SUBMISSION TO THE VICTORIAN LAW REFORM COMMISSION

LEGAL PRIVILEGE AND INTEGRATED LEGAL ASSISTANCE SERVICES:

CONSULTATION PAPER, JUNE 2026

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PART A: Introduction and Overview of Submitting Organisation

1. Monash Law Clinics (MLC) submits this response to the Victorian Law Reform Commission's Consultation Paper on Legal Privilege and Integrated Legal Assistance Services. We strongly welcome this inquiry, which addresses tensions that sit at the heart of our work.

2. MLC is a community legal centre that works in collaboration with a number of partner organisations to deliver integrated legal assistance services to people experiencing disadvantage across metropolitan Melbourne. Legal services at MLC usually involve law students working with a supervising lawyer.

3. Our three integrated programs are:

    a. The Lawyer-Assisted Family Dispute Resolution program (LAFDR), which partners MLC with family dispute resolution (FDR) services and community legal centres. Here MLC lawyers assist parties in family dispute resolution, conducted by accredited FDR practitioners, enabling a coordinated legal and dispute resolution response to family law matters, many of which involve family violence.
    b. The cohealth Monash Legal Assistance Service (cMLAS), a health justice partnership (HJP) between MLC and cohealth where law students and qualified supervising lawyers are embedded within cohealth's multidisciplinary community health teams, serving clients experiencing concomitant health and legal issues including family violence, family law, debt, homelessness, tenancy, financial matters, substituted decision-making, and end-of-life and safety planning.
    c. The MLC and Monash Social Work Clinics collaboration (MSWC), in which supervised law students work alongside supervised social work students, each under the supervision of qualified professionals, to provide integrated legal and social support to shared clients.

4. Additionally, MLC is one of the few Victorian community legal centres that operates a specialist tax law clinic known as the Monash Tax Law Clinic (MTLC). The MTLC is a part of the National Tax Clinic program that is supported and funded by the Australian Taxation Office. As part of its mandate to provide free legal services to taxpayers, the MTLC routinely works cooperatively with other non-legal providers, including accountants, tax/BAS agents, financial counsellors, social workers and other social services professionals, to ensure that taxpayers receive the holistic services they need. Presently, the MTLC model aligns with the Cooperative Model, though future iterations could see this specialist clinic develop to become either loosely or closely integrated.

5. Together, these programs give us a broad and grounded perspective on the challenges this inquiry addresses. We have experienced the constraints that legal privilege requirements place on integrated service delivery across a range of settings, client cohorts, and models of integration. We have grappled with the consent and disclosure framework in practice. We have observed the challenging effects that legal uncertainty has on our capacity to provide the most effective service possible to vulnerable cohorts.

6. At the outset, we note that this submission focuses on the professionals and students whose position under existing privilege doctrine is uncertain. Namely: social service professionals, health professionals, family dispute resolution practitioners, and supervised social work students working alongside lawyers in integrated settings. These professionals and students have their own various professional obligations and regulatory frameworks.

7. We do not address in detail the position of law students acting under the supervision of a solicitor. Their status as agents or extensions of the supervising lawyer is well established in the existing case law and

8. the operation of the *Legal Profession Uniform Law*, and their communications are already protected by legal professional privilege through that supervisory relationship.

9. Nor do we address the common law as it pertains to non-lawyers providing ancillary advice at the request of a lawyer in the circumstances set out in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278 (25 March 2022). Again, the law applying in these circumstances is reasonably settled. The challenge this submission addresses is distinct: it concerns the other professionals in the integrated service environment whose involvement may compromise privilege and whose own communications with shared clients lack adequate protection.

10. We strongly support reform in this area and support both options proposed in the consultation paper. We regard Option 2 (a new category of legal privilege for closely integrated legal assistance services) as the priority reform, complemented by Option 1 for loosely integrated settings. Our submissions on the design of those reforms include observations specific to the particular complexities arising in family violence, where safety planning for victim survivors and children is central to decision-making. We also address the status of social service professionals and supervised students in integrated environments, as well as the operation of the dominant purpose test in settings where multiple legitimate purposes coexist.

PART B: Question 1: How easy or difficult is it to implement the loosely integrated and closely integrated models of integrated legal assistance services in practice?

11. Our programs collectively demonstrate the range of implementation challenges that arise across different integration models. The legal uncertainty we identify is threefold: uncertainty about

    a. when and how information may be disclosed in integrated settings;
    b. whether the integrated service environment itself compromises privilege; and
    c. which professionals and students are recognised as being within the protection of the existing privilege doctrine.

The LAFDR Program

12. The LAFDR program presents a distinct set of implementation challenges arising from the intersection of two overlapping legal frameworks: the confidentiality and without prejudice protections applicable to family dispute resolution under the *Family Law Act 1975* (Cth) (ss 10H and 10J) and the requirements of legal professional privilege. MLC lawyers partner with accredited FDR practitioners (FDRPs) who may not have a legal background. In this context, the FDRP operates as an independent professional within their own regulatory framework and professional obligations. They work with MLC lawyers in a coordinated but distinctly separate role.

