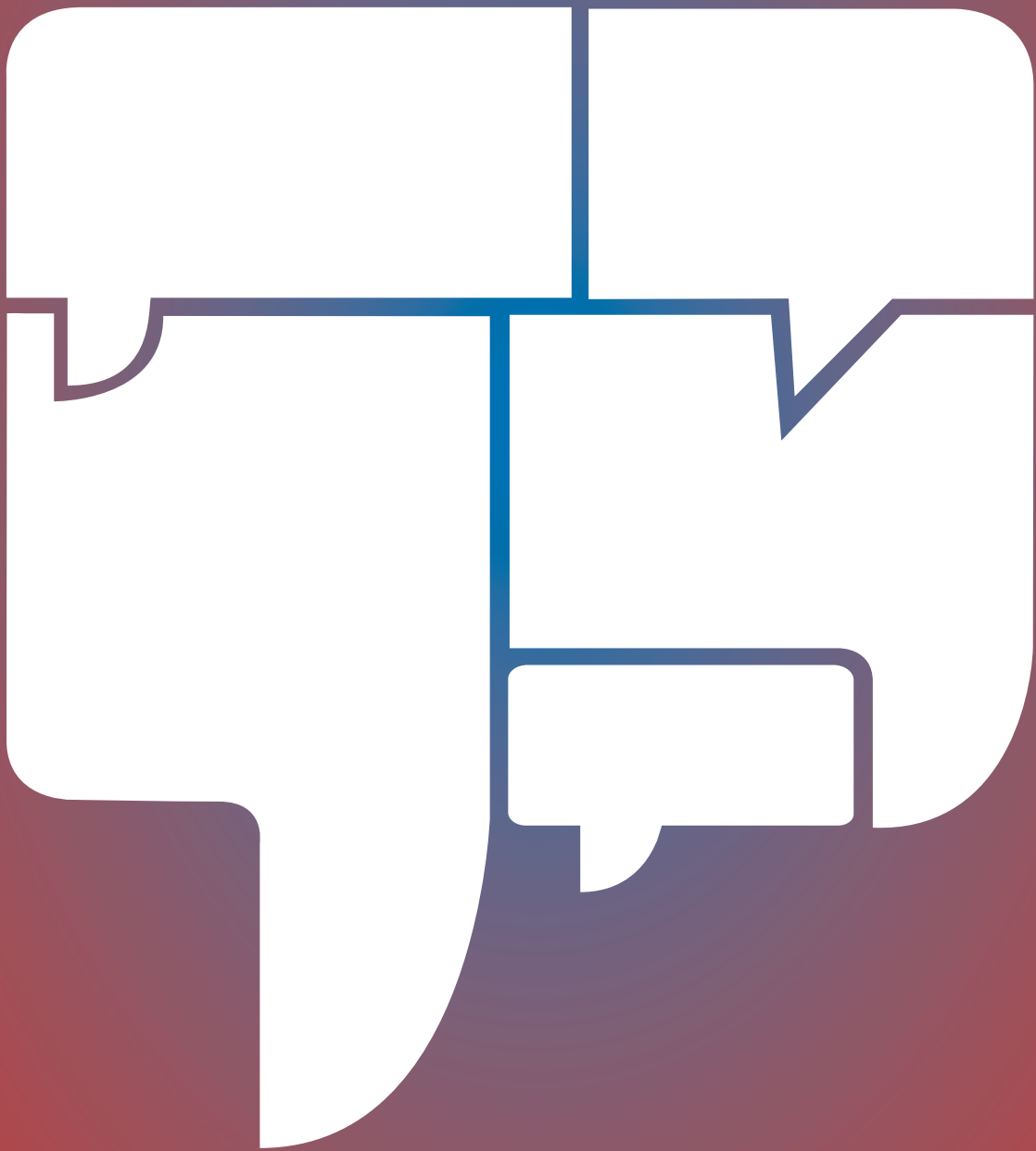


Legal Privilege and Integrated Legal Assistance Services



Published by the Victorian Law Reform Commission

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A note on the cover design

The cover design represents the complexity of legal privilege within the multiplicity of communications in integrated legal assistance services.

Our office is located on the land of the Traditional Custodians, the people of the Kulin Nation. We acknowledge their history, culture and Elders both past and present.

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Acknowledgement of Country and First Peoples

The Commission acknowledges the Traditional Owners of Country throughout Victoria.

We acknowledge all traditional custodians, and their Elders past and present and pay our respects to their continuing connection to land, waters and community.

We acknowledge that First Peoples are overrepresented in Victoria's justice system due to the ongoing impacts of colonisation, dispossession, removal of children from families, cultural dislocation and intergenerational trauma.

The Commission acknowledges and honours the work of First Peoples' leadership and contributions to law reform.

Terms of reference

Matter initiated by the Commission pursuant to section 5(1)(b) of the *Victorian Law Reform Commission Act 2000* (Vic) on 4 March 2026.

Legal privilege—known as legal professional privilege at common law and client privilege in legislation—is a fundamental legal right that protects confidential communications between a client and their lawyer, when those communications are made for the dominant purpose of obtaining legal advice or preparing for litigation. In the interests of upholding the administration of justice, legal privilege exists to ensure clients can communicate freely with their lawyers, without fear of disclosure.

Legal assistance services are free legal services provided to people facing disadvantage, including through community legal centres, legal aid commissions and pro bono programs run by private lawyers and law firms. 'Integrated legal assistance services' refers to the provision of tailored social support together with free legal support, such as when nurses work with lawyers to holistically address the needs of suspected family violence victims in hospitals. This approach enhances access to justice by efficiently and effectively addressing the complex and interconnected needs of clients, and freeing up the legal assistance sector to support more clients over the long term.

However, the provision of integrated legal assistance services may also weaken a client's ability to rely on legal privilege. This is because the participation of the non-lawyer may make it harder for the client to demonstrate the communications were confidential and made for a dominant legal purpose. A failure to meet these requirements would leave the client's information vulnerable to disclosure to an opposing party, prosecutor or investigative body.

Furthermore, if the communications are not privileged, the non-lawyer may be obliged to reveal the information provided by the client. A number of non-legal professionals are required by law to share and/or report information about family violence and child abuse. In addition, failing to tell the police about the sexual abuse of a child is a criminal offence, unless doing so would pose a risk to someone's safety, or some other reasonable excuse applies.

Integrated legal assistance service providers have developed a variety of strategies to help staff and clients manage these complicated requirements. In accordance with the 'choice and consent model' adopted by some providers, clients are asked to choose between accepting integrated services but jeopardising legal privilege on the one hand, and forgoing integrated services but retaining legal privilege on the other hand. Arguably, this imposes an unjustifiable constraint on clients already experiencing disadvantage, forcing them to choose comprehensive legal and social support, or the preservation of their fundamental legal rights.

The Victorian Law Reform Commission will examine whether the law and practice relating to legal privilege and integrated legal assistance services should be changed. In conducting this review, the Commission will have regard to:

- legal privilege under common and statutory law
- the benefits of integrated legal assistance services to clients and the justice system
- the impact of integrated legal assistance services on legal privilege, and vice versa
- strategies used by integrated legal assistance service providers to balance the needs of clients
- legal developments in other common law jurisdictions
- the broad legal and ethical implications of reform in this area and
- any other matter relevant to the topic of inquiry.

Although the Commission may consider the commercial provision of integrated legal services in formulating its views, the Commission's recommendations are to be confined to the relationship between legal privilege and the provision of integrated services in the legal assistance sector, consistent with the scope of this inquiry.

Glossary

Integrated legal assistance services

Free legal and social services provided by lawyers and social service professionals working for the same organisation or partnership in the legal assistance sector. The primary purpose of this approach is to enable people experiencing disadvantage to safely and effectively address their legal needs, which are often interconnected with other complex needs, such as family violence, homelessness and substance abuse.

Integrated legal practice

Also referred to as 'multidisciplinary legal practice', this overarching term describes the combined delivery of legal and other professional services across the private, public and community sectors. It includes the provision of integrated services this inquiry is not concerned with, such as those that provide commercial advantages to individual and corporate clients.

Legal assistance sector

This sector is made up of legal aid, community and pro-bono lawyers providing free legal services to clients experiencing disadvantage, often alongside other professionals who provide free social services to the same clients.

Legal privilege

The fundamental right of a client to protect confidential legal communications with their lawyer from disclosure at common law (where it is known as legal professional privilege) and in legislation (where it is known as client legal privilege). There are two categories of legal privilege, one relating to communications made for legal advice, and the other relating to communications made for litigation. This paper considers the option of a potential third category of legal privilege for communications made for integrated legal assistance services.

People experiencing disadvantage

People facing episodic, cumulative or systemic hardship resulting from social, economic, environmental or institutional factors affecting them or their family, and often experienced through intersecting forms of disadvantage related to race, gender, sexuality, disability, age or cultural background.

Social service professionals

Professionals employed or engaged to deliver social services alongside legal assistance services.

Social services

Services delivered alongside legal assistance services to support client health and overall wellbeing, including medical care, psycho-social support (including for alcohol or other drug dependence) and financial counselling.

Project at a glance

Legal privilege keeps legal advice private so it cannot be shared with courts or investigative bodies without client permission. It covers communications between a client and their lawyer, but can also cover communications with others if the communications remain confidential and for a legal purpose.

The legal assistance sector provides free legal and social services to people experiencing disadvantage. The Commission has grouped the varied approaches to delivering these services into four models:



Independent Model

Lawyers working independently might suggest clients see a certain type of social service professional, leaving the client to find their own way there.



Cooperative Model

Lawyers and social service professionals working cooperatively might warmly refer clients to one another but not otherwise share client information.




Loosely Integrated Model

Service delivery and information barriers ensure that loosely integrated legal and social services are delivered apart, though via the same entry point.



Closely Integrated Model

Lawyers and social service professionals providing closely integrated services meet jointly with clients and share client information.



Under the Independent and Cooperative Models, legal and social services are delivered separately and there is no impact on the client's ability to demonstrate their communications with their lawyer were confidential or for a legal purpose.

Under the Loosely and Closely Integrated Models, legal and social services are delivered by professionals working for the same organisation or partnership, making it harder for clients to demonstrate that their communications with their lawyer were confidential and legal enough to attract privilege. And the greater the level of integration, the higher the risk to privilege.

The Commission is considering two potential reform options that could enhance protection for clients accessing integrated legal assistance services. The first is establishing a privilege for social service professionals delivering loosely integrated legal assistance services. The second is establishing a new category of legal privilege that would incorporate communications with social service professionals delivering closely integrated legal assistance services.

We want to hear your views on how the law and practice on legal privilege and integrated legal assistance services currently work, and how you would like them to work.

You can make a submission by **3 August 2026**.

Find out more at: lawreform.vic.gov.au/project/legal-privilege-and-integrated-legal-assistance-services/.

Questions

1. Integrated legal assistance services involve the delivery of legal and social services by professionals working for the same organisation or partnership. Loosely integrated legal assistance services impose strict information barriers between lawyers and social service professionals providing services to clients. Closely integrated legal assistance services promote the joint delivery of legal and social services to clients at the same time, sometimes after obtaining client consent to potentially compromise privilege. How easy or difficult is it to implement these two models of integrated legal assistance services in practice?
2. What are the benefits of integrated legal assistance services for clients, service providers and the justice system? Do you have case studies, examples or other evidence you can share?
3. Integrated legal assistance services may compromise a client's ability to retain legal privilege and expose their private information, including through the professional reporting obligations of social service professionals. Do you have case studies, examples or other evidence that indicate how easy or difficult it is for lawyers, social service professionals or clients to manage information disclosure requirements and requests in this context?
4. Should the law enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance service settings? Why or why not?
5. Are you in favour of establishing:
 - a. a social service professional privilege that would enhance protection for communications between clients and social service professionals in loosely integrated legal assistance service settings and/or
 - b. a new category of legal privilege that would enhance protection for communications between clients, lawyers and social service professionals in closely integrated legal assistance service settings?Why or why not?
6. If you support a social service professional privilege for loosely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?
7. If you support a new category of legal privilege for closely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

We are particularly keen to hear your views on the definition of closely integrated legal assistance services, eligibility requirements for the privilege, a safety exception to the privilege, and the implications of the privilege for social service professionals.

Tell us your views

We welcome your views on the background, issues and questions set out in this consultation paper. The questions are listed on page 8 as well as appearing throughout the paper.

We invite you to make a submission by **Monday 3 August 2026**.

You can make a submission by:

- **email:** legal.privilege@lawreform.vic.gov.au
- **online form:** lawreform.vic.gov.au/all-projects/make-a-submission/
- **mail:** Victorian Law Reform Commission
GPO Box 4637
Melbourne VIC 3001

We will refer to submissions in our final report and publish them on our website.

We treat all submissions as public unless we are asked to:

- withhold the submitter's name (while still publishing their views)
- accept them as confidential (which we will not publish at all) or
- accept them as anonymous (which we will publish if suitable for publication).

We remove addresses, contact details and other identifying personal information from all submissions before they are published.

Submissions do not have to follow a particular format. You may answer all the questions or just some of them, depending on your interest and expertise.

You can find more information about making a submission, including our Submission Policy, on our website at lawreform.vic.gov.au/engage-in-law-reform/submissions-information/.

We will consider requests to consult with us in person or remotely during the consultation period. If you wish to consult with us, please send a request to legal.privilege@lawreform.vic.gov.au by 3 August 2026.

After receiving your feedback, the Commission will carefully consider the information you provide before setting out its findings and recommendations in a final report to the Attorney-General. This report will be available to the public in keeping with the Commission's role in supporting inclusive, transparent and independent law reform.

1. Introduction

- 1.1 Legal privilege allows people to protect their communications with their lawyer from external scrutiny, if those communications are confidential and made for the dominant purpose of obtaining legal advice or engaging in litigation. These communications are privileged (or immune) from disclosure because 'full and unreserved communication' between a client and their lawyer is necessary to secure the 'competent representation of ... the ordinary person before the courts'¹ and government bodies exercising investigative power.² Consequently, legal privilege is an important safeguard 'against tyranny and oppression', and has become a foundational element of the administration of justice in our legal system.³
- 1.2 However, the development of legal privilege has not kept up with innovations in legal service delivery. All Australian governments now fund and promote integrated legal assistance services.⁴ These services combine free legal assistance with free social support, such as health care or specialised family violence advocacy, to improve access to justice for people experiencing disadvantage.⁵
- 1.3 Many people struggle to identify the legal nature of their problems and often do not seek legal assistance.⁶ Even if a person experiencing disadvantage seeks legal assistance, they are often unable to carry the burden of advancing their legal case without additional support services.
- 1.4 The integrated nature of these services is designed to benefit clients, service providers and our justice system, yet it conflicts with requirements for legal privilege, complicating the administration of justice in Victoria.⁷ Two requirements of legal privilege are particularly difficult to establish in this setting—confidentiality and the dominant legal purpose. The scenario below places these difficulties in a practical context, allowing us to consider the implications:

1 *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475, 490 (Deane J).

2 *Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* [2002] HCA 49; (2002) 213 CLR 543, 552–3, [9]–[10]; cited in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [137].

3 *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475, 490 (Deane J).

4 Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (Report, 26 July 2017) <<https://www.ag.gov.au/legal-system/publications/national-partnership-agreement-legal-assistance-services>>; Council of Attorneys-General, *National Strategic Framework for Legal Assistance 2015-20* (Report, 2019); Commonwealth of Australia and the States and Territories, *National Access to Justice Partnership Agreement 2025-30* (Report, November 2024) <<https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2025-09/agreement-national-access-to-justice-partnership-signed.pdf>>.

5 See Chapter 3 of this report for a review of the evidence regarding the benefits of integrated approaches.

6 Nigel J Balmer et al. *The Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (Report, Victoria Law Foundation, 2023) 99 <<https://puls.victorialawfoundation.org.au/publications/everyday-problems-and-legal-need>>.

7 Mary Anne Noone and Kate Digney, *'It's Hard to Open up to Strangers' Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model* (Research Report, Rights and Justice Program, School of Law, La Trobe University, September 2010) <<https://lsbc.vic.gov.au/sites/default/files/2020-08/Improving%20Access%20to%20Justice%20Research%20Report.pdf>>.

