

Regulatory Impact Statement: Motor Accidents Compensation Regulation 2020

**State Insurance
Regulatory Authority**

25 March 2020

Title of Regulatory Proposal: Motor Accidents Compensation Regulation 2020

Proponent: State Insurance Regulatory Authority

Responsible Minister: The Hon Victor Dominello MP, Minister for Customer Service

Relevant Act: *Motor Accidents Compensation Act 1999*

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1. Introduction

1.1 Purpose of Regulatory Impact Statement

The preparation of a Regulatory Impact Statement is required under the *Subordinate Legislation Act 1989*. This Act provides that all regulations in New South Wales are automatically repealed five years after they are made, unless their repeal is postponed for a limited period. The Act also provides that a Regulatory Impact Statement is to be made prior to the making of a statutory rule such as a regulation, by-law, rule or ordinance.

A regulation is automatically repealed on 1 September following the fifth anniversary on which it was published. The repeal of the *Motor Accidents Compensation Regulation 2015* is now due on 1 September 2020.

The primary purpose of a Regulatory Impact Statement is to ensure that the economic and social costs and benefits of a particular regulatory proposal are fully examined. For a regulation to proceed, the costs must not exceed the economic and social benefits of the proposed regulation.

This Regulatory Impact Statement proposes that the *Motor Accidents Compensation Regulation 2015* be remade under the regulation making powers set out under the *Motor Accidents Compensation Act 1999* (the 'MAC Act'). The proposed Regulation repeals and remakes, with minor amendments, the *Motor Accidents Compensation Regulation 2015*.

1.2 Key Objectives

The key function of the *Motor Accidents Compensation Regulation 2015* (the 'existing Regulation') is to regulate the maximum recoverable costs for legal, medical treatment and medico-legal services provided in relation to motor accident claims.

Legal costs comprise the professional fees, expenses and disbursements charged by a legal practitioner. Medico-legal costs include the fees charged by medical practitioners for preparing medical reports and appearing as a witness in court and other proceedings. Medical treatment costs chargeable by a medical practitioner to an insurer are limited to those payable to a medical practitioner as prescribed in the Australian Medical Association List of Medical Services (AMA List) as varied from time to time.

The rationale for regulating the cost of these services is to ensure that transaction costs relating to motor accident claims do not unreasonably contribute to the cost of compulsory third-party insurance policies ('Green Slips') payable by New South Wales motorists.

1.3 Proposed new Regulation

The proposed *Motor Accidents Compensation Regulation 2020* (the 'proposed Regulation') maintains the existing regulatory framework and processes but will include updates to some of its provisions. These updates are minor in nature and do not bring significant changes to the legislation. Instead, they are designed to ensure that the proposed Regulation stays up-to-date and relevant to the CTP Scheme.

Changes to the proposed Regulation are summarised in **Appendix 1** of this document.

The proposed Regulation will still maintain the same fee structure for legal costs. This includes the fixing of maximum costs recoverable by legal practitioners in motor accident matters and 'contracting out' for practitioner and clients costs.

The proposed Regulation will also retain the same fee structure for medico-legal fees. This includes prescribing the maximum fees payable to medical practitioners for preparing medical reports and limits on costs for expert witnesses in motor accidents claims.

Finally, the proposed Regulation also retains the current provisions in respect of medical treatment costs payable by the insurer. The maximum costs paid by insurers for medical treatment that is provided by a medical practitioner are as specified in the Australian Medical Association (AMA) List, which has been updated as of 1 December 2019.

1.4 Submissions

Submissions are invited on any aspect of the proposed Regulation.

The final date for receipt of submissions is 5pm, Monday 11 May 2020.

Submissions should be sent via email to: MAIRstakeholder@sira.nsw.gov.au.

Please contact Ms Elizabeth Maister, Manager Stakeholder Engagement, on (02) 8281 6234 if you are unable to submit via email and require alternative options.

1.5 Additional Information

Copies of this Regulatory Impact Statement are available from the State Insurance Regulatory Authority's (SIRA) website at www.sira.nsw.gov.au. Any enquiries regarding the proposed Regulation and Regulatory Impact Statement may be directed to Ms Elizabeth Maister, Manager Stakeholder Engagement on (02) 8281 6234 or MAIRstakeholder@sira.nsw.gov.au.

