



Knowmore
Legal Service

Draft Claim
Farming Practices
Prohibition Bill 2025
Submission to the NSW
Department of
Communities and
Justice

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About Knowmore

Our service

Knowmore Legal Service (Knowmore) is a nation-wide, free and independent community legal centre providing legal information, advice, representation and referrals, education and systemic advocacy for victims and survivors of child abuse. Our vision is a community that is accountable to survivors and free of child abuse. Our aim is to facilitate access to justice for victims and survivors of child abuse and to work with survivors and their supporters to stop child abuse.

From 2013 to 2018, our service assisted people who were engaging with or considering engaging with the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission). From 1 July 2018, Knowmore has delivered legal support services to assist survivors of institutional child sexual abuse to access their redress options, including under the National Redress Scheme (NRS). Knowmore also delivers financial counselling services to people participating in the NRS, and works with other services in the NRS support network to support and build their capability. Since 2022, Knowmore has also been assisting survivors who experienced child sexual abuse in non-institutional settings, and providing legal and financial counselling support to people engaging with the Territories Stolen Generations Redress Scheme (Territories Redress Scheme).

Knowmore uses a multidisciplinary model to provide trauma-informed, client-centred and culturally safe legal assistance to clients. Knowmore has offices in Sydney, Melbourne, Brisbane, Perth, Adelaide and Darwin. Our service model brings together lawyers, social workers and counsellors, Aboriginal and Torres Strait Islander engagement advisors and financial counsellors to provide coordinated support to clients.

Knowmore is funded by the Commonwealth Government, represented by the Departments of Attorney-General and Social Services and the National Indigenous Australians Agency.

Our clients

In our Royal Commission-related work, from July 2013 to the end of March 2018, Knowmore assisted 8,954 individual clients. The majority of those clients were survivors of institutional child sexual abuse. Almost a quarter (24%) of the clients assisted during our Royal Commission work identified as Aboriginal and/or Torres Strait Islander peoples.

Since the commencement of the National Redress Scheme for survivors of institutional child sexual abuse on 1 July 2018 to 30 November 2024, Knowmore has received 156,580 calls to its 1800 telephone line and has completed intake processes for, and has assisted or is currently assisting, 20,610 clients. Almost 2 in 5 clients (39%) identify as Aboriginal and/or Torres Strait Islander peoples. About 1 in 8 clients (12%) are classified as priority clients due to advanced age and/or immediate and serious health concerns including terminal cancer or other life-limiting illness.

Our clients in New South Wales

Knowmore has a significant client base in New South Wales – 23% of our clients reside in the state. We therefore have a strong interest in laws to protect victims and survivors of child abuse from claim farming and related practices in New South Wales.

Knowmore's submission

Knowmore's overall position on the draft bill

Knowmore strongly supports the objective of the draft Claim Farming Practices Prohibition Bill 2025 (draft bill) to prohibit claim farming practices in relation to civil proceedings.¹ We have long advocated for a national response to address claim farming and related practices targeting victims and survivors of child abuse.² Given the arrests in New South Wales this week for alleged fraudulent claims of child sexual abuse and allegations of claim farming as an associated practice,³ we consider there is an increased need for legislative protections.

We acknowledge that the draft bill applies to claim farming practices targeting a broader range of people.⁴ However, reflecting the focus of our organisation's work, our comments in this submission focus on claim

¹ *Public consultation draft: Claim Farming Practices Prohibition Bill 2025, explanatory note* (explanatory note), accessed 23 January 2025, p 1, <dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/about-us/engage-with-us/public-consultations/draft-bill/claim-farming-practices-prohibition-bill-2025-exposure-draft.pdf>; NSW Government, Department of Communities and Justice, *Background paper: draft Claim Farming Practices Prohibition Bill 2025 (NSW)* (background paper), accessed 23 January 2025, p 3, <dcj.nsw.gov.au/content/dam/dcj/dcj-website/documents/about-us/engage-with-us/public-consultations/draft-bill/background-paper-prohibition-bill-2025-nsw.docx>.

² See, for example, Knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 7 February 2023, pp 61–62, <knowmore.org.au/wp-content/uploads/2023/03/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-cth.pdf>; Knowmore, *Submission on the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022*, 22 April 2022, pp 5–6, <knowmore.org.au/wp-content/uploads/2022/05/submission-personal-injuries-proceedings-and-other-legislation-amendment-bill-2022-qld.pdf>.

