



New South Wales

Motor Accidents and Workers Compensation Legislation Amendment Regulation 2020

Her Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the following Acts—

- (a) *Motor Accident Injuries Act 2017*,
- (b) *Motor Accidents Compensation Act 1999*,
- (c) *Workers Compensation Act 1987*,
- (d) *Workplace Injury Management and Workers Compensation Act 1998*.

VICTOR DOMINELLO, MP
Minister for Customer Service

Explanatory note

The object of this Regulation is to make miscellaneous amendments consequent on the commencement of Schedule 6 to the *Personal Injury Commission Act 2020* to the following Regulations—

- (a) *Motor Accident Injuries Regulation 2017*,
- (b) *Motor Accidents Compensation Regulation 2020*,
- (c) *Workers Compensation Regulation 2016*.

This Regulation is made under the following Acts—

- (a) *Motor Accident Injuries Act 2017*, including section 11.12 (the general regulation-making power),
- (b) *Motor Accidents Compensation Act 1999*, including section 228 (the general regulation-making power),
- (c) *Workers Compensation Act 1987*, including section 280 (the general regulation-making power),
- (d) *Workplace Injury Management and Workers Compensation Act 1998*, including section 248 (the general regulation-making power).

Motor Accidents and Workers Compensation Legislation Amendment Regulation 2020

1 Name of Regulation

This Regulation is the *Motor Accidents and Workers Compensation Legislation Amendment Regulation 2020*.

2 Commencement

This Regulation commences on the establishment day, within the meaning of the *Personal Injury Commission Act 2020*, and is required to be published on the NSW legislation website.

Schedule 1 Amendment of motor accident injuries legislation

1.1 Motor Accident Injuries Act 2017 No 10

Schedule 4 Savings, transitional and other provisions

Omit clause 2(4)(a) and (b). Insert instead—

- (a) premiums payable for third-party policies issued—
 - (i) during the transition period, or
 - (ii) after the transition period, but only in relation to underwriting profits achieved by insurers during the transition period,
- (b) Authority Fund levies payable in connection with third-party policies issued—
 - (i) during the transition period, or
 - (ii) after the transition period, but only in relation to underwriting profits achieved by insurers during the transition period.

1.2 Motor Accident Injuries Regulation 2017

[1] Clauses 15(2) and 20(j) and (k)

Omit “Dispute Resolution Service” wherever occurring. Insert instead “Commission”.

[2] Clause 22 Fixing of maximum costs recoverable by legal practitioners (sections 8.3 and 8.10)

Omit “Dispute Resolution Service” wherever occurring in clause 22(3) and (4).

Insert instead “President”.

[3] Clause 22(4)

Omit “to it”.

[4] Clause 22(4)(b)

Omit “claims assessor”.

Insert instead “member of the Commission assigned to the Motor Accidents Division of the Commission”.

[5] Clause 23A

Insert after clause 23—

23A Certain costs not payable for compensation matter applications (section 8.3(1)(c))

It is declared that no costs are payable for legal services in relation to a compensation matter application concerning a claim for damages, within the meaning of section 26 of the *Personal Injury Commission Act 2020*, to the extent that the costs are payable on a practitioner and client basis.

[6] Clause 26 Maximum costs for claims made by minors (section 8.3(1))

Omit “a claims assessor” from clause 26(7). Insert instead “the Commission”.

[7] Clause 29

Omit the clause. Insert instead—

29 Assessment of costs to produce information (section 8.6(4))

The Commission may assess the reasonable costs in relation to the issuing of, or compliance with, a direction under section 49 of the *Personal Injury Commission Act 2020*.

[8] Clause 30 Costs where claimant does not accept assessed amount of damages

Omit “claims assessor” wherever occurring in clause 30(7). Insert instead “Commission”.

[9] Clause 32 Non-attendance or cancellation of medical assessment (section 7.28(1) and (3)(d))

Omit “Authority” where secondly and thirdly occurring in clause 32(1).

Insert instead “President”.

[10] Clause 36 Service of documents generally (section 11.5(1)(f))

Omit clause 36(1)(b). Insert instead—

- (b) electronic transmission through an approved online system that enables the electronic service of documents of that kind.

[11] Clause 36(5)

Insert after clause 36(4)—

- (5) In this clause—

approved online system means an online system that is approved by—

- (a) the Authority, or
- (b) the Commission, or
- (c) the Commission rules.

[12] Schedule 1 Maximum costs for legal services

Omit “proper officer of the Authority” wherever occurring in Part 1, clauses 1(3)(a) and (b) and 2.

Insert instead “President”.

[13] Schedule 1, Part 1, clause 2(1)

Omit “, as allowed by the claims assessor or court,”.

