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14 August 2026

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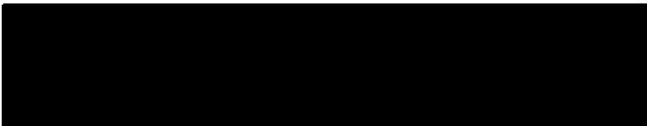
Dear Sirs,

**In re: Submission in response to the Victorian Law Reform Commission Consultation
Paper on Legal Privilege and Integrated Legal Assistance Services (18 June 2026)**

Please find enclosed a submission titled "*Be What You Seem to Be*". It is provided in response to your consultation paper on *Legal Privilege and Integrated Legal Assistance Services* (18 June 2026) and invitation to provide feedback.

Thank you.

Yours truly,
PHILIP TREISMAN


Lawyer

Encl. (1)

Be What You Would Seem to Be



Picture: *Alice and the Duchess* by John Tenniel, 1865

"I quite agree with you," said the Duchess; "and the moral of that is - 'Be what you would seem to be' - or if you'd like it put more simply - 'Never imagine yourself not to be otherwise than what it might appear to others that what you were or might have been was not otherwise than what you had been would have appeared to them to be otherwise.'"

(Lewis Carroll, *Alice's Adventures in Wonderland*, Chapter 9)

A submission to the Victorian Law Reform Commission Consultation Paper on Legal Privilege and Integrated Legal Assistance Services.

The Victorian Law Reform Commission published a Consultation Paper on 18 June 2026 regarding legal privilege and something the Commission refers to as "Integrated Legal Assistance Services" (**ILAS**).

The Commission proposes modifying or abrogating the law of legal privilege:

1. on the tenuous idea that by ignoring various legal and professional boundaries and areas of responsibility and divergent, often conflicting, purposes and objectives -

- a) legal aid can be integrated with non-legal social services to jointly deliver services addressing both (i) legal needs and (ii) other complex and interconnected non-legal needs of people facing disadvantage in Australia,
 - b) thereby improving access to justice and the effective and efficient provision of legal aid; and
2. on the basis that the laws relating to legal aid and legal privilege are insufficient for the protection of clients' legal privilege when receiving joint legal aid and social services under the practise of ILAS.

In response to the Victorian Law Reform Commission's Consultation Paper, this paper demonstrates why the practise of ILAS (whether loosely or closely) is fundamentally irreconcilable with the law of Australian legal services and the legal privilege granted to clients (whether advantaged or disadvantaged and whether or not as clients of legal aid or legal assistance services) in making use of those legal services when accessing justice under the law.

WHAT IS THE PRACTISE OF ILAS?

1. The Commission's paper defines ILAS as "the provision of tailored social support together with free legal support".
2. The glossary of the Consultation Paper elaborates this definition: "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."
3. The Consultation Paper further classifies ILAS as either:
 - a) "Loosely integrated" viz. joint delivery of legal and social services to a client utilising legal and social service professionals working for the same organisation or partnership, separated by an information barrier; or
 - b) "Closely integrated" viz. joint delivery of legal and social services at the same time to a client utilising legal and social service professionals working for the same organisation or partnership.

4. Put more simply, the practise of ILAS is the practise of amalgamating legal services and non-legal social services for people facing disadvantage in Victoria to achieve the highly complex, divergent, often conflicting, statutorily mandated purposes and objectives of both legal services and non-legal social services.

WHAT MISCHIEF IS THE PRACTISE OF ILAS TRYING TO ADDRESS?

5. The premise of the Consultation Paper is "whether the law and practice relating to legal privilege and" ILAS should be changed consequent on the notion that:
 - a) "holistically" addressing the legal and non-legal needs of people facing disadvantage will "enhance 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"; and
 - b) owing to the ILAS practise of joint delivery of legal and non-legal social services (whether loosely or closely), the legal privilege of the client is undermined or destroyed and the client's private information may be exposed.

WHAT IS THE PURPOSE OF REFORMING THE LAW RELATING TO LEGAL PRIVILEGE?