³ NSW Police, *Seven charged as detectives uncover fraudulent sexual abuse compensation claims in scheme worth more than \$1 billion*, 13 February 2025, <[www.police.nsw.gov.au/news/news?sq_content_src=%2BdXJsPWh0dHBzJTNBJTJGJTJGZWJpenByZC5wb2xpY2UubnN3Lmdvdi5hdSUyRmllZGlhJTJGMTE2ODE2Lmh0bWwmYWxsPTE%3D#:~:text=Strike%20Force%20Veritas%20was%20established,Department%20of%20Education%20\(DoE\)](https://www.police.nsw.gov.au/news/news?sq_content_src=%2BdXJsPWh0dHBzJTNBJTJGJTJGZWJpenByZC5wb2xpY2UubnN3Lmdvdi5hdSUyRmllZGlhJTJGMTE2ODE2Lmh0bWwmYWxsPTE%3D#:~:text=Strike%20Force%20Veritas%20was%20established,Department%20of%20Education%20(DoE))>.

⁴ *Public consultation draft: Claim Farming Practices Prohibition Bill 2025* (draft bill), section 4; background paper, p 4.

farming and related practices targeting victims and survivors of child abuse.

As the background paper to the draft bill reflects, claim farming negatively impacts on people who have experienced trauma in a range of circumstances, and several Australian states have passed or proposed laws to respond to the problem.⁵ Knowmore has particularly supported reforms in Queensland (Queensland model)⁶ and proposed reforms in South Australia (South Australian model),⁷ noting that these reforms respond to claim farming in relation to personal injury claims – an area of particular concern for victims and survivors of child abuse.

The Australian Parliament’s Joint Standing Committee on Implementation of the National Redress Scheme (Joint Standing Committee) for survivors of institutional child sexual abuse has noted the need for state and territory governments ‘to urgently change laws to address claim farming and exploitative practices’.⁸ Knowmore strongly supports all states and territories passing laws to address claim farming, informed by the strongest parts of the models in Queensland and South Australia respectively. As highlighted on pages 3 to 4, our submission is informed by our experience as a nation-wide service, assisting victims and survivors of child abuse in all Australian jurisdictions. As a nation-wide service, we frequently see the negative impacts of inconsistencies between jurisdictions on victims and survivors of child abuse. We know that, if nationally consistent protections against claim farming are not provided, it

⁵ Background paper, p 3.

⁶ *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Qld); Knowmore, *Submission on the Personal Injuries Proceedings and Other Legislation Amendment Bill 2022*, pp 5–6.

⁷ *Statutes Amendment (Claim Farming) Bill 2024* (SA); South Australian Government, Attorney-General’s Department, *Moves to outlaw predatory claim farming of SA’s most vulnerable*, 14 May 2024, <www.agd.sa.gov.au/news/moves-to-outlaw-predatory-claim-farming-of-sas-most-vulnerable>.

⁸ Australian Parliament, Joint Standing Committee on Implementation of the National Redress Scheme, *Redress: journey to justice*, November 2024, pp xiii–xiv, recommendation 20, <https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/RB000213/toc_pdf/RedressJourneytoJustice.pdf>.

is likely that claim farmers will simply move their operations to states and territories with weaker protections.

Claim farming was already widespread in New South Wales, even before the passing of Queensland's reforms in June 2022. Since then, the experience of Knowmore and other services suggests that some claim farming businesses and law firms have shifted their focus across the border from Queensland to New South Wales.⁹ Consistent with the comments of the Joint Standing Committee (see page 6 above), we consider there is an urgent need for action to address claim farming in New South Wales. The draft bill is an important first step towards a comprehensive and effective response.

We welcome the NSW Government's decision to propose the draft bill and consult publicly on its provisions. We note that the draft bill falls short of the Queensland and South Australian models in significant ways (see pages 21 to 26 below). We hope that the draft bill can be appropriately amended, reflecting our comments in this submission, and swiftly passed into law.

We also note that laws to address claim farming in relation to personal injury claims are only part of what is required to protect victims and survivors of child abuse from claim farming and related practices. We make brief comments about the need for a holistic response to claim farming on pages 25 to 27. For further information about this, we refer to our primary submission to the Joint Standing Committee and to the Joint Standing Committee's report.¹⁰

Our submission proceeds in 3 parts:

- First, we make comments about claim farming and related practices targeting victims and survivors of child abuse in New South Wales,

⁹ See, for example, Beyond Brave (Bravehearts Foundation), *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, 27 February 2023, pp 5–6, <<https://www.aph.gov.au/DocumentStore.ashx?id=13d0bad6-e04b-405f-aa90-057f0c0cc660&subId=734234>>.

¹⁰ Knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 57–62; Australian Parliament, Joint Standing Committee on Implementation of the National Redress Scheme, *Redress: journey to justice*, pp xiii–xiv and 157–163.

highlighting the importance of the prohibitions in sections 5 and 6 of the draft bill.

- Second, we respond to the focus questions detailed in the background paper.
- Third, we make additional comments about the draft bill with a view to improving protections against claim farming for victims and survivors of child abuse in New South Wales.