SCENARIO 1

A heavily pregnant woman, Tania, attends a scheduled weekly check-up with her midwife at her local hospital and discloses that she feels unsafe at home. The midwife suggests that Tania engage with the hospital's health justice program. Because she wants to continue monitoring Tania's health, the midwife arranges for the meeting to take place in her office in the maternity ward.

Tania tells the midwife, social worker and lawyer that she is afraid her partner will kill her. She has been living in her car for the past few days and has not been eating or sleeping properly. After working together on a risk assessment and management plan, they agree that the social worker will arrange emergency accommodation, the lawyer will apply for a family violence intervention order, and the midwife will arrange for a doctor to conduct more extensive health checks.

In the weeks and months that follow, the midwife, social worker and lawyer have multiple conversations with Tania and each other as they support her to set up a new life away from her violent partner. The lawyer might ask the midwife for medical records that help prove Tania has been subjected to family violence. The social worker might ask the lawyer for a copy of the family violence intervention order to support Tania's housing application.

The lawyer may wait for the social worker to confirm Tania has been accepted into a refuge before applying for the intervention order so that, when the police serve Tania's partner with a notice to appear in court, he cannot find and kill her. If Tania's employer tries to terminate her employment because she cannot return to the office while living in the refuge (where visiting places a family violence perpetrator can find you is often prohibited), the lawyer could explain to the employer that termination would be illegal.⁸

- 1.5 In this scenario, to maintain legal privilege, Tania would need to show that the initial conversation with her lawyer was confidential even though the midwife and social worker were present. That might not be too difficult, but what if the social worker took handwritten notes of the meeting and filed them in her office where other social workers could access them? Or what if the midwife took notes of the meeting in Tania's electronic hospital record so that other health care professionals could read them and adequately treat her? Would these records also be considered confidential?
- 1.6 In addition, Tania would need to demonstrate that the dominant purpose of the conversation was legal. While one of the purposes was clearly legal, there were several other purposes, including finding safe housing and checking on the health of Tania and her baby. Consequently, some parts of the conversation could be privileged, while others could not, and distinguishing between the two would be difficult.

8 This is a fictional case study drawing on facts from case studies featured in a number of evaluations of integrated legal services, for example: Eastern Community Legal Centre, *"It Couldn't Have Come At A Better Time": Early Intervention Family Violence Legal Assistance* (Report, 2018) <https://www.eclc.org.au/wp-content/uploads/ItCouldntHaveComeAtABetterTime-MABELS_EasternCLC.pdf>; First Step Legal, *Summary of Evaluation Findings* (Report, 2024) <https://cdn.prod.website-files.com/64e6d2582dd4319151be6a26/67ec5ac37d4a49335a3fed5a_First-Step-Legal--Summary-Evaluation-Findings-2024.pdf>; Inner Melbourne Community Legal, *Health Justice Partnership Legal Clinics in the Hospital - Evaluation Report on the Health Justice Partnership: The Royal Melbourne Hospital and Inner Melbourne Community Legal* (Report, 2018) <https://imcl.org.au/assets/downloads/RMH_Evaluation%20Report%202018.pdf>.

- 1.7 If Tania were to lose legal privilege over these communications, there could be multiple impacts. To provide the most effective support, the social worker and lawyer would have asked Tania questions about her relationship, coping strategies, mental health, work history and other matters that could later be used against her in court or other investigative proceedings. Tania might have revealed past experiences of abuse, unemployment, drug use, suicide attempts or homelessness. And it is likely that this information would be contained in the records of the midwife, social worker and lawyer.
- 1.8 If Tania's (now) ex-partner made a complaint to child protection services about their child's welfare, the midwife would likely be required under information sharing laws to provide a copy of their records to child protection. Tania would have a stronger case for arguing the social worker's records were privileged, but she would not know if they were privileged unless she fought it in court.
- 1.9 If Tania's ex-partner applied in the Family Court for an order compelling the midwife to share her records with him in an attempt to show that Tania is unfit to care for their child, the midwife may again be compelled to provide her records. The same is true of the social worker.
- 1.10 By accepting legal services in this way, Tania has effectively given up her right to legal privilege, even though the associated social services were integral to—and a necessary precondition for—her capacity to exercise the legal remedies available to her.
- 1.11 Alternatively, Tania could have chosen not to participate in the health justice program, and returned to sleeping in her car or gone home to her violent partner.
- 1.12 For someone in this situation, the Victorian legal system allows access to fully integrated legal assistance services or the right to legal privilege, but not both. This inquiry explores that tension, and whether the law aligns with the community's values and expectations regarding the administration of justice.

Community law reform project

- 1.13 This is a community law reform project. These are projects the Commission initiates in response to community suggestions.⁹ Community law reform projects are about issues of general community concern and are limited in size and scope. The topic for this inquiry was nominated by Eastern Community Legal Centre (ECLC).
- 1.14 ECLC provides integrated legal assistance services to people experiencing family violence, homelessness, mental illness, and drug and alcohol issues. It most often does this by providing wraparound services to clients in crisis when they seek help at a hospital or medical centre.
- 1.15 ECLC has taken steps to mitigate the risks surrounding legal privilege in its integrated programs.¹⁰ Yet the core tension remains—the provision of integrated services enhances access to justice for clients facing disadvantage, but the requirements of legal privilege mean that each step towards integration creates additional risks to legal privilege. ECLC (and other providers of integrated legal assistance services) remain concerned that this situation places an unfair burden on their clients.
- 1.16 After conducting a preliminary investigation, the Commission concluded that an inquiry into law and practice on this issue would be of significant public benefit. The terms of reference on pages 3-4 establish the scope of this inquiry.

9 'Suggest a Community Law Reform Project', *Victorian Law Reform Commission* (Web Page) <<https://www.lawreform.vic.gov.au/engage-in-law-reform/suggest-a-reform/>>. See Chapter 5.

Guide to this paper

- 1.17 The primary elements of the law on legal privilege in Victoria are set out in Chapter 2. The common law mostly applies to investigative bodies, whereas legislation mostly applies to court proceedings and associated preliminary processes.
- 1.18 Chapter 3 explains how and why integrated legal assistance services have evolved over the past 50 years, noting their primary purpose is to enhance access to justice for people experiencing disadvantage and to improve their life outcomes.
- 1.19 The risks to legal privilege when providing integrated legal assistance services are discussed in Chapter 4, while Chapter 5 examines how service providers mitigate these risks.
- 1.20 Chapter 6 considers alternative approaches to legal privilege and integrated legal assistance services in other common law jurisdictions.
- 1.21 Two potential options for reform are put forward in Chapter 7. The first is the establishment of a professional privilege covering communications between clients and social service professionals in loosely integrated legal assistance service settings. The second is the establishment of a new category of legal privilege that would incorporate communications between clients, lawyers and social service professionals in closely integrated legal assistance service settings. The scope, elements, eligibility requirements and implications of each option is examined with a view to seeking community feedback on their potential operation and impact.
- 1.22 The next steps are in Chapter 8, where we encourage everyone with an interest in this issue to take part in our inquiry.

2. What is legal privilege?

- 2.1 This chapter provides an overview of the general law of legal privilege before detailing the difference between common law and legislation.

Overview of legal privilege

- 2.2 In the ordinary course of events, people are entitled to conduct their affairs privately, without state interference. However, to settle a dispute or determine issues in contention, courts and investigative bodies can compel people to disclose their private communications with others. This is because 'the public interest in discovering the truth prevails over the private duty to respect confidence'.¹¹
- 2.3 Legal privilege protects confidential communications between a client and their lawyer from this power to compel disclosure. As Justices Stephen, Mason and Murphy explained in *Grant v Downs*, legal privilege 'enhances the administration of justice by facilitating the representation of clients by legal advisers, the law being a complex and complicated discipline.' Keeping their communications confidential promotes the client's 'full and frank disclosure of the relevant circumstances' to the lawyer, which in turn ensures the client is well advised and represented.¹²
- 2.4 The common law on legal privilege applies unless legislation replaces it. The *Evidence Act 2008* (Vic) governs the application of legal privilege in Victorian court proceedings and associated preliminary processes,¹³ such as pre-trial discovery. The common law still largely operates in relation to investigative bodies, such as WorkSafe Victoria and the Transport Accident Commission.
- 2.5 Under both the common law and legislation, legal privilege is absolute.¹⁴ This means it offers unqualified immunity from disclosure, subject to any overriding public interest. This can be contrasted with qualified privilege, which parliaments across Australia have granted to communications between clients and other professionals, and which can be more easily displaced by competing considerations, such as the need for courts to reach a decision about facts or law in determining a case.¹⁵
- 2.6 If Parliament wishes to override legal privilege, it must express a clear intention to do so.¹⁶ Across Australia, legal privilege is often curtailed in the case of Royal Commissions and integrity and anti-corruption bodies,¹⁷ where the public interest in uncovering the truth is deemed more important than the rights of participants to withhold their confidential legal information.

11 *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 65 [12].

12 *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 685 [19] (Stephen, Mason and Murphy JJ).

13 *Evidence Act 2008* (Vic) ss 4, 131A.

14 *Commissioner Australian Federal Police v Propend Finance Pty Ltd* [1997] HCA 3; (1997) 188 CLR 501, 563 (Gummow J), 583 (Kirby J).

15 For example, the qualified privilege over communications between a victim of a sexual offence and their counsellor in the *Evidence (Miscellaneous Provisions) Act 1958* (Vic) pt 2, div 2A.

16 *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 90 [18] (Murphy J), 96 [16] (Wilson J), 116 [11] (Deane J).

17 *Independent Broad-Based Anti-Corruption Commission Act 2011* (Vic) ss 98, 143; *Inquiries Act 2014* (Vic) s 32; *National Anti-Corruption Commission Act 2022* (Cth) s 114(1), *Royal Commissions Act 1902* (Cth) s 6AA.

Common law

- 2.7 At common law, legal privilege is known as legal professional privilege.
- 2.8 Legal professional privilege applies to confidential communications made between a client and a lawyer for the dominant purpose of legal advice or litigation, unless privilege is waived or an exception applies. The extent to which third parties fall within this privileged relationship depends on several factors.

What are confidential communications?

- 2.9 It is 'an essential element in a claim for legal professional privilege' that the material in question is, 'so far as the person from whom disclosure is concerned, confidential'.¹⁸ If material is made for a non-confidential purpose, legal professional privilege does not apply because privilege 'exists to secure confidentiality in communications between a legal adviser and the client ... and can have no application in relation to a document the purpose of which is to communicate information to others'.¹⁹
- 2.10 Communications may be written or oral but 'privileged communications are frequently in writing'.²⁰ The purpose of a particular communication is 'to be determined by reference to the content of the [communication] in its context, and the relevant evidence relating to it'.²¹ It follows that privilege can apply to some communications but not others, in any given conversation or record of a conversation.

Who is a client and who is a lawyer?

- 2.11 A client is a person or body who engages a lawyer to provide legal services, or employs a lawyer.²² A lawyer is someone who has been admitted to practice and is subject to professional standards.²³ Legal professional privilege may attach to in-house lawyers, as long as the lawyer is acting in their capacity as a lawyer and is sufficiently independent.²⁴ 'Independence' requires that lawyers' other non-legal duties, interests or loyalties (for example, commercial interests) to their client do not influence their professional legal advice.²⁵
- 2.12 Privilege belongs to the client, not the lawyer, meaning the lawyer cannot ordinarily waive it without the client's consent.²⁶ In addition, the lawyer has a duty to do their best to ensure that a client's ability to claim privilege is not lost.²⁷
- 2.13 The privilege must be claimed by the client, or by their lawyer on their behalf, for the court to consider it in any given case.²⁸ And the client bears responsibility for establishing privilege if they seek to rely on it.²⁹ To sustain a claim of privilege, the client 'must prove the facts that establish that it is properly made' and the 'evidence must reveal the relevant characteristics of each document in respect of which privilege is claimed'.³⁰

18 *Ritz Hotel Ltd v Charles of the Ritz Ltd and Another* [No 22] (1988) NSWLR 132, 133 (McLelland J).

19 *Asahi Holdings (Australia) Pty Ltd v Pacific Equity Partners Pty Ltd (No 2)* [2014] FCA 481; (2014) 312 ALR 403, 413 [46].

20 *Esso Australia Resources v Commissioner of Taxation* [1999] HCA 67; (1999) 201 CLR 49, 65 [36].

21 *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [205].

22 *AWB Limited v Honourable Terence Rhoderic Hudson Cole (No 5) (with Corrigendum dated 25 October 2006)* [2006] FCA 1234; (2006) 155 FCR 30, 46 [44(10)]; *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54.

23 *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54; *Attorney-General (NT) v Kearney* [1985] HCA 60; (1985) 158 CLR 500.

24 *Australian Hospital Care Pty Ltd v Duggan (No 2)* [1999] VSC 131; *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54; *Attorney-General (NT) v Kearney* [1985] HCA 60; (1985) 158 CLR 500.

25 *Telstra Corporation Ltd v Minister for Communications, Information Technology and the Arts (No 2)* [2007] FCA 1445, [35].

26 *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1, 28 (Gleeson CJ, Gaudron, Gummow and Callinan JJ); *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, [4] (Murphy J).

27 *Kang v Kwan & 2 Ors* [2001] NSWSC 698, [30].

28 *Commissioner Australian Federal Police v Propend Finance Pty Ltd* [1997] HCA 3; (1997) 188 CLR 501, 513 (Brennan CJ).

29 *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 386–87 [106] (Stone J, with Merkel J agreeing); affirmed in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [178] although noting that 'the position is not free from doubt'.

30 Ronald J Desiatnik, *Legal Professional Privilege in Australia* (LexisNexis Australia, 4th ed, 2025) 119.

What is the dominant purpose?

- 2.14 Purpose means 'the reason why the [communication] was brought into existence',³¹ and this is a question of fact.³²
- 2.15 Whereas privilege once applied when 'one of the purposes' of a communication was legal, and then subsequently applied when the 'sole purpose' of a communication was legal,³³ it now applies when the 'dominant purpose' of a communication is legal.³⁴
- 2.16 As Justice Kenny clarified in *Commissioner of Taxation v Pratt Holdings*, it is not enough that the 'primary' or 'substantial' purpose of a communication is legal advice or litigation. The dominant purpose means 'the ruling, prevailing, paramount or most influential purpose'. Consequently, if 'two purposes are of equal weight, neither is dominant in the relevant sense'.³⁵
- 2.17 In *Commissioner of Taxation v Pratt Holdings*, the court held that documents prepared by accountants to structure a transaction tax-effectively were not privileged. Even though they were later provided to lawyers to provide advice on, the dominant purpose of the documents was to achieve a favourable tax outcome.³⁶
- 2.18 In *AWB Ltd v Cole*, documents prepared for corporate reputation management, media and internal governance were not privileged as they too lacked a dominant legal purpose.³⁷

What is legal advice and litigation?

- 2.19 To attract privilege, 'the lawyer's advice must satisfy the description of professional advice given by a lawyer in his or her capacity as such'.³⁸ For this reason, privilege will not ordinarily apply to administrative documents (such as invoices or costs disclosures) or 'things lodged with a legal adviser for the purpose of obtaining immunity from production'.³⁹
- 2.20 The courts have recognised there is 'a continuum of communication' between a client and their lawyer, and that privilege extends beyond communications about the law. Privilege will protect 'advice as to what should prudently and sensibly be done in the relevant legal context'.⁴⁰
- 2.21 In relation to litigation privilege, the courts have held that privilege will protect communications when litigation is 'actual or likely',⁴¹ 'reasonably anticipated',⁴² or 'a real prospect'.⁴³
- 2.22 In *Grant v Downs*, when an inpatient died after escaping from a mental health facility, reports were prepared for investigative and operational purposes. The court found that the nature of the incident made it likely that litigation was reasonably anticipated at the time those reports were made, but the claim for privilege failed because litigation was just one of several material purposes for the reports.⁴⁴

31 *Waterford v Commonwealth* [1987] HCA 25; (1987) 163 CLR 54, 66 [10].

32 *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [170].

33 *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674.

34 *Esso Australia Resources v Commissioner of Taxation* [1999] HCA 67; (1999) 201 CLR 49, 66-73 [39]-[62].

35 *Commissioner of Taxation (Cth) v Pratt Holdings Pty Ltd* [2005] FCA 1247; (2005) 225 ALR 266, 278 [30] (Kenny J); cited in

Commissioner of Taxation v PricewaterhouseCoopers [2022] FCA 278, [143].