6. The purpose of the Consultation Paper is to enable the Commission's consideration two potential law reform options, namely:
 - a) establishing law for a new type of professional privilege for communications with social service professionals working in a loose ILAS.
 - b) establishing law for a "new category" of legal privilege that would incorporate communications with social services professionals working in a close ILAS.

IS THE PROPOSED REFORM A LEGISLATIVE NECESSITY?

7. The proposed reform is misguided and unnecessary when considering the fact that legal assistance services, components of legal aid, are part of the legal or legal-related services directed generally to people who are disadvantaged (including but not limited to being financially

disadvantaged) in accessing the legal system or in protecting their legal rights or are conducted in the public interest.¹

8. Legal aid (and the legal assistance services and legal services intrinsic to legal aid) seeks to deliver legal services “to provide to the community improved access to justice and legal remedies”² under the *Legal Aid Act 1978* and in accordance with the *Legal Profession Uniform Law Application Act 2014*.³

What is justice?

9. Justice in this sense means legal justice:
 - a) Australia’s ethical, philosophical idea that people are to be treated impartially, fairly, properly, and reasonably by the law and by arbiters of the law, that laws are to ensure that no harm befalls another, and that, where harm is alleged, a remedial action is taken - both the accuser and the accused receive a morally right consequence merited by their actions; and
 - b) Australia’s legal structure or system that is designed to adjudicate who should be accorded a benefit or burden when the established law is applied to a person’s factual circumstances in accordance with established legal procedures.⁴
10. Non-legal social services and social welfare providers’ purposes relate to Australia’s ethical, philosophical ideas about social justice reflected by ordinary adult Victorian citizens’ views of the character and quality of life of the members of Victorian society those citizens accept their responsibility of ensuring just laws are enacted in the Victorian Parliament by politicians those citizens elect:⁵
 - a) to achieve the fair distribution of wealth, opportunities, and privileges within Victorian society; and
 - b) addressing the systemic inequalities and historical barriers faced by marginalized or disadvantaged groups within Victoria’s social structure and systems.
11. Social justice focuses on the complex interconnected needs of clients to achieve social equity, inclusion, and the protection of basic human needs like healthcare and education.
12. As the Honourable Marilyn Warren AC, Chief Justice of Victoria put it so concisely in her 2014 Newman Lecture: “To the lawyer, justice

means the application of the rule of law, that is the certainty of applying legal rules developed over centuries to resolve disputes between citizens and the citizen and the state. To the judge, justice is the application of the rule of law without fear or favour, affection or ill-will."⁶

13. In the context, it follows that access to justice means: despite a person facing disadvantage that person is able to access civil and criminal courts to ensure the laws were applied correctly to that person's factual circumstances (impartiality, procedural fairness, established rules and due process), thereby delivering justice to that person.
14. Social justice is about social equity and redistribution of wealth, opportunities, and privileges within Australian society where individuals' rights and citizen's basic needs are recognized and protected by the law.
15. But, "... justice as a concept should not be appropriated for convenient political or popular descriptors. Justice should not be equated with comfort and feel good phrases in the lexicon. It is serious concept that carries gravitas and warrants respect. For example, in Australian states, departments concerned with a range of activities well beyond courts are sometimes called the 'Department of Justice'. We see facilities for a conglomerate of activities in some way remotely connected with the law - payment of fines, community corrections officers, sheriff's officers and the like described as 'justice centres'. It is as if these centres are providing a commodity when in fact all they do is provide a service related to or somehow underpinned by the legal system."⁷
16. Social services and social welfare providers' purposes, thus, are to ensure people facing disadvantage in Victorian society are able to access social equity and redistribution of wealth, opportunities, and privileges within Victorian society to address their individual rights and basic human needs.
17. Social justice agents, such as social services and social welfare providers, may drive changes to existent law or introduce new laws to politicians by testing whether the Australian laws, and the socio-political structures those laws uphold, are fair and equitable.

