

Draft Claim Farming Practices Prohibition Bill 2025 (NSW)

Submission to the Department of Communities
and Justice, NSW Government

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Who we are

The **Australian Lawyers Alliance (ALA)** is a national association of lawyers, academics and other professionals dedicated to protecting and promoting access to justice and equality before the law for all individuals.

Our members and staff advocate for reforms to legislation, regulations and statutory schemes to achieve fair outcomes for those who have been injured, abused or discriminated against, as well as for those seeking to appeal administrative decisions.

The ALA is represented in every state and territory in Australia. We estimate that our 1,500 members represent up to 200,000 people each year across Australia.

Our head office is located on the land of the Gadigal people of the Eora Nation. As a national organisation, the ALA acknowledges the Traditional Owners and Custodians of the lands on which our members and staff work as the First Peoples of this country.

More information about the ALA is available on our website.¹

¹ www.lawyersalliance.com.au.

Introduction

1. The ALA welcomes the opportunity to provide feedback to the NSW Government's Department of Communities and Justice (DCJ) regarding the draft of the Claim Farming Practices Prohibition Bill 2025 (NSW) ('Draft Bill').
2. Our submission details:
 - the ALA's opposition to claim farming; and
 - our analysis of the Draft Bill.

The ALA's opposition to claim farming

3. The ALA maintains our strong opposition to the insidious and predatory practice of claim farming. Our leadership and members have a strong record of calling out such activities across Australia, including in our submission to the DCJ last year on claim farming.
4. Claim farming greatly concerns the ALA since claim farming practices affect some of the most vulnerable people in NSW, including those who have been injured and those who are victim survivors of abuse – that is, people navigating serious injuries, rehabilitation and trauma.
5. The ALA is particularly concerned that the manner in which claim farmers obtain the personal information of people who have suffered personal injuries or experienced abuse, and how that confidential information is then used or sold to other agencies for profit, amount to a serious breach of privacy.

Analysis of the draft of the Claim Farming Practices Prohibition Bill 2025 (NSW)

6. The ALA notes and welcomes the DCJ's intention that the effect of the Draft Bill's provisions "would not remove existing pathways to justice for victim-survivors".²

² Background Paper 4.

7. Further, we note the DCJ has stated the following:³

Likewise, it is vital to protect and encourage legitimate practices that facilitate access to justice by ensuring members of the public are informed of their legal rights. The Draft Bill contains various exemptions to safeguard the effective provision of legal services.

8. The ALA supports these intentions and ambitions, as we have long maintained that measures to address and prevent claim farming must not inhibit injured people or victim survivors of abuse being told about their rights to make claims and receive compensation, and then being assisted by lawyers to access the compensation and justice to which they are entitled.
9. As such, the ALA considers that parts of the Draft Bill require clarification and amendment in order to fulfil the DCJ's stated intentions.

Language used in the Draft Bill

10. The ALA contends that some key terms in the Draft Bill are broad and require more specific definition so that all stakeholders can understand the parameters of the Draft Bill's provisions.
11. One example is the meaning of "solicit" in clause 5(1)(a) of the Draft Bill. While we note the listed exemptions,⁴ the ALA would welcome clarification as to whether the following would count as "soliciting" for the purposes of clause 5:

- issuing media releases;
- participating in free legal clinics;
- presenting at publicly available webinars;
- hosting an information evening about one's legal services;
- distributing of leaflets in an area where it was known a very large number of the residents were affected by negligence; or
- posting on social media.

³ Ibid.

⁴ See: Draft Bill cl 5(3).

12. A further example concerns the use of the terms “claimant”, “potential claimant” and “the public”. Clause 7 of the Draft Bill refers to advertising, marketing and promotion to “the public”. The ALA submits that it may be open to interpretation as to when a group of people who are subject to advertising, marketing or promotion are considered members of “the public” or when that group might be considered as “potential claimants” (within the meaning of clause 5(1) of the Draft Bill) or even “claimants”. The ALA recommends that the DCJ more clearly distinguish between “claimant”, “potential claimant” and “the public” in this Draft Bill.

