

18 February 2025

Policy, Reform and Legislation Branch, Department of Communities and Justice

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

To whom it may concern

Re: Proposed laws to prohibit claim farming – MIPS response

Thank you for the opportunity to comment on the draft *Claim Farming Practices Prohibition Bill 2025* (NSW) (“the draft Bill”). Thank you also for providing MIPS with an extension of time in which to respond to this important issue. There are two principal comments that MIPS would like to make in response to the draft Bill as set out below.

1. Impact of civil liability claims on health practitioners

The Medical Indemnity Protection Society (MIPS) is a member-based organisation that provides professional indemnity insurance to over 50,000 health practitioners (primarily medical and dental practitioners) and students across Australia. A significant part of MIPS’ work is dedicated to responding to and defending medical negligence claims that are brought against our members.

MIPS recognises and accepts the important role that community access to medical negligence litigation plays in ensuring that health practitioners provide safe high-quality healthcare. It also allows patients who suffer harm resulting from health care to seek answers, redress, and assurances that mistakes will not be repeated.

However, through our work representing health practitioners who are the subject of such litigation, MIPS sees first-hand the significant adverse impact that such claims can have on its members. The inherently accusatory and adversarial nature of these claims can be emotionally distressing and can lead to time away from practice, burnout, career dissatisfaction, and suicidal ideation. The threat of medical negligence litigation is one of the most serious workplace stressors for many practitioners.

MIPS understands that some of our members may have been the subject of multiple vexatious claims arising from claim farming practices in NSW and elsewhere in Australia. In some cases, the claims against the practitioner are not only spurious, but costly and time-consuming to defend. This has a significant impact on the members concerned and can potentially lead to increased professional indemnity insurance premiums. In turn, this adds to the overall economic costs of providing healthcare to the Australian community.

MIPS is therefore strongly supportive of the draft Bill and its clear intent on banning claim farming practices.

Assurances to health practitioners who request a law practice contact a patient

One of the services that MIPS provides to its healthcare practitioner members is a 24/7 medicolegal advisory service. Not infrequently, MIPS receives calls from members seeking advice about their professional obligations when patients disclose past or historical sexual assault, sexual abuse or sexual misconduct to them. Sometimes, patients will also ask their

health practitioner whether they should disclose the allegations to the police or whether they should seek legal advice. Sometimes, patients feel ashamed or afraid to reach out themselves to a lawyer and may consent to a health practitioner sharing the patient's disclosure with a law practice.

Therefore, MIPS suggests that it ought not be offence under the Bill for a law practice to contact a potential claimant on the request of a health practitioner, where the potential claimant was a patient of the health practitioner and disclosed sexual assault or sexual misconduct to that health practitioner. This would provide health practitioners with assurance that their patient's disclosure will be able to be acted on by a law practice.

This could be articulated as an additional exception under subsection 5(3)(d).

Response to specific questions

Other than as outlined above, MIPS does not wish to respond to the specific focus questions posed in the background paper.

We trust that these comments are helpful to the Department in progressing the draft Bill and we are happy to provide further input if required or requested.

Yours sincerely



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Chief Medical Officer, MIPS

cc. Ms Natasha Anning, Chief Executive Officer, MIPS