

2026

**THE LEGISLATIVE ASSEMBLY FOR THE
AUSTRALIAN CAPITAL TERRITORY**

ELEVENTH ASSEMBLY

CIVIL LAW (WRONGS) AMENDMENT BILL 2026

REVISED EXPLANATORY STATEMENT

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May 2026**

CIVIL LAW (WRONGS) AMENDMENT BILL 2026

The Bill **is not** a Significant Bill. Significant Bills are bills that have been assessed as likely to have significant engagement of human rights and require more detailed reasoning in relation to compatibility with the *Human Rights Act 2004*.

This explanatory statement relates to the Civil Law (Wrongs) Amendment Bill 2026 (**the Bill**). It has been prepared to assist the reader of the Bill and to help inform debate on it. It does not form part of the Bill and has not been endorsed by the Assembly. The statement is to be read in conjunction with the Bill. It is not, and is not meant to be, a comprehensive description of the Bill.

OVERVIEW OF THE BILL

Claim farming

Claim farming refers to the exploitative practice where a third party (the claim farmer) pressures an individual to make a redress or other personal injury claim, for the claim farmer's own benefit. In the *Redress: Journey to Justice* report, the Australian Parliament Joint Standing Committee on the Implementation of the National Redress Scheme discussed concerns about the practice of claim farming and its impact on victim survivors of child abuse.¹ Claim farming is a problem because it undermines the ability for vulnerable victims to make informed decisions about their redress or personal injury claim and can result in reduced compensation given to victims with claim farmers profiteering from the claim.

The purpose of this Bill is to establish a legislative framework in the *Civil Law (Wrongs) Act 2002* and *Legal Profession Act 2006* to protect victim survivors of child abuse and community members who have experienced personal injury, by establishing offences for the conduct of claim farming. The Bill is intended to provide protection for victim survivors and personal injury claimants from harassment and exploitative practices, and to prevent the risk of re-traumatising and deterring victims from making informed choices about redress.

There are a variety of tactics and actors that claim farmers use to contact vulnerable victims of child abuse to persuade them to make a redress claim, to procure personal information or to refer them to other fee-paying services without informing them that free legal advice and other services may be available.

For example, a claim farmer may contact a victim survivor of child abuse and earn their trust under the guise that they represent a victim advocacy group. The claim farmer may harass and pressure the victim to make a redress claim and refer the victim to an unethical law practice who may have a sub-contracting arrangement with the claim farmer, to assist the victim in their application by promising quick, easy and significant compensation. The claim farmer may also pressure the victim to pass on the personal information of other potential victims, in exchange for a fee. Once the

¹ Joint Standing Committee on Implementation of the National Redress Scheme, Parliament of Australia, *Redress: Journey to Justice* (November 2024).

claim farmer sells victims' personal information to the law practice, the law practice may then contact victims to assist them with their redress application, hiding any fees associated with a successful compensation claim and deliberately not mentioning that free legal advice and services are available for applications to the National Redress Scheme for Institutional Child Sexual Abuse (the National Redress Scheme). The law practice may pressure the victim to sign legal documents they do not understand, agreeing that the law practice is entitled to a percentage of the redress compensation if successful. If the redress claim is successful, the payment may be apportioned to the law practice. The victim does not receive the full amount of compensation and is 'worse off' having fallen prey to claim farming. Other unethical claim farming tactics include:

- Making unexpected and/or repeated phone calls or emails to survivors
- Implying they act on behalf of government agencies or insurers to earn the trust of survivors
- Promising quick, easy and significant compensation to survivors
- Hiding significant referral fees in their descriptions or in their agreements with survivors
- Keeping excessive or high fees hidden
- Operating on social media, including by participating in support groups for survivors, to contact and gain the trust of these survivors
- Not mentioning free legal advice and services available for redress applications
- Pressuring people to sign legal documents that they don't understand
- Pressuring survivors to pass on the personal information of other potential survivors, in exchange for a fee.