18. But, those social justice agents are professionally and legally constrained by those very laws and the socio-political structures they uphold and should not appropriate legal aid for their own purposes.
19. Simply put, legal aid providers (including legal services and legal assistance services) are not agents of social justice and cannot deliver access to social justice. In turn, agents of social justice (such as social service or social welfare providers) are not legal aid providers and cannot deliver legal aid (including legal services and legal assistance services) to improve access to legal justice.
20. Victorian society's lawmaker has clearly recognised this distinction in providing Victoria Legal Aid (VLA) the functions and powers to arrange measures and take steps that may be conducive to meeting the need for legal and legal-related services in the community in co-operation with government departments or bodies concerned with social services or social welfare.⁸
21. That is, the provision of tailored social support as part of a holistic approach to address the legal assistance needs of disadvantaged people can be carried out in co-operation with non-legal services providers.

BE WHAT YOU SEEM TO BE: THE PROVIDER OF LEGAL AND LEGAL ASSISTANCE SERVICES

22. But, legal assistance service providers cannot undertake non-legal related services, and non-legal related service providers cannot undertake legal assistance services:
 - a) regardless whether non-legal related services may be improved by 'person-centred support' focused on all the needs of the client; and
 - b) regardless whether those non-legal related services overlap or are provided by people who perform a similar role to lawyers.⁹

The role of lawyers and their unique area of professional responsibility and competence

23. The nature of lawyers, their unique professional and ethical duties in carrying out their role in the adversarial Australian legal system and the core objectives and key tenets of VLA within that legal system means that 'person-centred support' focused on all the needs of the client rather than the needs of the client within the professional

boundaries of lawyers and legal assistance service providers is a *non-sequitur*.

24. Australian lawyers must be able to pursue the best interests of their clients, and are obliged to do so, regardless of all other interests or duties except those owed to the law.¹⁰
25. In all instances Australian lawyers must be able to insist on justice being done "though the heavens fall" (*fiat justitia ruat caelum*) viz. justice for an individual client (whether facing disadvantage or otherwise) must be pursued regardless of consequences outside achieving that individual client's best interests within the bounds of the law, even when doing so may cause inefficient or less effective legal aid delivery, negative social policy outcomes, political backlash, economic problems, difficulties for social services or public outrage.
26. A lawyer acting for, say, ambulance and paramedic service providers in protecting and prosecuting their employment and wage rights cannot take into consideration the inefficiencies in health service delivery or other social justice consequences of disrupting ambulance services when advising on industrial action, if those ambulance and paramedic service providers are considering whether, or have decided that, their best interests lie in taking industrial action, and they are lawfully entitled to take such action.
27. The *fiat justitia ruat caelum* principle should not be undermined or distorted by ignoring legal and professional boundaries in the name of integrating the distinct objects and purposes of social services with legal services because the *fiat justitia ruat caelum* principle is not only a cornerstone of justice, it is also vital in accessing that justice in the Australian legal system.
28. Seeking to address or mitigate the complex interconnected non-legal needs of people facing disadvantage in Australia are not the only interests to be weighed in the balance. Nor are they necessarily the most important when considering whether to change or abrogate legal privilege and the consequences for the public interest in the Australian legal system, the legal profession, the proper administration of justice and individual rights under the law.¹¹
29. On balance, 'person-centred support' focused on the complex interconnected social justice needs of the client likely undermines access to justice under the Australian legal system and retards the

provision of legal aid in the most effective, economic and efficient manner.

The context of the best interests of the client

30. The best interests of a client under the rubric of a just legal system, in the general context of legal assistance and the specific context of legal privilege, means the best interest of the client with regard to the law and legal outcomes, not the best social justice interests of the client.
31. That is, legal services and legal assistance services objectives are advising and assisting the client to achieve what the client has decided is in his or her best interests with regard to the law.
32. The clients decide their own best interest. The legal assistance service providers advise and assist the clients on whether and how that best interest may be lawfully achieved or protected.
33. In the Australian legal system, a lawyer delivering legal or legal-related services, say, using any of the social justice derived "trustee of the legal system"¹² or "moral activism"¹³ or "ethics of care"¹⁴ approaches advocated by Christine Parker and Adrian Evan¹⁵ turn the lawyer into the decision maker. A lawyer using these approaches will breach the legal, ethical and professional duties of a lawyer, and denigrate the client because, as Isiah Berlin put it in his essay *"Two Concepts of Liberty"* (1958) "... to manipulate men, to propel them toward goals which you - the social reformers - see, but they may not, is to deny their human essence, to treat them as objects without wills of their own, and therefore to degrade them."
34. As agents of clients, and in order to preserve their professional independence and necessary objectivity, legal services providers must not become decision makers determining what would be best to achieve social justice for clients (or society), whether in connection with social services or social welfare interests, or otherwise trying to address all the other complex social needs of a disadvantaged individual in Australian society, such as family violence, homelessness and substance abuse, even when these complex needs are interconnected.
35. Lawyers and legal aid cannot address social justice or all disadvantaged Australian peoples' needs, whether complex or simple,

