**Background Paper**

Draft Claim Farming Practices Prohibition Bill 2025 (NSW)

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# Introduction

Claim farmers are individuals or organisations who target people that may be personal injury or abuse victims by contacting them without their consent and encouraging them to lodge civil compensation claims, often by using high-pressure and misleading tactics.

Claim farmers may present themselves as “claims management services” or similar, and charge referral fees to sell the claim to a law practice or other claim farming organisation.

The draft Claim Farming Practices Prohibition Bill 2025 (NSW) (**Draft Bill**) has been developed to prohibit the practice of “claim farming” in NSW in relation to certain personal injury claims.

The Draft Bill would create a new Act to:

* prohibit a person from contacting another person to encourage them to make a relevant claim
* prohibit a person from buying or selling a relevant claim referral
* prevent lawyers who are convicted of these offences from charging legal costs in relation to the claim, and to require them to refund any costs already received.

The new Act would apply to personal injury claims to which the *Civil Liability Act 2002* (NSW) applies as well as personal injury claims arising from intentional torts.

The Draft Bill is informed by a targeted consultation process on the issue of claim farming undertaken by the Department of Communities and Justice (**the Department**) in May 2024.

The proposed reforms contained in the Draft Bill also align with recent reforms developed by other jurisdictions as follows:

* Between 2019 and 2022, Queensland passed various legislation to prohibit claim farming in personal injury claims (including workers’ compensation and motor vehicle accidents).
* In November 2023, Western Australia introduced a bill to prohibit claim farming in motor vehicle claims; that bill has been read a second time in the Legislative Assembly.
* In September 2024, South Australia introduced a bill to prohibit claim farming in personal injury claims; that bill has been read a second time in the Legislative Council.

# Stakeholder feedback is requested

The Department is seeking stakeholder comments on the Draft Bill. The Department has also included several focus questions noting stakeholders may wish to respond to some or all of the focus questions.

Submissions are sought by close of business on **7 February** **2025**. Please send comments in writing to policy@dcj.nsw.gov.au. Further questions relating to the Draft Bill can also be sent to this email address.

As this is a public consultation, the Department intends to publish stakeholder submissions. If you do not want your submission to be published, please clearly mark it as “CONFIDENTIAL – not for publication”.

# The issue of claim farming

Claim farming activities can have negative and traumatic impacts on people, including victim-survivors of abuse. Prohibiting claim farming in NSW would protect members of the community from predatory and exploitative claim farming practices.

While claim farming practices vary, patterns of behaviour by claim farmers may include:

* obtaining the personal information of people who have suffered a personal injury or experienced abuse by engaging in unethical conduct, including misleading and deceptive practices, harassment, and intimidation
* making unsolicited contact with a potential claimant to pressure them to make a claim, sometimes through an intermediary
* presenting themselves as “claims management services” a “survivor advocate” organisation or similar, and
* charging the claimant referral fees to sell the claim, or to provide another service (such as preparing an evidentiary statement), to a lawyer or other claim farming organisation possibly without the claimant’s knowledge.

In response to targeted consultation undertaken by the Department in 2024, stakeholders provided anecdotal reports that claims can be sold to law practices for anywhere between $800 to $10,000, and that intermediary “claims managements services” may pay individual referrers $50 to $100 for every potential new claimant. Lawyers may pass on these costs to claimants through disbursement fees upon the settlement of a claim, which may not be understood by claimants.

Some stakeholders also raised concerns that claim farming may increase the potential for fraudulent and illegitimate claims, which poses risks to actual victim-survivors by jeopardising the integrity of legitimate claims.

The proposed prohibitions on claim farming in the Draft Bill would not remove existing pathways to justice for victim-survivors. Instead, the intention is to prohibit predatory behaviour by claim farmers that may exploit and further traumatise victim-survivors.

Likewise, it is vital to protect and encourage legitimate practices that facilitate access to justice by ensuring members of the public are informed of their legal rights. The Draft Bill contains various exemptions to safeguard the effective provision of legal services.

# Scope of the Bill

Proposed section 4 of the Draft Bill specifies the scope of the prohibitions on claim farming. The Act created by the Draft Bill would apply to claims for personal injury damages to which the *Civil Liability Act 2002* (NSW) (**CLA**) applies, except those claims that are “carved out” by section 3B(1)(b)–(h) of the CLA.

The CLA applies to most personal injury claims including those related to serious injury, medical negligence, and public and product liability. However, under the “carve outs” in section 3B(1), the CLA does not generally apply to certain claim areas including intentional torts, dust diseases, motor accidents, workers compensation, public transport accidents, victims of crime, sporting injuries compensation, and compensation under the *Anti-Discrimination Act 1977* (NSW).

