

Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005 No 113

[2005-113]



New South Wales

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Provisions in force

Some, but not all, of the provisions displayed in this version of the legislation have commenced.

Notes—

- **See also**
[Statute Law \(Miscellaneous Provisions\) Bill 2007](#)

Authorisation

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Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005 No 113



New South Wales

An Act to amend the *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987* with respect to dispute resolution procedures, insurance obligations, workers, costs and compensation for back injuries; and for other purposes.

1 Name of Act

This Act is the *Workers Compensation Legislation Amendment (Miscellaneous Provisions) Act 2005*.

2 Commencement

- (1) This Act commences on a day or days to be appointed by proclamation, except as provided by this section.
- (2) Schedule 3.2 [1] commences on 1 January 2006.
- (3) Section 6 and Schedule 4 commence on the date of assent to this Act.

3 Amendments relating to claims and dispute resolution

The *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987* are amended as set out in Schedule 1.

4 Amendments relating to insurance premiums and deemed workers

The *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987* are amended as set out in Schedule 2.

5 Miscellaneous amendments

The *Workplace Injury Management and Workers Compensation Act 1998* and the *Workers Compensation Act 1987* are amended as set out in Schedule 3.

6 (Repealed)

7 Repeal

The *Workers Compensation Legislation Further Amendment Act 2001* is repealed.

Schedule 1 Amendments relating to claims and dispute resolution

(Section 3)

1.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 73 Insurer to provide copies of reports to worker

Omit “, within the period required by the regulations,” from section 73 (1).

[2] Section 73 (3) (c)

Insert at the end of section 73 (3) (b):

, and

- (c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

[3] Section 74 Insurers to give notice and reasons when liability disputed

Omit section 74 (2) (a). Insert instead:

- (a) a statement of the reason the insurer disputes liability and of the issues relevant to the decision,
 - (a1) a statement to the effect that the worker can request a review of the claim by the insurer,

[4] Section 74 (2) (c1)

Insert after section 74 (2) (c):

- (c1) a statement to the effect that the matters that may be referred to the Commission are limited to matters notified in the notice, or in a notice after a further review or in correspondence prior to any such referral concerning an offer of settlement or in a request for a further review,

[5] Section 74 (5)

Insert after section 74 (4):

- (5) Before giving a notice under this section, an insurer must carry out an internal review of the decision to dispute liability in respect of the claim or an aspect of the claim.

[6] Section 119 Medical examination of workers at direction of employer

Omit “the regulations” wherever occurring in section 119 (4).

Insert instead “the WorkCover Guidelines”.

[7] Section 119 (6) (c)

Insert at the end of section 119 (6) (b):

, and

- (c) the opinion or report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

[8] Section 126 Copies of certain medical reports to be supplied to worker

Omit section 126 (2). Insert instead:

- (2) The regulations may make provision for or with respect to requiring an employer or insurer in possession of a medical report relating to an injured worker to provide a copy of the report to the worker, the worker’s legal representative or any other person, if the worker’s claim is disputed.
- (3) If an employer or insurer fails to provide a copy of a report as required by the regulations under subsection (2):
- (a) the employer or insurer cannot use the opinion or report to dispute liability to pay or continue to pay compensation or to reduce the amount of compensation to be paid and cannot use the report for any other purpose prescribed by the regulations for the purposes of this section, and
- (b) the report is not admissible in proceedings on such a dispute before the Commission, and
- (c) the report may not be disclosed to an approved medical specialist or an Appeal Panel in connection with the assessment of a medical dispute under Part 7 of Chapter 7.

[9] Section 287A

Insert after section 287:

287A Reviews prior to referral

- (1) A worker may request an insurer to review a claim after the insurer has disputed the claim or any aspect of the claim. A request may be made at any time before the dispute is referred to the Registrar for determination by the Commission.
- (2) On such a request, the insurer must review the claim not later than 14 days after the request is made and may accept the claim or, if the insurer determines that it disputes liability in respect of the claim or any aspect of the claim, must give notice of the dispute to the claimant.
- (3) The notice must contain the matters required to be set out under section 74 in a notice of a dispute and may contain such other information as the regulations may prescribe.
- (4) The notice is to comply with the other requirements for a notice given under section 74.

