



Proposed Remake of the *Motor Accidents Compensation Regulation 2005*

The following maximum fees are proposed for the remake of the *Motor Accidents Compensation Regulation 2005* in 2014.

DRAFT

Schedule 1

Tables A and B in Schedule 1 of the current regulation are replaced by the following single table.

For clarity: Only one stage can be claimed depending on the stage at which the claim resolves – i.e. each stage includes the previous stage and is “up to and including” the resolutions listed at each stage.

1. Costs for legal services

Stages	<i>Less than \$5,000</i>	<i>\$5,000 - \$20,000</i>	<i>\$20,000 - \$100,000</i>	<i>\$100,000 +</i>
Stage 1A – Claim not exempt from assessment - Up to but <u>not</u> including referral of claim to the Authority under s90 for assessment by CARS under s94 – includes (for the claimant) lodgement and investigation of the claim, particularisation of the claim under s85A, consideration of insurer’s s82 offer, attendance at settlement conference under s89A, making of s89C settlement offer, and consideration of insurer’s s89C offer where applicable	Nil.	15% of settlement amount	15% of settlement amount up to \$7,500 maximum	7.5% of settlement amount up to \$20,000 maximum
Stage 1B – claim exempt from assessment - Up to and including referral of claim to the Authority under s90 for exemption by CARS under s92 – includes (for the claimant) lodgement and investigation of the claim, application for exemption, consideration of insurer’s offers and finalisation of the claim before commencement of court proceedings.	Nil.	15% of settlement amount	15% of settlement amount up to \$7,500 maximum	7.5% of settlement amount up to \$20,000 maximum

Stage 2A – Claim not exempt from assessment – Claims referred for assessment at CARS – includes making application for assessment, all steps in CARS assessment process, and consideration of the certificate of assessment issued under s94 (where applicable)	Nil.	As for Stage 1. For clarity: Stage 2A costs are not payable in addition to Stage 1A costs. These costs can only be paid once.	Stage 1 + \$1500	Stage 1 + \$1500
Stage 2B – Claim exempt from assessment - Up to and including finalisation of the claim after commencement of court proceedings (subject to s152 and s153 where court can award costs in exceptional cases and to avoid substantial injustice)	Nil.	Stage 1 + \$2,000 Plus \$1,500 for each day (or part day) of hearing	Stage 2 + \$2,000 Plus \$1,500 for each day (or part day) of hearing	Stage 2 + \$2,000 Plus \$1,500 for each day (or part day) of hearing
Stage 3A – Claim not exempt from assessment – claimant rejects assessment and commences proceedings – including drafting, filing and serving court documents, attendances at court, preparation for and attendance at hearing	Nil.	This is still subject to s151 (who is liable for costs if the claimant doesn't accept the CARS assessment etc) and noting 153(1): Stage 2 + \$1,500 Plus \$1,000 for each day (or part day) of hearing	Subject to S.151: Stage 2 + \$1,500 Plus \$1,000 for each day (or part day) of hearing	Subject to S.151: Stage 2 + \$1,500 Plus \$1,000 for each day (or part day) of hearing
Stage 3B – Claim not exempt from assessment, insurer rejects assessment and commences proceedings – including drafting, filing and serving court documents, attendances at court, preparation for and attendance at hearing	Nil.	Stage 2 + \$2,000 Plus \$1,500 for each day (or part day) of hearing	Stage 2 + \$2,000 Plus \$1,500 for each day (or part day) of hearing	Stage 2 + \$2,000 Plus \$1,500 for each day (or part day) of hearing
Where the insurer rejects assessment, and is not more successful in court proceedings (by \$2,000 or 20%, whichever is greater), the insurer must pay the claimant's costs on an indemnity basis.				

Plus additional loadings as follows:

- **Liability wholly admitted** by insurer under s81(1), 81(2) or 81(4) or in court documents filed by the insurer - no uplift, regulated fees apply. (See Note 1)
- **Where Liability is not wholly admitted by insurer** (i.e. wholly denied (e.g. fault or causation is denied) or contributory negligence is alleged by the insurer, and the insurer is subsequently found to have, or concedes, some liability: a 50 percent uplift of the regulated fees for that stage may apply. Fees for each day of hearing are not to be included when calculating the uplift to be applied (i.e. they are to be added after the uplift is calculated). (See Note 2)

Note 1:

Where liability is wholly admitted by insurer under s81(1), 81(2) or 81(4) of the Act, the costs are regulated pursuant to Schedule 1.