In line with this, the Act would apply to the personal injury claims to which the CLA applies. However, the Act would also apply to civil liability claims for an intentional act that is done with intent to cause injury or death or that is sexual assault or other sexual misconduct. While these claims are excluded from the CLA by section 3B(1)(a), these claims have been included in the scope of the Draft Bill because they have been identified as a claims area in which claim farming is problematic.

# Offence 1: soliciting a potential claimant

Proposed section 5 of the Draft Bill would make it an offence for any person to contact another person (a potential claimant) to:

1. solicit the potential claimant to make a claim, or
2. refer the potential claimant to a third party for the purpose of the third party providing a service in relation to a potential claim.

It would also be an offence to arrange for a third party to contact a potential claimant in contravention of the above (for example, an employer directing an employee to contact the potential claimant).

The offence would stand under proposed subsection 5(4) regardless of whether the potential claimant:

1. is entitled to make a claim, or
2. has already decided to make, or has made, a claim.

***Exemptions***

Various exemptions would apply under proposed subsection 5(3). It would not be an offence:

1. if contact occurs with no intention to receive, and where there is no receipt of, consideration
2. if contact is by way of notification of representative proceedings (a “class action”)
3. if a law practice contacts a potential claimant for whom they have previously acted, subject to a reasonable belief that the potential claimant will not object to the contact, or
4. if a law practice contacts a potential claimant because they have been requested to do so by a representative of a community legal service or industrial organisation, subject to receipt of confirmation that the representative reasonably believes the potential claimant will not object to the contact.

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| **Focus question 1:** Are there representatives of other organisations (further to those in proposed subsection 5(3)(d)) that should be permitted to request that a lawyer contact a potential claimant?**Focus question 2:** Should other exemptions be considered to this proposed offence? |

# Offence 2: buying or selling a claim referral

Proposed section 6 of the Draft Bill would make it an offence for any person to:

1. refer a claim or potential claim to another person for consideration, or
2. provide consideration to another person for the referral of a claim or potential claim.

It would also be an offence to agree, or to arrange for a third party, to provide or receive consideration in relation to the referral of a claim.

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| **Focus question 3:** Should there be a threshold under which the giving or receiving of a non-monetary benefit for a claim or potential claim is not an offence under proposed section 6 (for example, a gift or hospitality with a value of $100 or less)?**Focus question 4:** If so, what is an appropriate value threshold of this non-monetary benefit? |

“Referring a claim” would include:

1. a referral for the purposes of the person providing consideration, or another person, providing a service in relation to the claim, or
2. a referral arising from services already provided to a claimant, and
3. the disclosure of a claimant’s personal details

The Draft Bill is intended to capture the usual meaning of a “referral” in the context of the relevant personal injury claims. That is, the passing on of details of a claimant or claim for the purpose of a service provider assisting the claimant to make or continue that claim.

However, it is also intended to capture the referral of, and therefore payment for, services already provided to the claimant by the referrer (or another person). For example, this would include statement preparation performed by an intermediary service provider that is then “sold” to a law practice to continue conduct of the claim.

Rule 12.4.3 of the *Legal Profession Uniform Law Australian Solicitors’ Conduct Rules 2015* (**Uniform Conduct Rules**) provides that it is not a conflict of interest for a solicitor to accept a referral fee if the client is appropriately informed and consents. The proposed offence is not intended to directly contradict this Rule, given the Rule is narrower in application and deals specifically with the doctrine of conflicts of interest.

Accordingly, although it may not be a conflict of interest for the purposes of the Uniform Conduct Rules for a solicitor to accept a referral fee, this behaviour could contravene the proposed offence in relation to claims covered by the Draft Bill.

***Exemptions***

It would not be an offence under proposed subsection 6(2) if a referral is made in the following circumstances:

1. where a lawyer or law practice refers an existing client to another person to provide a service in relation to that claim, where the lawyer or law practice continues to act for the client.
2. in relation to the sale of all or part of a law practice to a purchasing law practice, where:
	* 1. the referral, including details of the consideration, is disclosed to the claimant,
		2. the consideration provided by the purchasing law practice is not more than the claimant’s current unbilled legal costs,
		3. the claimant is advised the referral may be refused, and
		4. the claimant approves the referral.

**Focus question 5:** Is the exemption under proposed subsection 6(2)(b) sufficient to cover the sale of a law practice or the merger of law practices?

# Maximum penalties for offences

The proposed maximum penalty for each offence is 500 penalty units (currently $55,000). This amount is intended to be proportionate to the objective severity of the offences. This penalty amount is in line with the penalties for equivalent offences in Queensland (300 penalty units, currently $48,390) under the *Personal Injury Proceedings and Other Legislation Amendment Act 2022* (Qld), and the draft penalties for equivalent proposed offences in South Australia ($50,000) under the Statutes Amendment (Claim Farming) Bill 2024 (SA).