[10] Section 288 Referral of disputes to Commission

Insert at the end of the section:

- (2) The Registrar may not accept a dispute for referral for determination to the Commission if the dispute is a dispute that, under this Part, cannot be referred for determination by the Commission.

[11] Section 289 Restrictions as to when dispute can be referred to Commission

Insert after section 289 (4):

- (5) The Commission may not hear or otherwise deal with any dispute if this section provides that the dispute cannot be referred for determination by the Commission.

[12] Section 289A

Insert after section 289:

289A Further restrictions as to when a dispute can be referred to Commission

- (1) A dispute cannot be referred for determination by the Commission unless it

concerns only matters previously notified as disputed.

- (2) A matter is taken to have been previously notified as disputed if:
 - (a) it was notified in a notice of dispute under this Act or the 1987 Act after a claim was made or a claim was reviewed, or
 - (b) it concerns matters, raised in writing between the parties before the dispute is referred to the Registrar for determination by the Commission, concerning an offer of settlement of a claim for lump sum compensation.
- (3) The Commission may not hear or otherwise deal with any dispute if this section provides that the dispute cannot be referred for determination by the Commission. However, the Commission may hear or otherwise deal with a matter subsequently arising out of such a dispute.
- (4) Despite subsection (3), a dispute relating to previously unnotified matters may be heard or otherwise dealt with by the Commission if the Commission is of the opinion that it is in the interests of justice to do so.

[13] Section 292 Expedited assessment

Omit “the dispute by the Commission while the dispute is being dealt with under that Part”.

Insert instead “a dispute by the Commission while the dispute is being dealt with under Division 2 or 3 of that Part”.

[14] Section 293 Medical assessment

Insert “, in accordance with this section,” after “the Registrar may” in section 293 (1).

[15] Section 293 (2)

Insert “(including hearing loss)” after “impairment”.

[16] Section 293 (3)

Insert after section 293 (2):

- (3) The Registrar may not refer for assessment:
 - (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

[17] Section 296 Exercise of functions of Registrar

Insert “Division 2 or 3 of” before “this Part” where secondly occurring in section 296 (2).

[18] Section 297 Directions for interim payment of weekly payments or medical expenses compensation

Omit “\$5,000” from section 297 (2). Insert instead “\$7,500”.

[19] Chapter 7, Part 5, Division 2A

Insert after Division 2 of Part 5 of Chapter 7:

Division 2A Disputes concerning past weekly payments

304A Disputes to which Division applies

- (1) This Division applies in respect of a dispute that concerns weekly payments of compensation if the payments are for a period (not exceeding 12 weeks) before the dispute is referred to the Commission, being a period in respect of which an interim payment direction under this Part may not be made.
- (2) A dispute that also relates to medical expenses may be dealt with partly under this Division (in relation to weekly payments) and partly under Division 2 (in relation to medical expenses).

304B Registrar may deal with dispute

- (1) The Registrar may determine the dispute instead of the Commission.
- (2) For the purposes of determining the dispute and subject to the regulations, the Registrar has all the functions of the Commission constituted by an Arbitrator under the Workers Compensation Acts and any determination of the Registrar is taken to be the determination of the Commission constituted by an Arbitrator.
- (3) This Division does not affect any jurisdiction of the Commission to determine a dispute involving weekly payments of compensation.
- (4) To avoid doubt, the Registrar may, under section 371, delegate a function conferred on the Registrar under subsection (1) or (2).

[20] Section 321 Referral of medical dispute for assessment

Insert after section 321 (2):

- (3) The Commission may not refer for assessment under this Part a medical dispute concerning permanent impairment (including hearing loss) of an injured worker.