36 *Commissioner of Taxation (Cth) v Pratt Holdings Pty Ltd* [2005] FCA 1247; (2005) 225 ALR 266.

37 *AWB Limited v Honourable Terence Rhoderic Hudson Cole (No 5) (with Corrigendum dated 25 October 2006)* [2006] FCA 1234; (2006) 155 FCR 30, 95 [235].

38 *AWB Ltd v Cole* [2006] FCA 571; (2006) 152 FCR 382, 410 [101] (Young J).

39 *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 112.

40 *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [148]-[149].

41 *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 690 [2] (Jacobs J).

42 Ibid 682 [14] (Stephen, Mason and Murphy JJ).

43 *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* [2002] VSCA 59; (2002) 4 VR 332, 333 [3] (Callaway JA).

44 *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674.

Waiving privilege

- 2.23 A person who is entitled to the benefit of legal professional privilege may waive privilege,⁴⁵ expressly or by implication.⁴⁶
- 2.24 People frequently waive privilege 'deliberately and intentionally',⁴⁷ including when disclosing privileged communications in court, the media or some other public forum in which they are defending their behaviour.
- 2.25 However, the court will also deem a person to have waived privilege when they act in a manner that is 'inconsistent with the maintenance of the confidentiality which the privilege is intended to protect', even though they did not intend to waive privilege.⁴⁸
- 2.26 In *Attorney-General (NT) v Maurice*, Justices Mason and Brennan explained, 'An implied waiver occurs when, by reason of some conduct on the privilege holder's part, it becomes unfair to maintain the privilege.'⁴⁹ Chief Justice Gibbs expanded on this, stating that 'whether a waiver should be implied depends on whether it would be unfair or misleading to allow a party to refer to or use material and yet assert that that material ... is privileged from production'.⁵⁰
- 2.27 Referring to the existence of privileged material without revealing its contents did not waive privilege in *Attorney-General (NT) v Maurice*,⁵¹ nor did sharing privileged information for a limited, confidential purpose in *Mann v Carnell*.⁵² Whereas revealing legal advice to justify one's conduct to an investigative body did waive privilege in *Goldberg v Ng*⁵³ and *AWB Ltd v Cole*.⁵⁴ In the latter case, revealing some privileged information resulted in a waiver of privilege over any 'associated material which underpinned the legal advice'.⁵⁵

Exceptions to privilege

- 2.28 Communications made for the purpose of facilitating a fraud, crime or civil offence cannot be protected by privilege.⁵⁶ This is the case even if the lawyer did not know about the client's unlawful intent at the time. As the courts have observed, 'it is no part of a solicitor's duty "to advise [a] client as to the means of evading the law"'.⁵⁷
- 2.29 In *R v Bell*, the High Court held that privilege will not apply when a higher public interest overrides it. In that case, the Family Court had ordered a woman to return her child to her ex-husband on the basis that it was in the child's best interests, but she had failed to comply. The High Court then compelled the woman's lawyer to reveal the woman's address, even though she had given it to him in confidence. As Justice Stephen explained, allowing the claim of privilege in this case would have subverted 'the purpose of that privilege, which is to further and not to impede the administration of justice'.⁵⁸

45 *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475, 480 [5] (Gibbs CJ).

46 *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1, 13 [28]-[29].

47 *Goldberg v Ng Hango Holdings Pty Ltd* [1995] HCA 39; (1995) 185 CLR 83, 107-108 [21]-[22] (Toohey J).

48 *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1, 13 [29].

49 *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475, 487 [11] (Brennan and Mason J).

50 *Ibid* 481 [7] (Gibbs CJ).

51 *Attorney-General (NT) v Maurice* [1986] HCA 80; (1986) 161 CLR 475.

52 *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1.

53 *Goldberg v Ng Hango Holdings Pty Ltd* [1995] HCA 39; (1995) 185 CLR 83.

54 *AWB Limited v Honourable Terence Rhoderic Hudson Cole (No 5) (with Corrigendum dated 25 October 2006)* [2006] FCA 1234; (2006) 155 FCR 30.

55 *Ibid* 80 [178].

56 *R v Cox and Railton* [1884] 14 QBD 153; *Hodgson v Amcor Ltd; Amcor Ltd v Barnes (No 2)* [2011] VSC 204, [67].

57 *Russell v Jackson* (1851) ER 558, 560; cited in *R v Bell; Ex parte Lees* [1980] HCA 26; (1980) 146 CLR 141, 152 [14] (Stephen J).

58 *R v Bell; Ex parte Lees* [1980] HCA 26; (1980) 146 CLR 141, 151-52 [12] (Stephen J), see also 161 [7] (Wilson J).

When are communications with third parties privileged?

- 2.30 Privilege attaches to communications between a client and a lawyer, and agents of either.⁵⁹ Agents—such as employees or interpreters⁶⁰—step into the shoes of the client or lawyer, and do not independently 'consider and act upon' the communications exchanged.⁶¹
- 2.31 The extent to which (non-agent) third parties are included within the privileged client-lawyer relationship, is more contested. Until 2004, the prevailing view was that third parties could fall within litigation privilege, but not legal advice privilege.⁶² As lawyers frequently solicit information from subject-matter experts and other third parties to support their client's case in court, the inclusion of third-party communications made in contemplation of litigation has long been deemed 'a corollary of the common law mode of trial'.⁶³
- 2.32 In 2004, however, the Full Court of the Federal Court of Australia held in *Pratt Holdings v Commissioner of Taxation* that communications between a third party and a client or a lawyer may also fall within legal advice privilege. As Justice Stone explained:
- The coherent rationale for legal professional privilege developed by the High Court does not lend itself to artificial distinction between situations where that expert assistance is provided by an agent ... and where it is provided by a third party ... Provided that the dominant purpose requirement is met I see no reason why privilege should not extend to the communication by the expert to the client ... Courts would need to take into account exactly what function was served by the expert advice and whether it was really required in order to instruct the legal advisers fully.⁶⁴
- 2.33 In *Commissioner of Taxation v PricewaterhouseCoopers*, Justice Moshinsky followed the decision in *Pratt Holdings*, highlighting Justice Stone's observation above, and the following observation of Justice Finn:
- The important consideration is the nature of the function the third party performed for the client. If that function was to enable the client to make a communication necessary to obtain legal advice, privilege may attach to a documentary communication authored by the third party. The third party has been 'so implicated' in the communication made by the client to its legal adviser as to bring the third party's work-product within the rationale of legal advice privilege.⁶⁵
- 2.34 It is now clear that third-party communications may fall within legal advice privilege. However, the circumstances in which they will be deemed necessary to obtain legal advice are narrower than the circumstances in which they will be deemed necessary to prepare for litigation. After repeating Justice Finn's warning about the need to take care when evaluating the purpose of third-party communications in a non-litigation setting, Justice Moshinsky reiterated that non-legal advice given alongside legal advice 'will rarely be capable of attracting privilege' because the non-legal advice will often have 'a distinctive function and purpose in the client's decision-making'.⁶⁶
- 2.35 The difficulty of applying these tests to integrated legal assistance services is discussed at paragraphs 4.4-4.8.

59 *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 688 [26] (Stephen, Mason and Murphy JJ).

60 *Du Barré v Livette* (1971) ER 96.

61 *Jones v Great Central Railway Co* [1910] AC 4; cited in *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 688 [26] (Stephen, Mason and Murphy JJ); see also *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 386 [106] (Stone J).

62 *Commissioner of Taxation v Pratt Holdings Pty Ltd* [2003] FCA 6; (2003) 195 ALR 717, 726 [39] (Kenny J); cited in *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 360 [2], [6] (Finn J).

63 *Mitsubishi Electric Australia Pty Ltd v Victorian WorkCover Authority* [2002] VSCA 59; (2002) 4 VR 332, 335-336 [8].

64 *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 386-87 [105]-[106] (Stone J).

65 *Ibid* 367-68 [41]-[42] (Finn J, with Merkel J agreeing); cited in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [170].

66 *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [70].

Legislation

- 2.36 The *Evidence Act 2008* (Vic) (the Act) governs the application of legal privilege in court proceedings and processes. Under the Act, legal privilege is called client legal privilege, reflecting the fact that the privilege belongs to the client.⁶⁷
- 2.37 While the elements of client legal privilege closely resemble the elements of legal professional privilege, the Act refines many of the elements, rendering some narrower and others broader. Although these differences may have a significant impact on any given case, they do not materially affect the central matters under consideration in this inquiry.
- 2.38 Even when communications between a client and lawyer are not privileged, they are still likely to be confidential. The obligations of lawyers in relation to (non-privileged) confidential information is governed by Legal Profession Uniform Law.⁶⁸

Evidence Act

- 2.39 Under the Act, client legal privilege attaches to confidential communications made for the dominant purpose of a lawyer providing legal advice to a client, or a client being provided with professional legal services relating to an Australian or overseas proceeding (that is, litigation).⁶⁹
- 2.40 A client and a lawyer are defined broadly, with the former including an employee or agent of a client, and the latter including lawyers admitted to practice in Australia and overseas.⁷⁰
- 2.41 Client legal privilege protects confidential communications with 'another person' if they were made for the dominant purpose of a legal proceeding, but only confidential *documents* prepared by another person if they were made for the dominant purpose of legal advice.⁷¹ Confidential communications between an unrepresented party and another person may also be protected in the case of legal proceedings.⁷²
- 2.42 Client legal privilege may be 'lost' with the consent of the client, or if the client has acted in a way that is inconsistent with the maintenance of privilege, including when the client knowingly and voluntarily discloses the substance of a privileged communication to another person.⁷³
- 2.43 Client legal privilege may also be lost for misconduct, that being when the communication was made in furtherance of a crime, fraud or a deliberate abuse of power.⁷⁴

Confidentiality obligations under the Legal Profession Uniform Law

- 2.44 Under the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* (Solicitors' Conduct Rules), solicitors are mostly prohibited from disclosing their clients' (non-privileged) confidential information.⁷⁵ They may share information with employees of their law practice, a barrister or—importantly for integrated legal assistance services—another person who is 'engaged by the solicitor's law practice or by an associated entity for the purposes of delivering or administering legal services in relation to the client'.⁷⁶

67 *Evidence Act 2008* (Vic) pt 3.10.

68 *Legal Profession Uniform Law Application Act 2014* (Vic).

69 *Evidence Act 2008* (Vic) ss 118–119.

70 *Ibid* s 117(1).

71 *Ibid* ss 118–119.

72 *Ibid* s 120. This is somewhat more limited than the litigation privilege in s 119 of the Act which applies to proceedings that are 'anticipated or pending' – this privilege applies only where there are court proceedings on foot or the disclosure obligations referred to in s 131A exist.

73 *Evidence Act 2008* (Vic) s 122.

74 *Ibid* s 125.

75 *Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015* r 9.1.2.

76 This includes a multi-disciplinary partnership and a community legal service; *ibid* Glossary of Terms.

- 2.45 However, the Solicitors' Conduct Rules also state that a lawyer may disclose confidential information if it is for the 'sole purpose of avoiding the probable commission of a serious criminal offence' or 'for the purpose of preventing imminent serious physical harm to the client or to another person'.⁷⁷
- 2.46 Similarly, the *Legal Professional Uniform Conduct (Barristers) Rules 2015* prohibit barristers from sharing their clients' confidential information, except to their instructing solicitor or staff.⁷⁸ A barrister whose client threatens the safety of any person may advise the police or other appropriate authorities if the barrister believes 'on reasonable grounds that there is a risk to any person's safety'.⁷⁹

77 Ibid rr 9.2.4-9.2.5.
78 *Legal Profession Uniform Conduct (Barristers) Rules 2015* rr 114, 116.
79 Ibid r 82.

3. What are integrated legal assistance services?

- 3.1 This chapter introduces integrated legal assistance services as an innovative practice development and explores its impact in the Victorian legal assistance sector.
- 3.2 Victoria has a long history of engagement between legal assistance and social service providers. West Heidelberg Community Legal Service and Banyule Community Health have been co-located for nearly 50 years.⁸⁰ The Commission is aware of at least 84 integrated legal assistance partnerships in Victoria,⁸¹ 59 of which are health justice partnerships.⁸²
- 3.3 Supplementing legal assistance services with social services aims to enable people experiencing disadvantage to deal with a range of interrelated issues that may feel overwhelming to address in isolation, let alone together. Social services frequently delivered alongside legal assistance services include general and specialist health services, family violence services,⁸³ housing and homelessness services, aged care services, youth services, and financial counselling.⁸⁴
- 3.4 The purpose of Australia's governments when it comes to funding free social services alongside free legal services has been expressed differently over time, referring to the value of coordinated services in some instances, and integrated services in others. But the core objective has long been the delivery of legal and social services to enhance access to justice and life outcomes for people experiencing disadvantage.⁸⁵

80 Mary Anne Noone and Kate Digney, *'It's Hard to Open up to Strangers' Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model* (Research Report, Rights and Justice Program, School of Law, La Trobe University, September 2010) 15 <<https://lsbc.vic.gov.au/sites/default/files/2020-08/Improving%20Access%20to%20Justice%20Research%20Report.pdf>>.

81 '2025 Strong Foundations Grant Recipients', *Victorian Legal Services Board + Commissioner* (Web Page, 28 January 2026) <<https://lsbc.vic.gov.au/grants-and-funding/grants/2025-strong-foundations-grant-recipients>>; 'Health Justice Partnerships across Australia', *Health Justice Australia* (Web Page) <<https://healthjustice.org.au/health-justice-partnership/health-justice-partnerships-across-australia/>>; 'Housing Justice Grant Recipients', *Victorian Legal Services Board + Commissioner* (Web Page, 24 July 2025) <<https://lsbc.vic.gov.au/grants-and-funding/grants/housing-justice-grant-recipients>>; 'Integrated Services Fund', *Federation of Community Legal Centres* (Web Page, 2026) <https://www.fclc.org.au/integrated_services_fund>.

82 'Health Justice Partnerships across Australia', *Health Justice Australia* (Web Page) <<https://healthjustice.org.au/health-justice-partnership/health-justice-partnerships-across-australia/>>.

83 Clare Keating, *Creating Lasting Change - Evaluation and Review of Hume Riverina Community Legal Service's Family Violence Partnership with the Centre Against Violence* (Report, Effective Change Pty Ltd, February 2024); Liz Curran, *'Going Deeper' - The Invisible Hurdles Stage III Research Evaluation Final Report* (Report, Nottingham Trent University, 26 June 2022) <<https://hrcls.org.au/wp-content/uploads/2022/10/APPROVED-Final-Version-Going-Deeper-IH-Stage-III-Research-Evaluation-Report-20220626.pdf>>.

