



Most Reverend Vincent Long Van Nguyen OFM Conv DD STL
Bishop of Parramatta

Bethany Centre, 470 Church St, Parramatta NSW 2150, Australia
PO Box 3066, North Parramatta, NSW 1750

☎ 02 8838 3400 📠 02 9630 4813

✉ bishop@parracatholic.org

🌐 parracatholic.org

Policy, Reform and Legislation Branch
NSW Department of Communities and Justice
Locked Bag 5000
PARRAMATTA NSW 2124

7 February 2025

By email: policy@dcj.nsw.gov.au

Dear Sir or Madam,

We **enclose** our submission of today's date in response to the call for public consultation on the draft *Claim Farming Practices Prohibition Bill 2025 (NSW)*.

The submission is made on behalf of the following religious entities:

- Catholic Diocese of Parramatta
- Patrician Brothers, Australia & Papua New Guinea Province
- Franciscan Friars, Holy Spirit Province
- Society of the Missionaries of the Sacred Heart, Australian Province
- Vincentians (Congregation of the Mission), Province of Oceania

We thank you for this opportunity to provide our submissions to the Department and would be pleased to engage in further dialogue to assist the NSW Government with the draft Bill.

Yours sincerely,

Most Reverend Vincent Long Van Nguyen OFM Conv STL DD
Bishop of Parramatta



SUBMISSIONS IN RESPONSE TO THE NSW GOVERNMENT'S DRAFT CLAIM FARMING PRACTICES PROHIBITION BILL 2025 (NSW)

The submission is prepared on behalf of the following religious entities:

- Catholic Diocese of Parramatta
- Patrician Brothers, Australia & Papua New Guinea Province
- Franciscan Friars, Holy Spirit Province (Franciscan Order of Friars Minor)
- Society of the Missionaries of the Sacred Heart, Australian Province
- Vincentians (Congregation of the Mission), Province of Oceania

Stakeholder interest

The Diocese of Parramatta (the **Diocese**) supports the spiritual and social needs of Western Sydney's vibrant Catholic community. It is the fastest growing and one of the most multicultural dioceses in Australia. The Diocese of Parramatta spans seven local government areas and includes 47 parishes and 80 schools across Western Sydney and the Blue Mountains, servicing approximately 330,000 Catholics, and employing over 5,000 staff.

The Diocese is committed to providing a community of safeguarding that actively promotes the dignity and rights of all persons and has zero tolerance for abuse in any form. The Diocese acknowledges its own past failings in this respect but is steadfast in its commitment to keep children and adults safe from predatory behaviour, and to provide a just and compassionate response to those who have been harmed. The Diocese is a committed participant in mechanisms that aim to support a trauma-informed approach to their responses to claims by survivors.

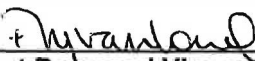
The following Catholic Religious Institutes who operate throughout the Diocese and beyond and are co-signatories to this submission – the Franciscan Order of Friars Minor, the Patrician Brothers, the Missionaries of the Sacred Heart, and the Vincentians (collectively, **Religious Institutes**) – share the same values and commitments.


The Diocese and Religious Institutes (**we**) commend the New South Wales Government for responding to the practice of 'claim farming', whereby some individuals and organisations have sought to take advantage of vulnerable survivors. These agents have targeted survivors, both individually and collectively, with tactics that can often

cause unnecessary and preventable distress to some of the most vulnerable members of society. In many cases, these organisations promote the bringing forward of spurious allegations that divert resources away from genuine survivors of historical child abuse.


We stand unequivocally in support of survivors in our support for the introduction of legislation that will work towards eliminating claim farming in NSW and provide for enforcement measures against those organisations which may seek to continue targeting survivors as a means of profiteering from the harm they have suffered.


The Diocese and Religious Institutes welcome the opportunity to provide the following submissions to the Department of Communities and Justice regarding the *Claim Farming Prohibition Bill 2025 (NSW) (Bill)*.