interconnected or not. Lawyers and legal assistance service providers can only address Australian society's need for a just legal system.

36. Only the society itself, through its political system, can address social justice and its complex of diverse interconnected socio-economic human needs (whether advantaged or disadvantaged) consequent on the society's decisions under its socially just (or socially unjust) political system through that political system's lawmaker.

37. That is the purpose of enabling legal aid co-operation with social services or social welfare providers: the co-operation and co-operative measures ought to deal with the intersection of legal assistance services and the often interconnected other complex social needs, while the social services and welfare providers deal with those other social needs within their respective areas of responsibility. To do otherwise is place all the service providers outside the lawful and professional boundaries of their respective competence and authority, and to treat those facing disadvantage as objects without wills of their own.

Holistic approach to improve the delivery of legal services

38. That is not to say whether the provision of legal assistance and legal services may benefit from a holistic approach to understanding the clients' decisions regarding their own best interests and how best to explain the law, legal methods and risks to achieve what the client has determined is in his or her best interests, particularly when dealing with clients facing disadvantage.

39. But, that holistic approach to improve the delivery of legal and legal assistance services cannot cause legal (assistance) services to be provided by social services or be used to integrate legal and social services to achieve the highly complex, divergent, often conflicting, statutorily mandated purposes and objectives of such services in the name of 'person-centred support' focused on all the needs of an individual facing disadvantage.

40. In the same way that a lawyer cannot lawfully or effectively or efficiently advise on the course of treatment for a patient's injuries consequent on family violence, a medical practitioner cannot lawfully or effectively or efficiently advise a patient on obtaining the protection of the law against family violence pursuant to such injuries.

41. Similarly, a social worker can only lawfully and effectively and efficiently advise the patient on the social services available to the patient as determined by the respective areas of responsibility and competence of such social services. Otherwise those social services are acting outside their area of lawful authority and competence, becoming ineffective and inefficient in achieving their social justice objectives.
42. Those social services and their respective areas of responsibility and competence are consequent on the society's decisions under its public policies to achieve social justice as determined by the society's political system.
43. They cannot be integrated (in the proper sense of that word) into legal services, and must always be ancillary to legal services (subordinated to and supportive of legal service delivery) or adjunct to legal services (provided at the same or overlapping time but without crossing or merging the distinct legal and professional boundaries).
44. Thus, a holistic approach to delivering legal assistance services must not be confused with integrating legal services and social services because each of those distinct fields have distinct requirements that unavoidably conflict with each other.

THE LEGAL PRIVILEGE ASPECT

45. The medical profession, for example, has the same basic underlying public policy reason to protect a person's confidential information as the legal profession: fostering trust and candour in the relationship to ensure proper, effective and efficient service delivery.
46. However, the law and the ethical and professional rules governing the medical profession's protection of a person's confidential medical information is effected in a completely different way to the legal profession because the purposes, objectives and outcomes of the services are distinctly unique.
47. The medical profession's duty of confidentiality addresses the person's medical needs in the context of public health interests and the ethical delivery of professional medical services for that individual's needs within the community and the community's public health needs.

