



7 February 2025

Mr Michael Tidball
Secretary
NSW Department of Communities and Justice
6 Parramatta Square, 10 Darcy Street
Parramatta NSW 2150

Dear Mr Tidball,

We refer to the Background Paper issued with respect to the draft *Claim Farming Practices Prohibition Bill 2025 (NSW)* and the request for stakeholder comments.

Catholic Religious Australia (CRA) commends the NSW Government for taking pro-active steps to prevent the practice of claim farming and we are grateful for the opportunity to comment on the draft Claim Farming Practices and Prohibition Bill.

We fully support the proposed Claim Farming Practices Prohibition Bill with some amendments as outlined below to strengthen and clarify the Bill's intention.

1. Background

CRA is the peak body representing the Leaders of 150 Catholic Religious Institutes and Societies of Apostolic Life which operate in Australia. Our religious institutes comprise over 4,800 Catholic religious women and men, working in education, health care and social welfare, including prison chaplaincy. Australia's Catholic religious institutes are strongly committed to action for justice. Through their justice ministries, they work with and advocate for Australia's most vulnerable communities, including youth and First Nations Peoples. Our members are committed to the safeguarding of children, recognising that their innate vulnerability requires adults to act with great care and responsibility to protect their rights and foster their flourishing.

Our members institutes are committed to ensuring that they are child safe institutions with comprehensive child protection practices in place.

Many of our religious institutes have undertaken extensive work to respond fairly and with compassion to people who suffered abuse, through acknowledgement, apologies, provision of support, financial, psychological and otherwise.

All our members required to join the National Redress Scheme have joined.

Our member institutes have clear policies and processes, and undertake safeguarding training for religious and lay staff to ensure zero tolerance of abuse and to reduce the prospect of additional trauma.

Religious institutes refer criminal allegations to the police.

2. Growing Trend

There has been a concerning trend emerging in New South Wales, and other States, of an increase in compensation claims being brought by a discrete part of the population that have distinguishing features that is suggestive of being claims that have been generated by claim farmers.

Claim farming is a practice which at best is traumatic and invasive to the privacy of genuine survivors of child abuse and at worst encourages people to bring fraudulent claims purely for financial gain. The latter category is currently resulting in a diversion of time and resources away from those who are genuine survivors.

3. Focus Question 8 and 9

Focus questions 8 and 9 raise the question of whether the limitation period of two years for an offence under the Act is adequate.

The offences in question include contacting another person to solicit the potential claimant to make a claim (proposed section 5) and offering and/or receiving consideration for the referral of a claim (proposed section 6).

In our experience, it can take many months from a claimant first instructing a solicitor to the putative respondent being put on notice of the claim. In historical abuse matters there is no limitation period pursuant to section 6A of the *Limitation Act 1969 (NSW)*, which means there is no ostensible imperative to advance a claim in a timely manner, even in the initial stages.

We have been advised that in recent years, the time for a claim to progress from initial notification through to resolution will often take more than two years. This is due to a variety of factors, prominent amongst which is the availability of expert psychiatrists.

We are concerned that the evidence that a claimant has been induced to bring a claim in contravention of the proposed Act usually will not emerge until the end of the claim process.

Accordingly, the proposed limitation period of two years has a high likelihood of not being long enough to adequately detect, let alone bring charges in relation to claim farming practices which contravene proposed section 5.

In circumstances where the consideration has been paid at the time of the initial referral, there is also a high likelihood that behaviour contravening proposed section 6 will quite comfortably occur more than two years before its detection.

Recommendation: We recommend that the limitation period proposed under section 9 should be extended from 2 years to 5 years.

4. Positive Duty

The draft Claim Farming Practices Prohibition Bill does not create a positive duty upon parties who suspect there has been a contravention of the law to report that suspicion.

A positive duty has been placed on parties who suspect there has been a contravention of the law to report that suspicion in section 71G of the *Personal Injuries Proceedings Act 2002 (Qld)*.

This encourages a collective community response to stamp out the practice of claim farming.

In addition, a positive duty to report suspected contraventions of the proposed Act increases the likelihood of offences against the proposed Act being detected and prosecuted within the proposed limitation period.