[14] Schedule 1, Part 1, clause 4, Table

Omit the matter relating to an application for exemption from assessment under Division 7.6 of the Act (but only where a certificate of exemption is issued under section 7.34 of the Act).

[15] Schedule 1, Part 1, clause 6

Insert after clause 5—

6 Compensation matter applications—claims for statutory benefits or damages

- (1) The maximum costs for legal services provided in a claim for statutory benefits or damages in connection with a matter relating to a compensation matter application set out in Column 1 of the Table to this clause are the costs set out in Column 2 opposite that matter.
- (2) An amount for the fees for senior counsel, or for more than one advocate, is not to be included unless the court so orders.

(3) In this clause—

compensation matter application has the same meaning as in section 26 of the *Personal Injury Commission Act 2020* in relation to which leave has not been granted by the District Court.

Table

Column 1	Column 2
	Monetary units
Court proceedings in relation to a compensation matter application	10
Representation in court—	
(a) maximum per day for advocate other than senior counsel	25
(b) maximum per day for senior counsel	35.5
Conference directly related to a compensation matter application	3

[16] Schedule 1, Part 2, clause 4(1)

Omit “claims assessor”. Insert instead “Commission”.

[17] Schedule 1, Part 2, clause 4(2)

Omit “assessor”. Insert instead “the Commission”.

Schedule 2 Amendment of Motor Accidents Compensation Regulation 2020

[1] Clause 3 Definitions

Omit “and published in the Gazette” from the definition of *costs breakdown* in clause 3(1).

[2] Clause 3(1), definition of “costs breakdown”

Insert “for damages” after “claim” in paragraph (a).

[3] Clauses 4(g) and (h) and 13(2)(b)

Omit “Motor Accidents Claims Assessment and Resolution Service” wherever occurring.
Insert instead “Commission”.

[4] Clauses 6(3), 9(5), 12(2) and 13(1) and (3)

Omit “a claims assessor” and “the claims assessor” wherever occurring.
Insert instead “the Commission”.

[5] Clause 8 Contracting out—practitioner and client costs

Insert after clause 8(6)—

- (7) This clause does not apply to costs involving a compensation matter application, as referred to in Schedule 1, clause 2A.

[6] Clause 12A

Insert before clause 13—

12A Claims exempt from assessment

- (1) For the purposes of section 92(1)(a) of the Act, the following kinds of claims are exempt from assessment under Part 4.4 of the Act—
- (a) a claim in which the claimant is a person under legal incapacity,
 - (b) a claim involving an action under the *Compensation to Relatives Act 1897* brought on behalf of a person under legal incapacity,
 - (c) a claim against a person who is not a licensed insurer or a third-party insurer,
 - (d) a claim in relation to which the insurer, by written notice to the claimant, alleges that the claim is fraudulent because the claimant—
 - (i) made a statement about the circumstances of the motor accident that gave rise to the claim, and
 - (ii) in making the statement, contravened section 117 of the Act,
 - (e) a claim for which the insurer, by written notice to the claimant and to the owner or driver of the motor vehicle to which a third-party policy relates, declines to indemnify the owner or driver under the third-party policy,
 - (f) a claim for which the insurer, by written notice to the claimant, denies liability because the insurer denies the fault of the owner or driver of the motor vehicle in the use or operation of the vehicle.
- (2) In this clause—
- person under legal incapacity* includes the following persons—
- (a) a child under the age of 18 years,

- (b) an involuntary patient or forensic patient within the meaning of the *Mental Health Act 2007*,
- (c) a person under guardianship within the meaning of the *Guardianship Act 1987*,
- (d) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*,
- (e) an incommunicate person, being a person with a physical or mental disability that prevents the person from receiving communications, or expressing their will, in relation to the person's property or affairs.

[7] Clause 13, heading

Omit "claims assessor". Insert instead "Commission".

[8] Clause 14

Omit the clause. Insert instead—

14 Assessment of costs to produce information

The Commission may assess the reasonable costs in relation to the issuing of, or compliance with, a direction under section 49 of the *Personal Injury Commission Act 2020*.

[9] Clause 17 Non-attendance or cancellation of appointment

Omit "Authority" where firstly and thirdly occurring. Insert instead "President".

[10] Schedule 1 Maximum costs for legal services

Omit "claims assessor" and "proper officer of the Authority" wherever occurring in the Table to clause 2.

Insert instead "Commission" and "President", respectively.

[11] Schedule 1, clause 2, Table

Omit "referred to the Authority". Insert instead "referred to the Commission".