48. The lawyer's duty of confidentiality and the legal privilege granted to a person when obtaining legal services, address:
- a) the public interest in "the general respect for and observance of the law within the community";¹⁶ and
 - b) the person's needs in obtaining legal services relating to that person's legal rights, liabilities, obligations or remedies where it is reasonable to consult a lawyer's professional knowledge and skills.¹⁷
49. That is why there are mandatory reporting requirements in particular circumstances in certain social services fields, such as healthcare or teaching services, which are not applicable to legal assistance services viz. the legal system would fail to deliver justice if lawyers were required to report the communications of a client seeking advice about, say, the law on family violence (whether as an alleged perpetrator or an alleged victim).
50. Extending legal privilege to the client's integral or joint engagement of social services providers would mean the legal privilege ceases to be absolute and unqualified because it introduces other political or public policy considerations or public interests such as: social services mandatory reporting requirements, efficiency in the administration of services delivery; principles of natural justice; addressing social services purposes; or seeking social justice objectives, such as mitigating socio-economic disadvantage in providing for non-legal needs.¹⁸

IN ANSWER TO QUESTION 1 OF THE CONSULTATION PAPER

A case of *petitio principii*

51. The question as to how easy or difficult it is to implement the loosely or closely integrated legal assistance service assumes the conclusion that ILAS (whichever model may be considered) is a lawful or justifiable and necessary practise.
52. It is clear from a close examination of the Consultation Paper that:
- a) the practise of ILAS does not render ILAS lawful. There are fundamental administrative and general law principles and prohibitions against agencies and professional service providers (whether legal services, legal assistance services or healthcare or

educational or other social services) acting outside the boundaries of their lawful authority and professional areas of responsibility and competence, as well as the perceived and actual conflicted interests arising, that have not been included for consideration in the Consultation Paper;¹⁹ and

- b) there is little more than anecdotal evidence regarding the benefits of ILAS practise (whether loose or close, lawful or unlawful) with regard to access to legal justice or improved delivery of legal services: the paper repeatedly refers to the benefits of ILAS practise for non-legal service providers and clients of those providers, but uses the words “may” and “could” when describing potential benefits of ILAS for access to justice and legal services providers and clients of legal assistance services.
53. The literature referred to in the Consultation Paper provides evidence of improved outcomes for non-legal service providers and the clients within the non-legal service providers’ legal and professional boundaries.
54. The literature seems to implicitly accept that: the benefits of those improved outcomes are consequent on close co-operation between the distinct professional legal and social services, and are lawful.
55. As an exemplar, the Beardon (et al) paper relied on by the Commission, *International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review*²⁰, defines the holistic approach to deal with a complex of interconnected social needs as: “collaborations between healthcare and legal services which support patients with social welfare issues such as welfare benefits, debt, housing, education and employment.”²¹
56. The Beardon (et al) paper concludes that these collaborations (a type of close co-operative endeavour) are “effective in tackling social welfare issues that affect the health of disadvantaged groups in society and can therefore form a key part of public health strategies to address inequalities.”²²
57. The paper does not provide evidence or even suggest that these collaborations are effective in improving access to legal justice or improving the delivery of legal aid or benefiting the delivery of legal assistance services or benefiting the clients of those legal services through the practise of ILAS.

58. On the contrary, the paper acknowledges the distinct legal, social and professional boundaries and areas of responsibility between the social service and the legal assistance service:

- a) "High-quality studies conducted in United Kingdom primary care found that people referred to [legal] advice by healthcare professionals would not otherwise have sought assistance..."²³
- b) "Quantitative outcomes reflect similar themes: surveys of clients accessing welfare support in United Kingdom primary care estimated that 66% would not have accessed [legal] assistance had they not been referred by a healthcare professional ..." ²⁴
- c) [collaborations] ... offer a means to assist healthcare professionals in addressing social welfare legal needs among patients, providing more responsive care and better supporting individuals whose health is affected by adverse socioeconomic circumstances.²⁵

59. Therefore, the collaborations facilitate both, but explicitly distinct:

- a) actions by healthcare professionals to mitigate health inequalities (improving social justice); and
- b) actions by legal services professionals to improve access to legal justice for the disadvantaged.

60. The benefits of the co-operation are not for "‘person-centred support’ focused on the needs of the client", but for "public health strategies to address inequalities" i.e. the benefits are not for the individual's legal needs; they are for the public health interests of the society (which ought to have the effect of mitigating individual health inequalities or improving healthcare services for individuals if the society so decides).

