

Correspondence to:

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General Manager

Email: [REDACTED]

7 February 2025

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

BY EMAIL: policy@dcj.nsw.gov.au

Dear Sir/Madam,

New South Wales Draft Government Bill – Claim Farming Practices Prohibition Bill 2025

Please find enclosed Slater and Gordon's response to the *New South Wales Draft Government Bill – Claim Farming Practices Prohibition Bill 2025 (Bill)*.

The Bill purports to prohibit the practice known as 'claims farming' whereby an individual's personal information is sold to law firms or other third parties, often without the individual's knowledge or informed consent, and are subjected to cold-calling and harassment to bring a personal injury claim.

Slater and Gordon is supportive of the NSW's Government's desire to prohibit this unscrupulous and predatory practice. However, it is our view the Bill requires amendments to more directly address the unethical behaviours associated with 'claim farming', rather than imposing a blanket prohibition on approach or contact for the purpose of making a claim.

Please note, Slater and Gordon is supportive of the submissions made by the Australian Lawyers Alliance submissions in relation to this Bill.

We would welcome the opportunity to be involved in further constructive dialogue with the NSW Government in the continuing development of this legislation.

Please contact me on [REDACTED] if you would like further advice and engage in further discussion in relation to our submission.

Once again, we thank you for the opportunity to make a submission and engage in this important discussion.

Yours faithfully



Rachael James
General Manager
Federal & Industrial Rights and Advocacy
SLATER AND GORDON



**Submissions to Policy,
Reform and Legislation
Branch, Department of
Communities and Justice on
the**

***Draft Claim Farming Practice
Prohibition Bill 2025***

Rachael James, General Manager

Submitted by
Slater and Gordon Lawyers

7 February 2025

Commercial-in-Confidence

1. Slater and Gordon Lawyers

Slater and Gordon Lawyers are Australia's largest consumer law firm. The firm has handled some of the most complex and groundbreaking cases in Australia. These include representing hundreds of miners who were dying as a result of their exposure to the deadly dust asbestos at the Wittenoom mine in Western Australia; 30,000 landowners affected by BHP's OK Tedi mine in PNG; victims of medically acquired HIV from contaminated blood supplies and women suffering health problems due to faulty IUDs and breast implants.

Slater and Gordon has a proud history of advocating for social justice, and our alignment with Labor values reflects our deep commitment to fairness, accountability, and protecting the vulnerable. Throughout our history, we've worked closely with governments, unions, and the community to fight for the rights of individuals and bring about meaningful change.

2. Background

On 14 January 2025, the NSW Department of Communities and Justice sought feedback on the draft *Claim Farming Practices Prohibition Bill 2025*.

The policy objectives as outlined in the *Background Paper: Claim Farming Practices Prohibition Bill 2025 (NSW) (Background Paper)* are:

- Gathering personal information from individuals who have been injured or abused, and in some cases quite vulnerable, through unethical means such as misleading actions, harassment and intimidation.
- Contacting individuals without consent, sometimes through intermediaries to pressure them into making a claim.
- Presenting themselves to be legitimate 'claims managers', or survivor advocate groups.
- Charging individuals fees to sell their claim or providing quasi-legal services such as drafting evidentiary statements, to a lawyer or other third party, sometimes without the individual's knowledge.

3. Executive Summary

Central to our submission is the protection of the rights of injured people across NSW, and to ensure their ability to access justice and support is not limited or restrained.

The NSW Government has a leadership role to play in protecting these rights and accessibility to justice.

We recommend the *Claim Farming Practices Prohibition Bill 2025 (NSW) (Bill)* be amended as follows:

- Ensure exemptions are in place under section 5 of the Bill to ensure informed consent is included as non-prohibited contact, solicitation or referral.
- Informed consent be a complete defence to the prohibitions under section 5 and 6 of the Bill.
- Include workable definitions of
 - Solicit
 - Benefit
 - Third party
 - Public

4. Addressing claim farming concerns

- 4.1 Slater and Gordon welcomes the opportunity to make submissions on the Bill.
- 4.2 We are supportive of the Bill's stated policy objectives to stop the unethical and predatory practice of 'claim farming'.
- 4.3 Unfortunately, rather than directly addressing the practice of 'claim farming' and the significant breaches of privacy, the Bill proposes a regime that appears to be motivated in part by a desire to reduce the number of claims for personal injuries. We note in this regard the concern expressed in the Background Paper:

"Some stakeholders also raised concerns that claim farming may increase the potential for fraudulent and illegitimate claims, which poses risks to actual victim-survivors by jeopardising the integrity of legitimate claims."

