

icare submission on the Draft Claim Farming Practices Prohibition Bill 2025 (NSW)

7 February 2025

A. Introduction

1. Thank you for the opportunity to provide feedback on the Draft Claim Farming Practices Prohibition Bill 2025 (NSW) (**Draft Bill**). icare welcomes the proposed legislation aimed at prohibiting claim farming related to specific personal injury claims. We acknowledge this initiative serves the interests of survivors of sexual abuse and the broader community, aligning with recent legislative advancements across various Australian jurisdictions including Queensland, Western Australia and South Australia.
2. We observe the proposed legislation encompasses a range of personal injury claims, including those resulting from sexual assault or other sexual misconduct. icare is responsible for managing the schemes covering NSW government agencies and government service providers that receive claims for compensation arising from sexual abuse, a key area of focus following the 2013 Royal Commission into Institutional Child Abuse.
3. We manage these liabilities primarily through the Treasury Management Fund, a self-insurance scheme established by the NSW Government, and the Special Liability Insurance Scheme, which addresses liabilities incurred by Non-Government Organisation service providers of youth homelessness and out of home care services.

B. icare's support the Draft Bill

4. In accordance with the terms of reference outlined in [the Department of Communities and Justice's Background Paper](#), we fully endorse the Draft Bill. Our comments are primarily intended as feedback on the focus questions:
 - a. **Focus question 3 and 4** – the threshold for non-monetary benefit for a claim or potential claim under the offence of buying or selling a claim referral.
 - b. **Focus questions 8 and 9** – relating to the appropriateness of the limitation period for the offences in section 5 and section 6 of the Draft Bill.

5. We support the proposed prohibition on claim farming practices, as it is likely to deter both individuals and organisations from engaging in these exploitative actions, ultimately offering better assistance to survivors of sexual abuse. By minimising unfounded or possibly fraudulent claims, the proposed measures will improve the efficiency of the claims process for survivors.

C. icare's response to the focus questions

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?

6. In our view, there should not be a threshold permitting the exchange of non-monetary benefits in relation to claims. Allowing even minor non-monetary benefits could create an environment where unethical practices and fraudulent behaviour are encouraged. Such incentives, regardless of their value, may open the door to exploitation and manipulation of the claims process, leading to false or exaggerated claims. Furthermore, allowing these benefits could foster a culture of dishonesty, where financial gain becomes the primary motivation rather than the integrity of the claims process itself and the reparation of survivors of sexual abuse.
7. Given the sensitive nature of certain claims, allowing any non-monetary benefit risks further victimising vulnerable individuals, undermining their trust in the legal and claims systems. For this reason, we advocate for a zero-tolerance approach to such practices, ensuring that all forms of incentives, whether monetary or non-monetary, are prohibited. This would serve to protect both the integrity of the claims process and the survivors of sexual assault, ensuring that justice is not compromised by opportunistic behaviour.

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?

8. The Draft Bill proposes a two-year limitation period for both offences outlined in sections 5 and 6. We respectfully recommend the Department of Communities and Justice give consideration at extending the limitation period to at least four years for claim farming related to sexual abuse claims.
9. On average, it is icare's experience that these claims take longer than two years to resolve. The proposed limitation period of two years is unlikely to capture offending conduct for matters that run over the proposed limitation period. This is because claim farming activities related to referral payments are unlikely to be detected near the conclusion of a case.
10. The complexities of claim farming pose significant challenges for survivors of sexual abuse, who often fail to recognise their exploitation until much later, particularly when influenced by third parties such as claims management companies. Extending the limitation period is crucial, as it allows survivors the time needed to understand their circumstances and take appropriate action, while also navigating the intricate web of involved parties, including legal and or other providers. Additionally, the psychological impact on survivors of sexual abuse, many of whom are already dealing with trauma, can impede their ability to seek justice; longer limitation periods provide them with the opportunity to process their emotional distress and make informed decisions regarding legal recourse.
11. In addition, extended periods may help icare to safeguard against meritless claims by allowing thorough information gathering to ascertain whether claims were genuinely initiated by victims or coerced by external parties. This is especially important in the context of sexual abuse claims.

D. Next Steps

12. Thank you once more for the opportunity to provide feedback on the Draft Claim Farming Practices Prohibition Bill 2025 (NSW). If the Draft Bill is enacted, we anticipate the opportunity to provide further feedback regarding the regulatory framework that will implement the offences and their associated exemptions.

13. Please do not hesitate to contact [REDACTED]
[REDACTED] if you require further information.

Yours sincerely



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