Where liability is not wholly admitted and the insurer is subsequently found to have, or concedes, some liability, an additional 50 percent uplift of the sum of costs calculated pursuant to Schedule 1 are claimable. (Note: Where contributory negligence is alleged, the uplift remains claimable regardless of whether the insurer succeeds or not. Where insurer's denial of liability is upheld, costs follow the event and the claimant's legal practitioners would not be entitled to costs.)

The percentage uplift where liability is not wholly admitted is not claimable at each stage and is not compounded. The uplift is to be added after calculation of costs dependent on stage of resolution of matter.

Note 2:

The maximum contracted-out amount is calculated as a percentage (50%?) of the regulated costs calculated by reference to Table 1 (including, where applicable, the percentage uplift in costs where liability is not wholly admitted).

Costs are payable as follows:

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| - Regulated costs as per Table 1: | [payable by insurer] |
| - Uplift (% of regulated costs as per Table 1): | [payable by insurer] |
| - Contracted out costs: | [payable by claimant] |
| - Add: Schedule 1 Table 2 and 3 and Schedule 2 costs | [payable by insurer] |

Schedule 1

2. Other costs

Other costs Table - Current Regulation (26 March 2010)		Current Proposal
Nature of costs	Current Maximum costs	
Costs associated with a medical dispute under Part 3.4 of the Act, as allowed by the claims assessor	up to \$670 but not exceeding \$1,600 in respect of any one claim, regardless of the number or kind of disputes	<p>\$750 per medical dispute as listed in s58(1) up to a max of \$2250 in respect of any one claim regardless of the number of assessments.</p> <p>\$750 for a further medical assessment or a review of a medical assessment, but only if the Proper Officer determines it is suitable for further assessment (14.3-14.8 Medical Assessment Guidelines) or that there is reasonable cause to suspect that the medical assessment was incorrect in a material respect (s63(3)).</p>
Costs associated with a dispute referred to in section 96 of the Act, as allowed by the claims assessor (includes disputes in relation to late claims)	up to \$800 in respect of any one claim, regardless of the number or kind of disputes	Up to \$800 per dispute
Costs of interlocutory court proceedings	n/a	Up to \$800 per dispute, unless otherwise ordered by the Court on application by the relevant party and only in an exceptional case (s153(1) of Act)
Cost of representation at an assessment conference under section 104 of the Act:	(a) flat fee \$530 (b) additional amount, at the claims assessor's discretion, if the conference exceeds 2 hours - up to \$170 per hour for each hour (or part of an hour) in excess of 2 hours	Up to \$1000 plus up to \$200 per hour or part of an hour after the first two hours
Cost of representation in court, per day:	(a) advocate other than senior Counsel \$2,110 (b) senior counsel \$2,950	\$2500 (junior) \$3500 (senior)
Cost of conference directly related to an assessment of the claim or a court hearing, per hour (or part of an hour)	\$170	\$250 per hour

Schedule 1

3. Country Loadings

3. Country Loadings Table - Current Regulation (26 March 2010)				Current Proposal
Town Loading \$		Town Loading \$		Recommend no change except to add note below regarding assessments in Byron Bay and Canberra.
Albury	\$965	Kempsey	\$839	
Armidale	\$885	Lismore	\$878	
Batemans Bay	\$883	Lithgow	\$364	
Bathurst	\$700	Maitland (incl East Maitland)	\$548	
Bega	\$1,065	Moree	\$821	
Bourke	\$1,521	Moruya	\$688	
Broken Hill	\$1,643	Moss Vale	\$379	
Campbelltown	\$84	Mudgee	\$653	
Casino	\$994	Murwillumbah	\$1,015	
Cessnock	\$548	Muswellbrook	\$581	
Cobar	\$1,399	Narrabri	\$762	
Coffs Harbour	\$779	Narrandera	\$757	
Condobolin	\$1,186	Newcastle	\$548	
Cooma	\$1,176	Nowra	\$548	
Coonamble	\$1,134	Nyngan	\$1,303	
Cootamundra	\$804	Orange	\$624	
Cowra	\$619	Parkes	\$844	
Deniliquin	\$1,036	Penrith	\$84	
Dubbo	\$820	Port Macquarie	\$707	
Forbes	\$820	Queanbeyan	\$701	
Glen Innes	\$779	Singleton	\$843	
Gosford	\$235	Tamworth	\$817	
Goulburn	\$579	Taree	\$653	
Grafton	\$954	Tweed Heads	\$952	
Griffith	\$784	Wagga Wagga	\$725	
Gundagai	\$920	Wentworth	\$1,539	
Gunnedah	\$907	Wollongong	\$347	
Hay	\$1,015	Yass	\$617	
Inverell	\$911	Young	\$804	
Katoomba	\$319			

Schedule 1

Interstate Loadings

NSW advocate where proceedings heard or partially heard in another state - reasonable loading as determined by the court or claims assessor.