13. At the time of establishing each partnership, practitioners meet to discuss each of their roles and obligations for all processes, including communication outside of mediation sessions. Lawyers and FDRPs clearly understand their roles during mediation and protect privilege by advising clients in breakout or private rooms where they meet separately.

The cohealth Health Justice Partnership

14. The cohealth Monash Legal Assistance Service (cMLAS) operates primarily as a closely integrated model. Supervised law students and supervising solicitors work within cohealth's multidisciplinary health teams. They attend case conferences and care team meetings, share information with health and social service professionals where appropriate, and collaborate on safety planning and risk management. This integration is not incidental to the program design: it is the program design. We cannot effectively address our clients' legal problems in isolation from their health and social circumstances.

15. However, the closely integrated nature of the program means that legal privilege is consistently at risk. Every joint meeting, every case conference note, and every piece of shared information potentially compromises a client's ability to demonstrate that their communications with their lawyer were confidential and for a dominant legal purpose. Managing this risk requires ongoing vigilance and consumes scarce resources. Despite our best efforts, the position is frequently uncertain. It also creates a difficult tension with our integrated service partner because legal privilege creates an absolute barrier in communication in some circumstances. This is very challenging in situations where safety is a priority, and closer collaboration might assist.

16. An additional complexity specific to our program is the involvement of supervised law students. As noted above, the position of law students acting under solicitor supervision as agents of the supervising solicitor for privilege purposes is well established in principle. However, we note that this has not been specifically tested in the integrated legal assistance context, and explicit confirmation in any new legislative framework would provide welcome certainty for clinical legal education programs.

The MLC and Monash Social Work Clinics Collaboration

17. The collaboration between MLC and MSWC raises a further question that the Consultation Paper does not address: whether supervised social work students count as 'social service professionals' for the purpose of either reform option. These students are not yet qualified professionals. It is therefore unclear whether they would fall within the definition of professionals eligible for the proposed social service professional privilege (Option 1), or within the scope of those involved in closely integrated legal assistance services for the purpose of the new legal privilege (Option 2).

18. The question matters practically. Our social work students, like our law students, perform substantive work under close professional supervision: they conduct client interviews, develop safety plans, and provide psychosocial support that is integral to the legal assistance our law students and supervising solicitors deliver. If they were treated differently from their qualified supervisors for privilege purposes, the result would be an arbitrary gap in protection and a disincentive to the development of this innovative model of intra-university integrated service delivery.

The Monash Tax Law Clinic

19. Unlike the integrated clinics above, the MTLC currently aligns more closely to the cooperative model. Having regard to the nature of its work, however, and the services it is typically called upon to provide, it is easily conceivable (and arguably desirable) that the MTLC could move to a more integrated service delivery model.
20. In the event that move were to happen, the same legal uncertainty would arise as it does for the other clinics. Namely: uncertainty about when, and the extent to which disclosure could happen; whether privilege would be compromised by involving non-legal providers in overall service delivery via MTLC; and uncertainty about which professionals and students are recognised as falling within the protection of existing privilege doctrine. This uncertainty and the difficulties of resolving it would likely be a

disincentive to MTLC moving to an integrated model, and that could be at the cost of a better service proposition for those most in need of assistance concerning tax problems.

PART C: Question 2: Benefits of Integrated Legal Assistance Services - What are the benefits of integrated legal assistance services for clients, service providers and the justice system?

Benefits to clients

21. Across all programs, the central benefit to clients is access. For many of our clients, the pathway to legal assistance runs through a health service, a social work clinic, or a family dispute resolution process. They would not otherwise seek, or be able to effectively use, legal help.

22. In cMLAS, embedding legal services within a trusted health setting reaches clients who face significant barriers to accessing conventional legal services, including poverty, trauma, cognitive impairment, language barriers, and deep distrust of formal institutions. For these clients, the presence of a familiar health professional who can introduce and support engagement with a lawyer is not a convenience but a precondition for access.

23. In the MLC and MSWC, clients benefit from the distinctive combination of legal and social work expertise in a way that treats their problems holistically. Social work students bring skills in psychosocial assessment, trauma-informed communication, and systems navigation that complement and enhance the legal assistance law students provide. The collaboration models the interdisciplinary approach that complex disadvantage requires.

24. In the LAFDR program, lawyer assistance enables clients, including many who are experiencing or at risk of family violence, to participate in FDR processes that would otherwise be unsafe or inaccessible for them. The combination of legal advice, and dispute resolution support in a coordinated framework reduces the power imbalances that can undermine the effectiveness and safety of FDR for vulnerable parties.

