ACWA submission – *draft Claim Farming Practices Prohibition Bill 2025 (NSW)* – February 2025

1. About ACWA

The Association of Children's Welfare Agencies (ACWA) is the NSW peak body representing the voice of non-government community organisations that deliver services to vulnerable children, young people and their families.

Established in 1958, for more than 66 years we have worked with our members, partners, government and non-government agencies, and other peak bodies, to bring about positive systemic reform that will deliver better outcomes to the lives of children and young people, including those living in out-of-home care.

ACWA supports its members by:

- Advocating for the rights, needs and interests of vulnerable children and young people.
- Providing strong sector leadership – gathering knowledge, examining new concepts and promoting best practice.
- Providing flexible, affordable and tailored training and development through the Centre for Community Welfare Training (CCWT).

ACWA's membership comprises the largest group of not-for-profit agencies delivering out-of-home care services in NSW. Many of our members deliver these services nationally and serve diverse communities. A full list of ACWA's membership can be found on our website https://www.acwa.asn.au/our-members/.

2. Feedback about the draft bill

At the outset, ACWA wishes to stress its strong commitment to ensuring that survivors of abuse can readily access information about their rights to seek recompense for the impact of abuse suffered, and are supported to navigate related justice, therapeutic and advocacy pathways.

ACWA supports the primary intention of the proposed bill, which is to prohibit and prevent predatory practices by certain individuals and organisations that target potential claimants, including:- the use of high-pressure and misleading tactics used to encourage potential abuse victims to lodge civil compensation claims, often resulting in 'claim farmers' on-selling their claim information to lawyers who may then seek recompense via disbursements and fees charged to claimants.

ACWA's members share the concerns expressed through the targeted consultations conducted by the Department in 2024 about the potential for claim farming to increase fraudulent claims and, the impact of such fraudulent claims in turn on the fair assessment and resolution of legitimate claims by victim-survivors.

Broadly speaking, ACWA supports the provisions contained in the draft bill, including the definition of 'prohibited contact', exclusions relating to contact, and penalties for non-

compliance. ACWA suggests further consideration be given to the following specific issues for consideration in formulating the next iteration of the draft bill:

2.1 Amending the draft bill to require the supervising principals of law practices to complete a 'law practice certificate' when retained to act in relation to a claim would help to increase the ability to identify and address claim farming. This approach has been adopted in Queensland (see s. 8C of Division 1AA of the *Personal Injuries Proceedings Act 2002* (QLD)). The Queensland scheme requires supervising law principals to provide a law practice certificate to a claimant and a failure to do so results in a penalty. In addition, a principal cannot charge or receive fees or other costs from the claimant if the retainer is terminated in circumstances where they have failed to issue a law practice certificate.

The proposed law certificate could include:

a. a requirement for plaintiff law firms to disclose in writing to all clients that an NRS application can be made without a lawyer, or even if with legal support, without charge by a government funded survivor advocacy service (example knowmore); and

b. a requirement for the principal of the law practice to, upon receipt of instructions from a survivor, be required to sign a certificate confirming that on the basis of the facts known to them and a reasonable assessment of the law, the solicitor holds a reasonable belief that the recoverable damages in the case will exceed the amount that the client would otherwise be entitled to from the NRS, after the deduction of all of the client's anticipated legal costs and expenses. The requirement could include compelling the solicitor to provide a copy of the signed certificate to the client and keep a copy on file so that the certificate can be produced in the event of an investigation, complaint, or audit by the Legal Services Commissioner.

2.2 The Queensland scheme includes reporting requirements for supervising principals of law practices retained by respondents and insurers of respondents to notify the Legal Services Commissioner in that state, if they form a reasonable belief that there has been a contravention of the Personal Injuries Proceedings Act. ACWA submits there would benefit in including similar obligations on respondent law practices and insurers in the draft bill.

2.3 In Queensland, that state's Legal Services Commissioner has an oversight and investigative role in relation to claim farming practices. There would be merit in Amending the bill to make explicit, the oversight and investigative role and powers of the relevant regulatory body charged with preventing and acting on non-compliance with the proposed claim farming legislation in NSW (the NSW Office of the Legal Services Commissioner). Non-compliance could include acting on alleged failures by supervising principals of law firms to issue a law practice certificate (if the requirement to issue these certificates is adopted), and any allegations of 'prohibited contact' with respect to potential claims. In addition, there would be merit in the regulatory body having a dedicated monitoring and educative function aimed at identifying and promoting greater awareness about claim farming practices and appropriate avenues to seek advice and support.

2.4 In relation to the excluded conduct listed in cl.5(3)(d) (i), that is, a law firm contacting a potential claimant after being requested to do so by a 'community legal service' or 'industrial organisation', there would be merit in adding 'victim-survivor advocacy body' with a related definition in Part 1, cl.3 (Definitions).

2.5 In relation to the limitation period, we note that the two-year limitation period in the draft bill runs from two years from the date that the offence was allegedly committed. However, civil claims processes are often subject to delays combined with the fact that the offending conduct may not be known until after a claim has concluded. Against this background, there is merit in considering a longer limitation period.

2.6 In relation to penalties, the proposed maximum penalty 'for each offence' is 500 penalty units (currently $55,000). The maximum penalty amount appears appropriate and is line with penalties in Queensland and South Australia. It may however assist to make clear in the bill (as it is in the accompanying paper) that the maximum penalty of 500 units relates to each offence identified and is not intended to cover cumulative offences detected.

3. Additional comments

3.1 In seeking to guard against fraudulent practices in relation to abuse claims, ACWA wishes to stress that from a policy perspective, the implementation of legislation preventing claim farming practices should be accompanied by close consideration of the adequacy of current avenues for victim-survivors in NSW to obtain information about, and how to exercise, their legal rights to make legitimate claims. This is particularly important for groups in the community who may be especially vulnerable or experiencing disadvantage. In this regard, ACWA and its member agencies are keen to work alongside government to ensure that young people are given appropriate information and support to exercise their legal rights to seek recompense for any abuse and trauma suffered during their time in care at the appropriate stage.

Finally, ACWA commends the NSW Government for its efforts in seeking to address the issue of claim farming and for providing the opportunity for key stakeholders to give feedback to assist with the formulation of the bill.

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