Most Reverend Vincent Long Van Nguyen
OFM Conv
Bishop of Parramatta


Br Nicholas Harsas fsp OAM
Province Leader, Patrician Brothers
Australia & Papua New Guinea Province


Dr David Leary OFM
Provincial Delegate, Professional Standards
and Safeguarding
Franciscan Friars, Holy Spirit Province


Fr Stephen Hackett MSC
Provincial Superior
Missionaries of the Sacred Heart
Australian Province


Fr Alan Gibson CM
Provincial, Vincentians (Congregation of the
Mission)
Province of Oceania

SUBMISSION CATEGORIES

This submission addresses the following issues:

1. Identifying and investigating claim farming
2. Oversight and investigation of claim farming
3. Limitation periods
4. Contact of potential claimants by law practices
5. Extraterritorial application of the Bill
6. Advertising
7. Penalties
8. Responses to Focus Questions

ISSUE 1: IDENTIFYING AND INVESTIGATING CLAIM FARMING

- 1.1. Ending claim farming requires a legislative mechanism, firstly to identify the practice, and secondly to investigate suspected instances of claim farming. We respectfully submit that the Bill could be strengthened in both respects.
- 1.2. As the Department is aware, significant numbers of claimants (particularly in child institutional abuse claims) pursue claims for damages through alternative dispute resolution processes, rather than potentially distressing and re-traumatising litigated proceedings.
- 1.3. Discovery and the general disclosure of documents in alternative dispute resolution processes in NSW is primarily governed by Part 5 of the *Uniform Civil Procedure Rules 2005 (UCPR)*. The UCPR provides no mechanism for a respondent to compel a law practice or third parties to disclose information in an unlitigated claim.
- 1.4. In litigated claims, subpoenas to produce and notices to produce can only be issued with respect to documents relevant to a fact in issue in the proceedings.
- 1.5. Respondents in both unlitigated and litigated claims therefore have very limited ability to obtain access to documents from law practices or third parties that may provide indication of claim farming practices. The result is that the identification of claim farming in the first instance is problematic.
- 1.6. It is almost inconceivable that an entity engaging in, or associated with, claim farming would voluntarily identify itself to a respondent or regulator. Measures supporting the identification and reporting of claim farming should therefore be mandatory. Unless such measures are made mandatory, there is a risk that claim farming entities will be able to continue their practices, thus subverting the legislative intent of the Bill.

QLD comparison

- 1.7. [Section 8C](#) of Division 1AA of the *Personal Injuries Proceedings Act 2002 (Qld)* (PIPA) requires the supervising principal of a law practice to complete a Law Practice Certificate when a law practice is retained by a claimant to act in relation to a claim. Prior to giving notice to the claim, the Law Practice Certificate must be provided to a claimant.
- 1.8. A failure to comply with this section carries a maximum penalty of 300 penalty units.¹
- 1.9. The PIPA clearly sets out² what information the Law Practice Certificate must contain, providing clarity for law practices about what is expected of them.
- 1.10. By way of enforcement, the PIPA further provides that if the Law Practice Certificate is not provided to a claimant in accordance with section 8C of the PIPA,

¹ Section 8C of Division 1AA the *Personal Injuries Proceedings Act 2002 (QLD)*.

² See sections 8B(2), 8B(3) and 8B(5) of Division 1AA of the [Personal Injuries Proceedings Act 2002 \(Qld\)](#).

the principal cannot charge or recover from the claimant any further fees and costs in relation to the claim in the event that the retainer is terminated.³

- 1.11. Further, the PIPA provides strict reporting requirements for supervising principals retained for respondents and their insurers. They must, within 14 days of forming a reasonable belief that the Law Practice Certificate requirements have not been complied with, report the contravention to the Legal Services Commissioner, who is then able to undertake an investigation into these matters.

The Bill

- 1.12. To aid in the identification, detection and potential prosecution of claim farming, the Bill would benefit from the inclusion of a provision similar to section 8C of the PIPA.