25. In the MTLC, the problems encountered are typically extremely serious. They tend to have a disproportionate impact on the most vulnerable in our community and, certainly when left unattended, these problems can (and often will) result in taxpayers being entrenched in their situations of vulnerability. A multidisciplinary approach through an integrated service delivery model is frequently the most promising response.

The educational dimension

26. Our programs serve an important educational function that should be recognised. Law students who work in genuinely integrated health, social work, FDR and tax practice settings develop capacities (trauma-informed communication, multidisciplinary collaboration, understanding of the social determinants of legal problems) that conventional law school education cannot provide.

27. While the MTLC makes its primary contribution to law and justice by meeting unmet legal need in the community, specifically in relation to taxation, it also aims to equip future lawyers (and those with whom they might work) to more deeply understand and engage with the human impact of taxation. Students are encouraged to reflect on how, and the extent to which, the tax and commercial laws are used as a weapon to perpetrate abuse and violence, how they can work with other professionals to recognise when that may be happening, and how effective collaboration might alleviate it.

28. That collaboration begins within the clinical setting itself, which would ideally include non-law students, such as social work students working alongside law students. Restricting integration for privilege reasons impoverishes the educational experience and produces graduates who are less able to serve clients experiencing disadvantage throughout their careers.

29. Intra-university collaborations between law and social work clinics represent an innovative model of clinical legal education that other institutions may wish to adopt. A legal framework that fails to protect these collaborations will deter their development nationally.

PART D. Question 3: Do you have case studies, examples or other evidence that indicate how easy or difficult it is to manage information disclosure requirements and requests in an integrated legal assistance context?

30. Managing the intersection of legal privilege and professional disclosure obligations is one of the most significant operational challenges across all of our programs. We identify five specific issues.

Mandatory reporting in cMLAS

31. Many of cohealth's health professionals are mandated reporters under the *Children, Youth and Families Act 2005* (Vic) and hold reporting obligations under the *Crimes Act 1958* (Vic). When a client discloses information in a joint meeting (with a lawyer, a health professional, and potentially a supervised law or social work student) that triggers or potentially triggers a mandatory reporting obligation, the team faces acute uncertainty. It is important to be clear: mandatory reporting obligations will always prevail over privilege. Parliament has made this unambiguous, particularly in the wake of the Royal Commission into Institutional Responses to Child Sexual Abuse. The issue for integrated services is not whether mandatory reporting trumps privilege (it does) but rather the operational difficulty of managing information flows in real time in integrated settings where the boundaries between privileged and non-privileged communications are unclear.

    In practice, the situation leads to imperfect responses: separating joint meetings at the moment of disclosure, asking clients to repeat information separately, or declining to operate in a closely integrated way. Each response reduces service quality and increases burden on the client. These defensive measures arise not from uncertainty about whether reporting obligations override privilege but from uncertainty about whether the information shared in an integrated context is privileged at all and about the implications for the professionals involved if they cannot determine that question in real time.

Information sharing in cMLAS

32. cohealth is an Information Sharing Entity (ISE) under both the Child and Family Violence Information Sharing Schemes. While those schemes prohibit ISEs from seeking or sharing legally privileged information, neither cohealth's health professionals nor our lawyers can reliably determine in real time whether information in an integrated setting is privileged. Our professionals must make that determination in real time, with potentially serious consequences for clients if they get it wrong.

Case Study 1: Lawyer–Client Privilege in a Health Justice Partnership

One client sought assistance after exhausting his avenues to remain lawfully in Australia. He faced the prospect of immigration detention and removal. At the same time, he was experiencing homelessness, poorly managed diabetes and other chronic health conditions, significant psychological distress, financial hardship, and substantial language barriers.

His limited education and the complexity of Australia's immigration system made it difficult for him to understand his legal position. The legal strategy extended beyond providing immigration advice. The multidisciplinary team sought to assist the client to understand his legal options, while also preparing him for the possibility that he may ultimately need to return to his country of origin.

Through cMLAS the client was connected with a lawyer, a social worker from his community and a community health nurse who managed his chronic health conditions. Together, the team hoped to facilitate referrals to international resettlement organisations that could assist the client if he chose to return voluntarily. In the team's view, this approach offered the client a significantly better prospect of a safe and supported transition than the alternative of involuntary removal without coordinated assistance.

Joint appointments necessarily involved practitioners who were not part of the legal team and whose professional obligations differed from those of the lawyers. Each practitioner maintained separate clinical or professional records, creating uncertainty about whether information discussed during multidisciplinary meetings would remain protected by legal professional privilege or instead become part of non-privileged health or social work files capable of disclosure in future legal processes.

The status of supervised students

33. Our programs involve supervised law students and supervised social work students. Neither group consists of qualified professionals. If law students are not treated as agents of the supervising solicitor, their communications with clients, including substantial preparatory work, may be unprotected. If social work students are not treated as social service professionals, the protections proposed in either reform option may not cover their communications at all. We are not aware of any authority that resolves these questions in the integrated legal assistance context.