In 2018, the ACT joined the National Redress Scheme, which provides support to people who have experienced institutional child sexual abuse. The National Redress Scheme delivers access to counselling, payment of money and direct personal responses to victim survivors of institutional child sexual abuse. The reforms in this Bill build on the ACT Government's participation in the National Redress Scheme and progress in implementing recommendations from the Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) to support victim survivors and remove barriers for in accessing ACT's civil litigation pathways, including removing limitation periods and setting aside unjust institutional child abuse settlement agreements.

The Joint Standing Committee recommended states and territories amend legislation to address claim farming and exploitative practices. This Bill will align the ACT with NSW, South Australia and Queensland which have all taken legislative action to prohibit claim farming activity.²

Amendments to the Civil Law (Wrongs) Act 2002

The Bill introduces offences to the *Civil Law (Wrongs) Act 2002* for:

- Contacting claimants about claims for the purposes of receiving a fee or benefit (s 221B); and

² *Claim Farming Practices Prohibition Act 2025* (NSW), *Statutes Amendment (Claim Farming) Bill 2025* (SA); and the *Personal Injuries Proceedings and Other Legislation Amendment Act 2022* (QLD).

- Giving or receiving, or arranging to give or receive, a fee or benefit for claim referrals (s 221C).

Claim farming offences apply to conduct relating to claims for damages based on a liability for personal injury and claims for redress under the National Redress Scheme. The new offences will not apply to motor accident claims within the meaning of the *Motor Accident Injuries Act 2019*, noting that Act already contains offences relating to referral fees.

Part 2.7 of the *Criminal Code 2002* extends the application of offences under this part beyond the territorial limit of the ACT and Australia, if the required geographical nexus exists for the offence.

Each offence will attract a penalty unit of 300 units. The penalties reflect the seriousness and meticulous intent required to engage in the conduct and is within the range of penalties set by other jurisdictions.

The Bill establishes exceptions to the offences so that they do not unnecessarily impede on the proper and efficient function of legal services in the ACT. The exceptions ensure law practices and industrial organisations who contact a claimant to genuinely provide services for civil action or a redress claim, or legitimately promote their business, would not be unintentionally captured by the offence.

These exceptions include where a claimant is being contacted for representative proceedings (for example, a class action), where the law practice has a prior relationship with the claimant and the law practice reasonably believes the claimant would not object to the contact, or where the claimant has been referred to the law practice by a community legal centre or industrial organisation and the community legal centre / industrial organisation reasonably believes the claimant would not object to being contacted.

Exceptions are also made for where a law practice is being sold to another law practice and the claimant consents to the referral, the advertising of law practices, and where a law practice who is acting for the claimant refers them to a third party for the purpose of providing a service to the claimant (for example, a law practice refers a personal injury claimant to a medical practice to provide medical services to the claimant).

Amendments to the Legal Profession Act 2006

This Bill will provide that claim farming conduct is capable of being unsatisfactory professional conduct or professional misconduct under the *Legal Profession Act 2006* Act, which may result in disciplinary action being made against the lawyer.

Lawyers are obligated to act in their client's best interests. The amendments are intended to ensure that lawyers in the ACT are held to professional ethical standards, to conduct themselves with honesty throughout their professional dealings.

This Bill will also provide that if a law practice or associate is convicted of a claim farming offence, the law practice is not entitled to charge or recover any costs in relation to a claim which the conviction relates to and must immediately refund legal costs. The repayment of legal costs is aimed at deterring law practices from claim

farming and will assure claimants and victims that, if targeted, they will be entitled to seek reimbursement of the full amount of redress or compensation they are entitled to.

Statutory duty of care on institutions

In addition to the prohibition of claim farming, this Bill also imposes a duty on organisations to prevent child abuse and amends the *Civil Law (Wrongs) Act 2002* to introduce a statutory duty of care to make organisations liable for child sexual abuse by persons associated with the organisation, unless the organisation proves it took reasonable precautions to prevent the abuse. These reforms are intended to operate prospectively, from the date of commencement, and were recommended by the Royal Commission.³

The Bill requires organisations responsible for a child to take reasonable precautions to prevent an individual associated with the organisation from perpetrating child abuse against the child in connection with the organisation's responsibility for the child.