Referrals

13. The ALA is seeking clarification on the intended scope and impact of clauses 5 and 6 of the Draft Bill, to ensure that legitimate and fair legal practices (that is, not claim farming practices) will not be curtailed by this Draft Bill, legislation which should be directed at prohibiting claim farming.
14. We offer the following hypothetical scenarios for consideration by DCJ:
- a. Would clause 5(1)(b) of the Draft Bill mean that Lawyer A cannot refer a new enquiry or lead to Lawyer B, if Lawyer A has declined the potential claimant’s case (for example, if Lawyer A does not practise the type of law relevant to the potential claimant’s claim)?
 - b. Does clause 5(2) of the Draft Bill mean that if Lawyer C cannot assist a lead, then they cannot – even with the lead’s consent – pass on the lead’s contact details and arrange for Lawyer D to contact them? If so, this would mean that Lawyer C would need to advise the lead to contact Lawyer D, which is also prohibited under clause 5(1)(b) of the Draft Bill.
 - c. How would the practice of referring matters to another firm (for example, a firm in another jurisdiction) for an end of claim fee share be affected by the provisions in this Draft Bill, especially with regards to the provisions regarding referrals “for consideration”?
 - d. Lawyer E talks to a lead and spends time on initial investigations, but then determines that it is a claim that should be referred to Lawyer F for a legitimate reason (for example, Lawyer F has specialist knowledge or Lawyer E determines that the claim

would be best pursued in a different jurisdiction where Lawyer F works). Would the effect of clause 6 of the Draft Bill be such that Lawyer E cannot be paid by Lawyer F for that initial work? We note that this hypothetical scenario could apply to referrals between firms and also referrals between lawyers in different departments within the same firm.

- e. Does 6(2)(a) of the Draft Bill mean that a law practice could potentially refer, including for consideration, claims to a particular medico-legal provider or to a disbursement funder, but not to another law practice in the circumstances outlined in the above hypothetical scenarios?

Application of these proposed provisions

- 15. The ALA notes that this legislation will apply “only in relation to acts done or omitted to be done on or after the commencement of this Act”.⁵
- 16. We also note that “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”.⁶
- 17. The ALA is concerned that the impact of this is that claim farming would be able to continue so long as a long-term contract or agreement is in place before the Act commences, even though that contract or agreement may be open-ended with no specified end date.
- 18. The ALA recommends that this section is amended to clarify that any actions or acts undertaken after the commencement of the new Act in relation to a pre-commencement agreement would not be permitted.

⁵ Draft Bill sch 1 pt 2 cl 2(1).

⁶ Draft Bill sch 1 pt 2 cl 2(2).

Interaction with Commonwealth laws

19. The ALA notes that the scope of these reforms includes “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)”.⁷
20. The ALA notes that the *Civil Liability Act 2002* (NSW) (‘CLA’) interacts with Commonwealth laws for the purposes of some forms of compensation.
21. For instance, section 275 of the Australian Consumer Law (ACL) picks up and applies the CLA for breaches of any consumer guarantees under the ACL. Would the effect of the Draft Bill mean that any claim farming in relation to those claims, made under Commonwealth law, would be covered by this Draft Bill, even though other claims and compensable actions under the ACL are not?
22. The ALA considers that DCJ should reconsider how the provisions of the Draft Bill interact with Commonwealth laws, including the appropriateness of state legislation placing any restrictions on the processes of making of a claim under Commonwealth law.

Conclusion

23. The Australian Lawyers Alliance (ALA) welcomes the opportunity to have input to the NSW Government’s Department of Communities and Justice on the Exposure Draft of the Claim Farming Practices Prohibition Bill 2025 (NSW).
24. The ALA is available to provide further assistance to the DCJ on the issues raised in this submission.



Genevieve Henderson

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Australian Lawyers Alliance

⁷ Draft Bill pt 2 cl 4.