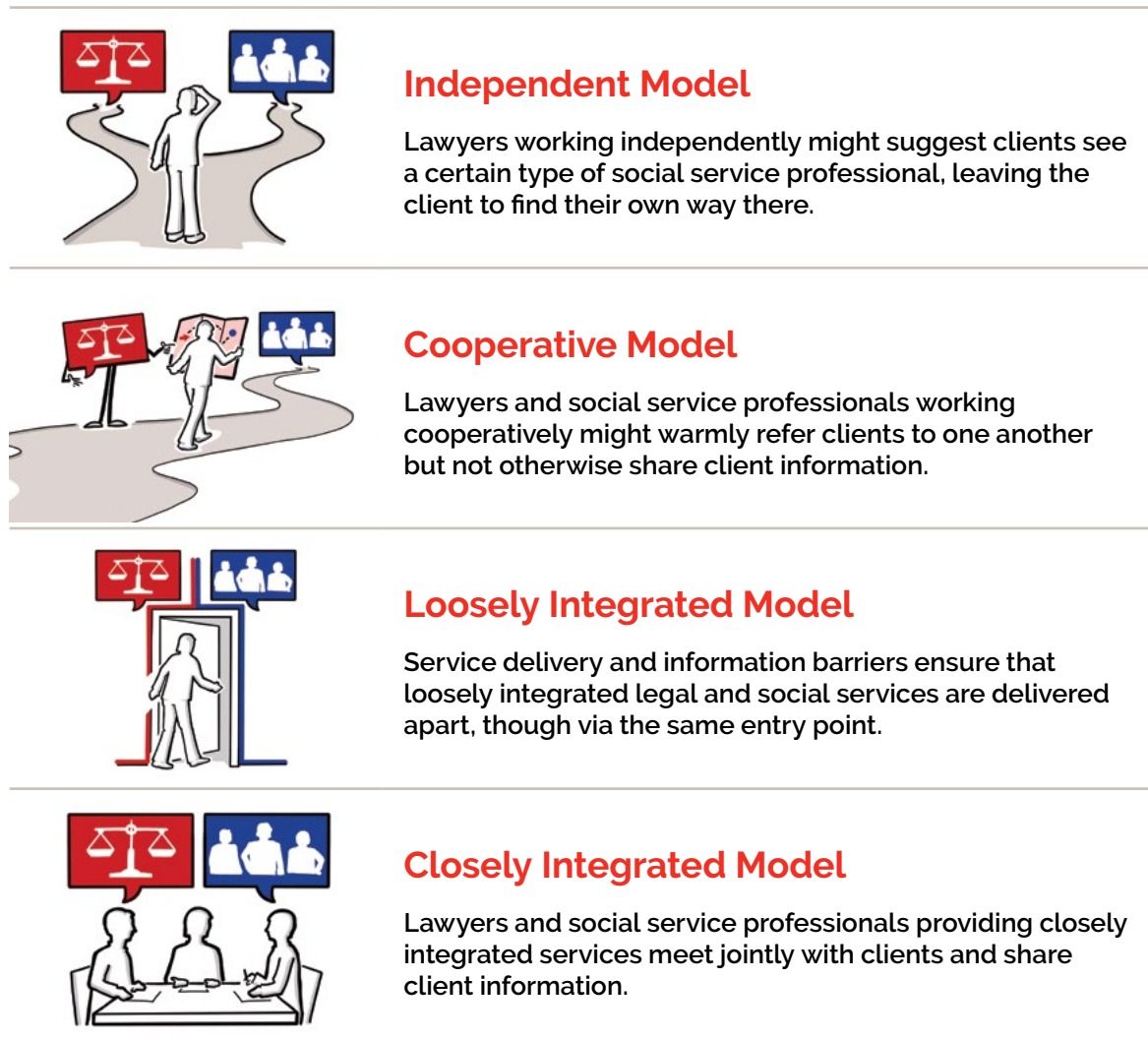
84 Justice Connect Homeless Law, *Under One Roof - Three Years of Embedding Legal Services to Make Justice Accessible for Homeless Clients* (Report, November 2018) <<https://justiceconnect.org.au/wp-content/uploads/2018/11/Justice-Connect-Homeless-Law-Under-One-Roof-Three-Year-Report.pdf>>.

85 Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (Report, 26 July 2017) <<https://www.ag.gov.au/legal-system/publications/national-partnership-agreement-legal-assistance-services>>; Council of Attorneys-General, *National Strategic Framework for Legal Assistance 2015-20* (Report, 2019); Commonwealth of Australia and the States and Territories, *National Access to Justice Partnership Agreement 2025-30* (Report, November 2024) <<https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2025-09/agreement-national-access-to-justice-partnership-signed.pdf>>.

Service delivery models in the legal assistance sector

- 3.5 Legal assistance services and social services are delivered in different ways, ranging from independent to fully integrated.⁸⁶ An increased level of integration poses an increased risk to legal privilege.
- 3.6 The Commission has identified four models of service delivery along this continuum.

Figure 1: Models of legal assistance services



- 3.7 Organisations or partnerships may adopt multiple models or elements of more than one model. This is particularly true of the Loosely Integrated Model and Closely Integrated Model, which are both often viewed by clients as integrated but—in the context of this inquiry—display materially different degrees of integration.
- 3.8 Where legal assistance services are provided independently or in cooperation with social service providers, there is little risk to legal privilege because social service professionals are not present during the lawyer's professional conversations with their client, and do not have access to the client's privileged information.

- 3.9 Where loosely integrated legal assistance services are provided, the client's legal privilege should not be compromised if the protocols preventing shared service delivery and information sharing are strictly followed. As indicated in Case Study 1, the Loosely Integrated Model allows lawyers to 'meet clients where they are at' and work alongside social service providers while they address the clients' complex legal needs. However, when clients are in crisis or these services are being delivered in the time and space constraints of court, rigid protocols are not always easy to follow.

CASE STUDY 1: *Loosely integrated legal assistance services*

While seeing a social worker at the Royal Children's Hospital, a young girl disclosed she had been sexually abused by her father. The social worker referred the girl and her mother, Samantha*, to a lawyer from Inner Melbourne Community Legal (IMCL) Centre, who was located in the hospital and who met with the mother and daughter that same day.

The girl had first disclosed the sexual abuse to her mother a year earlier, and Samantha had spoken to police and child protection at that time. The police determined there was not enough evidence to pursue criminal charges but obtained an intervention order allowing the father (Samantha's husband) to continue living with their daughter, as long as he did not commit family violence. Child protection concluded that any contact between the father and daughter should be supervised and closed the file.

Samantha initially remained living in the family home with her husband and children, attempting to hold the family together while keeping her daughter safe. After becoming increasingly concerned about her children's safety, Samantha moved out of the family home with the children, but her husband continued to visit the children at their new home and school. At this point the hospital social worker became aware of the situation and referred the girl and her mother to the hospital's legal clinic.

The IMCL lawyer assisted Samantha to urgently apply for parenting orders in the Federal Circuit Court. The lawyer then appeared on Samantha's behalf and was granted interim orders prohibiting the father from contacting the children. The lawyer also assisted Samantha to apply for a more protective intervention order. When the husband breached the order, the lawyer helped Samantha make complaints to the police and the husband was charged with a criminal offence. The lawyer also supported Samantha to lodge a divorce application, and referred her daughter to a private lawyer to pursue victims of crime compensation.

The legal matters took over a year to resolve, and Samantha ultimately obtained orders for her children to live with her and have no contact with their father, in accordance with their wishes. Throughout this time, the social worker and lawyer worked separately but collaboratively with Samantha and her daughter as they navigated their way to safety.⁸⁷

* *Not her real name*

- 3.10 Where closely integrated legal assistance services are provided by legal and social service professionals in joint meetings, the client's legal privilege would most likely be compromised, which is why service providers sometimes obtain client consent before delivering services in this way. As indicated in Case Study 2, the Closely Integrated Model aims to enable the safe and effective resolution of the clients' legal needs, while also aiming to deliver therapeutic benefits that support client engagement and overall wellbeing. However, it is hard to know if clients fully comprehend what they are agreeing to give up (that is, control over their confidential legal information) when providing consent.

CASE STUDY 2: Closely integrated legal assistance services

MABELS is a partnership between the Eastern Community Legal Centre and a maternal health clinic. Women attending the clinic who are experiencing family violence are offered free legal advice, safety planning, information and referrals in the same appointment, with assistance from an Aboriginal Engagement and Liaison Worker if they are Aboriginal. Legal and social service professionals in this program do 'not just share the space with another practitioner but feed off each other and [are] fluid in the delivery of the legal appointment'.

During a maternal child health appointment, a nurse asked new mother, Maria*, how things were going at home. When Maria said she had been worried about her husband's behaviour since the birth of their child six months earlier, the nurse offered her a place in MABELS. As Maria was worried about how she would explain the time away from home to her husband, the nurse arranged to take the baby's measurements before she had joint meetings with the lawyer and specialist family violence worker, so it appeared as though Maria was attending a standard appointment.

At her first MABELS appointment, Maria said she had never thought of her husband's behaviour as family violence. Over the course of three appointments, the lawyer and specialist family violence worker discussed healthy and harmful relationship behaviours, and Maria disclosed the full extent of the violence she had been experiencing.

The specialist family violence worker helped Maria develop a detailed safety plan, and the lawyer spoke to Maria about her legal options, including making a report to the police and applying for a family violence intervention order. Some time later, Maria got back in touch with MABELS, who assisted her to obtain a family violence intervention order.⁸⁸

* Not her real name.

Benefits of integrated legal assistance services

- 3.11 Integrated legal assistance services aim to provide 'person-centred support' focused on the needs of the client rather than the professional boundaries of distinct service providers.⁸⁹ This approach aims to benefit clients, service providers and the justice system.⁹⁰

Benefits to clients

- 3.12 The benefits to clients are reported to include improved access to justice, earlier intervention and better client outcomes.

Improved access to justice

- 3.13 Integrated legal assistance services are aimed at producing three distinct benefits for access to justice.
- 3.14 First, integrated legal assistance services can create new entry points for people who would not otherwise seek legal help.⁹¹ By embedding legal services in hospitals, schools and community centres, social service professionals can identify the legal needs of service users and leverage their existing relationship of trust to connect those people to lawyers.⁹²
- 3.15 People experiencing disadvantage often face intersecting barriers to legal assistance, such as poverty, lack of knowledge about their legal rights, or past trauma relating to legal systems.⁹³ By partnering with social services that people are already engaging with (such as health care, education or aged care) integrated legal services aim to build on those trusted relationships and work holistically with people to help identify and resolve underlying legal problems which may be aggravating their health or educational difficulties. Integrating services can therefore enable legal assistance to reach a cohort of people facing complex disadvantage, who are most in need of support.
- 3.16 In contrast to this approach, referring clients from one distinct service to another can result in 'referral fatigue'.⁹⁴ Clients referred in this way often struggle to access the other services in a timely manner—or at all—resulting in frustration and disengagement, and the compounding of unresolved problems.
- 3.17 Second, integrated legal assistance services can enhance access to justice by providing the social support people need to navigate legal processes that feel unfamiliar or even hostile. This support can vary from language translation, disability and mental health assistance, to support from an Aboriginal cultural safety officer.
- 3.18 Finally, complex and interconnected socio-legal problems often require a coordinated response from multiple professionals. A mother seeking to have her children returned from Child Protection may need specialist counselling services and housing assistance, supported by a family violence intervention order and parenting order, which are made in different courts. If the client's legal and social service professionals did not communicate with one another for fear of extinguishing legal privilege, she may struggle to decide whose advice to follow or what information she is allowed to share with each of them, and have to repeatedly recount her circumstances to separate agencies.

89 Elizabeth Tobin-Tyler et al, 'Health Justice Partnerships: An International Comparison of Approaches to Employing Law to Promote Prevention and Health Equity' (2023) 51(2) *Journal of Law, Medicine & Ethics* 332, 334.

90 Given the diversity of practice and terminology, it has not always been possible to identify the level of integration of legal assistance services within evaluations and research studies.

91 Sarah Beardon et al, 'International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review' (2021) 42 *Public Health Reviews* 1603976, 7.

92 Ibid 637; Hazel Genn, 'When Law Is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice' (2019) 72(1) *Current Legal Problems* 159, 185.

93 HM McDonald and Z Wei, *Justice at a Disadvantage: What We Know Now about Legal Need, Capability and Multiple Disadvantage* (Report, Victoria Law Foundation, 2025) 28.

94 Pascoe Pleasence et al, *Reshaping Legal Services: Building on the Evidence Base* (Discussion Paper, Law and Justice Foundation of NSW, 2014) 67.

Earlier intervention

3.19 Integrated services can identify and resolve legal problems early, reducing the level of legal assistance required and the impact on people's lives.⁹⁵ When legal assistance services are embedded in social service delivery settings, social service professionals are better able to identify emerging legal issues and connect clients with timely support—for things such as rent arrears or unpaid fines—before they escalate into a crisis.

Better client outcomes

3.20 Integrated legal assistance services aim to reduce the stress experienced by clients as result of their legal problems. Research involving patients accessing legal assistance through Inner Melbourne Community Legal Centre's health justice partnership indicated that 48 per cent believed the legal advice they had received would positively impact their health and wellbeing.⁹⁶ International evidence on the benefits to clients similarly shows reductions in stress and anxiety, improved mental stability, better sleep, greater peace of mind, and improved wellbeing and quality of life.⁹⁷

3.21 It is reported that these outcomes are partly due to the more therapeutic and streamlined nature of the services they receive. For example, integration minimises the need for people to repeatedly recount traumatic experiences to different service providers. They also strengthen collaboration between professionals, making it harder for people to fall through the cracks.⁹⁸

3.22 In addition, legal problems are often closely intertwined with social determinants of health, such as housing insecurity, poor interpersonal relationships, and debt.⁹⁹ The World Justice Project found in 2019 that nearly a third of people surveyed had experienced physical or stress-related ill health as a result of their legal problems.¹⁰⁰

3.23 Resolving legal problems can therefore promote better primary health outcomes.¹⁰¹ As one social worker from the Royal Melbourne Hospital remarked, 'How can you be ... taking medication daily when you're not housed?'¹⁰²

Benefits to service providers

3.24 The benefits to service providers reportedly include enhanced service coordination, reduced vicarious trauma and more effective use of scarce legal resources.

Enhanced service coordination

3.25 Integrating legal and social expertise can enhance the service quality by enabling providers to identify and manage complex client needs and risks that are difficult for any single professional to navigate, and to develop a coherent and managed response.

3.26 When professionals from different disciplines work in integrated ways, they can increase their capacity to recognise interconnected issues which may be crucial to their clients' wellbeing. First Step Legal is a community legal centre operating seven health justice partnerships. In a recent evaluation of its services, health and housing

95 Virginia Lewis, Lauren Adamson and Faith Hawthorne, 'Health Justice Partnerships: A Promising Model for Increasing Access to Justice in Health Services' (2019) 43(6) *Australian Health Review* 636, 637.

96 Inner Melbourne Community Legal, *Health Justice Partnership Legal Clinics in the Hospital - Evaluation Report on the Health Justice Partnership: The Royal Melbourne Hospital and Inner Melbourne Community Legal* (Report, 2018) 5 <https://imcl.org.au/assets/downloads/RMH_Evaluation%20Report%202018.pdf>.

97 Sarah Beardon et al, 'International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review' (2021) 42 *Public Health Reviews* 1603976, 5.

98 MABELS and Eastern Community Legal Centre, '*It Couldn't Have Come at a Better Time: Early Intervention Family Violence Legal Assistance*' (Report, September 2018) 28 <https://www.eclc.org.au/wp-content/uploads/ItCouldntHaveComeAtABetterTime-MABELS_EasternCLC.pdf>.

99 Virginia Lewis, Lauren Adamson and Faith Hawthorne, 'Health Justice Partnerships: A Promising Model for Increasing Access to Justice in Health Services' (2019) 43(6) *Australian Health Review* 636, 636; Stefanie Plage et al, 'Justice in Health? Studying the Role of Legal Support in a Culturally Responsive Mental Health Service in Australia' (2025) 35(4-5) *Qualitative Health Research* 418.

100 Alejandro Ponce, *Global Insights on Access to Justice: Findings from the World Justice Project General Population Poll in 101 Countries* (Report, World Justice Project, 2019) 7.

101 Hazel Genn, 'When Law Is Good for Your Health: Mitigating the Social Determinants of Health through Access to Justice' (2019) 72(1) *Current Legal Problems* 159, 201.

102 Inner Melbourne Community Legal, *Partners in Care: The Benefits of Community Lawyers Working in a Hospital Setting* (Report, 2018) 44 <https://imcl.org.au/assets/downloads/IMCL_report_FA_web.pdf>.

professionals reported improved ability to identify legal issues and make appropriate referrals, while legal professionals reported greater capacity to identify the impact of health and social issues on their clients and to communicate this to the court.¹⁰³ Both groups also reported 'increased job satisfaction arising from cross-disciplinary collaboration and the acquisition of new skills'.¹⁰⁴

- 3.27 Evaluations of integrated services have found that the confidence of social service professionals has increased when it comes to identifying and supporting the client's legal needs and has built strong relationships with the lawyers providing legal support.¹⁰⁵ Co-location and joint meetings helped build this trust.¹⁰⁶

Reduced vicarious trauma

- 3.28 Providing good legal advice and running a litigated matter require frank discussions with clients and often require lawyers to deliver complex or difficult news to clients who are already traumatised. Working together with social service professionals can provide therapeutic support to clients and support lawyers to maintain appropriate boundaries and work in trauma-informed ways.

