

# **REGULATORY IMPACT STATEMENT**

Road Transport (Third-Party Insurance) Regulation 2008

SL2008-37

Prescription of Maximum Legal Costs

Department of Treasury

20 August 2008

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## **Introduction**

This Regulatory Impact Statement (RIS) relates to the introduction of new restrictions on legal costs under the *Road Transport (Third-Party Insurance) Regulation 2008*. These restrictions (part 6, sections 27-30), based on claimants' awarded damages, determine the maximum lawyers may charge claimants. The creation of the restrictions satisfies the 'appreciable cost' criteria of Section 34 (1) of the *Legislation Act 2001*, which determines whether or not a subordinate law requires a RIS.

### **1. Authorising law**

The authorising law for the *Road Transport (Third-Party Insurance) Regulation 2008* (the Regulation) is the *Road Transport (Third-Party Insurance) Act 2008*, section 277.

### **2. Policy objectives of proposed law**

The objective of the Regulation (part 6, section 27-30) is to relieve upward pressure on ACT CTP insurance premiums, which are the second highest in Australia.

### **3. Appropriateness of approach adopted**

Part 6, sections 27-30 of the Regulation stipulates the maximum legal costs allowed in cases of small awards of damages. The provisions which stipulate these maximum legal costs are divided into two (2) types based on out of court settlements and court ordered outcomes: costs for mandatory final offers of \$50,000 or less, and costs for small court ordered awards of damages of \$50,000 or less.

For a mandatory final offer accepted as a substitute for subsequent court action, costs, including disbursements, must not exceed \$5,000 if a mandatory final offer for more than \$30,000 but not more than \$50,000 is accepted.

The costs for small awards of damages are as follows: in a case involving amounts up to \$30,000, if a court ordered award is 15% more than the Defendant's mandatory final offer, costs are to be worked out on a party-party basis and must not exceed \$10,000, or in any other case, no costs are to be awarded.

In a case between \$30,000 and \$50,000, if a court ordered award is at least 15% less than the plaintiff's mandatory final offer, costs are to be worked out on a party-party basis and must not exceed \$2,500, or in any other case, no costs are to be awarded. Correspondingly, if a court ordered award is at least 15% more than the defendant's mandatory final offer; the maximum amount allowable for costs is \$15,000.

The introduction of these costs restrictions is designed to moderate the legal costs associated with small insurance claims involving minor injuries, consistent with the objectives of the *Road Transport (Third-Party Insurance) Act 2008*. The incremental increase in the maximum amounts provide incentives for lawyers to advise clients to claim or defend feasible damages amounts that can be dealt with efficiently between the parties, or if necessary, by the court.

#### 4. Consistency with authorising law

The establishment of provisions that determine the limit of legal costs claimed by lawyers is consistent with the objects of the authorising law. One of the principle objectives of the authorising law is to increase the efficiency with which claims are processed and to reduce transaction costs.

#### 5. Inconsistency with other ACT laws

Part 6, sections 27-30 are not inconsistent with other ACT laws.

#### 6. Consideration of alternative approaches

An alternative approach would be for legal costs to continue to be regulated by Part 14 of the *Civil Law (Wrongs) Act 2002*. The *Civil Law (Wrongs) Act* provides that if the amount recovered on a claim for personal injury damages does not exceed \$50,000, the maximum costs recoverable for legal services provided to the plaintiff or defendant is 20% of the amount recovered or claimed or \$10,000, whichever is greater. These restrictions do not include disbursements. However, the provisions of that Act have proved ineffective in restraining legal costs for CTP claims. The section below on the benefits and costs illustrates why this alternative has been rejected.

#### 7. Benefits and costs of proposed law

The key differences in costs and benefits of the proposed law and the status quo are summarised below. The comparison focuses on those three stakeholders most affected by the reforms: individual claimants, insurers and the legal community.

##### *Benefits*

	<b>Proposed Law</b>	<b>Civil Law Wrongs Act Approach (Status Quo)</b>
<b>Individuals</b>	<ul style="list-style-type: none"><li>• Reduced legal costs</li><li>• Possibility of reduced insurance premiums</li></ul>	
<b>Insurers</b>	<ul style="list-style-type: none"><li>• Reductions in legal costs and therefore opportunity for more competitive insurance policies</li></ul>	
<b>Civil Litigation Lawyers</b>	<ul style="list-style-type: none"><li>• Market certainty in terms of the range of likely costs associated with different damages</li><li>• Capacity to recover costs of \$15,000 where insurers don't make reasonable damages offers</li></ul>	<ul style="list-style-type: none"><li>• Capacity to recover \$10,000 costs for a \$50,000 damages payout</li></ul>

## Costs

	Proposed Law	Civil Law Wrongs Act Approach (Status Quo)
<b>Individuals</b>	<ul style="list-style-type: none"> <li>Individuals may have difficulty engaging lawyers for cases where the claims are only likely to result in small damages</li> </ul>	<ul style="list-style-type: none"> <li>Small damages claims can be eroded by significant legal costs.</li> </ul>
<b>Insurers</b>	<ul style="list-style-type: none"> <li>Penalty provisions for the allocation of costs where reasonable offers are not made</li> </ul>	<ul style="list-style-type: none"> <li>Excessive legal costs which impact on the cost of doing business in the ACT</li> </ul>
<b>Civil Litigation Lawyers</b>	<ul style="list-style-type: none"> <li>Reduction in income from CTP injury cases</li> </ul>	

In the three years following the enactment of the Civil Law (Wrongs) Act, legal costs for ACT CTP claims increased by at least 80% on both the plaintiff's and the defence side. Legal costs currently represent in excess of 20% of the cost of a CTP policy for a private car in the ACT (\$80 out of a total premium of \$385.05), twice the level that applies anywhere else in Australia.

If the proposed law is successful in reducing legal costs in the ACT CTP scheme to a level comparable to that applicable elsewhere in Australia, there is the potential for a \$40 per policy saving which would likely be shared between licensed insurers and those insured (ACT motorists). In addition, it is likely that the changes would lead to increased efficiencies for the courts with associated savings in this area.

While the savings identified above would be at the expense of fees earned by civil litigation lawyers, the intention of the proposed law is to make the claims process more efficient and expeditious. This is consistent with the overall objective of all CTP Schemes which is to ensure that injured persons receive appropriate rehabilitation and compensation in a timely manner.

## 8. Consistency with scrutiny committee principles

Part 6, sections 27-30 are consistent with the scrutiny committee principles. The sections:

- are consistent with the objectives of the *Road Transport (Third-Party Insurance) Act 2008*;
- do not unduly trespass on existing rights established by law;
- do not make rights, liberties and/or obligations unduly dependent on non-reviewable decisions; and
- do not contain matters that should properly be dealt with in an Act.

In addition to these sections of the Regulation, the Regulation as a whole is consistent with the Scrutiny Principles.