Claim farming and related practices

Before discussing claim farming and related practices in more detail, we emphasise that Knowmore recognises the importance of personal injury claims as a legal option for victims and survivors of child abuse. We have long advocated for law reform, such as removing limitation periods for personal injury claims arising from child abuse,¹¹ to facilitate victims and survivors being able to bring these claims and to have them determined on their merits.

We also recognise the importance of victims and survivors being able to choose who they turn to for legal and other support. At the same time, a trauma-informed approach demands that victims and survivors are empowered to make informed choices about their legal options and who assists them.¹² Victims and survivors should not be harassed, pressured, deceived or taken advantage of – especially not when seeking assistance with their redress and compensation options.

Knowmore supports the provisions in the draft bill that are aimed at stopping claim farming in relation to personal injury claims. We particularly support:

- the prohibition on contacting or arranging contact with potential claimants for the purposes outlined in sections 5(1)–(2) of the draft bill
- the prohibition on participating in claim referrals for consideration in the ways outlined in section 6(1) of the draft bill.

¹¹ See, for example, Knowmore, *Submission on limitation periods in civil claims for child sexual abuse in New South Wales*, March 2014, p 3, <knowmore.org.au/wp-content/uploads/2020/11/submission-limitation-periods-in-civil-claims-for-child-sexual-abuse-nsw.pdf>.

¹² This reflects the core trauma-informed principles of safety, trustworthiness, choice, collaboration, empowerment and respect for diversity. See Blue Knot, *Trauma-informed services*, accessed 29 January 2025, <professionals.blueknot.org.au/resources/trauma-informed-services/>.

We consider that these prohibitions are necessary to protect victims and survivors of child abuse in New South Wales from further exploitation and harm. Our comments below address the following matters, highlighting the importance of strong protections:

- claim farming and related practices in New South Wales
- the relationships between claim farmers and law firms
- the impacts of claim farming and related practices on victims and survivors of child abuse
- the targeting of victims and survivors who experience heightened marginalisation.

Claim farming and related practices in New South Wales

We have heard much about claim farming and related practices in relation to institutional child abuse claims from our clients and other stakeholders, including the free and independent Redress Support Services who also assist victims and survivors engaging with the National Redress Scheme. In this context, claim farmers are sometimes referred to as ‘survivor advocates’ or ‘survivor advocacy businesses’.¹³ This reflects the fact that claim farmers often market themselves as survivor advocates,¹⁴ disguising their exploitative practices. There are, of course, legitimate survivor advocates and survivor advocacy organisations that assist victims and survivors, without exploitation.

Claim farming in relation to institutional child abuse claims is occurring throughout Australia, but is particularly prevalent in New South Wales. Knowmore has assisted many victims and survivors of child abuse who have experienced claim farming and related practices in New South Wales.

¹³ See, for example, Australian Parliament, Joint Select Committee on Implementation of the National Redress Scheme, *Second interim report*, November 2021, pp 70–71, <https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Former_Committees/National_Redress_Scheme/NationalRedressScheme/Second_Interim_Report>.

¹⁴ See Australian Parliament, Joint Standing Committee on Implementation of the National Redress Scheme, *Redress: journey to justice*, p 157.

In recent years, we have been aware of at least 3 claim farming businesses operating in New South Wales, targeting victims and survivors of institutional child abuse. We are also aware of claim farming businesses operating on social media, including in support groups for victims and survivors. In relation to New South Wales specifically, we note the information provided by the Redress Support Service Beyond Brave in a written submission to the Joint Standing Committee:

We are aware that survivor advocate groups have shifted their focus away from Queensland and are now targeting vulnerable communities in the Northern Territory, New South Wales and Western Australia, where such laws [to address claim farming] do not exist ... Information we have received suggest that they are targeting clients through public forums and Facebook survivor groups.¹⁵

In addition to the gap in NSW's legal protections, a key part of the situation in New South Wales is the large number of victims and survivors who were abused as children in NSW institutions. We note, for example, that the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) estimated that there were 21,880 victims and survivors of abuse in NSW institutions who would be eligible for the National Redress Scheme. This is the highest number of eligible victims and survivors of all Australian states and territories.¹⁶ The high level of claim farming in New South Wales also reflects the high number of victims and survivors of child abuse who are currently, or have been, in NSW prisons and the connections that key staff of some claim farming businesses have to people in prison (see the discussion on pages 14 to 16).

Relationships between claim farmers and law firms

Claim farming businesses are clear that their main role is to act as the conduit between victims/survivors and law firms. Their websites, public

¹⁵ Beyond Brave (Bravehearts Foundation), *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 5-6.