Section 114BBBC defines 'individuals associated with an organisation' whose wrongful acts may be attributed to the organisation in a non-exhaustive list, including an office holder, officer, owner, employee, agent, volunteer or contractor of the organisation, and, if the organisation is a religious organisation, a religious leader, such as a priest or minister, or other member of the personnel of the organisation, irrespective of whether they are ordained.

The imposition of a rebuttable presumption, a 'reverse onus of proof', shifts the evidential burden from the victim survivor onto the organisation once abuse has been established on the balance of probabilities. An organisation will be liable for child abuse perpetrated by an individual associated with the organisation, unless it can prove that it took reasonable precautions to prevent the abuse. Section 114BBD (4) outlines a list of factors a court may consider when determining whether an organisation has taken reasonable precautions. The factors in s 114BBD (4) guides courts in their decision-making while allowing them to consider any other matters the court considers relevant.

One of the factors that the court *may* consider is whether 'the organisation complied with any applicable standards in relation to child safety' - s 114BBD (4) (e). Organisations responsible for children are required to comply with standards in relation to child safety to safeguard children in their care. Applicable standards in relation to child safety include relevant child safety legislation, standards, schemes, policies, and guidance.

CONSULTATION ON THE PROPOSED APPROACH

Government has consulted with the Australian Government Department of Social Services, ACT Human Rights Commission, ACT Government Solicitor, ACT Law Society, ACT Bar Association and knowmore in the development of the Bill.

³ Royal Commission into Institutional Responses to Child Sexual Abuse, *Redress and Civil litigation* (2015), recommendations 91-93.

The issue of claim farming has been discussed through the Ministers' Redress Scheme Governance Board and Standing Council of Attorneys-General (SCAG).

CLIMATE IMPACT

This Bill does not have a climate impact.

CONSISTENCY WITH HUMAN RIGHTS

Rights Engaged

The Bill engages the following sections of the *Human Rights Act 2004 (HRA)*:

- Section 11 – rights of children to protection (*promoted*)
- Section 22 – rights in criminal proceedings (right to presumption of innocence) (*limited*)

The ways in which the Bill does this are set out below.

Rights promoted

Section 11 – Rights of children to protection

Statutory duty of care

The amendments to introduce division 8A.1A.2 (Duty of organisations to prevent child abuse) promote the rights of children to protection (section 11, *Human Rights Act 2004*). An organisation is taken to have breached its duty of care to prevent child abuse by persons associated with the organisation, unless the organisation can prove it took reasonable precautions to prevent the abuse. The establishment of this statutory duty of care confirms the responsibility that organisations have to protect children from abuse perpetrated by persons associated with the organisation. Further, the imposition of a rebuttable presumption shifts the evidential burden from victim survivors to organisations to prove, once abuse has been established on the balance of probabilities.

Rights limited

Statutory duty of care

The amendments may affect natural persons who are members of committees of unincorporated organisations. The imposition of duty of care on these natural persons does not give rise to human rights limitations.

Claim farming

The preamble to the HRA notes that few rights are absolute and that they may be subject to reasonable limits in law that can be demonstrably justified in a free and democratic society.

Section 28 (2) of the HRA contains the framework that is used to determine the acceptable limitations that may be placed on human rights.

Section 28 of the HRA requires that any limitation on a human right be authorised by a Territory law, and be reasonable to achieve a legitimate aim. Whether a limitation is reasonable depends on whether it is proportionate.

Section 22 – Rights in criminal proceedings

1. Nature of the right and the limitation (s28(2)(a))

Under section 22(1) of the HRA, everyone charged with a criminal offence has the right to be presumed innocent until proved guilty according to law.

As an orthodox legal principle, an accused person has an evidential burden of proof when seeking to rely on a defence to a standard of 'reasonable possibility'. This is the case because to do otherwise would require the prosecution to disprove all possible defences, even if the defence is irrelevant or fanciful.