Proposed legislative inclusion

- 1.13. It is respectfully submitted that the Bill would benefit from the inclusion of an additional section in Part 2 of the Act, along the following lines:

Law practice certificate

- (1) This section applies if a law practice is retained by a claimant to act in relation to the claimant's claim, before:
- (a) the claimant has given notice of an intention to make a claim, within the application of section 4 of this Act; or
 - (b) the claimant has commenced proceedings, through filing an originating process in the court making a claim within the application of section 4 of this Act.
- (2) The supervising principal of a law practice, or a nominated principal within the law practice, must -
- (a) complete a law practice certificate for the claim;
 - (b) give the law practice certificate to the claimant before the claimant gives notice of the claim, or the proceedings are commenced; and
 - (c) give the law practice certificate to the respondent at the time the claimant gives notice of the claim, or the proceedings are commenced.
- Maximum penalty - 500 penalty units.
- (3) If the supervising principal of the law practice in relation to a claim fails to give a law practice certificate to the claimant as required under section 2(b), or to the respondent as required under section 2(c), the claimant and/or respondent may request provision of the law practice certificate from the law practice.

³ [Section 9B](#) of Division 1AA of the *Personal Injuries Proceedings Act 2002* (QLD).

- (4) If within 14 days after the request for provision of the law practice certificate, the supervising principal of the law practice fails to provide the law practice certificate, the law practice and principal cannot charge or recover from the claimant any fees or costs relating to the claim from the date of retainer until the date the law practice certificate is provided.
- (5) If a person or lawyer reasonably believes that a person is contravening the law practice certificate requirement, that practitioner must, within 14 days after forming that belief, report to the Legal Services Commissioner all information it holds in relation to the contravention.

Note -

A lawyer's failure to comply with this section may constitute unsatisfactory professional conduct or professional misconduct, whether or not the lawyer has been convicted of an offence in relation to the contravention.

- (6) In this section -
 - (a) **respondent**: the person to whom notice is given, including a respondent's insurer and appointed legal representative.
 - (b) **law practice certificate**: A document signed by the supervising principal or nominated principal of the law practice and verified by statutory declaration, stating that:

The supervising principal and each principal and associate of the law practice have not -

- (i) personally approached or contacted the claimant and solicited or induced the claimant to make the claim in contravention of section 5 of this Act;
- (ii) received, agreed to receive, or allowed or caused someone else to receive consideration from another person for a claim referral or potential claim referral for the claim in contravention of section 6 of this Act;
- (iii) given, agreed to give, or allowed or caused someone to give consideration to another person for a claim referral or potential claim referral in contravention of sections 6 of this Act.

ISSUE 2: OVERSIGHT AND INVESTIGATION OF CLAIM FARMING

- 2.1. The Bill does not contain a provision for oversight and prosecution of claim farming practices by a designated supervisory body, such as the Office of the NSW Legal Services Commissioner. We respectfully propose that consideration should be given to including such a provision.

QLD comparison

- 2.2. Under the PIPA, the Queensland Legal Services Commissioner provides oversight over claim farming issues.⁴
- 2.3. The Legal Services Commission receives enquiries and information about claim farming. According to the Legal Services Commission's website – accessible [here](#) – clear information is provided to the public about the application of the PIPA and the prohibition of claim farming:

The Commissioner may investigate the conduct of an external entity where they suspect the entity has contravened the claim farming provisions.

A special investigator can be appointed to investigate potential claim farming offences... [and] will conduct investigations... in relation to (law practice certificates) and where complaints, intelligence or other information received indicates that a matter has been claim farmed.

The regulators will consider the available evidence to determine the appropriate regulatory response. Action taken will be impartial and proportionate to the seriousness of any breaches identified.

Breaches of the (law practice certificate) requirements or claim farming provisions may be considered unsatisfactory professional conduct or professional misconduct. The Commission may investigate this.

The Bill

- 2.4. The Bill should expressly provide for a designated supervisory body with powers to investigate, compel production of documents, and pursue prosecutions, including in circumstances where there has been failure or suspected failure to comply with the Law Practice Certificate requirements proposed under **Issue 1** above.
- 2.5. Benefits of a designated supervisory body include but are not limited to: increased consistency, faster implementation of enforcement and other regulatory initiatives, streamlined communication, standardised procedures, and an enhanced capacity to monitor and respond to claim farming patterns.
- 2.6. A failure to designate a supervisory body risks a lack of oversight and accountability, and potential regulatory non-compliance.