- (4) The Registrar may not refer for assessment under this Part:
- (a) a medical dispute concerning permanent impairment (including hearing loss) of an injured worker where liability is in issue and has not been determined by the Commission, or
 - (b) a medical dispute other than a dispute concerning permanent impairment (including hearing loss) of an injured worker, except when dealing with the dispute under Part 5 (Expedited assessment).

[21] Section 322 Assessment of impairment

Insert “(as in force at the time the assessment is made)” after “Guidelines” in section 322 (1).

[22] Section 327 Appeal against medical assessment

Omit “it appears to the Registrar that at least one of the grounds for appeal specified in subsection (3) exists” from section 327 (4).

Insert instead “the Registrar is satisfied that, on the face of the application and any submissions made to the Registrar, at least one of the grounds for appeal specified in subsection (3) has been made out”.

[23] Section 327 (6)

Omit the subsection. Insert instead:

- (6) The Registrar may refer a medical assessment for further assessment or reconsideration under section 329 as an alternative to an appeal against the assessment.

[24] Section 329 Referral of matter for further medical assessment or reconsideration

Insert after section 329 (1):

- (1A) A matter referred for assessment under this Part may be referred again on one or more further occasions by the Registrar to the approved medical specialist for reconsideration.

[25] Section 329 (2)

Insert “or reconsideration” after “further assessment”.

[26] Section 352 Appeal against decision of Commission constituted by Arbitrator

Insert after section 352 (1):

(1A) An appeal is to be made by application to the Registrar. The appeal is not to proceed unless the Registrar is satisfied that the requirements of this section and any applicable Rules and regulations as to the making of the appeal have been complied with.

[27] Section 352 (8)

Insert “, but does not include any award, order, determination, ruling or direction of an interlocutory nature prescribed by the regulations” after “direction”.

[28] Section 354 Procedure before Commission

Insert after section 354 (7):

(7A) The Commission may dismiss proceedings before it before or during the conduct of proceedings:

- (a) if it is satisfied that the proceedings have been abandoned, or
- (b) if it is satisfied that the proceedings are frivolous or vexatious or otherwise misconceived or lacking in substance, or
- (c) for any other ground of dismissal specified in the Rules.

[29] Section 371 Functions of Registrar

Insert after section 371 (2):

(3) The Registrar may exercise any of the functions of the Commission constituted by an Arbitrator to dismiss proceedings before the Commission.

[30] Chapter 7, Part 11

Insert after Part 10 of Chapter 7:

Part 11 Reconsideration of decisions

378 Reconsideration of decisions

- (1) The Registrar, an approved medical specialist or an Appeal Panel may reconsider any matter that has been dealt with by the Registrar, the approved medical specialist or the Appeal Panel, respectively, and rescind, alter or amend any decision previously made or given.
- (2) Without limiting subsection (1), if the Registrar, an approved medical specialist or an Appeal Panel is satisfied there is an obvious error in the text of a decision,

the Registrar, approved medical specialist or Appeal Panel may alter the text of the decision to correct the error.

- (3) The Registrar, an approved medical specialist or an Appeal Panel must reconsider any matter referred to it for reconsideration not later than 2 months after the referral is made.
- (4) An altered or amended decision is taken to be the decision of the Registrar, approved medical specialist or Appeal Panel.
- (5) Nothing in this section affects any other power under this Act or the 1987 Act to review or amend a decision.
- (6) In this section, **decision** includes an assessment or further assessment by an approved medical specialist or an Appeal Panel.

1.2 Workers Compensation Act 1987 No 70

[1] Section 54 Notice required before termination or reduction of payment of weekly compensation

Insert after section 54 (7):

- (8) Before giving a notice under this section, an insurer must carry out an internal review of the decision to give the notice.

[2] Section 65 Determination of degree of permanent impairment

Omit section 65 (4).