Case Study 2: Integrated Legal and Social Work Practice in a Student Clinic

MLC delivers an integrated legal and social work service through an interdisciplinary clinical education model. Clients receive support from law students supervised by lawyers and social work students supervised by qualified social workers. While this model offers significant benefits for clients with complex and intersecting legal and social needs, it also exposes a fundamental challenge arising from the differing professional and ethical obligations governing each discipline.

Ideally, both the law and social work students would attend the client's initial intake appointment together. This would enable the client to tell their story once, allow each discipline to ask questions relevant to their professional role, and facilitate coordinated supervision and service planning.

The presence of social work students and supervisors during an initial legal interview may jeopardise the confidentiality necessary to maintain privilege because, unlike members of the legal team, they are subject to a different professional regulatory framework. As a result, clinics commonly conduct separate legal and social work intakes.

This creates practical and ethical consequences. Clients are often required to recount highly personal and traumatic experiences multiple times. Information is filtered through the legal team before being shared with the social work team, preventing social work students and supervisors from asking questions during the client's initial narrative and limiting their ability to undertake holistic assessment at the earliest opportunity. Additional appointments are frequently required.

For student practitioners, the situation is equally challenging. MLC and MSWC students must navigate different professional obligations while attempting to provide genuinely collaborative, client-centred care.

This example illustrates how professional and legal obligations designed to protect clients may, in integrated service settings, inadvertently create barriers to trauma-informed, efficient and collaborative service delivery.

Case Study 3: The Impact of Differing Professional Obligations on Client Disclosure

A client attended MLC's integrated legal and social work clinic seeking advice about parenting arrangements following separation from a violent former partner. The clinic is staffed by law students supervised by lawyers and social work students supervised by qualified social workers, working collaboratively.

Ordinarily, this integrated part of MLC's practice seeks to provide holistic, trauma-informed support by involving both disciplines in a client's matter, working simultaneously. However, because of the differing professional obligations owed by lawyers and social workers, the supervising lawyer determined that the initial legal interviews should be conducted without the social work team present. The lawyer considered it unrealistic to expect law students, who were themselves still learning the boundaries of legal professional privilege and confidentiality, to explain adequately to a distressed client which parts of a conversation should be protected by privilege and therefore not be disclosed in the presence of social work practitioners.

During the initial legal interview, the client disclosed concerns about ongoing family violence, coercive control, and incidents affecting her children. She also revealed information that she had not previously shared with any service provider because she feared intervention by child protection authorities. Knowing that her conversation with the lawyer was protected by legal professional privilege enabled her to speak openly about the circumstances giving rise to her legal problem.

The supervising lawyer was then faced with a difficult decision about how to facilitate the client's access to social work support. To engage the integrated social work service, the client would need to recount aspects of her experiences to professionals who were subject to different ethical and legal obligations, including mandatory reporting obligations in circumstances involving risks of significant harm to children.

When this was explained, the client declined to engage with the social work service and instructed that information concerning the children's circumstances not be shared beyond the legal team. She expressed concern that discussing the full extent of the family violence and its impact on the children could trigger reports to child protection authorities. As a consequence, the social work team was unable to undertake an independent assessment or provide early therapeutic and practical support.

The LAFDR and the interaction of FDR confidentiality with legal privilege

34. In LAFDR, our lawyers must navigate the relationship between legal professional privilege and the confidentiality protections applicable to FDR communications under the *Family Law Act 1975* (Cth). These frameworks are not identical, and their interaction remains unsettled. FDR practitioners have their own professional obligations regarding disclosure, which do differ from those applicable to lawyers.

35. Where both professionals are present in joint sessions, clarity about which framework governs which communications and what disclosure is required or permitted is frequently unavailable. We note that recent amendments to FDRP legislation in the *Family Law (Family Dispute Resolution Practitioners) Regulations 2025* may clarify aspects of these obligations, and the Commission should consider the interaction between any new privilege framework and these updated regulatory provisions.

36. The family law context adds particular urgency. Many of our LAFDR clients are experiencing family violence, and while an adverse party is unable to rely on any records from mediations, there is no protection from information being divulged if parties are self-represented in further negotiations or litigation. Our lawyers advise clients about that risk but cannot give reliable assurances about the extent of protection available.

Collaboration and information sharing in the MTLC

37. Some clients present to the MTLC in a state of very high anxiety about their situation. Sometimes that anxiety is the result of the client having experienced 'referral fatigue'. Some clients will associate the prior on-referral(s) with an understanding of the tax problem as 'too hard to fix', which often makes them highly sensitive to receiving adverse advice or difficult guidance. Indications of self-harm are not uncommon in the MTLC and, indeed, are becoming more frequent. Such clients require a cautious response from practitioners and students within the MTLC, and sometimes more than they are themselves equipped to provide.