⁴ See sections 8B, 73B, 74, 85 of the *Personal Injuries Proceedings Act 2002* (QLD).

Proposed legislative inclusion

2.7. It is respectfully submitted that the Bill would benefit from the inclusion of an additional section in Part 2, along the following lines:

Legal Services Commissioner

- (1) The Legal Services Commissioner may, after the commencement of this Act -
 - (a) investigate, or continue the investigation of, a reported act or omission under this Act;
 - (b) compel the provision of all necessary information and documentation necessary to investigate, or continue the investigation of, a reported act or omission under this Act;
 - (c) bring proceedings in relation to the act or omission under this Act;
 - (d) disclose information to a relevant entity if the Commissioner believes the information is relevant to:
 - (i) the administration by the relevant entity of the Act;
 - (ii) monitoring and identifying patterns or trends in conduct of claims farming.
- (2) In this Act -

Legal Services Commissioner means the person appointed to or acting in the office of the Commissioner for Uniform Legal Services Regulation established by Part 8.3 of the Legal Profession Uniform Law as applied in the participating jurisdictions.

ISSUE 3: LIMITATION PERIODS

- 3.1. The proposed two-year limitation period contained in section 8 of the Bill is intended to account for the anticipated general duration of civil claims.
- 3.2. However, delays in the determination and resolution of civil claims are well known and documented.
- 3.3. As noted in the NSW Parliament Library Service Briefing Paper No. 01/2002 on Court Delays in NSW: Issues and Developments by Rachel Callinan (accessible [here](#)), delay has been a long standing concern to the courts and successive NSW Governments, and is considered a 'problem endemic to all legal systems'.
- 3.4. As outlined in the Department's Background Paper to the Bill, offending conduct may not be discoverable until after the conclusion of a claim.
- 3.5. It is respectfully submitted that the current proposal to restrict the limitation to 2 years may incentivise participants of claim farming practices to stall the progress of claims in order to avoid detection.
- 3.6. Further, claims concerning child abuse are no longer subject to limitation periods.⁵
- 3.7. Therefore, claim farming practices may not be detected within the two-year limitation period, with the result that prosecution and penalties are, or become, statute-barred. This may lead to an anomalous situation whereby some of the most vulnerable members of society would potentially remain at heightened risk of claims farming practices. This is unlikely to reflect the legislative intent of the Bill.

The Bill

- 3.8. If the proposals identified in response to **Issue 1** and **Issue 2** above are not adopted, consideration should be given to significantly extending the limitation period, or alternatively, removing the limitation period provided for in section 8 of the Bill.

Proposed legislative amendment

- 3.9. Consideration should be given to removing the limitation period as set out in section 8(1) of the Bill.
- 3.10. Alternatively, section 8(1) should be amended to align with section 73A(2A) of the PIPA, which reads:

⁵ Section 6A of the *Limitation Act 1969* (NSW).

A proceeding for an offence against a claim farming provision must start within the later of:

- (a) 2 years after the commission of the offence; **or**
- (b) **6 months after the commission of the offence comes to the knowledge of the complainant^{6,7}**

⁶ The 'complainant' for the purposes of the Queensland provision is the Queensland Legal Services Commissioner.

⁷ Emphasis added.

ISSUE 4: CONTACT OF POTENTIAL CLAIMANTS BY LAW PRACTICES

- 4.1. Section 5(3)(c) of the Bill allows a law practice to contact a potential claimant if that law practice has previously provided the potential claimant with legal services and reasonably believes that the potential claimant will not object to the contact.
- 4.2. This aspect of the Bill gives rise to a number of potential concerns.
- 4.3. Firstly, client databases of law practices may be targeted, or exploited, by claims farming operators.
- 4.4. Secondly, law practices may have provided legal services to a potential claimant for services entirely unrelated to the potential claim - for example, a property conveyance. Contact in the context of a child abuse claim may be unexpected by the potential claimant and lack a trauma-informed approach.
- 4.5. Thirdly, potential claimants may be contacted by multiple law practices, especially in circumstances where they have engaged a range of law practices to provide various services in the past, resulting in potential claimants feeling pressured or harassed.