[12] Schedule 1, clause 2A

Insert after clause 2—

2A Compensation matter applications—claims for damages

- (1) The maximum costs for legal services provided in a claim for damages in connection with a matter relating to a compensation matter application are the costs set out in the Table to this clause.
- (2) An amount for the fees for senior counsel, or for more than one advocate, is not to be included unless the court so orders.
- (3) In this clause—
compensation matter application has the same meaning as in section 26 of the *Personal Injury Commission Act 2020* in relation to which leave has not been granted by the District Court.

Table

Column 1	Column 2
	Monetary units
Court proceedings in relation to a compensation matter application	10
Representation in court—	
(a) maximum per day for advocate other than senior counsel	25
(b) maximum per day for senior counsel	35.5
Conference directly related to a compensation matter application	3

[13] Schedule 1, clause 4(1)

Omit “claims assessor”. Insert instead “Commission”.

[14] Schedule 1, clause 4(2)

Omit “assessor”. Insert instead “the Commission”.

Schedule 3 Amendment of Workers Compensation Regulation 2016

[1] Clause 8K Approval of agreement—Schedule 3, clause 3(1)

Omit “(within the meaning of Part 6 of the *Workers Compensation Commission Rules 2011*)” from clause 8K(5).

[2] Clause 8K(11)

Insert after clause 8K(10)—

(11) In this clause—

person under legal incapacity includes the following persons—

- (a) a child under the age of 18 years,
- (b) an involuntary patient or forensic patient within the meaning of the *Mental Health Act 2007*,
- (c) a person under guardianship within the meaning of the *Guardianship Act 1987*,
- (d) a protected person within the meaning of the *NSW Trustee and Guardian Act 2009*,
- (e) an incommunicate person, being a person with a physical or mental disability that prevents the person from receiving communications, or expressing their will, in relation to their property or affairs.

[3] Clauses 38(1)(g) and 38A(e)

Omit “Registrar of the Commission” wherever occurring. Insert instead “President”.

[4] Clause 43 Definitions

Omit the definition of *approved medical specialist*. Insert in alphabetical order—
medical assessor has the same meaning as in the 1998 Act.

[5] Clause 46, heading

Omit “approved medical specialists”. Insert instead “medical assessors”.

[6] Clauses 46, 47(1)(b) and (2)(b) and 49

Omit “an approved medical specialist” wherever occurring.

Insert instead “a medical assessor”.

[7] Clause 46(1)(c)

Omit “the approved medical specialist”. Insert instead “the medical assessor”.

[8] Clauses 88(3) and (4), 92(4), 101(1), 102(1), 103(1), 104(1) and (2) and 105(1)

Omit “Registrar” wherever occurring. Insert instead “President”.

[9] Clauses 92(3) and 97(1)(e)(i)

Omit “Commission” wherever occurring. Insert instead “President”.

[10] Clause 97 Deemed offer where insurer denies liability and no mediation occurs or mediation fails

Omit “Workers Compensation” from the note to the clause.

[11] Clause 104 Application for assessment of party/party costs—compensation matters

Omit clause 104(3). Insert instead—

- (3) A court or the Commission may, after making an order in relation to a matter—
 - (a) refer the matter to the President, and
 - (b) request the President to make arrangements for the assessment of costs payable as a result of the order.

Note— Schedule 3, clause 5(2) of the *Personal Injury Commission Act 2020* requires the Commission to be constituted by 1 non-presidential member assigned to the Workers Compensation Division of the Commission when dealing with the assessment of costs under this Regulation.

- (4) A referral under subclause (3) is taken to be an application for assessment duly made under this Division.

[12] Clause 105 Application for assessment of party/party costs—work injury damages matters

Omit clause 105(2). Insert instead—

- (2) A court or the Commission may, after making an order in relation to a matter—
 - (a) refer the matter to the President, and
 - (b) request the President to make arrangements for the assessment of costs payable as a result of the order.

Note— Schedule 3, clause 5(2) of the *Personal Injury Commission Act 2020* requires the Commission to be constituted by 1 non-presidential member assigned to the Workers Compensation Division of the Commission when dealing with the assessment of costs under this Regulation.

- (3) A referral under subclause (2) is taken to be an application for assessment duly made under this Division.

[13] Clauses 106, 111–118, 120, 121, 122(1) and (2), 127, 128 and 133

Omit “Registrar” wherever occurring. Insert instead “Commission”.

[14] Clauses 107–109, 123 and 169

Omit the clauses.

[15] Clauses 110 and 170

Omit “Rules of the Commission” wherever occurring. Insert instead “Commission rules”.

[16] Clauses 111(2), 116(2), 120(7) and 121

Omit “his or her” wherever occurring. Insert instead “the Commission’s”.

[17] Clause 117, heading

Omit “**Registrar**” wherever occurring. Insert instead “**Commission**”.

[18] Clauses 121(a) and 124

Omit “Registrar’s” wherever occurring. Insert instead “Commission’s”.