¹⁶ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil Litigation Report*, September 2015, p 330, table 27, <www.childabuseroyalcommission.gov.au/redress-and-civil-litigation>.

commentary from staff and communications with victims and survivors state that these businesses:

- gather preliminary information from victims and survivors to pass on to law firms, who then send costs agreements to survivors
- provide law firms with services such as taking and writing statements and gathering documents.

Client costs agreements seen by Knowmore indicate that claim farming businesses are effectively paid referral fees by law firms for introducing clients and passing on initial information,¹⁷ which is often very limited, and that their services come at a significant cost, which is ultimately borne by the victim/survivor. The fees charged by claim farming businesses can amount to many thousands of dollars, often for what appears to be very limited work and/or work that a law firm would in any event be required to do itself for the client in the course of acting for the client. We have been particularly concerned to see:

- law firms classifying fees payable to claim farming businesses as disbursements, thus increasing the total amount that may be charged to the survivor¹⁸
- fees payable to claim farming businesses and other disbursements initially being paid for by third party litigation/disbursement funders, who charge additional fees and interest rates of up to 23% for the life of the client's matter.

As noted in the explanatory notes for the Queensland model, such practices may not only disguise claim farming arrangements, but 'prevent successful claimants from receiving a fair and equitable share of judgment or settlement funds'.¹⁹

¹⁷ See also the discussion on page 15 about individuals being paid referral fees.

¹⁸ See *Legal Profession Uniform Law Application Act 2014* (NSW), schedule 1, clause 2; Office of the NSW Legal Services Commissioner, *Fact sheet 4 – regulated costs – personal injury claims*, July 2015, <olsc.nsw.gov.au/documents/OLSC_Factsheet_4_Reg_Costs_PI_July_2015.pdf>.

¹⁹ Explanatory notes to the *Personal Injuries Proceedings and Other Legislation Amendment Bill 2022*, p 2, <documents.parliament.qld.gov.au/tp/2022/5722T477-IBE3.pdf>.

In addition to working with claim farming businesses, some law firms engage in claim farming or related practices themselves. Knowmore has assisted victims and survivors of child abuse in New South Wales who have received unsolicited contact from law firms, employing aggressive tactics and pressuring them to commence personal injury claims.

In the course of our work assisting victims and survivors of child abuse, we have received concerning information about at least 23 different law firms – information that suggests that these law firms may be engaging in claim farming or related practices, or otherwise working with claim farmers. Of these 23 law firms, 15 have offices in New South Wales, including in Sydney and other parts of the state.

Some claim farming conduct is already inconsistent with the professional rules applying to lawyers – for example, rules against conflicts of interest and to prevent bringing the profession into disrepute.²⁰ At the same time, there are significant gaps in the rules.²¹ The existing professional regulation has not been sufficient to prevent significant involvement by lawyers in claim farming and related practices in New South Wales. This highlights the importance of the draft bill including strong provisions applying to lawyers (see the discussion on pages 23 to 24 below).

Impacts on victims and survivors of child abuse

As stated on page 9, a trauma-informed approach demands that victims and survivors are empowered to make informed choices about their legal options and who assists them. From our extensive experience working with victims and survivors, we also understand that it is critical that victims and survivors have sufficient time to make important decisions about their legal options, and that victims and survivors have access to appropriate, multidisciplinary support (see further discussion on page 27). However, the reported experience of many of our clients (and also clients of other

²⁰ *Australian Solicitors' Conduct Rules*, rules 5 and 12.

²¹ See, for example, *Australian Solicitors' Conduct Rules*, rules 12.4.3 and 12.4.4.

services)²² is that the current context and the relationships that exist between claim farming businesses and certain law firms can result in victims and survivors being exploited and re-traumatised. In addition to the practices outlined on pages 11 to 13, victims and survivors particularly report:

- distressing experiences of being cold contacted by strangers about their experience of child abuse, including in person, by mail and by phone
- being subjected to harassment, intimidation and high-pressure tactics
- being asked to sign documents they do not understand, and not knowing or being confused about what work is being done for them and by whom.

These and other negative experiences have left many clients feeling re-traumatised, and that claim farming businesses and the law firms they work with care more about money than about victims and survivors.

Targeting of victims and survivors who experience heightened marginalisation

From our experience assisting victims and survivors of child abuse, we have seen that claim farming and related practices particularly target victims and survivors who experience heightened marginalisation. This includes victims and survivors who are First Nations peoples, including Stolen Generations survivors, and victims and survivors living in rural, regional and remote communities. We receive especially frequent reports about claim farming and related practices targeting victims and survivors of child abuse in NSW prisons.

