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Minister Kate Washington
Policy, Reform and Legislation Branch,
Department of Communities and Justice
Locked Bag 5000, Parramatta, NSW, 2124
policy@dcj.nsw.gov.au

Dear Minister Washington

Re: Feedback to proposed laws to prohibit claim farming

The Australasian Association of Medico-Legal Providers (AAMLPL) is an independent organisation that has worked extensively with victims of sexual abuse claims through the provision of independent medical assessments. Whilst we are an independent organisation, we feel a responsibility through experience gained to share our knowledge of these vulnerable individuals, who have suffered the devastating consequences of sexual and institutional abuse. It is essential that survivors receive the support, respect, and justice they deserve.

The NSW Government's proposed legislation aims to curb exploitative practices related to "claim farming" by imposing severe financial penalties on the payment of referral fees for matters involving motor vehicle accidents (MVA) and sexual or institutional abuse claims. While the goal of addressing unethical marketing practices is commendable, we believe the broad scope of this legislation raises significant concerns, particularly when comparing MVA claims to the unique challenges faced by survivors of sexual abuse.

Key Concerns

Conflation of MVA and Sexual Abuse Claims

- **MVA Claims:** These claims generally involve clear and short timeframes, with claimants needing to file within 28 days. This urgency, coupled with high volumes, has led to an increase in indiscriminate marketing practices, which the legislation seeks to address.
- **Sexual Abuse Claims:** Survivors of sexual abuse, on the other hand, often take years, sometimes decades, to come forward due to the deeply personal, sensitive, and complex nature of their trauma. Comparing these two categories of claims is not only inappropriate but risks diminishing the unique and specific needs of abuse survivors.

Impact on Access to Justice

International jurisdictions, including Arizona, Ohio, and Florida, have enacted regulations to address marketing by legal firms and companies while still safeguarding access to justice for legitimate claimants. This approach aligns with the UN Human Rights Declaration, which emphasises the need for legal representation.

In contrast, the proposed penalties in NSW risk prioritising the inconvenience of unwanted marketing over the fundamental right of survivors to access legal support. For many sexual abuse survivors, trusted referrals are crucial to navigating the legal system, and this legislation could unnecessarily impede that access.

Government Responsibility and Inconsistencies

The NSW Government has previously implemented systems like iCare to streamline MVA claims. We propose that a similar approach is needed for abuse survivors, especially considering the unique and sensitive nature of their cases.

- Will there be any resources, similar to iCare, developed specifically for sexual abuse survivors? Or will these survivors face similar limitations on their claims as those seen in minor MVA cases?

If abuse claims are to be managed by entities like iCare, it is crucial to ensure that the needs of survivors are met and that these systems are adapted to the complexities of abuse cases.

Protecting Survivors vs. Protecting Perpetrators

The imposition of severe penalties on referral fees for sexual abuse cases risks inadvertently shielding perpetrators. By disincentivising individuals and organisations from helping survivors access legal support, this may hinder efforts to uncover and report abuse. Furthermore, there is currently no compensation for victims of familial sexual abuse, highlighting the broader systemic issues that must be addressed to properly support survivors.

Policy Proposals

Separate Treatment for Sexual Abuse Claims

The NSW Government must recognise the significant differences between MVA and sexual abuse claims and craft legislation that reflects these distinctions. Survivors of sexual abuse require specialised support systems that prioritise their unique needs.

Referral systems that help survivors of sexual abuse access legal assistance should be encouraged, not penalised. Such systems are often essential for individuals to navigate complex legal processes and secure the justice they deserve.

Support for Advocacy and Whistleblowers

Advocacy groups that educate the public on how to report abuse and access legal support must be funded and supported. These groups are vital in ensuring that survivors can navigate the legal landscape effectively.

Whistleblower protections must be strengthened to safeguard those who uncover and report abuse. These individuals and organisations should be commended for their efforts, not penalised.

Focus on Root Causes

Instead of imposing severe financial penalties on legitimate referrals, the government should focus on addressing the root causes of claims farming—particularly unethical marketing practices from overseas call centres—without hindering survivors' access to justice.

Conclusion

Equating MVA claims with sexual abuse claims is neither appropriate nor constructive. Survivors of abuse face unique challenges, and the legislation should reflect this. The imposition of financial penalties on referral fees in sexual abuse claims could inadvertently protect perpetrators rather than empower survivors. Those facilitating access to justice for survivors should be supported, not punished.

In summary, the underlying issue is not the claims referrals themselves but rather the unethical marketing practices that exploit vulnerable individuals. We respectfully suggest that the Government prioritise the rights, dignity, and well-being of abuse survivors in its policymaking. It is essential that their voices are heard and that they are provided with fair and accessible pathways to justice, free from unnecessary barriers that may further victimise them.

Yours sincerely,



Jenny Crane

NSW Representative
Australasian Association of Medico Legal Providers

cc: Mr Mark Gibbins
President Australasian Association of Medico Legal Providers