[19] Clause 122 Recovery of costs of costs assessment

Omit clause 122(4). Insert instead—

- (4) A Registrar of the Commission may take action to recover the costs of the Commission.

[20] Part 17, Division 4, Subdivision 5

Omit the Subdivision. Insert instead—

Subdivision 5 Appeals

125 Appeal against decision of Commission as to matter of law

- (1) This clause applies to a party to an application for an assessment of costs who is dissatisfied with a decision of the Commission (the *first instance Commission*) as to a matter of law arising in the proceedings to determine the application.
- (2) A party to whom this clause applies may, in accordance with the Commission rules, appeal to the Commission against the decision (the *appellate Commission*).
- (3) The appeal is to be—
- (a) in the form approved by the President, and
- (b) accompanied by the fee approved by the President from time to time.
- (4) After deciding the question that is the subject of the appeal, the appellate Commission may, unless it affirms the first instance Commission's decision—
- (a) make a determination in relation to the application that, in its opinion, should have been made by the first instance Commission, or
- (b) remit its decision on the question to the first instance Commission and order the first instance Commission to re-determine the application.
- (5) On a re-determination of an application, fresh evidence, or evidence in addition to or in substitution for the evidence received at the original proceedings, may be given.
- (6) In proceedings to determine an application for the assessment of costs under Schedule 6, subclause (2) only applies to a decision of the first instance Commission that is made in, or in connection with, the referral of a dispute to the President under clause 88(3).

Note— Schedule 3, clause 5 of the *Personal Injury Commission Act 2020* requires the Commission to be constituted by—

- (a) when dealing with the assessment of costs under this Regulation—1 non-presidential member of the Workers Compensation Division of the Commission, and
- (b) when dealing with an appeal against an assessment—1 presidential member of the Workers Compensation Division.

126 Effect of appeal on application

If a party to an application has appealed against a determination or decision of the first instance Commission under clause 125, the first instance Commission, the appellate Commission or the court may suspend the operation of the determination or decision until whichever occurs first—

- (a) the appeal is determined, or
- (b) for a suspension imposed by the first instance Commission—the suspension is ended by the first instance Commission, the appellate Commission or the court, or
- (c) for a suspension imposed by the appellate Commission—the suspension is ended by the appellate Commission or the court, or

- (d) for a suspension imposed by the court—the suspension is ended by the court.

- [21] **Clause 128 Referral of misconduct to designated local regulatory authority**
Omit “with a notice issued under clause 108, or with any other provision of this Division,” from clause 128(3).
Insert instead “with a provision of this Division”.
- [22] **Schedule 6 Maximum costs—compensation matters**
Omit “Workers Compensation Commission (the *Commission*)” from clause 1(1)(a).
Insert instead “Commission”.
- [23] **Schedule 6, clauses 2(1) (definition of “application”) and 3(2)(a) and (b)**
Omit “Registrar” wherever occurring. Insert instead “Commission”.
- [24] **Schedule 6, clause 2(1), definition of “teleconference”**
Omit “the Registrar or”.
- [25] **Schedule 6, clauses 2(2) and (3), 4(3), 12 and 13**
Omit “or the Registrar” wherever occurring.
- [26] **Schedule 6, clause 6(1)(c)**
Omit “an approved medical specialist or a Medical Appeal Panel”.
Insert instead “a medical assessor or Appeal Panel”.
- [27] **Schedule 6, clause 6(3), definition of “Medical Appeal Panel”**
Omit “*Medical*”.
- [28] **Schedule 6, clause 7(3)(c)**
Omit “Registrar”. Insert instead “President”.
- [29] **Schedule 6, clause 9(2)(b)**
Omit “Commission or the Registrar”. Insert instead “President”.
- [30] **Schedule 6, clauses 11(a) and 15**
Omit “practice direction or Registrar’s guideline” wherever occurring.
Insert instead “procedural direction of the President or the Commission rules”.
- [31] **Schedule 6, Part 2, Tables 1 and 3**
Omit “Registrar” wherever occurring. Insert instead “President”.
- [32] **Schedule 6, Part 2, Table 2**
Omit “referred by the Registrar for determination by an arbitrator” from item 5.
Insert instead “referred to the Commission for determination”.
- [33] **Schedule 6, Part 2, Table 4**
Omit “or the Registrar” wherever occurring.

[34] Schedule 6, Part 3, table

Omit “an approved medical specialist” from item 5. Insert instead “a medical assessor”.

[35] Schedule 7 Maximum costs for legal services—work injury damages matters

Omit “an approved medical specialist” from item 1 of the Other Work Injury Costs Table to clause 2.

Insert instead “a medical assessor”.