

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Claim Farming Practices Prohibition Bill 2025

Explanatory note

Overview of Bill

The object of this Bill is to prohibit claim farming practices by making it an offence to—

- (a) make certain contact with a potential claimant in civil proceedings, and
- (b) pay or receive referral fees in relation to civil proceedings.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name, also called the short title, of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on day or days to be appointed by proclamation.

Clause 3 defines certain words and expressions used in the proposed Act.

Part 2 Certain contact and referral payments prohibited

Clause 4 provides that the proposed Act, Part 2 applies to claims for personal injury damages other than certain types of claims excluded from the general application of the *Civil Liability Act 2002*.

Clause 5 makes it an offence to contact a potential claimant in civil proceedings to solicit the claimant to make a claim or to refer the claimant to a third party to provide services in relation to a claim. The clause also makes it an offence to arrange for prohibited contact using a third party. The proposed offences do not apply if the claimant is contacted in the following circumstances—

- (a) if no person expects to receive, and no person receives, consideration because of the contact,
- (b) if the contact is by way of a notice given in relation to representative proceedings under the *Civil Procedure Act 2005* or equivalent legislation in the Commonwealth or another State or Territory,
- (c) by a law practice that has previously supplied the claimant with legal services and reasonably believes the claimant will not object to the contact,
- (d) by a law practice at the request of a community legal service or industrial organisation where the person making the request reasonably believes the claimant will not object to the contact.

Clause 6 makes it an offence to refer a claim in civil proceedings for consideration, provide consideration for the referral of a claim or to enter into agreements or arrangements relating to referrals of claims for consideration. The proposed offence does not apply in certain circumstances where a law practice refers work to another person providing a service for the claim or where a law practice is sold to another law practice.

Clause 7 provides that a person does not commit an offence under the proposed part in relation to public advertising of a law practice.

Part 3 Miscellaneous

Clause 8 provides that proceedings for an offence under the proposed Act may be commenced within but not later than 2 years after the date on which the offence is alleged to have been committed.

Clause 9 provides that proceedings for offences under the proposed Act may be dealt with summarily before the Local Court.

Clause 10 enables the Governor to make regulations for the purposes of the proposed Act.

Schedule 1 Savings, transitional and other provisions

Clause 1 enables savings and transitional regulations to be made as a consequence of the commencement of the proposed Act or a provision that amends the proposed Act.

Clause 2 provides that clause 6 does not apply to consideration provided or received after the commencement of the proposed Act in relation to an agreement entered into before commencement.

Schedule 2 Amendment of Legal Profession Uniform Law Application Act 2014 No 16

Clause 1 inserts proposed section 61A into the *Legal Profession Uniform Law Application Act 2014*. The proposed section provides that, if a law practice of an associate of a law practice is convicted of an offence under the proposed Act, Part 2, the practice is not entitled to charge or recover legal costs in relation to the claim to which the conviction relates and must refund legal costs already received in relation to the claim.

Clause 2 amends the *Legal Profession Uniform Law Application Act 2014*, section 165B to provide that contraventions of the proposed Act, Part 2 are capable of constituting unsatisfactory professional conduct or professional misconduct for a lawyer, whether or not the lawyer has been convicted of an offence in relation to the contravention.

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public consultation draft

NEW SOUTH WALES
DRAFT GOVERNMENT BILL

Claim Farming Practices Prohibition Bill 2025

No , 2025

A Bill for

An Act to prohibit certain contact with potential civil liability claimants and the payment and receipt of referral fees; and for related purposes.

The Legislature of New South Wales enacts—

Part 1 Preliminary

1 Name of Act

This Act is the *Claim Farming Practices Prohibition Act 2025*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

3 Definitions

(1) In this Act—

associate, of a law practice, has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

claim includes a potential claim.

consideration means a fee or other benefit.

law practice has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

legal services has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

potential claimant—see section 5(1).

Note— The *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Act.

(2) In this Act, a reference to a law practice, other than a reference to a purchasing law practice, includes a reference to an associate of a law practice.

Part 2 Certain contact and referral payments prohibited

4 Application of part

This part applies to claims for personal injury damages, within the meaning of the *Civil Liability Act 2002*, section 11, other than claims of the kinds referred to in that Act, section 3B(1)(b)–(h).

5 Prohibited contact in relation to potential claims

- (1) A person must not contact another person (a *potential claimant*) to—
 - (a) solicit the potential claimant to make a claim, or
 - (b) refer the potential claimant to a third party to provide a service in relation to a claim.Maximum penalty—500 penalty units.
- (2) A person must not arrange for a third party to contact a potential claimant in contravention of subsection (1).
Maximum penalty—500 penalty units.
- (3) This section does not apply in the following circumstances—
 - (a) if a potential claimant is contacted and no person expects to receive, and no person receives, consideration because of the contact,
 - (b) if a potential claimant is contacted by way of a notice given in relation to representative proceedings under the *Civil Procedure Act 2005*, Part 10, Division 3 or a corresponding law,
 - (c) if a law practice—
 - (i) contacts a potential claimant that the practice has provided with legal services, and
 - (ii) reasonably believes the potential claimant will not object to the contact,
 - (d) if a law practice—
 - (i) contacts a potential claimant having been requested to do so by a representative of a community legal service or industrial organisation, and
 - (ii) receives confirmation the representative reasonably believes the potential claimant will not object to the contact.
- (4) This section applies regardless of whether the potential claimant—
 - (a) is entitled to make a claim, or
 - (b) has already decided to make, or has made, a claim.
- (5) In this section—

community legal service has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

contacting, in relation to a potential claimant, includes personally approaching or contacting the claimant—
 - (a) in person or by mail, telephone, email or another form of electronic communication, and
 - (b) individually or as a member of a class of persons.