The Bill provides statutory exceptions to claim farming conduct, where the evidential burden to prove that a defence applies falls on the defendant albeit to the lower evidential standard of proof of reasonable possibility (see *Criminal Code 2002*, section 58). As the defendant is required to prove their innocence, the statutory exceptions limit the right to a defendant's presumption of innocence.

2. Legitimate purpose (s28(2)(b))

The limitation on section 22 of the HRA is aimed to promote the offence as a deterrence for claim farming conduct, to protect victim survivors and personal injury claimants from unsolicited contact, harassment and re-traumatisation. A prohibition against claim farming is the most effective way to protect vulnerable victims and support victims to make informed choices about redress or their personal injury claim.

The establishment of defences to the offences are intended to allow legal practitioners who provide legitimate legal services to assist victim survivors and personal injury claimants to continue to do so in the course of their business.

The evidential burden to demonstrate an exception/s applies falls on the defendant because they are better placed than the prosecution to provide evidence of their legitimacy in providing legal services to a claimant. If the defendant wishes to rely on one or more of the exceptions to the offence, the limitation from imposing the evidential burden on the accused is reasonable as they are better to provide evidence on why the defence applies, and to ensure appropriate regulatory action can be taken.

For example, a defendant has better access to information to demonstrate their prior relationship with the claimant and reasonable belief the claimant would not object to

being contacted, or that they were being contacted for a class action, or that the claimant had been referred to the law practice by a community legal centre, or that the law practice was being sold.

If it applies, the defendant is also in a better position to prove that they are not liable to claim farming as they were conducting advertisement for their law practice.

3. Rational connection between the limitation and the purpose (s28(2)(d))

As noted above, the defences to the offences impose an evidential burden on the accused. This limitation to section 22 of the HRA exists because it is unreasonable to impose this burden on prosecution to provide evidence to disprove all possible defences to claim farming offences. The accused person is uniquely or better place to produce evidence to explain why they should be excused.

4. Proportionality (s28(2)(e))

Where the Bill provides exceptions to offences which supply a defence, it would impose an unreasonable burden on the prosecution to prove in every case for the offence at section 221B, that the accused *had not*:

- contacted the claimant in relation to representative proceedings,
- been in a prior relationship with the claimant,
- contacted the claimant due to a referral by a community legal centre or industrial organisation, and held a reasonable belief the claimant would not object to being contacted; and
- been found liable for the offence for their advertising, marketing or promotion of their law practice.

Similarly, it would be unreasonable for the prosecution to provide in every case for the offence at section 221C, that the accused *had not*:

- referred the claimant to a third party for the purpose of the third party providing a service to the claimant in relation to the claim;
- referred, on the consent of the claimant, the claimant from the accused's (the first) law practice to a another (the second) law practice because the first law practice was being sold to the second law practice; and
- been found liable for the offence for their advertising, marketing or promotion of their law practice.

Accordingly, the limitation of a person's rights under s 22 of the HR Act resulting from imposing an evidential burden on the accused where a defence is raised is minor, necessary and appropriate.

CLAUSE NOTES

Part 1 Preliminary

Clause 1 Name of Act

This clause provides that the name of the Act is *the Civil Law (Wrongs) Amendment Act 2026*.

Clause 2 Commencement

This clause provides for the commencement of the Act on the day after its notification day.

Clause 3 Legislation amended

This clause lists the legislation amended by this Act, which are the:

- *Civil Law (Wrongs) Act 2002*
- *Legal Profession Act 2006* (see Schedule 1)

Clause 4 Definitions—ch 7A Section 107A, new definitions

This clause inserts a new definition of claimant and consumer claim under Chapter 7A.

Clause 5 Time when child abuse happens Section 114BA

This clause makes a technical amendment to exclude new division 8A.1A.2 (Duty of organisations to prevent child abuse) from the operation of existing section 114BA.