Schedule 2 Amendments relating to insurance premiums and deemed workers

(Section 4)

2.1

(Repealed)

2.2 Workers Compensation Act 1987 No 70

[1]-[6] (Repealed)

[7] Section 175 Employers evading payment of correct premiums

Insert after section 175 (4A):

- (4B) The Authority may waive or reduce a late payment fee payable under this section.

[8] Section 175C

Insert after section 175B:

175C Authority may make private rulings regarding workers at the request of employers

- (1) The Authority may, on application, make a private ruling, based on information submitted to it by the applicant, as to whether any particular person is a worker, or any particular class of persons are workers, employed by the applicant for workers compensation insurance premiums purposes.
- (2) A private ruling is to be used in the calculation of a relevant insurance premium by the insurer concerned, unless:
 - (a) there has been a material change in the information submitted to the Authority relating to the ruling, or
 - (b) the ruling has been withdrawn.
- (3) A private ruling may be used by the person on whose application it was made as evidence as to whether any person is a worker, or any class of persons are workers, employed by the applicant, but only if there is no material change in the information submitted to the Authority relating to the application.
- (4) Other than in proceedings under section 155 or other proceedings relating to payment of insurance premiums required by this Act, a private ruling is inadmissible in proceedings in which the status of a person as a worker is at issue.
- (5) A private ruling has no effect on any determination by any person or body as to whether a person is a worker entitled to compensation under this Act.
- (6) The regulations may make provision for or with respect to private rulings.
- (7) Without limiting subsection (6), the regulations may deal with:
 - (a) applications for private rulings (including the information to be provided with applications), and
 - (b) making of private rulings, and
 - (c) objections, reviews and appeals against private rulings, and
 - (d) amendment or withdrawal of private rulings by the Authority.

Schedule 3 Miscellaneous amendments

(Section 5)

3.1 Workplace Injury Management and Workers Compensation Act 1998 No 86

[1] Section 112 Costs

Omit “Division 6 of Part 11 of the *Legal Profession Act 1987*” from section 112 (2) (c).

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[2] Section 113 Regulations fixing maximum costs recoverable by legal practitioners or agents

Omit “*Legal Profession Act 1987*” from section 113 (4).

Insert instead “*Legal Profession Act 2004*”.

[3] Section 113 (5) and (6)

Omit the subsections. Insert instead:

(5) This section and any regulations under this section prevail to the extent of any inconsistency with the *Legal Profession Act 2004* (in particular section 329 of that Act) and the regulations under that Act. An assessment under Division 11 of Part 3.2 of that Act of any costs in respect of which provision is made by a regulation under this section is to be made so as to give effect to that regulation.

(6) Expressions used in this section have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by this section.

[4] Section 114 Maximum fees recoverable by medical practitioners for medico-legal services

Omit “*Legal Profession Act 1987*” from section 114 (3).

Insert instead “*Legal Profession Act 2004*”.

[5] Section 116 Solicitor/client costs in compensation proceedings

Omit “Division 6 of Part 11 of the *Legal Profession Act 1987*” from section 116 (3).

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[6] Section 116 (4)

Omit “Part 11 of the *Legal Profession Act 1987*”.

Insert instead “Part 3.2 of the *Legal Profession Act 2004*”.

[7] Section 142 Regulation of advertising

Omit “*Legal Profession Act 1987*” from section 142 (2).

Insert instead “*Legal Profession Act 2004*”.

[8] Section 239 Authority may obtain documents from certain registries

Omit section 239 (1). Insert instead:

(1) The Authority is entitled, for the purpose of exercising its functions:

- (a) to inspect or copy, or take extracts from, any documents held in the registry of the Commission, and
- (b) to inspect or copy, or take extracts from, such documents held in the registry of the District Court as relate to its residual jurisdiction under Division 8A of Part 3 of the *District Court Act 1973*.

[9] Section 239 (2)

Omit “Compensation Court”. Insert instead “District Court”.