Case Study 4: The use of a multidisciplinary team to deliver difficult tax advice to a highly sensitive client

A client presented to the MTLC with both federal and state taxation debts arising from the purchase of an existing dwelling in circumstances where the client was not a permanent resident of Australia. Combined, the debts exceeded $100,000.00, and interest was compounding and accruing daily. Additionally, he had been statutorily ordered to dispose of the dwelling by a particular date.

The client resided in the dwelling with his wife and young children, all of whom were refugees and who, since arriving in Australia, had been involved in a serious accident which exacerbated existing trauma. The client resolutely maintained that he would not dispose of the dwelling nor allow it to be taken from him, as it was the only place in the world where his family could be safe and recover from their past trauma. Self-harm was indicated.

Since the tax law situation was very difficult to manage, MTLC made arrangements for the client to be supported by other professionals during the meeting at which he was to be provided with tax law advice. The originally conceived team was to be a trauma-informed legal practitioner, a financial counsellor and/or a social worker/counsellor/psychologist from the cMLAS team. Noting the potential problems with disclosure to non-legal professionals, the decision was taken to limit involvement to legal professionals only, who would provide assurance of access to non-legal professionals after the meeting. The compromise preserved privilege, but at the cost of the coordinated multidisciplinary response the client's circumstances plainly called for: the professionals best equipped to support a client at risk of self-harm were excluded from the very meeting at which the most difficult advice was to be delivered.

PART E. Question 4: Should the law enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance service settings?

38. Yes, unequivocally. Our experience across the three distinct integrated programs of MLC and the collaborative model of the MTLC confirms the case for reform.

39. The current law of legal privilege was developed in a context that does not describe our clients. It assumes a client who can engage with a lawyer independently, give coherent instructions, and maintain a clearly bounded relationship with their legal representative. For people experiencing family violence, homelessness, mental ill-health, substance use, language barriers, cognitive impairment, or limited literacy, this assumption may not be justified. Effective legal assistance for these clients is integrated legal assistance. A privilege doctrine that protects only clients who can access legal services in isolation from other support is a doctrine that provides systematically less protection to those who need it most.

40. It may be suggested that existing doctrines already protect these communications and that no new privilege is required. In our submission, they do not. Common interest privilege depends on a shared legal interest between the parties to the communication, which a health professional, social worker or family dispute resolution practitioner does not hold. The agency principle protects third parties who facilitate the communication between lawyer and client, such as interpreters and experts, but it does not extend to the independent professional contribution that a social service professional makes within an integrated service.

41. We submit that the Commission should consider a broader application of the concept of 'agent' in the integrated service context, one that encompasses not only trainees but also social workers, health professionals, and other practitioners who are engaged to further the provision of legal assistance to the client within a defined integrated program. The dominant purpose test continues to defeat the mixed-purpose communications that are characteristic of integrated practice, where legal assistance is one of several legitimate and simultaneous purposes. A communication may have many purposes, but if none is dominant, the test is not satisfied. This is the precise difficulty that integrated services face.

42. The consequence is that practitioners in our programs manage privilege risk through the imperfect and defensive measures described above, including separating joint meetings at the point of disclosure and limiting what is recorded. Those measures are themselves evidence that existing doctrine does not reach these communications. If it did, they would be unnecessary.

43. The Consultation Paper correctly identifies a systemic catch-22 (paragraph 7.3). Our programs experience it daily, across different settings and client cohorts. Our programs experience it daily, across different settings and client cohorts. In each case, the structure of the choice imposed on clients (integrated services or legal protection, but not both) is unjustifiable. It reflects a gap in the law that has grown as integrated service delivery has developed and that law reform is well placed to address.

44. The Victorian and Commonwealth governments have invested in integrated legal assistance services because the evidence demonstrates they improve access to justice and client outcomes. A legal framework that undermines those services is inconsistent with that investment. We submit that law reform should bring the law of legal privilege into alignment with contemporary legal service delivery and contemporary understandings of access to justice.

PART F Question 5: Are you in favour of establishing (a) a social service professional privilege and/or (b) a new category of legal privilege incorporating social service professionals?

45. We support both options. We regard them as complementary reforms that address different aspects of the problem, and we urge the Commission to recommend both.

46. Option 1 (social service professional privilege) is particularly relevant to cMLAS in its loosely integrated operation, where strict information barriers mean legal privilege is preserved but clients' communications with cohealth health professionals remain unprotected. A social service professional privilege would provide important protection in those settings. It is also the appropriate vehicle for addressing the status of supervised social work students in MSWC when they are operating separately from legal professionals.

47. Option 2 (new category of legal privilege) is the priority reform. It is essential to enable close integration in cMLAS, MLC and MSWC Collaboration, and the LAFDR program without requiring clients to choose between integrated services and the protection of their fundamental legal rights. Our most detailed submissions on design are directed at this option.