²² See, for example, the evidence given by Silvia Skinner from Beyond Brave (Bravehearts Foundation) to the Australian Parliament's Joint Select Committee on Implementation of the National Redress Scheme: *Official Committee Hansard*, 16 August 2021, pp 13–15, <https://parlinfo.aph.gov.au/parlInfo/download/committees/commsen/afla0263-1f99-4a8d-813d-05410f911cbf/toc_pdf/Joint%20Select%20Committee%20on%20Implementation%20of%20the%20National%20Redress%20Scheme_2021_08_16_9035_Official.pdf;fileType=application%2Fpdf#search=%22national%20redress%20committee%22>.

As noted on page 11, there are many victims and survivors of child abuse who are currently, or have been, in NSW prisons. The Royal Commission recognised that people in prison were more likely than people in the general population to have experienced child sexual abuse – and there are more people in prison in New South Wales than in any other Australian state or territory.²³ Knowmore assists many victims and survivors of child abuse who are currently, or have been, in NSW prisons. This includes many victims and survivors who have experienced claim farming and related practices in NSW prisons.

We know that claim farming businesses regularly send unsolicited letters to victims and survivors of child abuse in NSW prisons. These letters generally follow a similar model of asking the victim/survivor to provide some initial details to take up the business's offer of assistance and start their claim. Many of our clients have been confused about who the letters were from and what they should do with the letters. The documents sent by some of the businesses use particularly forceful language, referring to information 'required' of the victim/survivor or information that 'must' be provided.

Knowmore regularly hears that claim farming businesses have asked people in NSW prisons to disclose the names of other people in prison who they think have experienced child sexual abuse. We have heard reports of claim farming businesses paying people in prison in exchange for the names of victims and survivors.

The above discussion highlights the tendency of claim farmers to target places where large numbers of victims and survivors of institutional child abuse are likely to be present. In our experience, claim farming can become entrenched in such places, where people experience heightened

²³ Royal Commission, *Final report: volume 3, impacts*, December 2017, p 144, <www.childabuseroyalcommission.gov.au/impacts>; Australian Bureau of Statistics, *Prisoners in Australia*, 19 December 2024, <www.abs.gov.au/statistics/people/crime-and-justice/prisoners-australia/latest-release>.

marginalisation and inadequate support.²⁴ This reinforces the importance of strong provisions to address claim farming and relates practices. It also highlights the importance of a holistic response to claim farming, based on an understanding of the experiences, rights and needs of people who experience heightened marginalisation (see further discussion on pages 25 to 27).

²⁴ For more information about the heightened marginalisation and inadequate support experienced by victims and survivors in prison, see Knowmore, *Supplementary submission to the Joint Standing Committee on Implementation of the National Redress Scheme: seventh year of the National Redress Scheme*, 26 July 2024, pp 20–30, <knowmore.org.au/wp-content/uploads/2024/08/submission-joint-standing-committee-on-implementation-of-the-national-redress-scheme-seventh-year-cth.pdf>.

Responses to focus questions

We note that the background paper raises 10 focus questions. We respond to these focus questions in the table below.

| Focus question number | Focus question | Knowmore's response |
|-----------------------|--|--|
| 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? | Any broadening of the exception proposed in subsection 5(3)(d) of the draft bill would need to be considered with caution, so as not to undermine the effectiveness of the draft bill in practice. We note that subsection 5(3)(d) of the draft bill is broadly consistent with the equivalent provisions of the Queensland and South Australian models. ²⁵ |
| 2 | Should other exemptions be considered to this proposed offence? | See our response to focus question 1. We note that the exemptions in section 5 of the draft bill are broadly consistent with the South Australian model. ²⁶ |
| 3 | Should there be a threshold under which the giving or | No. In our view, there should not be a threshold under which the giving or receiving of a non-monetary benefit for a claim or |

²⁵ *Personal Injuries Proceedings Act 2002* (Qld), section 71B(3)(c); *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42B(4)(d) of the *Summary Offences Act 1953* (SA).

²⁶ *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42B(4).

| Focus question number | Focus question | Knowmore's response |
|-----------------------|---|--|
| | 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)? | <p>potential claim is not an offence under the proposed section 6.</p> <p>We note that the question refers to gifts and hospitality as examples. We do not see how it could be appropriate for gifts or hospitality to be provided in exchange for a claim referral, or how this differs in a relevant way from providing a monetary benefit.</p> <p>We do not regard \$100 as a small value to be given in exchange for a claim referral. We also note that even small values can add up to a significant amount over time.</p> |
| 4 | If so, what is an appropriate value threshold of this non-monetary benefit? | See our response to focus question 3. We do not consider that a threshold of this nature should exist. |
| 5 | Is the exemption under proposed subsection 6(2)(b) sufficient to cover the sale of a law practice or the | We note that the South Australian model includes an additional limitation on the exemption for the sale of a law practice – namely, that ‘the sale is not undertaken by the original practice or the new practice for the purpose of avoiding the operation of [the equivalent provisions of the South Australian bill]’. ²⁷ In our view, this additional limitation on the exemption for the sale of a law practice should be added to the draft bill. It will help to |

