



**samsn**

SURVIVORS & MATES SUPPORT NETWORK

**DRAFT CLAIM FARMING PRACTICES PROHIBITION BILL  
2025 (NSW)  
STAKEHOLDER FEEDBACK**

Prepared by

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## **5. Offence 1: soliciting a potential claimant**

**Focus question1:** *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?*

Firstly, it is our submission that section 5 (3)(a) should be removed. Contacting potential claimants at any time whether or not consideration because of the contact, is to be paid, will create distress and anxiety in the person being contacted. To create a situation where any potential claimant can be ‘cold called’ is not trauma-informed. The potential claimant has not asked to be contacted. Many of our clients have reported that being ‘cold called’ has caused distress and confusion. Many do not know how their personal information was provided to the caller. Many are angered that trusted support services may have leaked their personal information to these callers. It is for reasons that we would submit this section should be removed from the legislation.

Even if consideration because of the contact is not paid, the law firm potentially will receive a benefit from the contact in that they will be able to contact a person who may ultimately become a client who will then pay costs for the legal services received.

Section 1 of the draft legislation clearly states the prohibition and this prohibition must be maintained.

In relation to section 3(d), it is our submission that by citing only two organisations/services

- A community legal service; and
- An industrial organisation

the legislation, would be omitting other important sources of referral, such as community health services or other community services. It is presumed that ‘industrial organisation’ would include trade unions, employer and employee organisations. It is suggested that ‘industrial organisation’ be defined in section 3(5).

However, importantly it is our submission that section 5 (3) (d) (ii) should be reworded as follows to include:

(ii) receives written consent from the potential claimant agreeing to being contacted by the law practice.



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

It is our submission that no further exemptions to this proposed should be considered. As stated above unsolicited contact can create distress and anxiety especially for survivors of child sexual abuse. The purpose of this legislation is to prohibit unsolicited contact with potential claimants in civil proceedings. Making further exemptions, than those already outlined in section 5(3) would diminish the effectiveness of this legislation.

## **6. Offence 2: buying or selling a claim referral**

**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)?*

It is our submission there should be no threshold under which an offence under this section is not committed. The receipt of a benefit of any nature must be prohibited. Section 6(1) clearly sets out the prohibition and the subsequent penalty. Section 3 defines consideration. To set a threshold before the offence occurs, would be to weaken considerably the effectiveness of this legislation. We already know of law firms offering incentives for referrals, such as tickets to sporting events.

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

We refer to our answer to focus question 3.

**Focus question 5:** *Is the exemption under proposed subsection 6(2) sufficient to cover the sale of a law practice or the merger of law practices?*

SAMSN does not have the expertise to answer this question.

## **7. Maximum penalties for offences**

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

It is our submission that the penalty of 500 penalty units for an offence of contacting a potential claimant to make a claim or refer a potential claimant to a third party to provide a service, is appropriate.



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

We would submit the maximum penalty for this offence (\$55,000) should be increased. Many law firms are making substantial profits from claim farming. The penalty needs to be of such severity that no incentive to make a financial gain, can exist. It would be our submission that the penalty for this offence should be doubled to effectively diminish the cost benefit to law firms and deter law firms from committing this offence.

## **9. Summary offences and limitation periods**

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

It is our submission that the limitation period of 2 years be extended to 5 years. Many clients do not realise they have been the victims of claim farming until they receive their final statement of costs and disbursements from their law firm. Many claims are taking more than three years to settle. A time limit of 2 years after the date on which the offence is alleged to have been committed, will mean many clients unaware that an offence has been committed, will not be able to pursue their justice options.

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

We refer to our answer to focus question 8.

## **10. Transitional provisions**

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

We are not aware of any other saving or transitional provisions that should be considered.

Thank you for the opportunity to make submissions on this very important piece of legislation. The high incidence of claim farming especially within many correctional facilities is causing confusion, distress and anxiety amongst survivors of child sexual abuse.