Positive motives alone do not guarantee good or lawful outcomes

61. Notwithstanding the good intentions of aiming "to provide ‘person-centred support’ focused on the needs of the client rather than the professional boundaries of distinct service providers",²⁶ focusing on person-centred support outside legal services delivery under a client's lawful, proper and competent instructions²⁷ places lawyers in breach of their ethical and professional rules and legal duties to the law²⁸ and the obligation to avoid of any compromise to their integrity and professional independence.²⁹

62. For example, a lawyer would have ethical, legal and professional difficulty making representations to Court on the basis of a client's instruction that: the client has a valid claim to housing because a nurse advised that the client is legally entitled to housing in order for the client to take her medication on a daily basis.³⁰

IN ANSWER TO QUESTION 2 OF THE CONSULTATION PAPER

A case of the tail wagging the dog

63. It could be inferred that the only perceptible benefit of the practise of ILAS is to the non-legal service providers as an obfuscation in order to misappropriate legal aid and legal assistance services funding to deliver social services offerings masquerading as, say, a Community Legal Centre.³¹
64. This inference is reasonable because the law already provides for:
- a) multi-disciplinary legal (and legal assistance) services, such as Community Legal Centres, employing lawyers, sociologists, criminologists, financial counsellors, psychologists, nurses and other social services workers to provide both legal (assistance) services and non-legal social services, though the non-legal services must be subordinate (whether ancillary or adjunct or separate) to the legal practise and the maintenance of its professional integrity and independence.³²; and
 - b) the mechanisms of information barriers and information sharing arrangements to enable the management of the multi-disciplinary legal (and legal assistance) service providers are well-established and well-understood; and
 - c) common interest privilege may be applied, where the common interest of, say, officers or employees of the same Community Legal Service are so closely related as to make it inappropriate to treat the legal assistant service parties separately to the other parties³³, particularly with regard to parties whom are "law practise associates" or "lay associates"³⁴; and
 - d) such other co-operative mechanisms as VLA may decide can be lawfully and properly devised and implemented to facilitate "the most effective, economic and efficient manner to deliver legal aid"

using a holistic approach to the delivery of legal and legal-related services; and

- e) the extension of the legal privilege to communications with or from third parties if the function that the third party performed for the client was to enable the client communications with the lawyer necessary to obtain legal advice required by the client.³⁵ This extension of the legal privilege is particularly relevant when seeking to utilise a holistic approach to delivering legal services.

65. Accordingly, the practise of ILAS (whether closely or loosely) as defined by the Consultation Paper has no benefits for clients, service providers and the justice system that are not already available to those clients, service providers and the justice system.

A Case Study

66. The Consultation Paper itself demonstrates this conclusion in its Case Study 4.

67. In this case study access to justice was obtained, legal privilege was asserted and upheld in accordance with the law, and justice was done by the Court.

68. Lee had decided it was in his best interests to pursue the records from a loosely integrated legal assistance service in his dispute with Anh.

69. Legally he was entitled to prosecute his case for those records, just as Anh was entitled to assert her legal privilege and defend that privilege.

70. Whether or not:

- a) it is difficult for non-legal service providers to conform to the law regarding legal privilege while seeking to provide 'person-centred support' focused on the needs of the client; or
- b) there are non-legal negative consequences for the adverse parties and their lawyers,

these aspects are not relevant to the lawyers' professional independent advice and representation of their respective clients.

71. The possibility of creating inefficiencies or difficulty for the provision of 'person-centred' non-legal support or creating vicarious trauma or repeated re-lived trauma is neither here nor there with regard to the:
- a) the lawyers' respective paramount duties in following Lee's or Anh's lawful, proper and competent instruction; and
 - b) the Court's just adjudication of the dispute, which inherently and explicitly requires the parties and their representatives to present their respective evidence, re-living the trauma, and arguments, causing legal (assistance) service providers to suffer vicarious trauma.
72. If, say, Lee's lawyer had decided not to act in accordance with Lee's instructions because the lawyer decided³⁶ the impact on social services delivery was more important than Lee's best legal interests (as decided by Lee), she would be in breach of her ethical, legal and professional duties as an Australian lawyer.
73. If, say, Anh's lawyer advised Anh not to assert and defend her legal privilege because the lawyer decided³⁷ re-lived trauma, or the purpose of more efficient 'person-centred support' focused on Anh's interconnected human needs, was more important than achieving Anh's best legal interest (as decided by Anh), despite the re-lived trauma and making it difficult for non-legal service providers, the lawyer would be in breach of his ethical, legal and professional duties as an Australian lawyer.
74. That is not to say the handling of evidence, witnesses and presentation of arguments and evidence in court should not be, say, properly trauma informed or otherwise that the delivery of legal services and access to justice would not be improved by a holistic approach to understand the clients' instructions; and when acting on those instructions doing so in an appropriately sensitive professional manner.