CASE STUDY 3: Trauma-informed integrated legal assistance services can reduce vicarious trauma for professionals

A law firm partnered with a community service centre to provide pro bono legal assistance over the phone to asylum seekers. The lawyers were regularly required to deliver bad news to clients about their legal matters, and were struggling to do this in a trauma-informed way for clients with existing mental health risk factors. While the lawyers could refer clients to social service professionals within the community service centre, this support could only be provided separately to the meeting with the lawyer. The lawyers were concerned about their ability to meet their duty of care to clients and maintain their clients' trust, and as a result were experiencing high rates of burn out and vicarious trauma.

The community service centre trialled an integrated approach which enabled the pro bono lawyers to consult with social service professionals about how best to approach these difficult conversations with each client, and include social service professionals in their calls with their clients to offer direct support in the context of an existing therapeutic relationship. This meant the lawyers were able to maintain healthier professional boundaries, which reduced their levels of burn out and vicarious trauma.¹⁰⁷

Effective use of scarce legal resources

- 3.29 An international study has found that health justice partnerships engage people who are otherwise unlikely to seek help,¹⁰⁸ indicating that integrated legal assistance services can overcome significant access barriers faced by clients experiencing disadvantage.

103 First Step Legal, *Summary of Evaluation Findings* (Report, 2024) 4 <https://cdn.prod.website-files.com/64e6d2582dd4319151be6a26/67ec5ac37d4a49335a3fed5a_First-Step-Legal---Summary-Evaluation-Findings-2024.pdf>.

104 Ibid.

105 Sarah Loveday et al, 'Health Justice Partnership: An Opportunity to Respond to Childhood Adversity' (2025) 25(1) *International Journal of Integrated Care*, 10 <<https://pmc.ncbi.nlm.nih.gov/articles/PMC11951959/>>.

106 Ibid; First Step Legal, *First Step Legal - Final Evaluation Report* (Report, 2017) 9 <https://d3n8a8pro7vvhmx.cloudfront.net/firststep/pages/107/attachments/original/1525920080/VLSB_Final_Evaluation_Report-2017.pdf?1525920080>.

107 Preliminary Consultation 3 (Confidential).

108 Sarah Beardon et al, 'International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review' (2021) 42 *Public Health Reviews* 1603976, 7.

- 3.30 Integrated legal assistance services can also reduce duplication—such as through shared intake processes—and make it easier for clients to remain engaged with services over time. These efficiencies can help service providers address the substantial unmet demand for legal assistance.¹⁰⁹
- 3.31 A UK study found that where integrated legal assistance services address the client's underlying social issues, this may also produce social service system benefits, including shorter hospital admissions, reductions in prescription costs and a reduction in GP attendances.¹¹⁰ By stabilising the client's underlying circumstances in this way, integrated legal assistance services can also reduce the likelihood that people will re-enter the legal system with recurring or crisis-driven legal problems.

Benefits to the justice system

- 3.32 The benefits to the justice system may include reduced demand on courts and identification and reform of systemic problems.

Reduced demand on courts

- 3.33 By enabling early intervention and resolving issues at an earlier stage, integrated legal assistance services can prevent situations from deteriorating to the point where court proceedings are unavoidable, or where they reach crisis point and require protracted engagement with one or more courts.
- 3.34 In addition, by addressing the underlying causes of a client's legal problems, integrated legal assistance services may reduce the likelihood that clients return repeatedly to court over time. For example, where lawyers work closely with an alcohol and drug counselling service, a client may gain access to recovery programs that support them to stay sober and avoid breaking the law, potentially also reducing the need for ongoing involvement of agencies such as Child Protection.

Identification and reform of systemic problems

- 3.35 Integrated legal assistance services can create opportunities for systemic analysis, advocacy and reform. By working closely with social service providers, legal aid commissions and community legal centres are well placed to identify recurring legal problems and patterns of compounding disadvantage arising from the operation of the law in these contexts. These insights enable legal assistance and social service providers to move beyond individual casework to advocate for changes to laws, policies and practices that repeatedly contribute to poor outcomes for vulnerable groups.¹¹¹
- 3.36 Integrated models may also support effective systemic responses by allowing proposed reforms to be informed by, and tested against, frontline experience across disciplines. For example, Legally Minded—an integrated legal assistance service in Melbourne's north for people experiencing poor mental health—identified 'system change and service improvement' as a key benefit of its model, achieved through collaboration between legal and mental health professionals on both individual matters and advocacy efforts.¹¹²

109 Emily Millane, Angela Jackson and Nathan Blane, *Justice on the Brink: Stronger Legal Aid for a Better Legal System* (Report, November 2023).

110 Sarah Beardon and Hazel Genn, *The Health Justice Landscape in England & Wales: Social Welfare Legal Services in Health Settings* (Report, The Legal Education Foundation and UCL Centre for Access to Justice, 2018) 23 <https://www.ucl.ac.uk/laws/sites/laws/files/lef030_mapping_report_web.pdf>.

111 When using information for systemic reform, legal assistance service providers need to ensure that they do not inadvertently waive privilege when using case studies from clients in their advocacy work: *Munkara v Santos NA Barossa Pty Ltd (No 4)* [2024] FCA 414.

112 Laura Hayes et al, *Legally Minded: Understanding How Legal Intervention Can Improve the Lives of People with Mental Ill-Health* (Final Research Report, Mind Australia, March 2021) 19 <https://www.mindaustralia.org.au/sites/default/files/2023-06/Legally_minded_final_research_report.PDF>.

Questions

1. Integrated legal assistance services involve the delivery of legal and social services by professionals working for the same organisation or partnership.

Loosely integrated legal assistance services impose strict information barriers between lawyers and social service professionals providing services to clients. Closely integrated legal assistance services promote the joint delivery of legal and social services to clients at the same time, sometimes after obtaining client consent to potentially compromise privilege.

How easy or difficult is it to implement these two models of integrated legal assistance services in practice?

2. What are the benefits of integrated legal assistance services for clients, service providers and the justice system? Do you have case studies, examples or other evidence you can share?

4. Risks to legal privilege when providing integrated legal assistance services

- 4.1 As discussed in Chapter 2, legal privilege is a fundamental legal right that enables clients to keep confidential communications with their lawyer private. And as discussed in Chapter 3, integrated legal assistance services can ensure clients experiencing disadvantage secure the assistance they need to resolve their complex legal problems, resulting in a range of benefits to clients, service providers and the justice system. However, maintaining legal privilege while providing integrated legal assistance services is challenging on several fronts.
- 4.2 This chapter examines two key challenges to retaining privilege while providing integrated legal assistance services. The first is complying with the requirements of legal privilege by demonstrating that the communications were confidential and for a dominant legal purpose, and—if contested—establishing a claim of privilege.
- 4.3 The second challenge is that—when it is unclear whether legal privilege applies—social service professionals providing integrated legal assistance services alongside legal professionals may feel obliged to disclose those communications in accordance with the information disclosure obligations that ordinarily apply to their profession. While legally privileged communications are exempt from disclosure under these obligations, the lack of clarity regarding the application of the law on legal privilege to communications made in integrated legal assistance settings places social service professionals in a difficult situation when it comes to determining what information they should or should not reveal.

Complying with the requirements of legal privilege

- 4.4 Common law and legislation allow confidential client-lawyer communications involving a third party to be covered by legal privilege in certain circumstances. The circumstances in which third-party communications will be privileged are broader for communications made for litigation than for communications made for legal advice.
- 4.5 Third-party communications made for the dominant purpose of supporting a client's case at trial will often satisfy the requirements of litigation privilege. By contrast, where third-party communications are made to support the provision of legal advice, legal privilege will not apply if an 'equally important' non-legal purpose can be inferred from the related but distinct area of expertise on which the communications are based.¹¹³

- 4.6 For example, in integrated legal assistance services, communications made by a social service professional about a client's alcohol and drug counselling may attract privilege, where that treatment is a fact in issue in the client's case. However, communications that are not directly related to ongoing litigation but are nonetheless crucial to the client's ability to safely navigate the legal system might not attract privilege—such as communications about the client's accommodation needs. If these non-legal services were provided to support a client to obtain legal advice (rather than to prepare for litigation), neither communication is likely to attract privilege, owing to their 'distinctive function and purpose'.¹¹⁴
- 4.7 Applying the confidentiality requirement of legal privilege to the provision of integrated legal assistance services is equally difficult. A confidential conversation between a client, lawyer and social service professional for a dominant legal purpose is likely to attract privilege. It is less likely privilege will attach to the records that the social service professional makes, stores, shares and actions (to enrol the client in school, for example). While sharing privileged communications for a limited and confidential purpose may be consistent with the maintenance of privilege,¹¹⁵ it is unclear how broadly 'limited' and 'confidential' can be interpreted in the context of integrated service provision.
- 4.8 An additional challenge relates to the need for the party claiming privilege to establish that privilege exists, and the fact that the court's decision will depend heavily on the circumstances of each case. As indicated in Case Study 4, it can be a difficult and stressful exercise for people experiencing disadvantage to assert their right to privilege in court.

CASE STUDY 4: *Violent ex-partner subpoenaed records from loosely integrated legal assistance service*

An umbrella organisation is home to a range of services that help a particular group of people experiencing hardship, including a community legal centre (CLC) and a counselling service. The CLC is staffed exclusively by lawyers and paralegals, and the counselling service is staffed solely by social workers. Although staff from both services meet with clients at the same physical location when needed, they never meet clients together and have separate electronic and paper record keeping systems.

The CLC had previously acted for a mother, Anh*, in an immigration matter. With Anh's consent, they had referred her to the organisation's counselling service for assistance. A year after her immigration matter was finalised, Anh was a party to family law proceedings, in a context where, Lee*, her ex-partner and the father of her child, had been violent towards her over a long period of time. As part of these proceedings, Lee had subpoenas issued to the umbrella organisation. Both Anh and Lee were self-represented at the time the court first considered the subpoenas.

The organisation advised the court that it held two sets of documents but objected to the release of either set, arguing its counselling service records were protected under legislation regarding 'protected confidences', and its CLC records were protected by legal privilege.

Continued on next page

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The organisation provided evidence in support of the claim of legal privilege in the form of its accreditation as a community legal centre, its organisational structure and the strict information barriers in place.

The court heard arguments on the protected confidence and legal privilege arguments in two separate hearings. At the first hearing, the court determined the social work documents (records of confidential counselling) were not covered by qualified privilege, and ordered the organisation to make them available to Lee's lawyers. The court held that Anh's distress at Lee gaining access to this personal information could be managed by restricting access to Lee's lawyers.

The court also ordered that in advance of the second hearing, the organisation produce the documents to which it said legal privilege applied, and required that Anh (who was still self-represented) review the documents and decide whether to claim legal privilege over them, or whether Lee would be given access to them.

Anh could not afford private legal representation for the second hearing on legal privilege, but Lee had secured legal representation by that stage. The organisation's CLC secured legal representation for itself at the second hearing. The CLC felt compelled to do this due to the level of disadvantage Anh was facing without legal representation of her own, and because it considered that Lee's conduct in seeking these documents was part of a long pattern of family violence. This pattern included seeking to undermine Anh's mental health and parenting ability. Lee's attempts to access the information Anh had provided to support services caused her significant distress, as she feared he would 'weaponise' the confidential information about her distress while trying to escape him, to further undermine her position in their family court proceedings.

During the second hearing, despite the evidence already provided regarding the organisational structure and the strict information barriers in place, Lee's lawyer argued, without supporting evidence, that the information barriers within the organisation may not be secure and that the legal records may contain information that were not legally privileged. Lee's lawyer also argued that Anh had waived privilege over all the documents in question by signing the organisation's client agreement, which permitted the organisation to disclose confidential information if required in compliance with a court order or insurance obligations, and also because an affidavit which the CLC had assisted Anh to prepare had been filed in court in the immigration matter.

Ultimately, the court found the legal documents were legally privileged and did not allow Lee to access them.

Prior to this case, the CLC had considered increasing its level of integration with the counselling service to enhance their capacity to meet their clients' needs. After this case, it abandoned the idea.¹¹⁶

** Not their real name.*

Obligations to disclose information

- 4.9 In Victoria, social service professionals are required to disclose information in a number of contexts. Failing to comply with some obligations may amount to professional misconduct and result in dismissal, whereas failing to comply with others might also amount to a criminal offence.
- 4.10 If a client receives legal assistance and social services in the same room at the same time, and both parties keep records of the meeting, this may put the social service professional in a difficult position in relation to their information disclosure obligations. While legally privileged communications are exempt from these disclosure obligations, for the reasons outlined above it can be difficult to determine which communications are legally privileged and which are not. This means that, in some cases, social service professionals may inadvertently disclose privileged information, while in other cases they may fail to disclose information that should be disclosed because they mistakenly believe it is privileged.

Professional disclosure obligations

- 4.11 For more than a decade, there has been a policy shift in Victoria towards information sharing to combat risks of family violence and child abuse and prioritise the safety and wellbeing of victim survivors.¹¹⁷ As a result, social service professionals now have obligations under mandatory reporting, information-sharing schemes, and professional ethical codes. These obligations require social service professionals to share information that is confidential, but not privileged. However, if a client's legal privilege is compromised because they accessed integrated legal assistance services, social service professionals may be required to share confidential information that would otherwise be protected by privilege.¹¹⁸

Mandatory reporting

- 4.12 Under the *Children, Youth and Families Act 2005* (Vic), certain professionals must make a report to child protection if they form a belief on reasonable grounds that a child is at risk of significant harm due to physical injury or sexual abuse, where the child's parent is not acting 'protectively'.¹¹⁹
- 4.13 Some mandated reporters are professionals likely to participate in legal assistance partnerships, including:
- registered medical practitioners
 - nurses
 - midwives
 - registered teachers and school principals
 - registered psychologists
 - school counsellors.¹²⁰
- 4.14 These obligations are particularly significant for health justice and school lawyer programs.

117 Family Violence Reform Implementation Monitor, *Legislative Review of Family Violence Information Sharing and Risk Management: Reviewing the Effectiveness of Parts 5A and 11 of the Family Violence Protection Act 2008* (Vic) (Report, May 2023) 27–29 <<https://www.vic.gov.au/sites/default/files/2023-08/Legislative-review-of-family-violence-information-sharing-and-risk-management-2023.PDF>>; Ellie Florence and Angus Tonkin, 'A Moment of Reckoning: Recent Developments in Victoria's Child Safety Framework' (Research Note No 1, Parliament of Victoria, January 2026) 6–7.

118 The more limited circumstances in which solicitors and barristers may reveal non-privileged confidential information in Victoria is at paragraphs 2.43–2.45.

119 *Children, Youth and Families Act 2005* (Vic) s 184(1).
120 *Ibid* s 182.

Information sharing

- 4.15 The Child and Family Violence Information Sharing Schemes, established under the *Child Wellbeing and Safety Act 2005 (Vic)* and the *Family Violence Protection Act 2008 (Vic)* respectively, require 'Information Sharing Entities' to disclose information about risks to children and/or victims and people who use family violence.¹²¹
- 4.16 Information Sharing Entities under the schemes include:
- nurses
 - general practitioners
 - public health services (including midwives, psychologists and allied health workers in those services)
 - schools
 - state-funded services for alcohol and other drug use, homelessness, sexual assault, and specialist family violence support
 - registered community-based child and family services
 - state-funded financial counsellors¹²²
 - the Victorian Disability Worker Commission
 - settlement services for migrants, refugees and asylum seekers.
- 4.17 When the information relates to adult victim survivors of family violence, it can only be shared with their consent, except in certain high-risk circumstances. In addition, social service providers are prohibited from asking for, or providing, legally privileged information.¹²³
- 4.18 In practice, however, there is a risk that neither the client nor the social service professional would be alert to the fact that the information they are seeking to share is (or could be) privileged, and that they could reasonably decline a request to share that information. Further, in some circumstances, sharing information could amount to a waiver of privilege, even though this was not contemplated at the time.

Ethical obligations of social service professionals

- 4.19 Many social service professionals are subject to codes of ethics or professional rules set by their employer, by a peak body, or under an accreditation scheme, in addition to legal obligations relating to the sharing of confidential information. These typically state that information may be shared without client consent if there is a risk or threat of harm to any person. A failure to follow these obligations could result in professional sanctions.¹²⁴
- 4.20 These professional expectations could potentially create conflict between social service professionals seeking to share information, and legal professionals seeking to prevent the disclosure of information due to legal privilege concerns.

121 *Child Wellbeing and Safety Act 2005 (Vic)* pt 6A; *Family Violence Protection Act 2008 (Vic)* pt 5A.