2. Background

2.1 Overview of the Motor Accidents Scheme

The New South Wales motor accidents scheme is a privately underwritten Compulsory Third Party (CTP) personal injury insurance scheme operating under the *Motor Accidents Compensation Act 1999*. The MAC Act was superseded by the *Motor Accident Injuries Act 2017* on 1 December 2017, however, the MAC Act still applies to claims for compensation for motor accident occurring before this date. The scheme is regulated by the State Insurance Regulatory Authority (SIRA).

The 1999 CTP scheme is a modified common law, primarily fault-based scheme. This generally means that people injured in a motor vehicle accident in New South Wales that is caused through an owner or driver's fault in the use or operation of a motor vehicle is entitled to compensation under the 1999 scheme. Compensation entitlements include current and future medical, rehabilitation and treatment expenses; domestic assistance; lost earnings; loss of earning capacity and in cases of serious injuries involving ongoing impairment, damages for non-economic loss or pain and suffering. These are paid as a lump sum on finalisation or settlement of a claim. Compensation payments made under the scheme are fully funded from CTP insurance policies or Green Slips, which are compulsory for all vehicle owners in New South Wales. CTP (Green Slip) insurance policies are only available from private insurers licensed by SIRA.

2.2 Motor Accidents Compensation Act 1999

The *Motor Accidents Compensation Act 1999* (the MAC Act) applies to all motor accidents that occurred in New South Wales between its commencement on 5 October 1999 to 30 November 2017 inclusive, after which it is superseded by the *Motor Accident Injuries Act 2017*.

The objectives of the MAC Act are to:

- encourage early and appropriate treatment and rehabilitation to achieve optimum recovery from injuries sustained in motor accidents, and to provide appropriately for the future needs of those with ongoing disabilities;
- provide compensation for people with compensable injuries sustained in motor accidents, and to encourage the early resolution of compensation claims;
- promote competition in the setting of premiums for third-party policies, and to provide the Authority with a prudential role to ensure against market failure;
- keep premiums affordable, particularly by limiting the amount of compensation payable for non-economic loss in cases of relatively minor injuries, while preserving principles of full compensation for those with severe injuries involving ongoing impairment and disabilities;
- deter fraud in connection with compulsory third-party insurance.

2.3 Motor Accidents Compensation Regulation 2015

The *Motor Accidents Compensation Regulation 2015* (the 'existing Regulation') commenced on 1 April 2015 and remakes, with several amendments, the *Motor Accidents Compensation Regulation 2005*.

The *Motor Accidents Compensation Regulation 2005* commenced on 26 August 2005 and made provisions for:

- the maximum costs for legal services provided in relation to motor accident claims;
- the maximum costs for medico-legal services and expert evidence provided in relation to motor accident claims;
- the maximum amounts payable by insurers for certain medical treatments provided in relation to motor accident claims;
- other matters relating to costs including fees for non-attendance or cancellation of medical assessment appointments;
- the rate of certain travel expenses and the assessment of costs by claims assessors;
- the time limits for the payment of an assessed amount of damages by a CTP insurer;
- the classes of motor vehicles that are taken to be subject to unregistered vehicle permits;
- the authorities to which protected information may be divulged; and
- costs that are unregulated in respect of motor accident matters.

The existing Regulation makes additional provisions with respect to:

- legal practitioners providing a full breakdown of all costs and disbursements incurred in motor accident matters to SIRA;
- an insurer who does not accept an assessment of damages paying all costs of the claimant incurred in the matter;
- appointing fees for joint appointment of a medico-legal specialist; and
- preventing fees for an initial report from a treating medical practitioner being paid twice.

These provisions assist SIRA and Government to ensure that the CTP scheme delivers effective, fair and efficient outcomes for claimants and insurers involved in motor accident claims.

2.4 Consultation

In accordance with section 5(2) of the *Subordinate Legislation Act 1989*, an advertisement will appear in the Government Gazette and in a daily newspaper circulating throughout New South Wales announcing the intention to remake the existing Regulation. The Regulatory Impact Statement and proposed Regulation will also be circulated to several organisations that have an identifiable interest in the proposed Regulation listed in **Appendix 2**.

3. Options to achieve objectives

3.1 Options for remaking the Motor Accidents Compensation Regulation 2015

There are three options for the remaking of the Motor Accidents Compensation Regulation 2015 (the Regulation):

- i. **Take No Action** – Allow the existing Regulation to lapse
- ii. **Maintain the Status Quo** – Remake the existing Regulation without amendment
- iii. **Update the Regulation** – Remake the existing Regulation with amendments

These options are discussed in detail below.

3.2 Option 1: Take No Action – Allow the existing Regulation to lapse

This option means that the Government does not take any action in relation to the automatic repeal of the current Regulation. The Regulation would be allowed to lapse and its provisions would no longer have any operational effect.