The draft penalties for proposed offences in Western Australia under the Insurance Legislation Amendment (Motor Vehicle Claims Harvesting) Bill 2023 (WA) are lower at $10,000. However, given that Bill applies exclusively to motor vehicle accident claims, it is not directly equivalent to the Draft Bill.

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| **Focus question 6:** Is the maximum penalty for the offences under proposed section 5 (Offence 1) appropriate?**Focus question 7:** Is the maximum penalty for the offences under proposed section 6 (Offence 2) appropriate? |

# General exemption for public advertising

There would be a general exemption under proposed section 7 of the Draft Bill to Offences 1 and 2 for public advertising of legal services. It would not be an offence to:

1. advertise, market, or promote a law practice to the public (for example, this would not be prohibited contact), or
2. provide or receive consideration relating to advertising, marketing, or promoting a law practice to the public (for example, if this results in a claimant using the advertised services, it would not be a prohibited claim referral).

# Summary offences and limitation periods

Proposed section 9 of the Draft Bill states that proceedings for both offences may be dealt with summarily before the Local Court of NSW. This is in line with the proposed maximum penalties and the relatively low objective severity of the offending.

It is currently proposed in section 8 of the Draft Bill that the limitation period for both offences would be two years from the date of the alleged offending conduct. This is longer than the default limitation period of six months for summary offences under section 179(1) of the *Criminal Procedure Act 1986* (NSW). Personal injury claims and proceedings routinely take longer than six months to resolve, and in some cases the offending conduct may not be discoverable until after the conclusion of the claim (for example, a disbursement charged for payment of a claim referral that is identified during costs assessment).

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| **Focus question 8:** Is the limitation period for the offences under proposed section 5 (Offence 1) appropriate?**Focus question 9:** Is the limitation period for the offences under proposed section 6 (Offence 2) appropriate? |

# Transitional provisions

Proposed Schedule 1, Part 2 of the Draft Bill contains transitional provisions. It provides that the Act would apply only in relation to acts done or omitted to be done on or after the commencement of this Act. This means that arrangements or agreements made prior to the commencement of the Act that involve claim farming would not constitute an offence.

The draft Bill also provides that the offence of buying or selling a claim referral (under proposed section 6) would not be contravened if consideration is provided or received after the commencement of the Act in relation to an arrangement or an agreement entered into before the commencement of the Act. For example, it would not be an offence where an agreement is entered into prior to commencement of the Act for payment of a referral fee upon resolution of a claim, where that claim is resolved and the payment is made after the commencement of the Act.

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| **Focus question 10:** Are there any other saving or transitional provisions that the Department should consider including? |

# Additional consequences for lawyers

Schedule 2 of the Draft Bill would also amend the *Legal Profession Uniform Law Application Act 2014* (NSW) (**the Application Act**) to create additional consequences for lawyers.

***No costs recoverable***

Part 6 of the Application Act relates to particular kinds of legal costs. Under the Draft Bill, section 61A would be inserted into Part 6 of the Application Act to provide that lawyers or law practices who are convicted of an offence:

1. would not be entitled to charge or recover legal costs in relation to the claim to which the conviction relates, and
2. would be required to immediately refund any legal costs already received in relation to the claim to the person who paid the costs.

This would ensure that the penalty imposed for a conviction is not simply absorbed by a lawyer or a law practice as a “cost of doing business”. For example, where the lawyer or law practice would otherwise consider that the legal costs to be gained from carriage of a “farmed” claim are sufficiently higher than the potential penalty amount so as to commercially justify contravening the offence provisions.

Money owing to the person who paid the costs would also be recoverable as a debt in a court of competent jurisdiction.

***Unsatisfactory professional conduct or professional misconduct***

In respect of the proposed offence provisions, NSW Police would have responsibility for investigating and prosecuting alleged contraventions.

The Draft Bill would also amend section 165B of the Application Act to confirm that the conduct covered by the proposed offence provisions is capable of constituting unsatisfactory professional conduct or professional misconduct for the purposes of the *Legal Profession Uniform Law* (NSW) when engaged in by lawyers.

This will ensure that the NSW Legal Services Commissioner is empowered to investigate alleged misconduct by lawyers in connection with these offences, and that lawyers may face disciplinary consequences where their conduct falls short of the standard reasonably expected of a lawyer, regardless of whether charges have been laid by NSW Police or a conviction has been recorded.

# General feedback is welcome

The Department invites stakeholders to provide feedback on the Draft Bill if they have other comments more generally.