

# Fact Sheet 6 - Regulated Costs – Motor Accident Compensation

October 2017

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**Costs** comprise the professional fees, expenses, and disbursements charged by a lawyer. The costs of a solicitor, for example, include professional fees and disbursements such as fees for medical reports or other expert reports, court filing fees, fees of process servers/agents and barrister's fees.

Lawyers in New South Wales are generally free to charge for their services on any basis they choose, provided their charges are "fair and reasonable". Most lawyers either charge a fixed amount or calculate the amount they will charge their client at an hourly rate.

Certain costs are regulated by legislation. If a motor accident occurred on or after 5 October 1999, costs related to personal injury or death claims arising out of the accident are regulated by the *Motor Accident Compensation Act 1999* and the *Motor Accident Compensation Regulation 2015*.

The amount a lawyer can charge or be awarded for legal services in motor accident matters is fixed by the legislation. The legislation sets out the maximum amount that a lawyer can charge a client and other parties for services on an individual events or activity basis (for example in the preparation and service of a notice of claim or for representation at an assessment conference).

However, lawyers **can** and **often do**, charge a client more than the fixed maximum amount by "contracting out". To contract out, lawyer must:

- make required costs disclosures [Further information can be found on the OLSC Fact Sheet **Costs Disclosure**]; and
- enter into a costs agreement with the client; and
- before entering into the costs agreement, advise the client in a separate written document that, even if costs are awarded in favour of the client, the client will be liable to pay such amount of the costs provided for in the costs agreement as exceeds the maximum amount; and
- provide the Motor Accidents Authority with a costs breakdown in relation to the claim when it is finalised.

From 1 November 2016, contracting out is only permitted if the amount paid in resolution of the claim by way of settlement or an award of damages is more than \$50,000.00.

**This gap can often be significant and the client will be liable for that gap.**

### Costs where a claims assessment is made

A client cannot commence proceedings in court unless the Claims Assessment and Resolution Service (CARS) has considered the claim. CARS issues a certificate of assessment, specifying an amount of damages.

If a client does not accept the amount of damages in settlement of the claim within 21 days after the certificate is issued, then the following applies with respect to liability for costs incurred after the certificate was issued:

- **the insurer is liable to pay the costs** if the amount of damages awarded by the court in respect of the claim exceeds the amount of damages specified in the certificate of assessment by particular amounts set out in the *Motor Accident Compensation Act 1999*.
- **the client is liable to pay the costs** if the amount of damages awarded by the court in respect of the claim does not exceed the amount of damages specified in the certificate of assessment, but the maximum amount of insurer's costs that the client is liable to pay is \$25,000.00

In certain circumstances each party will have to pay its own costs.

### Exempt claims

Certain claims, however, are exempt from CARS assessment and these claims go directly to court. These claims **are not** subject to the above costs limitations. A lawyer can charge for their services on any basis they choose, provided their charges are fair and reasonable. The lawyer must, however, disclose to the client the basis of the costs and should enter into a written costs agreement with the client. [Further information can be found on the OLSC Fact Sheet **Costs Disclosure**] Generally, the court's usual rules about costs apply.

### Disbursements and expenses

Some costs associated with motor accident claims, such as for reports by accident reconstruction experts and accountants and for interpreter fees, are not regulated by the *Motor Accident Compensation Act 1999*.

Clients may be asked by their lawyer to pay for medical reports and other reports up front. If successful, the client should be reimbursed for most of these expenses.

It is recommended that clients ask their lawyer at the outset whether their claim is covered by the regulated costs scheme. If the claim is covered by the costs scheme, the client should ask whether the lawyer intends to charge them more than the fixed maximum costs.