Recommendation: We recommend that a similar positive duty to report suspected claims farming is introduced in the New South Wales Bill.

5. Police Enforcing Adherence

The proposal that contraventions of the Act would be investigated and prosecuted by the NSW Police lends appropriate seriousness to the nature of the practice, however, we hold concerns that the resources of the NSW Police are not sufficient to respond to what we perceive to be the widespread nature of claim farming that is currently being committed.

Recommendation: We recommend that the Office of the Legal Services Commissioner be provided with parallel responsibilities and powers of investigation and an obligation to report their findings to the NSW Police.

6. Legal Fees

Further to the above, the proposed amendments to the *Legal Profession Uniform Law Application Act 2014 (NSW)* include that engaging in claim farming practices is conduct capable of constituting unsatisfactory professional conduct or professional misconduct (proposed s165B) yet limits the prohibition on the recovery of costs to circumstances where there has been a conviction under the proposed Act.

Recommendation: We recommend that the disentitlement to charging legal fees and the requirement to refund legal fees be extended to circumstances where there has been a finding of unsatisfactory professional conduct or professional misconduct under the *Legal Profession Uniform Law Application Act 2014 (NSW)* in addition to a conviction under the proposed Act.

7. Cold Calling Former Clients

The proposed exemption under section 5(3)(c) affords a legal practitioner the ability to contact claimants for whom the legal practitioner has previously acted.

Significantly, for historical abuse claims in NSW, Part 1C of the *Civil Liability Act 2002 (NSW)* affords claimants the ability to apply to set aside agreements entered into before 2019 in certain circumstances.

While the application of Part 1C is in its infancy, the case of *EXV v Uniting Church in Australia Property Trust (NSW) [2024] NSWSC 490* demonstrates that one of the major factors in determining whether an affected agreement will be set aside is the mindset of the plaintiff at the time of the previous settlement informed by the legal advice the plaintiff received.

This gives rise to a high probability of there being a conflict of interest for the solicitor who advised on the earlier settlement and the claimant/plaintiff.

We strongly believe that being contacted by a legal practitioner to query re-litigating and/or revisiting a previously finalised action has the potential to re-traumatise survivors in circumstances where they might otherwise have closed a highly traumatic chapter in their life.

Recommendation: We recommend that the proposed exemptions should specifically disallow legal practitioners from contacting claimants about a cause on which they have previously acted, so as to avoid the potential of re-traumatisation.

8. Lack Of Certification

Division 1AA of the *Personal Injuries Proceedings Act 2002 (Qld)* requires that the supervising principal of a law practice must provide a statutory declaration that the supervising principal has not contravened the claim farming provisions under that Act. This certification must be provided at the initial notification of the claim, or for claims commenced before the introduction of the provisions, at the conclusion of the claim.

We commend this requirement.

While the personal injury claims processes in NSW are not as obviously amenable to the requirement to provide certification, similar certification processes could be introduced at stages such as the lodgement of a Workers Compensation Claim, notification of a Motor Vehicle Accident claim, the commencement of litigation in Court (adjunct to certifying reasonable prospects of success) and for matters that do not have those milestones, a requirement that payment of compensation is contingent upon certification being provided at the conclusion of a matter (akin to Medicare and Centrelink notification requirements).

Certification requirements foster a positive culture against claim farming practices and give rise to straight forward disciplinary processes if evidence emerges that the declaration made has been false.

Recommendation: We recommend that a requirement that the supervising principal of a law practice certifies that there has been no contravention of the claim farming provisions is included in the legislation.

9. Conclusion

We fully support the proposed *Claim Farming Practices Prohibition Bill* with the additions outlined in this submission to ensure that those who have been harmed in our member institutions will continue to be fairly compensated, while those who are not genuine claimants are not encouraged by solicitors who have a financial motivation to pursue unmeritorious claims.

We will continue to respond to those who have been harmed in our institutions with just compensation, acknowledgement and apology.

Thank you for the opportunity to provide a submission in which we collaborated with the Christian Brothers and Marist Brothers. We are happy to discuss this further with you.

Yours sincerely,



Anne Walker
National Executive Director