122 Only in relation to the Family Violence Information Sharing Scheme.

123 *Child Wellbeing and Safety Act 2005 (Vic)* s 41Q(a)(v); *Family Violence Protection Act 2008 (Vic)* s 144C(e).

124 For example, Australian Association of Social Workers, *Australian Association of Social Workers Code of Ethics* (Report, 2020) rr 5.4.5 and 10.3

Crimes of non-disclosure

- 4.21 A person who fails to make a mandatory report under the *Children, Youth and Families Act 2005* (Vic) may be guilty of a crime, and subject to a fine.¹²⁵ This Act does not explicitly exempt those whose belief is based on legally privileged information, and it has not been tested in court. However, in keeping with the requirement for Parliament to express a clear intention to override legal privilege,¹²⁶ the better view is that it would be a defence to a charge of failing to report to argue that the information was covered by legal professional privilege.
- 4.22 Under the *Crimes Act 1958* (Vic), an adult who forms a reasonable belief that another person has committed (or attempted to commit) a sexual offence against a child under the age of 16, must report their belief to the police.¹²⁷ Failure to do so attracts a penalty of up to three years imprisonment.
- 4.23 A person will not be guilty of this crime if they have a reasonable excuse for failing to report their belief, or they are exempt.¹²⁸ Among the people who are exempt are those whose belief is based on information that is protected by client legal privilege,¹²⁹ or that was given to a medical practitioner or counsellor.¹³⁰
- 4.24 Given the serious consequences for failing to comply with these obligations, and the lack of clarity regarding the application of legal privilege, social service professionals providing integrated legal assistance services may err on the side of disclosing communications. However, disclosure may undermine the client's trust in their service provider, in addition to a range of other harmful consequences explored in Chapter 5.

Question

3. Integrated legal assistance services may compromise a client's ability to retain legal privilege and expose their private information, including through the professional reporting obligations of social service professionals.

Do you have case studies, examples or other evidence that demonstrate how easy or difficult it is for lawyers, social service professionals or clients to manage information disclosure requirements and requests in this context?

125 *Children, Youth and Families Act 2005* (Vic) s 184(1).

126 *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 90 [18] (Murphy J), 96 [16] (Wilson J), 116 [11] (Deane J).

127 *Crimes Act 1958* (Vic) s 327(2).

128 *Ibid* ss 327(5), 327(7).

129 *Ibid* s 327(7)(b).

130 *Ibid* s 327(7)(c).

5. Managing risks to legal privilege when providing integrated legal assistance services

- 5.1 As discussed in Chapter 4, uncertainty about how legal privilege applies to integrated legal assistance services—and how it interacts with professional disclosure obligations—creates a heightened risk that legal privilege will be inadvertently lost. This chapter examines how integrated legal assistance service providers manage that risk, and the costs and potential unintended consequences of these risk management strategies.
- 5.2 If legally privileged information is disclosed, the consequences may be extremely serious. The use of a client's information in child protection, family violence or family law proceedings may result in a criminal conviction, the removal of children, and further harm by a person using family violence.

Sector guidelines

- 5.3 The lack of certainty surrounding the application of the law on legal privilege to integrated legal assistance services makes it difficult for service providers to know which practices will undermine legal privilege, and which will not. For this reason, service providers have collaborated across the legal assistance sector to develop practice guidelines.
- 5.4 To address the complexities involved in the delivery of integrated legal assistance services, the Federation of Community Legal Centres created the Integrated Legal and Social Support Network. In 2018, the Network published the *Integrated Practice Toolkit* (the Toolkit) as a 'framework for understanding and minimising risks related to legal professional privilege and mandatory reporting in the context of integrated service models'.¹³¹
- 5.5 In 2021, Eastern Community Legal Centre (ECLC) released the *Integrated Practice—Better Practice Principles*.¹³² These principles do not explicitly address the risk of clients losing the protection of legal privilege, though they do recommend that integrated practice programs consider the challenges presented by client confidentiality.¹³³ The principles focus on mitigating risks through program design and obtaining client consent.¹³⁴

131 Federation of Community Legal Centres Victoria, *Integrated Practice Toolkit: A Guide to Help Understand Privilege and Mandatory Reporting in Integrated Practices* (Report, September 2018) 3.

132 Eastern Community Legal Centre, *Integrated Practice - Better Practice Principles* (Report, 2021) 9 <<https://eclc.org.au/wp-content/uploads/ECLC-Better-Practice-Principles-Integrated-Practice-Report.pdf>>.

133 Ibid.

134 Ibid.

Program design

- 5.6 To preserve legal privilege, the Toolkit suggests service providers consider implementing rigid service provision and information barriers between legal and social service professionals. On page 22, we described this model as loosely integrated.
- 5.7 The requirement for legal advice or litigation to be the dominant purpose for legal privilege to be preserved means that the Toolkit recommends that any joint meetings between lawyers, clients and social service professionals be structured 'so that the legal matters are the focus, with non-legal needs being addressed in a separate part of the meeting'.¹³⁵
- 5.8 If a client becomes distressed during an appointment with their lawyer, and the lawyer invites a social worker in to assess the client's social support needs, the Toolkit advises:
- Consider separating the meetings and making the client aware of the difference between the two meetings, particularly if the client is going to disclose something the social worker may be obliged to report if not protected by privilege.¹³⁶
- 5.9 On establishing information barriers, the Toolkit advises:
- Collaborating medical and legal teams must establish strict protocols including shadow files and firewalls to protect records of legal communications from becoming part of the medical records.¹³⁷
- 5.10 By protecting legal privilege in this way, however, service providers may overly constrain the operation of integrated service delivery and inhibit the timely and effective resolution of the client's legal and social needs.

Client consent

- 5.11 An alternative approach canvassed in *Integrated Practice–Better Practice Principles* is to inform clients about the potential loss of privilege as part of obtaining client consent to engage with the service. This may give legal assistance service providers the confidence to provide closely integrated legal assistance services, which we described in more detail on pages 22 and 24.
- 5.12 ECLC'S MABELS program, for example, which embeds legal assistance and family violence support in the maternal child health system, builds informed consent regarding legal privilege into the intake process:
- At intake, the woman is provided with the option of seeing either the family violence lawyer, the family violence advocate, or both in the one appointment. At this point, the woman is advised of the different roles and professional skills of the family violence lawyer and the family violence advocate as well as the potential benefits of having two different professionals working collaboratively. The woman is also made aware of the different professional responsibilities of each profession, including the possible implications on her right to legal professional privilege that the traditional lawyer-client relationship attracts. The woman is given a choice as to the type of service that she would like to receive based on her own assessment of her needs.¹³⁸
- 5.13 Given the complexity of the law on legal privilege and its application to integrated legal assistance services, this process inevitably adds to the cognitive load for clients already grappling with intersecting legal and social issues. Though entirely justifiable in the circumstances, the consent model places the burden on clients to make speculative decisions about potential future legal consequences that largely depend on the specific circumstances of each case.

135 Federation of Community Legal Centres Victoria, *Integrated Practice Toolkit: A Guide to Help Understand Privilege and Mandatory Reporting in Integrated Practices* (Report, September 2018) 10.

136 Ibid 9.

137 Paula Galowitz et al, 'Ethical Issues in Medical-Legal Partnership' in Elizabeth Tobin Tyler, et al (Eds) in *Poverty, Health and Law: Readings and Cases for Medical-Legal Partnership* (Carolina Academic Press, 2011) 173.

138 MABELS and Eastern Community Legal Centre, *'It Couldn't Have Come at a Better Time': Early Intervention Family Violence Legal Assistance* (Report, September 2018) <https://www.eclc.org.au/wp-content/uploads/ItCouldntHaveComeAtABetterTime-MABELS_EasternCLC.pdf>.

Consequences of risk mitigation

- 5.14 The ways in which integrated legal assistance service providers have been compelled to manage risks associated with legal privilege can themselves have adverse consequences. These include overly restricting service integration and exposing clients' confidential legal information, causing harm.

Overly restricting integration

- 5.15 Where legal and social service professionals are advised to limit joint meetings and information sharing, this can reduce meaningful service integration. It can undermine access to justice by limiting the support clients need to resolve complex socio-legal issues that require both legal and social expertise.¹³⁹
- 5.16 In practice, this may mean that a client with an intellectual disability is unable to have a trusted support worker present during a legal consultation, or that a lawyer feels compelled to disengage when discussions move beyond strictly legal matters, to avoid the risk of losing legal privilege.
- 5.17 When multiple professionals are involved but operate in isolation from one another, complex problems that depend on coordinated professional input may stagnate or remain unresolved.
- 5.18 Reduced integration can also shift the burden onto clients to reconcile conflicting advice from different professionals. The Commission has heard accounts of clients feeling uncertain about who to trust when legal and social service advice appears inconsistent, which can undermine confidence in both services.¹⁴⁰
- 5.19 Constraints on collaboration may also erode trust between professionals. An evaluation of a health justice partnership involving Inner Melbourne Community Legal Centre found that social workers believed they could provide more effective support—particularly to clients with cognitive impairment—if lawyers consistently shared information such as appointment dates, reminders and documentation requirements.¹⁴¹
- 5.20 These limitations may discourage early engagement with services, increasing the likelihood that legal issues go unidentified until they escalate.
- 5.21 Clients with the most complex needs—who would also benefit most from integrated support—are often the most adversely affected when service integration is limited because of concerns about legal privilege.

Exposing private legal information

- 5.22 Even where integrated legal assistance services rely on strict separation of service delivery and record management through information barriers, there remains a risk that records may be subpoenaed and confidential legal information exposed.
- 5.23 This risk is particularly acute for clients experiencing family violence, as subpoena processes can be used by perpetrators as a form of systems abuse, enabling ongoing control, surveillance, and boundary violations. As indicated in Case Study 4 on pages 31-32, the fear of a hostile party accessing personal information contained in integrated legal assistance service records can cause further harm and trauma to the client.
- 5.24 For clients in crisis, however, the hypothetical loss of legal privilege at some stage in the future is an abstract prospect, and usually a much lower priority than resolving their immediate problems. For clients experiencing disadvantage, accessing the wraparound support integrated legal assistance services can provide may be much more important in the short term.

139 See discussion of access to justice benefits at paragraphs 3.13-3.18.

140 Preliminary Consultation 1 (Confidential).

141 Inner Melbourne Community Legal, *Partners in Care: The Benefits of Community Lawyers Working in a Hospital Setting* (Report, 2018) 9 <https://imcl.org.au/assets/downloads/IMCL_report_FA_web.pdf>.

- 5.25 While consent processes may protect lawyers from liability where a client suffers harm following the loss of privilege in an integrated practice setting, they cannot mitigate the serious and foreseeable risks to clients arising from the disclosure of sensitive legal information.
- 5.26 Given the lack of clarity in the law governing legal privilege in integrated legal assistance service settings, it is difficult to accurately explain the scope of the privilege and the associated risks to clients. This raises concerns that clients may be unable to provide genuinely informed consent or may be overwhelmed by complex legal considerations in addition to their existing legal and personal challenges.

6. Approaches in other common law jurisdictions

- 6.1 A review of other common law jurisdictions reveals a range of approaches to reducing the tension that exists in Victoria between legal privilege and integrated legal practice.
- 6.2 Some overseas jurisdictions have restricted integrated legal practice, which removes the tension by preserving the traditional service delivery model in which legal privilege emerged.
- 6.3 The Northern Territory has restricted legal privilege in very specific circumstances, which removes the tension by exposing the client's information to scrutiny even when the client reveals that information to a lawyer.
- 6.4 Several Australian jurisdictions have adopted a professional confidential relationship privilege that coexists with legal privilege, which reduces the tension by enhancing the level of protection for social service professionals, including those working alongside lawyers providing integrated services.
- 6.5 New Zealand considered—but ultimately did not support—expanding legal privilege to protect communications with third parties involved in integrated legal practice. This would have removed the tension by protecting communications made by different types of professionals delivering integrated services.

Restrict integrated legal practice

- 6.6 In Canada, one of the 'greatest regulatory concerns' about multidisciplinary practice (or integrated legal practice) is the ability of clients and services to maintain legal privilege.¹⁴² Because of this, legal practice regulations do not permit lawyers to provide services with non-legal professionals in provinces other than British Columbia and Ontario.¹⁴³
- 6.7 This approach is not suitable in Victoria, as it is inconsistent with the Victorian Government's support for integrated legal assistance services.

Restrict legal privilege

- 6.8 In the Northern Territory, mandatory reporting obligations under the *Care and Protection of Children Act 2007* (NT) apply to all adults, 'despite any other ... law of the Territory'. Under these obligations, an adult must report any reasonably held belief of harm to a child, whether physical, sexual, or emotional, or due to neglect or exposure to family violence.

142 Canadian Bar Association, *Futures: Transforming the Delivery of Legal Services in Canada* (Report, August 2014) 44 <<https://cba.org/getmedia/a93c7208-99dc-48f8-a037-a5b3ee3266f0/Futures-Final-eng.pdf>>.
143 Ibid 40–44.

- 6.9 As all other laws are expressly overridden in the legislation, these obligations apply to lawyers, as well as social service professionals. Restricting legal privilege in this way removes some of the tension between lawyers and social service professionals providing integrated legal assistance services because the obligation to disclose is clear, regardless of who the information is disclosed to.
- 6.10 In all other integrated legal assistance service contexts in the Northern Territory, however, the lack of certainty remains in relation to which communications are privileged, and which are therefore excluded from the professional reporting obligations of social service professionals.
- 6.11 This approach is not suitable for further consideration in this inquiry as it is of limited benefit to the problem under review, and overriding legal privilege in this way would require a clear expression of intent from the government of the day.

Adopt a professional confidential relationship privilege

- 6.12 A number of professional privileges are enshrined in Australian legislation, including journalist privilege and religious confessions privilege. See Appendix A for a table of professional privileges across Australia.
- 6.13 A professional confidential relationship privilege exists in the Australian Capital Territory, New South Wales, Western Australia and Tasmania.¹⁴⁴ This privilege protects communications from disclosure where a professional party is under an obligation not to disclose them, including communications between a client and their doctor, psychiatrist or social worker. Unlike legal privilege, this privilege is qualified, meaning the court may compel disclosure if the desirability of the evidence being given is greater than the harm of disclosure to the client claiming privilege.
- 6.14 As this privilege coexists with legal privilege in the abovementioned jurisdictions, lawyers can rely on either privilege, as needed.¹⁴⁵
- 6.15 There appears to be considerable scope for lawyers to participate in client conversations with social service professionals without compromising professional confidential relationship privilege.¹⁴⁶ However, the fact that the presence of a social service professional may compromise legal privilege in those settings means that legal and social services must still be delivered separately,¹⁴⁷ unless it is in the client's best interests to deliver them jointly (in a crisis situation, for example) or the client consents.
- 6.16 Consequently, clients accessing loosely integrated legal assistance services in these jurisdictions enjoy professional confidential relationship privilege in relation to their communications with social services professionals, as well as legal privilege in relation to their communications with lawyers.
- 6.17 In 2005, a joint report by the Australian Law Reform Commission, New South Wales Law Reform Commission, and Victorian Law Reform Commission recommended that the Uniform Evidence Law be amended to include a professional confidential relationship privilege.¹⁴⁸ The Victorian Law Reform Commission again adopted this recommendation in the *Implementing the Uniform Evidence Act Report*, noting that the privilege has been operating in New South Wales since 1998.¹⁴⁹ To date, the Victorian Government has not introduced it.¹⁵⁰

144 See *Evidence Act 1995 (NSW)* ss 126A-126F; *Evidence Act 2001 (Tas)* ss 126A-126F; *Evidence Act 2011 (ACT)* ss 126A-126F; *Evidence Act 1906 (WA)* ss 20A-20F.

145 See *Urquhart v Lanham* [2003] NSWSC 109, [12].

146 See *Evidence Act 1995 (NSW)* s 126A(2) which states that 'a communication may be made in confidence even if it is made in the presence of a third party if the third party's presence is necessary to facilitate communication'.

147 See *Kang v Kwan & 2 Ors* [2001] NSWSC 698 where Santow J stated, 'It is not enough that the solicitor refrain from disclosing a privileged communication ... The lawyer's duty ... is to do that lawyer's best to ensure that a valid claim for privilege is not lost: at [30].