IN ANSWER TO QUESTION 3 OF THE CONSULTATION PAPER

A case of *ignoratio eelenchi*

75. The question as to how easy or difficult it is to implement the loosely or closely integrated legal assistance service assumes the conclusion that ILAS is a lawful or justifiable and necessary practise.

76. As it cannot be concluded that ILAS is a lawful or justifiable and necessary practise and “It is only if the lawyer is acting as lawyer in giving that advice that such a [legal privilege] claim could arise, [indicating] ... that the person giving the advice in respect of which privilege was claimed was ‘engaging in legal practice’”³⁸, it follows that the practise of ILAS *ipso facto* undermines or destroys the legal privilege of the client and the client's private information can be exposed by the practise of ILAS (except as permitted by the extensions of the legal service provider's duties of loyalty, confidentiality and the legal privilege granted thereby).
77. Accordingly, it is irrelevant how easy or difficult it is for lawyers, social service professionals or clients to manage information disclosure requirements and requests under the practise of ILAS.

IN ANSWER TO QUESTIONS 4, 5, 6 AND 7 OF THE CONSULTATION PAPER

A logical paradox or a false dilemma

78. The law should not enhance protection for communications between clients, lawyers and social service professionals in the practise of ILAS, particularly in the practice of close ILAS, because:
- a) the practise of ILAS may be unlawful and is irreconcilable with the professional and ethical duties of lawyers and legal service providers; and
 - b) there is no legislative necessity; and
 - c) the law already provides for the protection of such communications while providing for the management of information and information disclosure requirements necessary to maintain the distinct boundaries of authority and professional responsibility; and
 - d) the law of legal privilege and its extension to third parties sufficiently provides for the enhanced protection of such communications; and
 - e) the law governing multi-disciplinary law practises (including Community Legal Services) is sufficient for the provision of legal assistance and legal services to benefit from a holistic approach to understanding the clients' decisions regarding their own best

interests and how to explain the law and legal methods to achieve what the client has determined is in his or her best interests; and

- f) the law governing legal aid and legal (assistance) services already addresses the mischief anticipated by the proposed law reform and is sufficient to obtain any benefits of improved access to justice and the effective and efficient provision of legal aid and legal (assistance) services through co-operative mechanisms authorised under the legal aid legislation.

- 79. Enhanced communications between lawyers and social services professionals outside the scope of legal services delivery is irreconcilable because lawyers have legal and fiduciary duties not to serve two masters and to avoid the conflict of divided allegiance, consistent with the *fiat justitia ruat caelum* principle.
- 80. Thus, the Consultation Paper's basis is fatally conflicted either because its premises are mutually exclusive or because it presents mutually exclusive outcomes when other viable alternatives exist.
- 81. For these reasons, and the reasons set out above, enhanced protection for communications between clients, lawyers and social service professionals, particularly in the practice of close ILAS, is not supported.
- 82. For the same reasons, establishing: (a) a social service professional privilege; and/or (b) a new category of legal privilege should not be favoured and is not supported.

CONCLUSION

- 83. Community Legal Centres and other law practises delivering legal aid and legal (assistance) services ought properly to look to their regulators (VLA and the Victorian Legal Services Board + Commission) to propose, develop and implement co-operative (collaborative) mechanisms and processes to ensure all legal services obtain the benefits of a holistic approach to improve the delivery of legal services without creating the perception of misappropriation of legal aid funding, impugning the legal, ethical and professional boundaries of lawyers or altering the fundamental nature of Community Legal Centres and other law practises delivering such legal and legal assistance services.