Clause 6 Section 114BA, new note

This clause inserts a new note in existing section 114BA to clarify that new division 8A.1A.2 (Duty of organisations to prevent child abuse) will apply only to child abuse or alleged child abuse that happens on or after the day the division commences.

Clause 7 New division 8A.1A.1 heading

This clause creates a heading for new division 8A.1A.1.

Clause 8 Definitions – pt 8A.1A Section 114BB, definition of *employee*

This clause removes the definition of employee from section 114BB. This definition will be relocated to section 114BC to limit its application to division 8A.1A.3.

Clause 9 Section 114BB, definition of *responsible*

This clause is a technical amendment to substitute existing section 114BD with new section 114BBA in the definition of responsible.

Clause 10 New division 8A.1A.2 etc

This clause creates the new Division 8A.1A.2, Duty of organisations to prevent child abuse.

New section 114BBB provides that this new division applies in relation to child abuse that happens, or is alleged to happen, on or after the day this division commences.

Section 114BBC defines the meaning of individual *associated* with an organisation to include an office holder, officer, owner, employee, agent, volunteer or contractor of the organisation; and, if the organisation is a religious organisation – a religious leader, such as a priest or minister, or other member of the personnel of the organisation, whether or not the individual is ordained. A regulation may prescribe if an individual is or is not associated with an organisation.

If an organisation delegates its responsibility for a child to another organisation, in whole or in part, an individual associated with the delegate organisation is also taken to be associated with the principal organisation.

New section 114BBD imposes a duty of care on organisations that forms part of a cause of action in negligence. An organisation that is responsible for a child must take reasonable precautions to prevent an individual associated with the organisation from perpetrating child abuse against the child in connection with the organisation's responsibility for the child.

If an individual associated with the organisation perpetrates child abuse against a child in connection with the organisation's responsibility for the child, the organisation is taken to have breached the duty of care unless the organisation establishes that it took reasonable precautions to prevent the child abuse.

Section 114BBD (4) provides a non-exhaustive list of factors that a court may consider in deciding whether an organisation took reasonable precautions to prevent the child abuse. This list is non-exhaustive. A court may consider any other matters it considers relevant (section 114BBD(4)(g)), and a regulation may prescribe other matters a court may consider (section 114BBD(4)(f)).

Clause 11 Section 114BC heading

This clause makes an amendment to the heading of the meaning of employee under section 114BC to limit its application to division 8A.1A.3 (Vicarious liability of organisations).

Clause 12 Section 114BC (1)

This clause makes a technical amendment to section 114BC meaning of employee to limit its application to division 8A.1A.3 (Vicarious liability of organisations).

Clause 13 Organisations that are responsible for child Section 114BD

This clause makes a technical amendment to relocate section 114BD (Organisations that are responsible for child) to division 8A.1A.1 to extend its application to the whole part 8A.1A (Liability of organisations).

Clause 14 New part 15.4A

This clause inserts the new Part 15.A to prohibit claim farming conduct.

New section 221A provides definitions for associate, claim, claimant, law practice and service.

New section 221B establishes an offence for contacting claimants about claims. The elements for the offence is (a) if the person contacts a claimant for the purposes of soliciting or inducing the claimant to make a claim, or referring a claimant to another person (a third party) for the purposes of the third party providing a service to the claimant and (b) the person receives or agrees or expects to receive, a fee or other benefit from any person because of the contact; or asks for someone else to receive or agrees to someone else receiving a fee or other benefit from any person because of the contact. The maximum penalty for the offence is 300 penalty units.

Section 221B (2) provides exceptions to the offence for where the claimant is being contacted in relation to representative proceeding (however described, such as class actions), where the claimant was a previous client of the law practice, and where the claimant was referred to the law practice by a community legal centre or industrial organisation and the law practice reasonably believes the claimant will not object to the contact. These exceptions ensure that law practices who genuinely assist claimants with legitimate legal services can continue to do so without barriers.