²⁷ *Statutes Amendment (Claim Farming) Bill 2024 (SA)*, clause 5, proposed section 42A(3)(a)(v) of the *Summary Offences Act 1953 (SA)*.

| Focus question number | Focus question | Knowmore's response |
|-----------------------|---|---|
| | merger of law practices? | avoid loopholes that may limit the effectiveness of the draft bill in practice. |
| 6 | Is the maximum penalty for the offences under proposed section 5 (Offence 1) appropriate? | <p>Yes. In our view, the maximum penalty for the offences under proposed section 5 is appropriate. \$55,000 is a significant penalty, reflecting the seriousness of the offences, and the need to deter claim farming and related practices by rendering such practices unprofitable.</p> <p>As the background paper notes, the draft bill's maximum penalties are broadly consistent with the maximum penalties under the Queensland and South Australian models.²⁸</p> |
| 7 | Is the maximum penalty for the offences under proposed section 6 (Offence 2) appropriate? | Yes. See our response to focus question 6. |
| 8 | Is the limitation period for the offences under proposed section 5 (Offence 1) appropriate? | The limitation period for the offences under proposed section 5 should be amended to align with the Queensland model. Under the Queensland model, the limitation period is the later of 2 years after the commission of the offence or 6 months after the commission of the offence comes to the knowledge of the complainant. ²⁹ In contrast, the limitation |

²⁸ Background paper, p 6.

²⁹ *Personal Injuries Proceedings Act 2002* (Qld), section 73A(2A).

| Focus question number | Focus question | Knowmore's response |
|-----------------------|---|--|
| | | <p>period in the draft bill is 2 years after the date on which the offence is alleged to have been committed.³⁰ The draft bill does not allow for the limitation period to be extended beyond 2 years if there is a delay in the relevant information coming to light. This is despite the background paper acknowledging that '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'.³¹</p> |
| 9 | <p>Is the limitation period for the offences under proposed section 6 (Offence 2) appropriate?</p> | <p>See our response to focus question 8. The limitation period for the offences under proposed section 6 should be amended to align with the Queensland model.</p> |
| 10 | <p>Are there any other savings or transitional provisions that the Department should consider drafting?</p> | <p>Knowmore's priority in this context is that the bill is swiftly passed into law and commences, with the appropriate amendments. As noted on page 6, and illustrated by the discussion on pages 9 to 16, there is an urgent need for action to address claim farming in New South Wales. Every day that the necessary reforms are delayed leaves victims and survivors vulnerable to further exploitation.</p> |

³⁰ Draft bill, section 8.

³¹ Background paper, p 7.

Additional comments about the draft bill

We make additional comments below about the draft bill with a view to improving protections against claim farming for victims and survivors of child abuse in New South Wales. As noted on pages 6 to 7, these comments are informed by our experience as a nation-wide service assisting victims and survivors of child abuse, and our appreciation of the importance of a consistent, national response to claim farming. In making these comments, we have reflected on what we consider to be the strongest parts of the Queensland and South Australian models.

Our comments below address the following matters:

- the claim referral offence in section 6 of the draft bill
- provisions addressing the accountability of employers for claim farming and related practices involving their employees
- provisions addressing the involvement of lawyers in claim farming and related practices
- provisions for the draft bill to apply outside New South Wales
- the need for a holistic response to address claim farming and related practices.

Claim referral offence in section 6

The claim referral offence in section 6 of the draft bill falls short of best practice elements from the Queensland and/or South Australian models in 3 ways.

First, the Queensland and South Australian models both prohibit a person from allowing a claim referral in exchange for consideration or a benefit,³² whereas the draft bill does not prohibit this conduct. In our view, section 6(1) of the draft bill should be amended to prohibit a person from allowing

³² *Personal Injuries Proceedings Act 2002* (Qld), section 71(2); *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42A(1) of the *Summary Offences Act 1953* (SA).

a claim referral in exchange for consideration. We do not think that it is acceptable for a person to allow claim farming to occur (for example, within their business). We consider that a prohibition on this conduct is necessary to prevent a person from profiting from claim farming by allowing it to occur.

Second, the exception for a law practice making a referral in section 6(2)(a) of the draft bill does not have a direct equivalent in the Queensland model and is significantly broader than the equivalent exception in the South Australian model. Under the South Australian model, the exception only applies to referrals between law practices where the referring practice has a conflict of interest or insufficient expertise in the subject matter of the claim.³³ We query whether the exception in section 6(2)(a) of the draft bill should be included at all, noting the present involvement of some lawyers in claim farming and related practices (see the discussion on pages 11 to 13) and the potential for conflicts of interest when claim referrals are exchanged for money. However, if the exception is to be included, then we consider that it should be narrowed to match the equivalent exception in the South Australian model. Lawyers should not have a broad exception from the claim referral offence in section 6 of the draft bill.