- 4.4 We note, in relation to this comment, there appears to be no evidence claim farming is responsible for fraudulent or illegitimate claims, or that this Bill would reduce the instances of fraudulent or illegitimate claims.
- 4.5 We submit the *Legal Profession Uniform Law* already provides sufficient protection against the making of fraudulent and illegitimate claims.
- 4.6 Our concern is that if enacted in its current form, the regime will severely impair or limit access to justice for individuals, particularly vulnerable individuals, with legitimate claims.
- 4.7 Having regard to the foregoing, Slater and Gordon believes the Bill needs to be redrafted to more specifically define and prohibit the claim farming practices which it purports to address, whilst maintaining the rights of injured individuals to access justice through compensation.

5 The Bill Objectives

- 5.7 Slater and Gordon proposes the Bill be redrafted to more accurately address the practice of 'claim farming', the core components of which we submit are:

Commercial arrangements which are for the sole or dominant purpose to provide pre-agreed financial incentives to actively solicit potential claims without the informed consent of potential claimants, in exchange for the referral of those potential claimants to a legal practitioner or other claims management service provider.

- 5.8 The Bill requires redrafting to more directly address the undesirable and unethical behaviours which are a hallmark of 'claim farming', such as breaching individual's privacy, using high pressure communication tactics and unscrupulous commercial arrangements, rather than imposing a blanket prohibition on contact or referral for the purpose of making a claim, which may have the unintended consequence of reducing or removing an individual's access to justice.

6 Commentary and Feedback

Prohibited Contact in relation to potential claims

6.7 Subsection 5(1)(a)

Solicit is not defined in the Bill. The interpretation of the term 'solicit' should be defined narrowly so that it does not include legitimate business and legal practices such as:

- Advertising which has a call to action to contact a particular law firm
- Free legal seminars to medical, nursing and other allied health organisations, wherein an attendee may refer a future patient
- Free legal seminars to charities, Not-For-Profits and other organisations with public interest objectives wherein an attendee may, in the future, refer a community member
- Media interviews regarding a specific case, series of cases or personal injury in general
- Free legal seminars to social and community care workers
- Social media posts providing information about personal injury or inviting individuals to learn about their rights under the law.

6.8 Subsection 5(1)(b) and 5(2)

Third party is not defined in the Bill. However, within the Background Paper the example of an offence under the Bill is an employer directing their employee to contact a potential claimant, meaning the employee was a third party for the purposes of this section.

As a result, this would mean a lawyer would be in breach of this section if they requested their legal assistant or other administrative function within their practice to contact a potential claimant to organise a meeting to discuss their potential claim, since legal assistants and other administrative functions receive 'consideration', by way of wage or salary.

This is an unreasonable interpretation of the term third party and would significantly hinder a lawyer's ability to undertake their professional responsibilities if they cannot delegate this administrative task.

Third party must be defined in a way which does not capture legitimate employment relationships or practices.

6.9 Subsection 5(4)

The current drafting of this subsection would prohibit a lawyer, who can no longer assist a claimant with their claim, from referring their client to another firm and then receive repayment for disbursements or their work done to date. There are many circumstances for which a lawyer may refer a matter to another firm, for example, as a result of a conflict which arose after the matter commenced.

The ability to refer a claimant or potential claimant who has decided to make a claim or has made a claim must be included for in legitimate circumstances.

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

Yes – additional organisations should be included in subsection 5(3)(d), such as:

- Doctors, nurses, allied health practitioners and their affiliated organisations, for example, Cancer Nurses Society of Australia.
- Charities, Not-For-Profits and other community organisations with public interest objectives such as the Cancer Council
- Police, Fire Brigade and Ambulance
- Social workers
- Courts and Tribunals
- Union-like affiliations and associates
- Other law firms

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

Yes – informed consent provided by the claimant or potential claimant should be an exemption

Claim referrals for consideration prohibited

6.10 Section 6(1)(a)

The term **benefit** is not defined in the definitions or in the context of its application in this Bill. Benefits come in various forms, both tangible and intangible. To ensure proper adherence this term requires further guidance or clarification.

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)?

Yes – a threshold for 'benefit' or non-monetary benefit would assist with clarifying the parameters of a benefit. However, a threshold must be supplemented by further guidance and clarification.

We submit the term 'benefit' must be cognisant of the example we provided in section 3.3, and be defined similarly:

Benefit refers to a form of advantage or positive outcome, such as monetary reward, physical goods, or services provided. A Benefit does not include reimbursement, repayment or restitution.

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

We are of the view that \$100 as suggested in focus question 3 is an appropriate amount.

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?

Yes.

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

Yes.

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

Yes

Exceptions for advertisements of legal services

6.11 Section 7

In general terms, we are supportive for the advertising exemptions provide for under the Bill and consider the ability of a law practice to advertise its services to the public an important pillar of accessing justice.

However, without further guidance, the term 'public' may be interpreted in a way that means 'claimants' and 'potential claimants' (within the meaning of subsection 5) are captured as subsection of the 'public'.

We submit that the public, should include 'claimant', 'potential claimant' and that it not be an offence for the purposes of section 5 or 6, to advertise to the public.

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

Yes.

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

Yes.