148 Australian Law Reform Commission, *Uniform Evidence Law: Report* (Report No 102, 2005) [15-1]-[15-3]. The Uniform Evidence Law is discussed further at paragraphs 759-760.

149 Victorian Law Reform Commission, *Implementing the Uniform Evidence Act - Final Report* (Report, 2006) [2.43]-[2.53].

150 Victoria, *Parliamentary Debates*, Legislative Assembly, 26 June 2008, 2636 (Rob Hulls, Attorney-General).

6.18 Although the Commission broadly affirms its support for the adoption of this privilege in Victoria, reconsidering its adoption in full is beyond the scope of this inquiry. However, considering a version of this privilege that solely applies to social service professionals providing integrated legal assistance services, is within scope. This forms the foundation of the first reform option set out in Chapter 7.

Expand legal privilege to accommodate integrated legal practice

- 6.19 The New Zealand Law Commission (Te Aka Matua o te Ture) considered expanding legal privilege to non-legal professionals providing integrated legal services in commercial settings, as well as non-legal professionals working alongside legal aid, community and pro bono lawyers.
- 6.20 The proposed reform would have established a two-tiered system of legal privilege—absolute privilege for communications made by legal and non-legal professionals for the purpose of litigation, and qualified privilege for communications made by legal and non-legal professionals for the purpose of obtaining legal advice.
- 6.21 After receiving unfavourable feedback, particularly in relation to the proposed loss of absolute privilege for clients seeking legal advice, and the resulting need to go to court to determine which communications were privileged and which were not, the New Zealand Law Commission recommended the law stay as it is.¹⁵¹
- 6.22 While this approach is beyond the scope of this inquiry (noting it also concerned commercial legal practice), considering a version of legal privilege that could potentially facilitate the full realisation of integrated legal assistance services is consistent with the position of the Victorian Government. This forms the foundation of the second reform option set out in Chapter 7.

7. Options for reform

- 7.1 As suggested throughout this paper, the law on legal privilege has not adapted to meet the needs of modern legal service delivery methods for people experiencing disadvantage.
- 7.2 People facing disadvantage are often not aware of the legal aspects of their problems, and do not always seek legal assistance.¹⁵² Embedding a lawyer in a hospital (for example) creates an entry point to legal assistance that a patient would not otherwise have. Even if a person does seek legal assistance, they are not always able to give informed and ongoing instructions to their lawyer, without additional support.
- 7.3 This creates a systemic catch-22. Without integrated legal assistance services, people experiencing disadvantage cannot take up the legal remedies available to them. Yet with integrated legal assistance services, people experiencing disadvantage are currently forced to jeopardise their fundamental right to legal privilege, undermining the effectiveness of the legal remedies now available.
- 7.4 In this chapter, we put forward two potential options for reform that would provide greater protection for confidential communications between clients experiencing disadvantage and professionals providing integrated legal assistance services. In doing so, each could potentially enhance access to justice.
- 7.5 The first option for reform is the creation of a professional privilege that would apply to social service professionals providing loosely integrated legal assistance services alongside—but apart from—lawyers. The potential privilege would operate side-by-side with legal privilege.
- 7.6 The second option for reform is the creation of a new category of legal privilege that would cover communications with lawyers and social service professionals jointly providing closely integrated legal assistance services to people experiencing disadvantage.
- 7.7 This chapter explores the possible scope, elements, eligibility requirements and implications of these reform options, with a view to seeking feedback on the issues that arise in relation to their operation and impact.

Option 1: A social service professional privilege

- 7.8 In loosely integrated legal assistance service settings, legal privilege is not at risk so long as the information barriers between legal and social services are maintained. A social service professional privilege could therefore sit alongside legal privilege (as it now operates), giving additional protection to confidential communications between clients and social service professionals in those settings.

Scope of the social service professional privilege

7.9 This section considers whether a potential social service professional privilege should apply to investigative bodies as well as court proceedings, and whether it should be qualified.

Should the privilege apply to investigative bodies?

7.10 If a legislatively enshrined social service professional privilege were introduced, consideration would need to be given to whether including it in the *Evidence Act 2008* (Vic) (Evidence Act) would be sufficient. Confining the privilege to court proceedings in this way would be consistent with all other non-legal professional privileges in Australia.¹⁵³

Should the privilege be qualified?

7.11 Professional privileges can be absolute, in which case they *must* be upheld if the requirements for the privilege are met, unless one of the few public interest exceptions apply (see paragraphs 2.28-2.29 for the circumstances in which legal privilege can be overridden). Or they can be qualified, in which case they *may* be upheld once a court has balanced competing interests identified in legislation.

7.12 Creating a qualified privilege would be consistent with all other non-legal professional privileges in Victoria, including journalist privilege and sexual assault communications privilege.¹⁵⁴ It is also consistent with professional confidential relationship privilege elsewhere.¹⁵⁵

7.13 As qualified privileges are vulnerable to being overridden by judicial discretion, the protection they provide is inherently uncertain. Claiming the privilege is also resource intensive, as it is harder to uphold without a judicial determination.

7.14 Recently, the release of counselling records of survivors of sexual assault by services such as 1800RESPECT has led to calls from the community for the sexual assault communications privilege to be upgraded to an absolute privilege. This is because 'accessing counselling records can fundamentally undermine the work of mental health services ... [and] discourage victims from seeking help when they need it the most'.¹⁵⁶

7.15 Other than legal privilege, the only professional privileges in Australia that are absolute are medical communications privilege in the Northern Territory and Tasmania, and sexual assault communications privilege, also in Tasmania.¹⁵⁷ In these circumstances, the government has seemingly decided that the public benefit of ensuring people who need these services can access them without fear of exposure is greater than the public benefit of information being available in associated court proceedings.

Elements of the social service professional privilege

7.16 The potential privilege would attach to confidential communications between a client and social service professional providing integrated legal assistance services. This section asks how 'confidential', 'communications' and 'integrated legal assistance services' should be defined.

153 Gino Dal Pont, *Law of Confidentiality* (LexisNexis, 2nd ed, 2020) para 18.9.

154 See *Evidence Act 2008* (Vic) s 126K (journalist privilege); and *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32C (confidential communications privilege).

155 See *Evidence Act 1995* (NSW) ss 126A-126F; *Evidence Act 2001* (Tas) ss 126A-126F; *Evidence Act 2011* (ACT) ss 126A-126F; *Evidence Act 1906* (WA) ss 20A-20F.

156 Rachael Burgin and Gemma Hamilton, 'Rapists' Lawyers Are Using Their Victim-Survivors' Counselling Notes in Court. This Needs to Stop', *The Conversation* (online, 30 March 2026) <<https://theconversation.com/rapists-lawyers-are-using-their-victim-survivors-counselling-notes-in-court-this-needs-to-stop-279314>>.

157 See Table 1: Australian Professional Privileges in Appendix A for more information.

What should confidential mean?

- 7.17 It is often necessary for social service professionals to use a client's confidential information, with consent, to advocate on their behalf to other organisations. For example, a financial counsellor may share a client's circumstances of family violence with a debt collection agency to prevent inappropriate debt recovery practices. It could be considered necessary for a social service professional privilege to protect such disclosures as the use of information in this way is key to the delivery of integrated legal assistance services.
- 7.18 In addition, social service professionals can currently share client information with lawyers, but lawyers cannot share client information with social service professionals for fear of compromising legal privilege. Without a broad definition of confidential, the potential social service professional privilege may reduce how much information social service professionals can share with lawyers in integrated legal assistance service settings.

Which communications should be protected?

- 7.19 Given the diversity of social services provided alongside legal services in integrated settings, protecting all confidential communications between clients and social service professionals in these settings would provide the most certainty. Although this covers communications made about a range of topics and for a range of purposes, the breadth of protection afforded by non-legal professional privileges is balanced by the broad circumstances in which they can be overridden.¹⁵⁸

What should integrated legal assistance services mean?

- 7.20 National funding agreements for legal assistance services are confined to free legal services funded by government—those being, legal aid and community legal services.¹⁵⁹ However, pro bono services provided by private lawyers also play an important role in enhancing access to justice for people experiencing disadvantage. For this reason, we have included pro bono services in the definition of legal assistance services in this report.
- 7.21 For the purposes of enshrining a social service professional privilege in legislation, any definition of legal assistance services should include services provided by Victoria Legal Aid and community legal centres. It is less clear whether the definition should include services provided by pro bono practices in commercial law firms in their own right (that is, as distinct from when they partner with Victoria Legal Aid or a community legal centre). A definition of legal assistance services that included pro bono lawyers could potentially create integrity risks, as clients could attempt to use the privilege for commercial gain rather than to support access to justice.¹⁶⁰
- 7.22 The range of social service providers that work alongside lawyers providing integrated legal assistance services is extensive and difficult to list exhaustively. A useful starting point may be the professional confidential relationship privilege, which requires that the confidant is acting in a professional capacity and is under an express or implied obligation not to disclose the contents of a communication.¹⁶¹

¹⁵⁸ See, for example, *Evidence (Miscellaneous Provisions) Act 1958* (Vic) s 32D balancing the 'probative value' and the 'public interest in preserving the confidentiality' and harm to a protected person, in relation to the sexual assault communications privilege in Victoria; or *Evidence Act 1995* (NSW) s 126B balancing likely harm with the 'desirability of the evidence being given', in relation to the professional confidential relationship privilege in New South Wales.

¹⁵⁹ Commonwealth of Australia and the States and Territories, *National Access to Justice Partnership Agreement 2025-30* (Report, November 2024) <<https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2025-09/agreement-national-access-to-justice-partnership-signed.pdf>>.

¹⁶⁰ For more on the court's position on the application of legal privilege in commercial multidisciplinary practice settings, see paragraphs 7.71-7.75.

¹⁶¹ *Evidence Act 1995* (NSW) s 126A(1).

Eligibility for the social service professional privilege

- 7.23 Service providers rely on professional privileges until a court (or investigative body, in the case of legal privilege) compels the production of certain communications, and the client or service provider objects on account of privilege. The court then determines if the privilege applies. A social service professional privilege could operate in the same way.

Implications of the social service professional privilege

- 7.24 This section considers the benefits and disadvantages of a qualified privilege, including in relation to the existing disclosure obligations of social service professionals discussed in Chapter 4.

Limited protection for client information

- 7.25 Historically, qualified privileges have been overturned by courts or under-used by eligible parties because they are poorly understood.¹⁶² As shown in Case Study 4 on pages 31-32, the qualified privilege was not upheld in relation to the client's counselling records, whereas the absolute privilege was upheld in relation to the client's legal records.
- 7.26 If the potential privilege were qualified, clients may not feel assured that their private information is adequately protected from disclosure. However, social service professionals and service providers may welcome the flexibility this provides when it comes to adhering with existing information disclosure requirements, especially when it comes to revealing potential harm to children.

Impact on obligations to disclose information

- 7.27 A qualified social service professional privilege would not impact the mandatory disclosure obligations of some social service professionals, although it could potentially override discretionary ethical obligations, such as a duty to report safety risks.

Option 2: A new category of legal privilege incorporating social service professionals

- 7.28 A new category of legal privilege could attach to confidential communications made between a client, lawyer and social service professional for the purpose of accessing integrated legal assistance services.
- 7.29 At common law, legal privilege can only be expanded to incorporate novel circumstances if doing so would further, rather than impede, the administration of justice.¹⁶³ Where the delivery of social services is critical to the safe and accessible provision of legal services in integrated legal assistance service settings, the new legal privilege appears to meet this criterion.
- 7.30 When extending legal privilege to third parties supporting the provision of legal advice in *Pratt Holdings v Commissioner of Taxation*, Justice Finn observed that denying legal privilege to an 'under-resourced client' who must rely on third parties to obtain effective legal advice (because they do not have the knowledge or expertise themselves) would 'undercut the privilege itself'.¹⁶⁴

162 Royal Commission into Institutional Responses to Child Sexual Abuse, *Criminal Justice Report: Parts VII-X and Appendices* (Report, 2017) 258 <https://www.childabuseroyalcommission.gov.au/sites/default/files/file-list/final_report_-_criminal_justice_report_-_parts_vii_to_x_and_appendices.pdf>.

163 *R v Bell; Ex parte Lees* [1980] HCA 26; (1980) 146 CLR 141, 151–52 [12] (Stephen J), see also 161 [7] (Wilson J).

164 *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 368 [42]–[44].

Scope of the new legal privilege

- 7.31 This section considers whether the potential privilege should apply to court proceedings and investigative bodies, and whether it should be absolute.

Should the privilege protect clients before courts and investigative bodies?

- 7.32 As discussed in Chapter 2, the common law mostly protects client information from disclosure to government investigative bodies, like child protection, whereas the Evidence Act mostly protects client information from disclosure to courts.
- 7.33 Allowing clients to access the new legal privilege in one context but not the other may be difficult to justify. It may also be unworkable because a service provider could not adopt practices that would be protected by the potential privilege in one arena, while simultaneously extinguishing the privilege in the other arena.

Should the privilege be absolute?

- 7.34 An absolute privilege would be consistent with the level of protection afforded under the current law on legal privilege. The justification for the absolute nature of legal privilege is its role in furthering the administration of justice, the fact that a lawyer's duty to the court and the administration of justice is paramount, and the fact that lawyers who breach this duty are subject to harsh sanctions.¹⁶⁵
- 7.35 A qualified privilege for legal and social service professionals would reduce protection for clients accessing integrated legal assistance services and require clients to establish their claims for privilege more often in court.

Elements of the new legal privilege

- 7.36 This section considers the legal elements of the new privilege, including what integrated legal assistance services should mean, and whether the new privilege should include a safety exception.

Which communications should be protected?

- 7.37 Client legal privilege in the Evidence Act protects 'communications' with third parties for the purpose of litigation, but only 'documents' prepared by third parties for the purpose of legal advice. Given the nature of the services the potential privilege is aiming to protect, it may be desirable to protect all communications, including documents, as this would provide greater certainty for both clients and service providers.

What should confidential mean?

- 7.38 Information shared between a client, lawyer and social service professional is likely to be considered confidential as there is an expectation of confidentiality in integrated legal assistance service settings. However, confidentiality in the context of a new legal privilege may also need to allow for the sharing of information for a contained purpose.
- 7.39 As discussed at paragraph 7.17, it is often necessary for social service professionals to use a client's confidential information to advocate on their behalf to other organisations. The potential privilege may need to protect such disclosures to adequately support the delivery of closely integrated legal assistance services.

What should the purpose of the communications be?

- 7.40 Any purpose test would need to be framed broadly to reflect the range of reasons clients use integrated legal assistance services. At a minimum, 'obtaining legal services' would need to be an 'appreciable purpose' of the communications¹⁶⁶ or, alternatively, 'obtaining integrated legal assistance services' could be the 'dominant purpose' of the communications.

What should integrated legal assistance services mean?

- 7.41 Once again, it would seem reasonable to align the definition of legal assistance services with the existing national funding agreement for those services.¹⁶⁷ Determining whether the definition should include pro bono services in their own right is more difficult, as is defining 'integrated'.
- 7.42 A new legal privilege would need to address the heightened risk to legal privilege that currently arises in relation to closely integrated legal assistance services. This model may operate in a single organisation employing both legal and social service professionals, or through formal partnerships between separate organisations delivering services jointly, such as a health justice partnership. Presumably, clients of both program types should benefit from the protection of the privilege.
- 7.43 The range of social services that may be integrated with legal assistance services is broad. While services such as financial counselling would fall within scope, it is less clear whether adjacent professions—such as financial advisers—should be included. Any definition of integrated legal assistance services may need to distinguish between professional roles that sufficiently support access to justice, and those that do not.
- 7.44 A related issue concerns the clients who receive the services, and who would benefit from the protection of the privilege. The legal assistance sector is funded to provide services to groups of people that are marginalised and a priority for government. This paper has used the term 'people experiencing disadvantage' in keeping with the term first used in the national funding agreement.¹⁶⁸ While specifically defining this term for the purpose of the privilege may also be difficult, such precision may not ultimately be necessary.
- 7.45 This is because the way in which the privilege is implemented would affect the scope of integrated legal assistance services it covers. For example, limiting the privilege to clients of Victoria Legal Aid and community legal centres would provide operational clarity and integrity, but may also exclude clients of pro bono lawyers unless they partnered with those bodies. It would also necessarily determine which clients the privilege would apply to. This is discussed further at paragraphs 7.52-7.56.