Third, the exemption for the sale of a law practice in section 6(2)(b) of the draft bill falls short of the equivalent provisions of the South Australian bill. We have made comments about this in response to focus question 5 on pages 18 to 19.

Provisions to address the accountability of employers

The Queensland and South Australian models include significantly stronger provisions than the draft bill to address the accountability of employers for claim farming and related practices involving their employees. These provisions extend to a range of similar situations – for example, the

³³ The exception will also apply 'in prescribed circumstances', which have not been specified. See *Statutes Amendment (Claim Farming) Bill 2024 (SA)*, clause 5, proposed section 42A(3)(b) of the *Summary Offences Act 1953 (SA)*.

accountability of people for their agents.³⁴ For simplicity, we will speak of the accountability of employers for employees, although similar considerations apply more broadly.

Under the Queensland and South Australian models, an employer can generally be held accountable for the conduct and state of mind of an employee acting within the scope of the employee's actual or apparent authority, subject to some limitations.³⁵ In Knowmore's view, provisions of this nature appropriately recognise that claim farming is a business model. In a business, different parts of an activity may be carried out by different people, each with their own state of mind. This cannot be an excuse for claim farming to continue, or for an employer in a claim farming business to escape accountability for conduct that is within their control and from which they are likely profiting.

We consider that the draft bill should be amended to include provisions to address the accountability of employers for claim farming, similar to the provisions under the Queensland and South Australian models.

Provisions addressing the involvement of lawyers

The Queensland model includes significantly stronger provisions than the draft bill to address the involvement of lawyers in claim farming and related practices. In particular, the Queensland model includes provisions to address a practice described on page 12 above, where a law firm outsources work that would ordinarily be performed by a law firm to a claim farming business under an arrangement that results in the victim/survivor paying more for the assistance than would otherwise be allowed.³⁶ We consider that the draft bill should be amended to protect victims and survivors from this practice, which erodes their compensation for child abuse, and suggest implementation by an amendment to the

³⁴ *Personal Injuries Proceedings Act 2002* (Qld), section 71C; *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42C of the *Summary Offences Act 1953* (SA).

³⁵ *Personal Injuries Proceedings Act 2002* (Qld), section 71C; *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42C of the *Summary Offences Act 1953* (SA).

³⁶ *Legal Profession Act 2007* (Qld), section 347, as amended by the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (Qld), clause 16.

relevant provision of the *Legal Profession Uniform Law Application Act 2014* (NSW).³⁷

In addition, we consider that the draft bill should be amended to align with the Queensland model in relation to law practice certificates. Under this part of the Queensland model, law firms are required to provide certificates to confirm they have followed the law against claim farming at key moments: before starting a claim,³⁸ on settlement or judgment,³⁹ and before referring a claim as part of the sale of a law practice.⁴⁰ If the law firm does not provide a certificate when required, the consequences may include a fine of up to \$48,390 and being required to refund the claimant.⁴¹ These provisions are a significant deterrent against law firms participating in claim farming and related practices. In contrast, the draft bill does not require law practice certificates and only requires a refund in the event of a conviction for a claim farming offence.⁴²

Provisions for the draft bill to apply outside New South Wales

The draft bill does not have provisions for the draft bill to apply outside New South Wales. This is in contrast to the Queensland and South Australian models, the main provisions of which apply outside of their respective states.⁴³ As highlighted by the discussion on pages 6 to 7, claim farming is a nation-wide problem, requiring a coordinated, national response. As a nation-wide service, we frequently see the negative impacts of legal inconsistencies between jurisdictions and of gaps in protection, linked to jurisdictional borders. We consider that provisions for the draft bill to apply outside New South Wales would be a valuable step towards minimising inconsistencies and gaps of this nature. We do not see any good reason for

³⁷ *Legal Profession Uniform Law Application Act 2014* (NSW), schedule 1, clause 2.

³⁸ *Personal Injuries Proceedings Act 2002* (Qld), section 8C.

³⁹ *Personal Injuries Proceedings Act 2002* (Qld), section 6I.

⁴⁰ *Personal Injuries Proceedings Act 2002* (Qld), section 8F.

⁴¹ *Personal Injuries Proceedings Act 2002* (Qld), sections 8C, 8F and 6I.

⁴² Draft bill, schedule 2, clause 1.

⁴³ *Personal Injuries Proceedings Act 2002* (Qld), section 71F; *Statutes Amendment (Claim Farming) Bill 2024* (SA), clause 5, proposed section 42E of the *Summary Offences Act 1953* (SA).

the draft bill to be more limited in where it applies than the Queensland and South Australian models.