48. We do not regard the New Zealand Law Commission's decision not to recommend equivalent reform as a decisive reason against proceeding. The concerns that influenced that decision, particularly the proposed loss of absolute privilege in the legal advice context, can be addressed in the design of the new privilege, as we discuss below.

PART G: Question 6: Do you have a view on the scope, elements, eligibility requirements or implications of a social service professional privilege? (Option 1.)

Absolute rather than qualified privilege

49. We submit that the social service professional privilege should be absolute rather than qualified, though we acknowledge this position carries risks that warrant careful consideration. A qualified privilege that may require judicial determination to enforce provides inadequate protection for clients who are already poorly resourced and frequently unrepresented.

50. The Consultation Paper's reference to recent community concern about the release of counselling records from 1800RESPECT reflects a broader understanding that qualified privilege for sensitive health communications is insufficient for vulnerable clients. Our clients deserve at least equivalent protection.

51. However, we recognise the potential dangers of absolute privilege: it admits of no exception, and there may be exceptional circumstances, particularly involving children's safety, where the rigidity of absolute protection creates tension with other fundamental obligations. We invite the Commission to consider whether the safety exception discussed below, or another carefully calibrated mechanism, can address those concerns while preserving the strength of protection that vulnerable clients require.

Application to investigative bodies

52. The privilege should apply to investigative bodies as well as courts. Our clients are subject to scrutiny by child protection services, the police, and administrative decision-makers. Limiting the privilege to court proceedings would leave a significant protection gap.

Supervised social work students

53. Any definition of social service professionals eligible for the privilege should expressly include supervised social work students working under the direct supervision of a qualified social worker within an accredited integrated legal assistance program. This is essential to the viability of the MLC and MSWC collaboration and any similar intra-university or intra-organisational model. The supervision relationship, which governs the student's conduct and creates professional accountability, provides a sufficient basis for extending the privilege.

Definition of social service professionals

54. The definition should be broad enough to encompass the full range of professionals working in integrated legal assistance settings. In our experience, this range includes social workers, medical practitioners, nurses, midwives, psychologists and other mental health clinicians, allied health professionals, alcohol and other drug workers, financial counsellors, specialist family violence advocates, and accredited family dispute resolution practitioners. We note, however, that care must be taken in drafting this definition. Many of these professionals (including general practitioners, nurses, mental health clinicians, and allied health professionals) are more accurately described as health service professionals than social service professionals, and their inclusion should be explicit rather than left to the interpretation of a term that does not naturally describe them. We submit that a starting point of 'a professional person under an express or implied obligation not to disclose the contents of a communication', as in the NSW professional confidential relationship privilege, should be supplemented by a non-exhaustive list of included professions spanning both social service and health service professionals and an express extension to supervised students working under qualified professionals in accredited programs.

55. A combined functional and enumerated approach would also draw the boundary the Commission identifies at paragraph 7.43 between professional roles that sufficiently support access to justice and those that do not: each of the professions we have named is engaged to address the health, safety or social circumstances that prevent a client from effectively obtaining legal assistance, and each operates under a professional framework that imposes confidentiality obligations. A financial counsellor who assists a client experiencing economic abuse meets both criteria, while a financial adviser retained for commercial advantage does not meet either.

56. Implementing a privilege that spans these professions will require consideration of, and potentially amendments to, the distinct regulatory frameworks under which each operates. Medical practitioners, nurses, midwives and psychologists are registered under the Health Practitioner Regulation National Law and subject to its mandatory notification regime.

57. Social workers are not a registered profession under that Law: their practice is governed by accreditation through the Australian Association of Social Workers (AASW) and the AASW Code of Ethics, the same accountability framework on which our submissions concerning supervised social work students rely. Family dispute resolution practitioners are accredited under a Commonwealth framework, the Family Law (Family Dispute Resolution Practitioners) Regulations 2025 (Cth).

58. Financial counsellors practise under a Commonwealth framework of a different kind again: their agencies operate under a licensing exemption in sub-regulations of the Corporations Regulations 2001 (Cth) and the National Consumer Credit Protection Regulations 2010 (Cth), the title 'financial counsellor' is protected by statute, and practitioners must be accredited members of their state association. Mental health clinicians are additionally subject to the *Mental Health and Wellbeing Act 2022* (Vic). Many of these professionals are also mandated reporters under the *Children, Youth and Families Act 2005* (Vic) or prescribed as ISEs under the Child and Family Violence Information Sharing Schemes. The Commission should address the consequential legislative amendments required to ensure coherence across this landscape: a privilege that names these professions without addressing how it sits alongside their registration, accreditation, reporting and information-sharing frameworks would simply relocate the uncertainty the reform is intended to resolve.