corresponding law means the following—
 - (a) the *Federal Court of Australia Act 1976* of the Commonwealth, Part IVA,

- (b) a law of another State or Territory that makes provision in relation to representative proceedings, however described,
 - (c) a law declared by the regulations to be a corresponding law.
- solicit* includes induce.

6 Claim referrals for consideration prohibited

- (1) A person must not—
 - (a) refer a claim to another person for consideration, or
 - (b) provide consideration to another person for the referral of a claim, or
 - (c) agree to provide or receive consideration in relation to the referral of a claim, or
 - (d) arrange for a third party to provide or receive consideration in relation to the referral of a claim.

Maximum penalty—500 penalty units.

- (2) This section does not apply in the following circumstances—
 - (a) if, in connection with the provision of legal services to a claimant, a law practice refers a matter to another person providing a service in relation to the claim,
 - (b) if all or part of a law practice is being sold to a purchasing law practice and—
 - (i) the referral, including details of the consideration, is disclosed to the claimant, and
 - (ii) the consideration provided by the purchasing law practice is not more than the current unbilled legal costs of the claimant, and
 - (iii) the claimant is advised the referral may be refused, and
 - (iv) the claimant approves the referral.

- (3) In this section—

claimant includes a potential claimant.

legal costs has the same meaning as in the *Legal Profession Uniform Law (NSW)*.

refer, in relation to a claim, includes—

 - (a) a referral for the purposes of providing a service related to a claimant's claim—
 - (i) by the person providing consideration, or
 - (ii) by another person, and
 - (b) a referral arising from services provided to a claimant, and
 - (c) the disclosure of a claimant's personal details.

7 Exceptions for advertisements of legal services

A person does not commit an offence under this part—

- (a) by advertising, marketing or promoting a law practice to the public, or
- (b) by providing or receiving consideration relating to advertising, marketing or promoting a law practice to the public.

Part 3 Miscellaneous

8 Time within which proceedings for offences may be commenced

- (1) Proceedings for an offence under this Act may be commenced within but not later than 2 years after the date on which the offence is alleged to have been committed.
- (2) This section applies despite any provision of the *Criminal Procedure Act 1986* or another Act.

9 Nature of proceedings for offences

Proceedings for an offence under this part may be dealt with summarily before the Local Court.

10 Regulations

The Governor may make regulations about a matter that is—

- (a) required or permitted by this Act to be prescribed, or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1 Savings, transitional and other provisions

Part 1 General

1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the commencement of—
 - (a) a provision of this Act, or
 - (b) a provision amending this Act.
- (2) A savings or transitional provision consequent on the commencement of a provision must not be made more than 2 years after the commencement.
- (3) A savings or transitional provision made consequent on the commencement of a provision is repealed 2 years after the commencement.
- (4) A savings or transitional provision made consequent on the commencement of a provision may take effect before the commencement but not before—
 - (a) for a provision of this Act—the date of assent to this Act, or
 - (b) for a provision amending this Act—the date of assent to the amending Act.
- (5) A savings or transitional provision taking effect before its publication on the NSW legislation website does not—
 - (a) affect the rights of a person existing before the publication in a way prejudicial to the person, or
 - (b) impose liabilities on a person for anything done or omitted to be done before the publication.
- (6) In this section—
person does not include the State or an authority of the State.

Part 2 Provision consequent on enactment of Act

2 Application of Act to conduct before commencement

- (1) This Act applies only in relation to acts done or omitted to be done on or after the commencement of this Act.
- (2) Despite subsection (1), section 6 does not apply if consideration is provided or received after the commencement of this Act in relation to an arrangement or agreement entered into before the commencement of this Act.

Schedule 2 Amendment of Legal Profession Uniform Law Application Act 2014 No 16

[1] Section 61A

Insert after section 61—

61A Contravention of claim farming practices prohibition—no costs recoverable

- (1) This section applies if a law practice or an associate of a law practice is convicted of an offence under the *Claim Farming Practices Prohibition Act 2025*, Part 2.
- (2) Despite any other provision of legal costs legislation, the law practice—
 - (a) is not entitled to charge or recover legal costs in relation to a claim to which the conviction relates, and
 - (b) must immediately refund legal costs received in relation to the claim to the person who paid the costs.
- (3) Money owing to a person under subsection (2)(b) is recoverable as a debt in a court of competent jurisdiction.

[2] Section 165B Conduct capable of constituting unsatisfactory professional conduct or professional misconduct

Insert “, the *Claim Farming Practices Prohibition Act 2025*, Part 2” after “local regulations” in section 165B(1).