[10] Section 239 (4)

Omit “Compensation Court Registry or by the Registrar of the Commission”.

Insert instead “registry of the Commission, or (in relation to its residual jurisdiction under Division 8A of Part 3 of the *District Court Act 1973*) at the registry of the District Court,”.

[11] Section 288A

Insert after section 288:

288A Referral of disputes to Commission

Section 345 of the *Legal Profession Act 2004* applies to and in respect of the provision of legal services in connection with a dispute referred to the Commission under this Part in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

Note—

Section 345 of the *Legal Profession Act 2004* prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

[12] Section 327 Appeal against medical assessment

Insert after section 327 (7):

- (8) Section 345 of the *Legal Profession Act 2004* applies to and in respect of the provision of legal services in connection with an appeal under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

Note—

Section 345 of the *Legal Profession Act 2004* prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

[13] Section 332 Definitions

Omit section 332 (2). Insert instead:

- (2) Expressions used in this Division have the same meanings as they have in Part 3.2 of the *Legal Profession Act 2004*, except as provided by this section.

[14] Sections 334 and 335

Omit the sections. Insert instead:

334 Part prevails over *Legal Profession Act 2004*

This Part, and the regulations under this Part, prevail to the extent of any inconsistency between them and the *Legal Profession Act 2004* or the regulations under that Act.

335 Assessment of costs

An assessment of costs is to be made so as to give effect to the provisions of this Part (whether or not the assessment is made under Division 11 of Part 3.2 of the *Legal Profession Act 2004*).

[15] Section 337 Maximum lawyer and agent costs

Omit "*Legal Profession Act 1987*" from section 337 (2).

Insert instead "*Legal Profession Act 2004*".

[16] Section 339 Maximum fees payable to health service providers

Omit "*Legal Profession Act 1987*" from section 339 (2).

Insert instead "*Legal Profession Act 2004*".

[17] Section 340 Application of Division

Insert ", or by a party's insurer," after "party".

[18] Section 341 Costs to be determined by Commission

Omit "Division 6 of Part 11 of the *Legal Profession Act 1987*" from section 341 (3).

Insert instead "Division 11 of Part 3.2 of the *Legal Profession Act 2004*".

[19] Section 341 (4)

Omit the note.

[20] Section 342 Costs unreasonably incurred

Omit section 342 (1). Insert instead:

(1) If the Commission is satisfied that any party's costs on a claim have been unreasonably incurred, the Commission is to order that those costs are not to be paid by any other party to the claim.

(1A) A costs agreement within the meaning of Part 3.2 of the *Legal Profession Act 2004* is of no effect to the extent to which it relates to costs the subject of an order in force under subsection (1).

[21] Section 342 (2) (e)

Insert at the end of section 342 (2) (d):

, or

(e) in connection with any issue raised in relation to a claim in respect of which there were, when the issue was raised, no grounds for a reasonable belief that the issue would be determined in favour of the party by whom it was raised.

[22] Section 342 (3)

Omit the subsection. Insert instead:

(3) A legal practitioner representing a party to proceedings before the Commission, or providing legal services to the party's insurer, is not entitled to recover from the party or insurer, as the case may be, any costs that the Commission has ordered are to be treated as unreasonably incurred.

[23] Section 343 Restrictions on recovery of solicitor/client costs

Omit “Part 11 of the *Legal Profession Act 1987*” from section 343 (3).

Insert instead “Part 3.2 of the *Legal Profession Act 2004*”.

[24] Section 345 Costs penalties where appeal is unsuccessful

Omit section 345 (1) (a). Insert instead:

- (a) if the appellant is unsuccessful on the appeal, the Commission is to order that the appellant’s costs on the appeal are not to be paid by any other party to the appeal, and

[25] Section 345 (2)

Insert after section 345 (1):

- (2) A costs agreement within the meaning of Part 3.2 of the *Legal Profession Act 2004* is of no effect to the extent to which it relates to costs the subject of an order in force under subsection (1) (a).