PART H: Question 7: Do you have a view on the definition of closely integrated legal assistance services, eligibility requirements, the safety exception, and implications for social service professionals?

Definition of closely integrated legal assistance services

59. We submit that the definition should capture: (a) a single organisation that employs both lawyers and social service professionals to deliver integrated services; (b) formal partnerships between separate organisations, such as cMLAS, where lawyers and social service professionals deliver services jointly under a formal arrangement; and (c) integrated service models operating within clinical education programs, where supervised law students and supervised social work or other professional students deliver services jointly under the supervision of qualified professionals. All three program types present the same privilege risk and deserve the same protection.

60. The definition should not require that legal advice be the dominant purpose of the communications. That requirement is precisely what the reform is designed to address. The current dominant purpose test poses particular difficulties for integrated services because a communication may serve multiple legitimate purposes simultaneously (legal, health, social welfare, and dispute resolution) without any single purpose being dominant. We submit that a communication should attract the new privilege if obtaining integrated legal assistance services is an 'appreciable purpose', consistent with the formulation the Consultation Paper identifies at paragraph 7.40, reflecting the reality that integrated services necessarily serve multiple legitimate purposes simultaneously.

61. We anticipate a concern that a communication made in the presence of a social service professional cannot be confidential, and that the participation of a third party either negates confidentiality or evidences that any privilege has been waived. That concern reflects the operation of the common law privilege, and it does not govern the statutory privilege we propose.

62. A new category of privilege may define its own confidentiality condition, and we submit that the condition should be assessed by reference to disclosure outside the accredited closely integrated service, not disclosure within it. Within such a service, the other professionals are not outsiders to the client's legal relationship. They are participants in the very modality through which a client experiencing disadvantage is able to obtain legal assistance at all.

63. This approach is consistent with the established treatment of interpreters and other agents who facilitate lawyer-client communication, whose involvement has never been understood to destroy privilege. Defining confidentiality by reference to the boundary of the accredited service confines the privilege to the integrated settings the reform is intended to protect, and provides a clear and administrable test for courts and practitioners.

The LAFDR context: FDR practitioners as social service professionals

64. We submit that accredited family dispute resolution practitioners should be recognised as social service professionals for the purpose of the new privilege when they are participating in lawyer-assisted FDR within an accredited integrated legal assistance program. FDR practitioners hold professional qualifications, operate under ethical codes and confidentiality obligations, and play a role in LAFDR that is functionally equivalent to the role of health or social service professionals in other HJP models: they provide specialised expertise that enables the client to safely and effectively address their legal matter.

65. The FDR context also raises the question of how the new privilege would interact with the confidentiality and without-prejudice protections under the *Family Law Act 1975* (Cth). We submit that the new privilege and the *Family Law Act* protections should operate concurrently, with the new privilege providing protection in contexts, including before investigative bodies and in state proceedings, where the *Family Law Act* protections do not apply. The Commission should address this interaction expressly in its recommendations, to avoid uncertainty that would undermine the effectiveness of both frameworks.

Federal jurisdiction

66. The Consultation Paper raises the question of whether a new privilege enshrined in Victorian legislation would apply in federal proceedings, including family law proceedings in the Federal Circuit and Family Court of Australia. We submit that this is a critical question for our LAFDR program, which serves clients in family law proceedings, a federal jurisdiction.

67. We support the Consultation Paper's suggestion that the new privilege may be capable of being 'picked up' by section 79 of the *Judiciary Act 1903* (Cth) in federal proceedings heard in Victoria. However, we submit that the Commission should expressly recommend that the Victorian and Commonwealth Attorneys-General work together to ensure the privilege applies consistently in federal family law proceedings. Integrated legal assistance services, including LAFDR, are not confined to state law matters, and a privilege that protects clients in state proceedings but not federal ones would leave a fundamental gap for some of our most vulnerable clients.

Eligibility and accreditation

68. We support the accreditation framework approach. Certainty about eligibility is itself a significant benefit of the reform: it would allow our programs to operate with confidence rather than managed uncertainty.

69. An accreditation framework should recognise Victoria Legal Aid and its funded programs, accredited community legal centres, formal partnership programs involving those bodies, and clinical legal education programs operating through accredited university law schools in partnership with health, social service, or FDR organisations. The framework should expressly address collaborative models involving supervised law and social work students, confirming that supervised students working under qualified professionals within accredited programs can rely on the privilege.

70. We note that law school clinical programs are subject to a high degree of professional oversight: supervising solicitors bear professional responsibility for the work of supervised students under the Legal Profession Uniform Law. This level of accountability is at least as robust as the oversight that applies to qualified professionals in other integrated settings, and provides a sound basis for extending the privilege to clinic programs.

The holder of the privilege and waiver

71. Because integrated services necessarily involve several professionals, the legislation should confirm that disclosure by another member of the integrated team, acting within the service and in accordance with agreed protocols, does not constitute waiver by the client. This is essential to the reform's coherence: a privilege that could be lost through the routine operation of the integrated service it is designed to protect would offer clients little practical security.