New section 221C prohibits giving or receiving a fee or benefit for claim referrals. This section introduces two offences:

Section 221C (1) - Giving, agreeing to give or arranging for someone else to give a fee or other benefit for a claim referral; and

Section 221C (2) - Receiving, agreeing to receive or arranging for someone else to receive a fee or other benefit from a claim referral.

Exceptions to the offences are provided for in section 221C (3) and (4) including for a claim referral by a law practice acting for the claimant to another person (a third

party) for the purposes of the third party providing a service to the claimant, and for a law practice that has been sold to another practice, where the purchaser agrees to take on the matter and sets a fee that does not exceed the legal costs incurred up to the time of sale, provided those costs were not previously billed and the claimant consents to the arrangement.

New section 221D provides an exception from the offences in this part for advertising law practices. This part does not apply to the advertising, marketing or promotion of a law practice to the public or a group of people, or the giving or receiving of a fee or other benefit relating to advertising, marketing or promotion of a law practice to the public or group of people. The defendant has an evidential burden in relation to the matters mention in s 221D.

Clause 15 Section 262 heading

This clause makes a technical amendment to the heading of section 262 for the relocation of current part 8A.1A (Liability of organisations) to division 8A.1A.3 (Vicarious liability of organisations).

Clause 16 Section 262

This clause makes a technical amendment to section 262 to refer to division 8A.1A.3 (Vicarious liability of organisations).

Clause 17 New chapter 22

This clause creates new chapter 22, which contains transitional provisions for the offences made by this Act to the conduct of claim farming.

New section 264 provides the application of new Part 15.4A applies in relation to anything done or omitted to be done on or after the day of commencement. However, section 221C (Giving or receiving fee or benefit for claim referrals) does not apply to a fee or benefit given or received on or after the commencement day if the fee or benefit was given or received under an existing claim referral agreement and the claim referral was finalised before the commencement day.

New section 264(3) provides definitions for commencement day and existing claim referral agreement.

New section 265 is a sunset clause and provides that Chapter 21 will expire 12 months after commencement.

Clause 18 Dictionary, new definitions

This clause provides the definitions for *associate*, of a law practice, for part 15.4A and associated, for an individual for division 8A.1A.2.

Clause 19 Dictionary, definition of *claim*, new paragraph (c)

This clause is a technical amendment to the Dictionary meaning for *claim* for part 15.4A.

Clause 20 Dictionary, definition of *claimant*, new paragraph (c)

This clause is a technical amendment to the Dictionary meaning of *claimant* for part 15.4A.

Clause 21 Dictionary, definition of *employee*

This clause is a technical amendment to the Dictionary meaning for *employee* that replaces part 8A.1A (Liability of organisations) with division 8A.1A.3 (Vicarious liability of organisations) to limit its application.

Clause 22 Dictionary, new definition of *law practice*

This clause inserts a new definition for *law practice* and provides the definition of *law practice* as defined under the *Legal Profession Act 2006*.

Clause 23 Dictionary, definition of *responsible*

This clause is a technical amendment to the Dictionary meaning of *responsible* which replaces a reference to section 114BD with section 114BBA.

Clause 24 Dictionary, new definition of *service*

This clause inserts a new definition for *service*, for part 15.4A

Schedule 1 Legal Profession Act 2006—Consequential amendments

Clause 1.1 New section 307A

This clause creates new section 307A.

New section 307A provides that if a law practice or an associate of a law practice is convicted or found guilty under part 15.4A (Prohibition on claim farming) of the *Civil Law (Wrongs) Act 2002*, the law practice is not entitled to recover any legal costs in relation to the claim to which the conviction or finding of guilt relates. The law practice must repay any legal costs received in relation to the claim to the person from whom it was received.

Clause 1.2 New section 389 (h)

This clause inserts a new subsection (h) to section 389.

New section 398 (h) provides that conduct of an Australian legal practitioner consisting of a contravention of the *Civil Law (Wrongs) Act 2002*, part 14.4A (Prohibition on claim farming) is conduct capable of being unsatisfactory professional conduct or professional misconduct under s 389, *Legal Profession Act 2006*.