The current Regulation is necessary to support the *Motor Accidents Compensation Act 1999* (the Act). This ensures that the 1999 compulsory third-party insurance (CTP) scheme can still operate effectively until all claims under that scheme are finalised.

The existing Regulation also supports the objectives of the Act, which is to keep Green Slip premiums affordable for vehicle owners. It prescribes regulatory provisions that fix the maximum costs recoverable for legal, medico-legal and medical treatment costs, which if left unchecked, could contribute to rising premiums. The Regulation also ensures that an adequate amount of compensation is returned to the injured party.

If the Regulation is allowed to lapse, this will present difficulties for the 1999 scheme. The absence of the familiar and effective regulatory framework will create significant uncertainty and lead to costly delays in finalising claims under the 1999 scheme.

There are few benefits for the government, industry or community if the existing Regulation is allowed to lapse. On the contrary, the effects would be highly detrimental. Without the provisions provided in the existing Regulation, the intention and detail of the 1999 Act would be unclear. Specific provisions in the 1999 Act would be rendered inoperable without the supporting Regulation. Furthermore, this would likely lead to an increase in complaints and disputes between injured motorists, insurers, legal practitioners and the government. It would also make it difficult for SIRA to execute its role and responsibilities properly because the regulatory guidance afforded by the existing Regulation is absent.

This option is not recommended.

3.3 Option 2: Maintain the Status Quo – Remake the existing Regulation without amendments

This option means remaking the current Regulation with no changes. This would maintain the current regulatory framework for the regulation of costs in the 1999 scheme and allow all the provisions in the current Regulation to continue for another five-year period.

Remaking the existing Regulation without amendment would support the operation of the 1999 Act, and allow the 1999 scheme to run its due course until all claims under that scheme are finalised. However, parts of the Regulation would have no practical effect because they relate to outdated or repealed legislative instruments. The effective use of the Regulation requires at least some amendments to be made.

This option is not recommended.

3.4 Option 3: Update the Regulation – Remake the existing Regulation with amendments

This option involves remaking the current Regulation with amendments when the Regulation lapses on 1 September 2020 under the Subordinate Legislation Act 1989. The proposed Regulation (Motor Accidents Compensation Regulation 2020) will maintain the existing regulatory framework and processes but will include updates to some of its provisions. These updates are necessary to align with legislative changes and revised medical services and fees.

The proposed Regulation will include updates to the following provisions:

2015 provision	Amendment/Update	Rationale
Clause 4 (g) - (h) Costs not regulated by this Part	Claims Assessment and Resolution Service to be amended to 'Motor Accidents Claims Assessment and Resolution Service'	The correct name for this operational unit is 'Motor Accidents Claims Assessment and Resolution Service' as stated in the <i>Motor Accidents Compensation Act 1999</i> .
Clause 12(3)(c) Assessment of costs by claims assessor	Replace reference to <i>Legal Profession Act 2004</i> with <i>Legal Profession Uniform Law Application Act 2014</i> .	The <i>Legal Profession Act 2004</i> was repealed in 2015 by the <i>Legal Profession Uniform Law Application Act 2014</i> . A claims assessor must now give effect to and

		must have regard to the principles and matters set out in the <i>Legal Profession Uniform Law (NSW) s 200</i> .
Clause 14 Appeals against assessment	Replace reference to <i>Legal Profession Act 2004</i> with <i>Legal Profession Uniform Law Application Act 2014</i> .	As above, the <i>Legal Profession Act 2004</i> was repealed in 2015.
Clause 17 Private motor vehicle travel expenses incurred by injured persons	Subclause (2) is to be removed.	This subclause is no longer relevant and should be removed.
Clause 19(4) Maximum amounts payable by insurer for certain treatment	The date for the AMA list (also known as the List of Medical Services and Fees) is to be updated to '1 December 2019'.	The latest AMA list of medical services and fees has been updated to "1 December 2019".
Schedule 3 Savings, transitional and other provisions	Schedule 3 is to be removed.	The provisions in Schedule 3 are no longer relevant, and therefore should be removed. Note that section 30(2) of the <i>Interpretation Act 1987 (NSW)</i> expressly saves the operation of repealed savings or transitional provisions. If repealed, these provisions can still be accessed via the NSW Legislation database.

The amendments proposed above are designed to ensure the *Motor Accidents Compensation Regulation 2020* stays up-to-date and relevant to the CTP Scheme.