The need for a holistic response to address claim farming and related practices

As noted on page 7, there is a need for a holistic response to address claim farming and related practices, with further information about this contained in our primary submission to the Joint Standing Committee and the Joint Standing Committee's report.⁴⁴ Given the scope of the consultation about the draft bill, we do not make comprehensive comments about a holistic response here. Our comments below focus on 2 matters that will likely have a significant impact on the effectiveness of the draft bill in practice:

- the agency responsible for investigating and prosecuting the offences under the draft bill
- the need for victims and survivors to have access to free, independent and trauma-informed legal assistance and wraparound support.

The agency responsible for investigating and prosecuting

The background paper notes that the NSW Police would be responsible for investigating and prosecuting offences under the draft bill.⁴⁵ In our view, it would be more appropriate for this responsibility to be allocated to the Office of the NSW Legal Services Commissioner (OLSC) with appropriate resourcing for the OLSC to carry out the required functions. We note that, under the Queensland model, the Queensland Legal Services

⁴⁴ Knowmore, *Submission to the Joint Standing Committee on Implementation of the National Redress Scheme*, pp 57–62; Australian Parliament, Joint Standing Committee on Implementation of the National Redress Scheme, *Redress: journey to justice*, pp xiii–xiv and 157–163.

⁴⁵ Background paper, p 8.

Commissioner investigates and can prosecute claim farming offences in relation to personal injury claims.⁴⁶

Knowmore considers that the Queensland model is more appropriate than the draft bill for 2 reasons. First, Knowmore assists many victims and survivors of child abuse who, for a range of reasons, do not trust the police. Many victims and survivors, and their communities, have had negative experiences with the police, including when reporting child abuse to the police.⁴⁷ If the only option is to report claim farming offences to the NSW Police, then many victims and survivors of child abuse will never report the claim farming that they have experienced. This will most impact victims and survivors who experience heightened marginalisation – the same victims and survivors who are disproportionately targeted by claim farming and related practices (see the discussion on pages 14 to 16).

Second, Knowmore considers that the offences in the draft bill align more closely with the work of the OLSC than the work of the NSW Police, as the offences relate to the integrity and proper functioning of the legal system. Regardless of whether the offences in the draft bill are committed by lawyers or non-lawyers, they involve the manipulation of legal processes to exploit victims and survivors of child abuse, who should be able to count on the legal system for justice, safety and support. We note that the draft bill confirms the OLSC's role in relation to the professional regulation of lawyers for claim farming conduct.⁴⁸ It would align with this, and reduce the fragmentation of responsibilities across different agencies, for the OLSC to be responsible for investigating and prosecuting the offences in the draft bill more broadly.

⁴⁶ *Personal Injuries Proceedings Act 2002* (Qld), section 73A(1)(c); *Justices Act 1886* (Qld), section 42(1); Queensland Legal Services Commission, *Claim farming*, accessed 6 February 2025, <www.lsc.qld.gov.au/for-the-profession/personal-injury-and-proceedings-act-2002-2/personal-injury-and-proceedings-act-2002>.

⁴⁷ See Knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, 7 June 2024, pp 31–33, <knowmore.org.au/wp-content/uploads/2024/06/submission-justice-responses-to-sexual-violence-cth.pdf>.

⁴⁸ Draft bill, schedule 2, clause 2; background paper, p 8.

The need for free, independent and trauma-informed legal assistance and wraparound support

We welcome the background paper's recognition that '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'.⁴⁹ In our experience, timely access to appropriate legal assistance significantly reduces the risk that victims and survivors of child abuse will be exploited by claim farmers. This is because appropriate legal assistance makes claim farmers redundant. It can further assist clients to identify 'red flags' that may indicate claim farming and consider their legal options (limited though these are at present for clients in New South Wales).

If the draft bill is passed, then victims and survivors will require legal assistance and related support to understand and enforce their new rights. Noting that many victims and survivors of child abuse have had negative experiences of the legal system,⁵⁰ it is vital that this support is survivor-focused, trauma-informed and culturally safe.⁵¹

Knowmore has long advocated for all Australian governments, including the NSW Government, to ensure that victims and survivors of child abuse have access to free, independent and trauma-informed legal assistance and wraparound support in relation to the comprehensive range of legal issues that victims and survivors experience.⁵² This should include assisting victims and survivors of child abuse to challenge claim farming and related practices.

⁴⁹ Background paper, p 4.

⁵⁰ Knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 11–13.

⁵¹ For more information about the importance of survivor-focused, trauma-informed and culturally safe support, see Knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 14–18.

⁵² See, for example, Knowmore, *Submission to the Australian Law Reform Commission's inquiry into justice responses to sexual violence*, pp 14–18.



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