The Bill

- 4.6. Section 5(3)(c) of the Bill does not impose any time limitation or require the nature of the previously provided legal services to be taken into account before a law practice makes contact with former clients in relation to a potential claim.
- 4.7. We propose the inclusion of a time limit, together with a requirement that practicably similar legal services must have been previously provided by the law practice to the potential claimant, and a definition of 'reasonable belief'.

Proposed legislative amendment

Consideration should be given to removing section 5(3)(c) of the Bill.

Alternatively, section 5(3)(c) of the Bill may be amended as follows:

If a law practice -

- (i) contacts a potential claimant that the practice has provided with **practicably similar** legal services **within the last 12 months**,⁸ and
- (ii) reasonably believes that the potential claimant will not object to the contact.

It is also proposed that a definition of reasonable belief should be included within section 5(5) of the Bill. Proposed wording may be as follows:

⁸ Emphasis added to show inclusion.

reasonable belief: If a reasonable person, doing the same work, would form the same belief on those grounds, based on the same information. Grounds for forming a belief are matters which the person has become aware, and any opinion in relation to those matters, and are to be determined with regard to all the circumstances, including any steps taken to ascertain that the potential claimant would not object.

ISSUE 5: EXTRATERRITORIAL APPLICATION OF THE BILL

- 5.1. The co-signatories to this submission have experienced multi-jurisdictional claims for historical child abuse. These are claims that have either been brought forward by claimants living in states other than NSW, or contain allegations of child abuse against multiple institutions both within and outside of NSW.

The Bill

- 5.2. The Bill does not currently include any provision that considers the applicability of the proposed Act across multiple jurisdictions.
- 5.3. The concern is that the Bill as currently drafted may not apply to claim farming offences that occur outside of NSW (at least in part) and where a claim is then brought forward by a claimant in NSW.

Proposed legislative inclusion

- 5.4. Consideration should be given to including provisions similar to those found in section 568A of the *Legal Profession Act 2007 (Qld)*. This provision allows for extraterritorial investigations of claim farming contraventions under the PIPA. The wording of section 568A reads:
- (1) This chapter applies both within and outside Queensland to the extent necessary for any investigation of a contravention of the [Personal Injuries Proceedings Act 2002](#) , [section 71](#) or 71B .
 - (2) For subsection (1), the chapter applies outside Queensland to the full extent of the extraterritorial legislative power of the Parliament.
- 5.5. Similar wording is found in [section 42E](#) of the proposed SA Bill.

ISSUE 6: ADVERTISING

- 6.1. Claims farming advertising takes many forms including: direct messaging on social media, attendances at school reunions, profiling of school yearbooks and class rolls, the use of agents amongst prison populations, and the publication of detailed profiles of alleged perpetrators in advertisements targeting specific institutions against which potential claimants are encouraged to bring actions.
- 6.2. Speaking in the Queensland Parliament in support of *the Personal Injuries Proceedings and Other Legislation Amendment Bill 2002* (Qld), the Honourable Shannon Fentiman, then Queensland Labor Attorney-General and Minister for Justice, Minister for Women, and Minister for the Prevention of Domestic and Family Violence, stated that:
- [a] significant developing area of this business is now known as ‘survivor farming’... for potential cases of institutional sexual abuse survivor claims. This is also taking place particularly amongst the prison population with former prisoners both in and outside of prisons, as well as some specific communities that are being identified as particularly susceptible...
- 6.3. Another submission made in support of that bill by Mr Jason Hunt, Labor Member for Caloundra on 21 June 2022, was that claim farming had:
- ...brought the profession into disrepute and threatens the viability of insurance schemes and causes distress to potential vulnerable community members. The practice itself had morphed into an even more disgusting format when it began to target the survivors of institutional child sexual abuse.
- 6.4. The Law Society of NSW has also expressed concern that advertising (particularly ‘no-win, no-fee’ type advertising) may encourage unmeritorious litigation.

The Bill

- 6.5. The Bill provides an opportunity to address and prohibit unscrupulous claim farming advertising.