Note: Assessments undertaken in the Australian Capital Territory should use the loading for Queanbeyan. Assessments undertaken in Byron Bay should use the loading for Lismore.

Alternative option:

Increase country loadings by CPI (last increased in March 2010).

Schedule 2

Maximum fee for medico-legal services

Schedule 2 - Current Regulation				Current Proposal
Appearances as witnesses				
1	Non-Expert Medical evidence - Medical practitioners and other medical professionals called to give evidence other than expert evidence	\$260 per hour (or proportionately if not for a full hour) to a maximum of \$520		CPI Indexation
2	Expert Medical evidence - Medical practitioners and other medical professionals called to give expert evidence: (to a maximum of \$2,165)	(a) for the first one and a half hours (including time travelling to the court from the medical professional's home, hospital, place of practice, office or other place and return to that place from the court)	(a) \$605	CPI Indexation
		(b) for every full hour after the first hour and a half (or proportionately if not for a full hour)	(b) \$260	CPI Indexation
3	Travel Expenses - Travelling allowance in connection with appearance as witness	\$0.40 per kilometre		CPI Indexation
4	Accommodation and Meals - Accommodation and meals in connection with appearance as witness	reasonable costs		CPI Indexation
Medical Reports				
5	Treating GP Report - Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending general practitioner	(a) if a re-examination of the patient is not required	\$130	CPI Indexation
		(b) if a re-examination of the patient is required	\$195	CPI Indexation
6	Treating Specialist Report - Report (in the form, if any, provided for in the MAA Medical Guidelines) made by an attending specialist	(a) if a re-examination of the patient is not required	\$260	CPI Indexation
		(b) if a re-examination of the patient is required	\$350	CPI Indexation

Schedule 2 - Current Regulation				Current Proposal
7	<p>Non-Treating Specialist Report – where the referral has been jointly agreed between the parties</p> <p>Report (in the form, if any, provided for in the MAA Medical Guidelines) made by a specialist who has not previously treated the patient</p> <p>(depending, in both cases, on the complexity of the matter, the number of documents to be studied and the amount of research required)</p>	(a) if a re-examination of the patient is not required	n/a	<p>\$770 - \$960</p> <p>(Consistent with the June 2013 <i>Schedule of Allowances to Witnesses and Suggested Fees for Medical Examinations and Reports</i> agreed between the Law Society of NSW and the AMA, reduced by 40% where examination not required)</p>
		(b) if a re-examination of the patient is required	n/a	<p>\$1,285 - \$1,595</p> <p>(Consistent with the June 2013 <i>Schedule of Allowances to Witnesses and Suggested Fees for Medical Examinations and Reports</i> agreed between the Law Society of NSW and the AMA)</p>
8	<p>Non-Treating Specialist Report – other than a jointly agreed referral</p> <p>Report (in the form, if any, provided for in the MAA Medical Guidelines) made by a specialist who has not previously treated the patient</p> <p>(depending, in both cases, on the complexity of the matter, the number of documents to be studied and the amount of research required)</p>	(a) if a re-examination of the patient is not required	\$350 - \$435	CPI Indexation
		(b) if a re-examination of the patient is required	\$400 - \$720	CPI Indexation
9	Copying - Charges for copying medical reports	\$1 per page		CPI Indexation
Cancellation Fee				
10	Fee if appearance or medical report is not required	No more than 50% of the relevant amount specified in this Table		As is

*Last CPI indexation occurred in March 2010 taking account of movements in CPI to the end of the September quarter 2009.

Note: Provision to be made in the regulation to prevent claimants recovering the costs of treating reports or reports from jointly agreed referral to non-treating specialists in party-party costs (and legal practitioner from recovering from their client if contracting out) unless the report in question has first been requested from the insurer and the insurer has failed to provide it. It is proposed that the MAA Claims Handling Guidelines will require insurers to act in a manner supporting this process.