72. The same principle governs the interaction with compelled disclosure. Where a professional is required to disclose information under a mandatory reporting obligation or an information sharing scheme, the privilege must yield to that specific statutory duty. We submit, however, that such compelled disclosure should not waive the privilege for any other purpose or proceeding.

73. A statutory modification to this effect, confirming that disclosure compelled by a reporting or information sharing obligation does not operate as a waiver, would allow integrated services to comply with their existing legal duties without forfeiting the protection the new privilege provides. This would preserve both the operation of the information sharing schemes and the security the reform is intended to deliver.

The safety exception

74. We support a safety exception, but submit it must be carefully calibrated to avoid reintroducing the uncertainty the reform is designed to address.

75. The exception should permit, but not require, disclosure where a professional holds a reasonable belief that there is an imminent risk of serious physical harm to the client or another person. This threshold mirrors Rule 9.2.5 of the *Legal Profession Uniform Law Australian Solicitors' Conduct Rules* 2015, which already permits solicitors to disclose confidential information for the purpose of preventing imminent serious physical harm. Adopting the same standard for all professionals within an accredited integrated service would resolve the current anomaly in which the lawyers and non-legal professionals in a single joint consultation operate under different disclosure thresholds. The threshold also matters in family violence contexts, where risk is ongoing and can escalate without warning: a lower threshold would permit disclosure so routinely that clients could not speak openly, and the privilege would offer little practical protection.

76. We support a specific provision for children's safety. Given that many of our clients, across all our programs, have children who may be at risk, and given the High Court's recognition in *R v Bell; Ex parte Lees* (1980) 146 CLR 141 of the paramount importance of child welfare, we submit that the safety exception should allow (or in cases of reasonable belief of significant harm to a child, require) disclosure to child protection. This provision is essential to the community acceptability of the new privilege.

77. We do not support extending the exception to psychological or financial harm. Such an extension would introduce significant uncertainty and risk reducing the privilege to a de facto qualified privilege in practice.

Implications for supervised students

78. The new privilege should expressly confirm that supervised law students providing legal assistance under the direct supervision of an accredited solicitor are treated as agents of the supervising solicitor for the purposes of the privilege. This is consistent with the established principle that agents step into the shoes of the lawyer for privilege purposes. We note that the Federal Court's decision in *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278, dealing with privilege in multidisciplinary partnerships, provides some support for the proposition that communications from a multidisciplinary practice can attract privilege where a prior solicitor-client relationship has been established.

79. By analogy, in an integrated legal assistance service where the involvement of non-legal professionals is directed towards the provision of legal assistance, there is a sound basis for recognising their communications as attracting privilege. We submit that the Commission should consider whether the concept of 'agent' for privilege purposes can be given broader application in the integrated service context, extending not only to law students and trainees but also to social workers, health professionals, and other practitioners who are engaged within an accredited integrated program to facilitate the delivery of legal assistance. Such an extension would reflect the reality that in contemporary integrated practice, multiple professionals contribute to the provision of effective legal assistance, and their involvement is no less essential than that of a traditional interpreter or expert.

80. Supervised social work students working under the direct supervision of a qualified social worker within an accredited, closely integrated program should similarly be treated as social service professionals for the purpose of the privilege. The supervision relationship, along with the professional accountability it establishes, provides a sufficient basis for this extension.

Implementation support

81. Any new privilege should be accompanied by clear statutory guidance on how it interacts with mandatory reporting obligations and information sharing schemes; model practice protocols developed in consultation with the sector; and a well-resourced training and support program for practitioners across legal, health, social work, and FDR settings. The Commission should recommend that the Victorian Government commit to funding this implementation support as a condition of the reform's effectiveness.

PART I: Conclusion

82. MLC's three integrated programs, LAFDR, the cMLAS health justice partnership, and the MLC and MSWC collaboration, together with the cooperative model of the MTLC, give us a comprehensive view of the tensions this inquiry addresses. Across these programs, we encounter daily the constraints that the current law of legal privilege imposes on integrated service delivery, the burden those constraints place on vulnerable clients, and the chilling effect that legal uncertainty has on program design and service quality.

83. We strongly support both reform options and urge the Commission to recommend them. We ask the Commission to pay particular attention to the status of supervised law and social work students within any new privilege framework; the interaction between the new privilege and family law confidentiality; the application of the new privilege in federal family law proceedings; and the potential for a broader application of the concept of 'agent' for privilege purposes in accredited integrated settings.

84. The consultation paper proposes well-designed and well-targeted reforms. With the design considerations we have identified, these reforms would make a material difference to our clients' ability to access justice without sacrificing the legal protections that make that justice meaningful.

85. We welcome further consultation and would be pleased to provide additional information or case studies.

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