[26] Section 347 Regulations for costs assessment

Omit “Division 6 (Assessment of costs) of Part 11 of the *Legal Profession Act 1987*” wherever occurring in section 347 (2) and (3).

Insert instead “Division 11 of Part 3.2 of the *Legal Profession Act 2004*”.

[27] Section 347 (5)

Omit “Part 11 of the *Legal Profession Act 1987*” and “Division 6 of Part 11 of that Act”.

Insert instead “Part 3.2 of the *Legal Profession Act 2004*” and “Division 11 of that Part”, respectively.

[28] Section 348 Regulations displace Legal Profession Act provisions

Omit the section.

[29] Section 352 Appeal against decision of Commission constituted by Arbitrator

Insert after section 352 (7):

- (7A) Section 345 of the *Legal Profession Act 2004* applies to and in respect of the provision of legal services in connection with an appeal to the Commission under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in

that section.

Note—

Section 345 of the *Legal Profession Act 2004* prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

3.2 Workers Compensation Act 1987 No 70

[1] (Repealed)

[2] Section 66A

Omit the section. Insert instead:

66A Agreements for compensation

- (1) In this section, **complying agreement** means a written agreement:
 - (a) under which a worker who has received an injury, and an employer or insurer, agree as to either or both of the following:
 - (i) the degree of permanent impairment that has resulted from the injury,
 - (ii) the amount of pain and suffering compensation to which the worker is entitled in respect of the injury, and
 - (b) in which there is a provision in which the employer or insurer certifies that it is satisfied that the worker has obtained independent legal advice before entering into the agreement.
- (2) If a worker enters into a complying agreement in relation to an injury:
 - (a) the permanent impairment compensation to which the worker is entitled in respect of the injury is the compensation payable in respect of the degree of impairment so agreed, and
 - (b) the pain and suffering compensation to which the worker is entitled in respect of the injury is the amount so agreed.
- (3) The Commission may award compensation additional to the compensation payable under subsection (2) by virtue of a complying agreement if it is established that:
 - (a) the agreed degree of permanent impairment or the amount of pain and suffering compensation is manifestly too low, or
 - (b) the worker has been induced to enter into the agreement as a result of fraud

or misrepresentation, or

(c) since the agreement was entered into, there has been an increase in the degree of permanent impairment beyond that so agreed.

(4) Complying agreements, and the payments made under them, are to be recorded in accordance with the WorkCover Guidelines.

(5) Subsection (2) has effect despite section 234 (No contracting out) of the 1998 Act.

(6) Nothing in this section prevents a complying agreement from containing provision as to the payment of costs.

[3] Section 87F Commutation by agreement

Omit section 87F (2) (a). Insert instead:

(a) a legal practitioner instructed independently of the insurer and the employer has certified in writing that the legal practitioner has advised the worker:

(i) on the full legal implications of the agreement, including implications with respect to any entitlement of the worker to compensation under this Act or to benefits under any other law (including a law of the Commonwealth), and

(ii) on the desirability of the worker obtaining independent financial advice, before the worker enters into the agreement, as to the financial consequences of the agreement, and

[4] Section 87J Other commutation agreements invalid

Omit "(Registration of agreements for compensation)" from section 87J (3).

[5] Section 144 Appeal against Authority's decision on claim for compensation

Insert after section 144 (5):

(6) Section 345 of the *Legal Profession Act 2004* applies to and in respect of the provision of legal services in connection with an application to the Commission under this section in the same way as it applies to and in respect of the provision of legal services in connection with a claim or defence of a claim for damages referred to in that section.

Note—

Section 345 of the *Legal Profession Act 2004* prohibits a law practice from providing legal services in connection with a claim or defence unless a legal practitioner associate responsible for the provision of those services believes, on the basis of provable facts and a reasonably arguable view of the law, that the claim or defence has reasonable prospects of success.

Schedule 4 (Repealed)