The benefit of this option is that it provides the public with updated and modern regulation that is relevant. It also reduces costs for the government in administering the regulation and prevents any disputes or queries that may arise in relation to outdated provisions.

Costs to the government, industry and community are assessed as negligible or minimal. There are no significant changes to the proposed regulation and therefore unlikely to impact any party.

Remaking the Regulation with amendments would provide updated legislative support and administrative detail for the 1999 Act.

This option is recommended.

3.5 Conclusion

Recommendation: Option 3 - Remake the Regulation with amendments.

The preferred option is to remake the 2015 Regulation with amendments. This ensures that the 2020 Regulation is up-to-date and relevant to the CTP Scheme. As mentioned previously, this option provides updated legislative support and administrative detail for the 1999 Act.

If the *Motor Accidents Compensation Regulation 2015* is allowed to lapse (Option 1), the effects would be highly detrimental. The absence of regulation would mean that the 1999 Act would be unsupported. There would be a lack of clarity and transparency of provisions of the 1999 Act. Claimants in the 1999 Scheme would have no recourse to seek compensation or benefits as the 2017 Scheme would not be applicable to them. Furthermore, the absence of regulation to support the 1999 Act would likely lead to an increase in complaints and disputes between injured motorists, insurers, legal practitioners and the government. This would add to administrative costs for the government and have a financial impact on motorists in the broader community.

Remaking the Regulation without amendment (Option 2) would maintain the current regulatory framework for the regulation of costs in the 1999 CTP Scheme. However, it would fail to capture the necessary amendments to ensure the Regulation is up-to-date and relevant in line with legislative changes and revised medical services and fees.

There is a strong case and rationale for Option 3, and therefore remaking the Regulation with amendments is the preferred and recommended approach.

Appendix 1 – Summary of Main Changes to the Regulation

2015 provision	Amendment/Update	Rationale
Clause 4 (g) - (h) Costs not regulated by this Part	Claims Assessment and Resolution Service to be amended to 'Motor Accidents Claims Assessment and Resolution Service'	The correct name for this operational unit is 'Motor Accidents Claims Assessment and Resolution Service' as stated in the <i>Motor Accidents Compensation Act 1999</i> .
Clause 12(3)(c) Assessment of costs by claims assessor	Replace reference to <i>Legal Profession Act 2004</i> with <i>Legal Profession Uniform Law Application Act 2014</i> .	The <i>Legal Profession Act 2004</i> was repealed in 2015 by the <i>Legal Profession Uniform Law Application Act 2014</i> . A claims assessor must now give effect to and must have regard to the principles and matters set out in the <i>Legal Profession Uniform Law (NSW) s 200</i> .
Clause 14 Appeals against assessment	Replace reference to <i>Legal Profession Act 2004</i> with <i>Legal Profession Uniform Law Application Act 2014</i> .	As above, the <i>Legal Profession Act 2004</i> was repealed in 2015.
Clause 17 Private motor vehicle travel expenses incurred by injured persons	Subclause (2) is to be removed.	This subclause is no longer relevant and should be removed.
Clause 19(4) Maximum amounts payable by insurer for certain treatment	The date for the AMA list (also known as the List of Medical Services and Fees) is to be updated to '1 December 2019'.	The latest AMA list of medical services and fees has been updated to "1 December 2019".
Schedule 3 Savings, transitional and other provisions	Schedule 3 is to be removed.	The provisions in Schedule 3 are no longer relevant, and therefore should be removed. Note that section 30(2) of the <i>Interpretation Act 1987 (NSW)</i> expressly saves the operation of repealed savings or transitional provisions. If repealed, these provisions can still be accessed via the NSW Legislation database.

Appendix 2 – List of Targeted Stakeholders

The following organisations and industry bodies have been invited to comment on the proposed Regulation and this Regulatory Impact Statement:

Allianz Australia Insurance Group
Australian Lawyers Alliance
Australian Medical Association (NSW)
Enstar
Insurance Australia Group
Insurance Council of Australia
Law Society of NSW
Motorcycle Council of NSW
NSW Bar Association
QBE Insurance Australia
Suncorp Group
Zurich Australia

Disclaimer

This publication may contain information that relates to the regulation of workers compensation insurance, motor accident third party (CTP) insurance and home building compensation in NSW. It may include details of some of your obligations under the various schemes that the State Insurance Regulatory Authority (SIRA) administers.

However to ensure you comply with your legal obligations you must refer to the appropriate legislation as currently in force. Up to date legislation can be found at the NSW Legislation website legislation.nsw.gov.au

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