Proposed legislative amendment

- 6.6. Consideration should be given to incorporating into the Bill sensible limits on advertising, including the prohibition of advertisements that encourage potential claimants to bring claims against specific respondents, and the prohibition of direct target marketing.

ISSUE 7: PENALTIES

- 7.1. Sections 5 and 6 of the Act outline maximum penalty units for claim farming offences.
- 7.2. It is unclear whether the intention is that these maximum penalty units will apply to each individual claim farming offence, or cumulatively. The Bill would benefit from greater clarity in this respect.
- 7.3. It is unclear whether these penalties are meant to apply to individuals as well as to organisations. In our view, consideration should be given to applying penalties to both individuals and organisations, as this would provide more stringent oversight of practitioners by supervising principals.
- 7.4. It is also unclear what type or level of seriousness of claim farming offences would attract a maximum penalty, and what type would attract a lesser penalty. A consideration of Queensland caselaw in respect of claim farming offences shows that the Court has been reluctant to impose penalties even close to the maximum, despite the reported seriousness of the offences⁹.

QLD and SA position

- 7.5. We note that the maximum penalty units proposed in the Bill are comparable to those provided for in the PIPA and proposed South Australian claim farming legislation.

The Bill

- 7.6. A consistent approach to penalties between States and Territories should be maintained in order to guard against and discourage claim farming entities from targeting jurisdictions where lesser penalties apply.

Proposed legislative amendment

- 7.7. To discourage claims farming practices in NSW, consideration should be given to removing the word 'maximum' from sections 5 and 6 of the Bill, with the result that a penalty of 500 penalty units for each incident of claims farming would apply both to offending individuals and offending organisations.

⁹ Reference given to the case of 2023 prosecution against [Accident Management Solutions](#), who was found to have breached claims farming legislation on 94 occasions. Despite their actions being described as 'serious offending', a penalty of approximately \$10,000 was applied for each offence, well short of the maximum penalty available.

ISSUE 8: RESPONSES TO FOCUS QUESTIONS 1 – 10

Focus Question 1: Are there representatives of other organisations (further to those proposed in subsection 5(3)(d) that should be permitted to request that a lawyer contact a potential claimant.

8.1. No. The organisations proposed in subsection 5(3)(d) are sufficient.

Focus Question 2: Should other exemptions be considered to this proposed offence?

8.2. No.

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 value of \$100 or less)?

8.3. No. Permitting non-monetary benefits introduces uncertainty. There is also potential scope for claim farming entities to seek to circumvent limits - for example, by providing multiple gifts under the proposed \$100 threshold. The proposed SA claim farming legislation similarly does not permit non-monetary benefits.

Focus Question 4: If so, what is an appropriate value threshold of this non-monetary benefit?

8.4. Not applicable. Refer to response to Focus Question 3.

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?

8.5. Yes.

Focus Question 6: Is the maximum penalty for the offences under proposed section 5 (Offence 1) appropriate?

8.6. Yes. Submissions have been outlined at **Issue 7** above.

Focus Question 7: Is the maximum penalty for the offences under proposed section 6 (Offence 2) appropriate?

8.7. Yes. Submissions have been outlined at **Issue 7** above.

Focus Question 8: Is the limitation period for the offences under proposed section 5 (Offence 1) appropriate?

8.8. No. Submissions have been outlined at **Issue 3** above.

Focus Question 9: Is the limitation period for the offences under proposed section 6 (Offence 2) appropriate?

8.9. No. Submissions have been outlined at **Issue 3** above.

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

- 8.10. Yes. The co-signatories of those submission express their concern that the provisions under Schedule 1 Part 2(2) of the Bill as they currently stand may not be adequate in dealing with existing agreements or arrangements between law practices and third party claim farming groups.
- 8.11. The current wording of Schedule 1 Part 2(2) may provide scope for such law practices to enter into overarching umbrella-type agreements or extend current agreements/arrangements to post-date the commencement of the Act. This will have the effect of ensuring that payments made to claim farming referrers are not captured by the Act.
- 8.12. Consideration should be given to revising the scope of Schedule 1 Part 2(2) to ensure that the payment or consideration provided and/or received after the commencement of the Act is for any work already completed upon the Act's commencement.