Should there be a safety exception?

- 7.46 If introduced, a new legal privilege would displace the reporting and information sharing obligations of social service professionals discussed in Chapter 4. While the privilege is intended to provide protection to people experiencing disadvantage, consideration must also be given to the safety of those the reporting and information sharing obligations are designed to protect, including children at risk of harm.

166 When just one of the purposes of a communication had to be legal for privilege to apply, it had to be an appreciable or substantial purpose: *Esso Australia Resources v Commissioner of Taxation* [1999] HCA 67, (1999) 201 CLR 49, 66 [39] (Gleeson CJ, Gaudron and Gummow JJ).

167 Commonwealth of Australia and the States and Territories, *National Access to Justice Partnership Agreement 2025-30* (Report, November 2024) <<https://federalfinancialrelations.gov.au/sites/federalfinancialrelations.gov.au/files/2025-09/agreement-national-access-to-justice-partnership-signed.pdf>>.

168 Council of Australian Governments, *National Partnership Agreement on Legal Assistance Services* (Report, 26 July 2017) <<https://www.ag.gov.au/legal-system/publications/national-partnership-agreement-legal-assistance-services>>.

- 7.47 The rules that permit legal professionals to disclose confidential information where there is a risk of personal harm have a significantly higher test than the reporting and information sharing obligations that currently apply to social service professionals.¹⁶⁹ Applying the standard of legal professionals to all professionals providing integrated legal assistance services would reduce the ability of service providers to disclose information about a person at risk of harm.
- 7.48 An exception to the privilege could be introduced that allows, or possibly requires, professionals in possession of privileged information to share that information to prevent harm to the client or others. The critical question is what level and type of harm should be required to permit disclosure.
- 7.49 In Canada, the Model Code of Professional Conduct allows a solicitor to disclose privileged information where there is an imminent risk of serious bodily harm or death, which is still a considerably high threshold.¹⁷⁰
- 7.50 The High Court of Australia overrode legal privilege in *R v Bell* because of the higher public interest in 'securing the welfare of a child' in family law proceedings.¹⁷¹ This supports the general proposition of including a safety exception for children.
- 7.51 A 2021 review of the Solicitors' Conduct Rules considered whether psychological or financial harm should be able to be disclosed by legal professionals, in addition to physical harm.¹⁷² Consideration should also be given to whether threats of self-harm, as opposed to threats of harm to others, should be included, noting self-harm is not illegal, whereas harm to others is.

Eligibility for the new legal privilege

- 7.52 Uncertainty surrounding the application of the law on legal privilege remains, despite significant work by the community legal sector to develop practice guidelines for integrated legal assistance services (see paragraphs 5.3-5.13). Providing greater certainty about when the new legal privilege could be relied upon could be a key benefit of the privilege.
- 7.53 Enshrining the privilege in legislation, while otherwise allowing it to operate in the same way as legal advice and litigation privilege under common law and legislation, may not provide the required certainty and integrity. Under the current law, it may take lengthy and costly litigation to determine whether a communication is privileged. Departing from one of the few fixed elements of the current law on privilege—that being the traditional context in which legal privilege most obviously applies—might exacerbate its contestable nature.
- 7.54 Creating a framework to determine, in advance, when the privilege would apply, may help provide certainty and clarity. Clients of legal assistance providers or programs that meet a set of predetermined criteria would then be able to rely on the privilege.
- 7.55 One option would be to establish an accreditation framework under which an organisation or program could be recognised as an integrated legal assistance service provider for the purpose of relying on the new legal privilege. This option would allow services to 'opt-in' to the framework and could be implemented through existing accreditation mechanisms for legal assistance services to limit costs.
- 7.56 Another option for determining which organisations or programs could rely on the privilege would be to establish a regulatory scheme that authorises a government minister to designate eligible organisations or programs. This could be done through an application process or built into funding agreements. While this option would also provide considerable certainty and integrity, it may also require significant administrative and financial resources.

169 *Legal Profession Uniform Conduct (Barristers) Rules 2015; Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015*.
 170 Federation of Law Societies of Canada, *Model Code of Professional Conduct* (Report, April 2024) r 3.3-3.
 171 *R v Bell; Ex parte Lees* [1980] HCA 26; (1980) 146 CLR 141, 146 [8] (Gibbs J).
 172 Law Council of Australia, *Review of the Australian Solicitors' Conduct Rules* (Report, 5 May 2021) 41-49, which found that 'further consultations will be necessary [regarding] whether the Rule 9 exceptions should apply to psychological and financial harm'.

Implications of the new legal privilege

- 757 Creating a new legal privilege for integrated legal assistance services in Victoria may create problems for clients whose legal matters cross multiple jurisdictions, place an additional financial burden on the strained resources of the legal assistance sector, and increase demands on professionals delivering those services.
- 758 Expanding legal privilege to incorporate social service professionals in integrated legal assistance service settings may also give rise to misplaced concerns about the potential application of legal privilege to integrated legal services in commercial contexts.

Inconsistency with other Australian jurisdictions

- 759 Australia's Commonwealth, State and Territory governments sometimes adopt uniform laws to ensure national consistency. The Legal Profession Uniform Law discussed at paragraphs 2.44-2.46 is one such law,¹⁷³ and the Uniform Evidence Law on which Victoria's legislation is based, is another.¹⁷⁴
- 760 Uniformity across Australia's evidence laws aims to make it easy for lawyers to reliably and confidently apply evidentiary requirements across state and federal jurisdictions. Nonetheless, the evidence law of each Australian jurisdiction is somewhat different to the others.¹⁷⁵
- 761 As the privilege would be contained in Victorian legislation, it would apply to matters heard in Victorian courts. Integrated legal assistance service providers operating solely in this jurisdiction would be able to rely on it in their service delivery.
- 762 The privilege would not apply to matters in other states or territories. Victorian integrated legal assistance service providers operating across state borders would not be able to rely on the privilege for fear of inadvertently extinguishing their client's privilege elsewhere. For example, an accused person charged with drug-related offences may access a legal assistance service provider in Albury-Wodonga that provides integrated legal and alcohol or other drug services. Where charges were laid in Victoria, the client would be able to rely on the new legal privilege to protect information they provided and received in a joint meeting with the legal and social service professionals. However, where charges were brought in New South Wales, that same information would not be protected because the privilege would not apply.
- 763 There is a question as to whether the new legal privilege would apply in federal courts sitting in Victoria, such as the Federal Circuit and Family Court. Section 79 of the *Judiciary Act 1903* (Cth) allows for state laws relating to evidence and court procedures to be 'picked up' and applied in federal proceedings being heard in that state, where there is 'a gap' in federal laws.¹⁷⁶
- 764 The new legal privilege, which would form part of Victorian evidence law, may be the kind of law capable of being picked up by section 79. As we have highlighted, the law on legal privilege has not kept pace with the development of integrated legal assistance services. In this respect, it could be argued that the current construction of legal privilege contains a gap. If a federal court could be persuaded that federal evidence law has a similar gap, the privilege may be able to be relied on in federal court proceedings heard in Victoria, in the same way the privilege would apply to Victorian proceedings.
- 765 If this were accepted, clients accessing integrated legal assistance services would be able to rely on the privilege when accessing support for both state and federal law matters, such as family violence law (a state matter) and family law (a federal matter).

173 Applied in NSW and Victoria, see *Legal Profession Uniform Law Application Act 2014* (Vic).

174 See *Evidence Act 1995* (Cth); *Evidence Act 1995* (NSW); *Evidence Act 2001* (Tas); *Evidence Act 2008* (Vic); *Evidence Act 2011* (ACT); *Evidence (National Uniform Legislation) Act 2011* (NT).

175 Attorney General's Department, *Uniform Evidence Acts Comparative Tables* (Report, 27 August 2015) <<https://www.ag.gov.au/legal-system/publications/uniform-evidence-acts-comparative-tables>>.

176 *Rizeq v Western Australia* [2017] HCA 23; (2017) 262 CLR 1.

- 7.66 In federal courts not sitting in Victoria, the privilege would not apply and could not be picked up by section 79, as that section can only apply Victorian laws to federal proceedings heard in Victoria.
- 7.67 Adopting the privilege nationally would remove this inconsistency.

Potential financial burden on the legal assistance sector

- 7.68 If a new category of legal privilege were introduced, it would operate as an additional protection for those who access integrated legal assistance services. While some service providers may not want to fully integrate their services and make use of the privilege, additional administration and training costs may impose a financial burden on those who do. The new category of privilege may also give rise to litigation testing the circumstances in which the privilege applies. This would impose a further financial burden on clients and service providers.

Impact on professionals

- 7.69 If introduced, the new legal privilege would likely create a dual system of protections and obligations for lawyers and social service professionals providing legal assistance services. Many service providers deliver independent and integrated services for clients simultaneously. For example, a community legal centre may provide services to clients that are not integrated (in which case the current two categories of legal privilege would apply) while also providing a closely integrated health justice program (where the new legal privilege could also apply). Additional processes, case management systems and training may be required for professionals working in these services to manage the practicalities of dual protections and obligations.
- 7.70 In addition, social service professionals may feel uneasy about the extent to which the new legal privilege would override their professional disclosure obligations. A carefully designed safety exception may go some way to addressing this concern.

Exclusion of integrated legal services in commercial contexts

- 7.71 The courts' position on the application of legal privilege to integrated legal services in commercial contexts is clear.
- 7.72 In the recent case of *Commissioner of Taxation v PricewaterhouseCoopers*, Justice Moshinsky recognised claims of privilege over some documents prepared by lawyers and non-lawyers in a large integrated legal services firm, while rejecting claims of privilege over others. The documents that attracted privilege were deemed to have been made for the dominant purpose of obtaining legal advice, whereas those that did not were deemed to have been made for some other commercial purpose.¹⁷⁷
- 7.73 In reaching this decision, Justice Moshinsky cited the following observation from *Pratt Holdings*:
- Advice as to commercially advantageous ways to structure a transaction are extremely unlikely to attract privilege because the purpose in putting the advice together will, in most cases, be quite independent of the need for legal advice. Even if the parties have in mind that the advice will be submitted to a lawyer for comment, the purpose is unlikely to be the dominant purpose.¹⁷⁸
- 7.74 Similarly, in *Mann v Carnell*, Justice McHugh observed that 'in commercial relationships, it is often convenient and useful for legal advice to be circulated among non-lawyers who are not officers or employees of the client which owns the privilege'.¹⁷⁹ Privilege will not attach to this advice because 'the client who does so is furthering his, her or its personal corporate interests, not the administration of justice'.¹⁸⁰

¹⁷⁷ *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [209]-[220].

¹⁷⁸ *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122; (2004) 136 FCR 357, 387 [107] (Stone J, with Merkel J agreeing); cited in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, [166].

¹⁷⁹ *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1, 38 [121].

¹⁸⁰ *Ibid.*

775 As suggested throughout this paper, the provision of free legal and social services for people experiencing disadvantage is necessary to ensure access to justice and is therefore consistent with the administration of justice. As such, expanding legal privilege to integrated legal assistance services is distinct from the above decisions limiting the application of privilege to third-party communications in commercial contexts. Consequently, expanding legal privilege to integrated legal assistance services would have few, if any, implications for the application of legal privilege in those contexts.

Questions

4. Should the law enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance service settings? Why or why not?
5. Are you in favour of establishing:
 - a. a social service professional privilege that would enhance protection for communications between clients and social service professionals in loosely integrated legal assistance service settings and/or
 - b. a new category of legal privilege that would enhance protection for communications between clients, lawyers and social service professionals in closely integrated legal assistance service settings?Why or why not?
6. If you support a social service professional privilege for loosely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?
7. If you support a new category of legal privilege for closely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

We are particularly keen to hear your views on the definition of integrated legal assistance services, eligibility requirements for the privilege, a safety exception to the privilege, and the implications of the privilege for social service professionals.

8. Next steps

- 8.1 Law reform commissions review the law independently of government so they can recommend reforms that modernise the law in line with contemporary community views, and with rigorous analysis. They do this by researching widely, consulting extensively, and engaging with experts to design practical, evidenced-based reforms for government consideration.
- 8.2 The Commission now invites your views on the questions raised throughout this paper and listed on [page 8](#). You can share your views by making a written submission or consulting with us. More information on how to engage with the Commission can be found on [page 9](#).
- 8.3 The Commission's final report will be presented to the Attorney-General for consideration in 2027.
- 8.4 To allow the Commission time to consider your feedback before finalising recommendations, we ask that you to share your views with us by **Monday 3 August 2026**.

Appendix A: Australian professional privileges

Table 1: Australian Professional Privileges

Privilege	Victoria	Commonwealth	Australian Capital Territory	New South Wales
Client legal privilege	<i>Evidence Act 2008 (Vic)</i> ss 118-126 *	<i>Evidence Act 1995 (Cth)</i> ss 118-126 *	<i>Evidence Act 2011 (ACT)</i> ss 118-126 *	<i>Evidence Act 1995 (NSW)</i> ss 118-126 *
Professional confidential relationship privilege	N/A	N/A	<i>Evidence Act 2011 (ACT)</i> ss 126A-126F	<i>Evidence Act 1995 (NSW)</i> ss 126A-126F
Sexual assault communications privilege	<i>Evidence (Miscellaneous Provisions) Act 1958 (Vic)</i> ss 32B-32CF	N/A	N/A	<i>Evidence Act 1995 (NSW)</i> ss 126G-126I <i>Criminal Procedure Act 1986 (NSW)</i> ss 295-306
Journalist privilege	<i>Evidence Act 2008 (Vic)</i> ss 126J-126K	<i>Evidence Act 1995 (Cth)</i> ss 126J-126K	<i>Evidence Act 2011 (ACT)</i> ss 126J-126L	<i>Evidence Act 1995 (NSW)</i> ss 126J-126L
Religious confessions privilege	<i>Evidence Act 2008 (Vic)</i> s 127	<i>Evidence Act 1995 (Cth)</i> s 127	<i>Evidence Act 2011 (ACT)</i> s 127	<i>Evidence Act 1995 (NSW)</i> s 127
Medical communications privilege	N/A	N/A	N/A	N/A

* Privilege is absolute

Privilege	Northern Territory	Queensland	South Australia	Tasmania	Western Australia
Client legal privilege	<i>Evidence (National Uniform Legislation) Act 2011 (ACT)</i> ss 118-126 *	Common law* <i>Right to Information Act 2009 (Qld)</i> s 7 sch 3 *	Common law *	<i>Evidence Act 2001 (Tas)</i> ss 118-126 *	Common law * Soon to be <i>Evidence Act 2025 (WA)</i> ss 149-157 *
Professional confidential relationship privilege	N/A	N/A	N/A	<i>Evidence Act 2001 (Tas)</i> ss 126A-126F	<i>Evidence Act 1906 (WA)</i> ss 20A-20F Soon to be <i>Evidence Act 2025 (WA)</i> ss 158-162
Sexual assault communications privilege	<i>Evidence Act 1939 (NT)</i> ss 56-56G	<i>Evidence Act 1977 (Qld)</i> ss 14C-14J	<i>Evidence Act 1929 (SA)</i> ss 67D-67F	<i>Evidence Act 2001 (Tas)</i> s 127B *	<i>Evidence Act 1906 (WA)</i> ss 19A-19M Soon to be <i>Evidence Act 2025 (WA)</i> ss 164-177
Journalist privilege	<i>Evidence (National Uniform Legislation) Act 2011 (NT)</i> s 127A	<i>Evidence Act 1977 (Qld)</i> ss 14Q-14ZB	<i>Evidence Act 1929 (SA)</i> ss 72-72C	N/A	<i>Evidence Act 1906 (WA)</i> ss 20G-20L Soon to be <i>Evidence Act 2025 (WA)</i> ss 178-184
Religious confessions privilege	<i>Evidence (National Uniform Legislation) Act 2011 (NT)</i> s 127	N/A	N/A	<i>Evidence Act 2001 (Tas)</i> s 127	N/A
Medical communications privilege	<i>Evidence Act 1939 (NT)</i> s 12 *	N/A	N/A	<i>Evidence Act 2001 (Tas)</i> s 127A *	N/A

* Privilege is absolute

Legal Privilege and Integrated Legal Assistance Services

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