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13 August 2026

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Endnotes

¹ *Legal Aid Act 1978 s.2; Legal Profession Uniform Law Application Act 2014 Sch. 1. s.6*

² *Legal Aid Act 1978 s.4(c); Legal Profession Uniform Law Application Act 2014 Sch. 1. s.6*

³ *Legal Aid Act 1978 s.3(2)(a)* VLA is a body corporate with perpetual succession; s.16; and *Legal Profession Uniform Law Application Act 2014 Sch. 1; Sch.1. s.6*.

⁴ Legal Information Institute, Cornell Law School *Legal Encyclopedia*, www.cornell.edu/wex/justice (accessed 2026-08-07)

⁵ Honourable Marilyn Warren AC, Chief Justice of Victoria, "What is Justice?" Newman Lecture, Mannix College, Melbourne, 20 August 2014. p.21.

⁶ *Ibid.* p. 3.

⁷ *Ibid.* pp. 25 - 26.

⁸ *Legal Aid Act 1978 s.6(2)(a)*

⁹ *Orrong Strategies Pty Ltd v Village Roadshow Ltd* [2007] VSC 1; 207 FLR 245 at 889 and Gino Dal Pont, *Lawyers' Professional Responsibility 8th ed*, Thomson Reuters, 2025 at pp. 413 - 414 and cases cited therein.

¹⁰ Be it the absolute honesty owed to the Court, obligations under the rubric of the administration of justice or to the legal profession under professional rules governing lawyers and legal (assistance) services.

¹¹ "Privilege in Perspective: Client Legal Privilege in Federal Investigations" [2007] ALRC 2; Final Report pp. 255 - 256.

¹² The lawyer "as trustee of the legal system" has a self-contradictory overriding duty to maintain the justice and integrity of the legal system "even against the client's interests". Under this approach the lawyer is the decision-maker (trustee) as to what constitutes justice and the Australian legal system and may make such decisions to maintain justice in order to override the client's instructions. *Inside Lawyers' Ethics*, Australia: Cambridge UP, 2010. pp. 24 - 27.

¹³ The lawyer as "moral activist" has the lawyer substitute his or her own decisions as to what "doing justice" means by seeking out ways to act out the lawyer's convictions, despite the idea of justice as prescribed by the Australian legal system, including by making decisions to override the client's instructions, in order to "do good" (whatever that may mean) by promoting social and political justice. *Inside Lawyers' Ethics*, Australia: Cambridge UP, 2010. pp. 28 - 31.

¹⁴ The "ethics of care" approach means the lawyer focuses on trying to serve both client and non-client interests at the same time by "discarding fundamental rules of professional conduct" in order for the lawyer to decide that the best interest of the client lies in preserving or restoring relationships with colleagues, family and community, and avoiding harm to all, in a holistic way that incorporates the moral, emotional and relational dimensions of the lawyer's view of the problem when providing a legal solution for the client. *Inside Lawyers' Ethics*, Australia: Cambridge UP, 2010. pp. 31 - 37.

¹⁵ *Inside Lawyers' Ethics*, Australia: Cambridge UP, 2010.

¹⁶ *Wentworth v Lloyd* (1864) 10 HL Cas 689; 11 ER 1154; *Baker v Campbell* (1983) 153 CLR 52 at 95 per Wilson; and cases cited in the Consultation Paper.

¹⁷ *Legal Aid Act 1978 s.4(c); Three Rivers District Council v Governor & Company of the Bank of England (No 6)* [2005] 1 AC 610; *AWB Ltd v Cole* (2006) 152 FCR; *Ge Dal Pont*

Lawyers' Professional Responsibility 8th Ed. Thomson Reuters, 2025 at pp. 412 - 413; Submissions per The Federation of Community Legal Centres (Vic) Inc quoted in "Privilege in Perspective: Client Legal Privilege in Federal Investigations" [2007] ALRC 2; Final Report at p.65 and the comprehensive consideration of the rationale and principles of legal privilege at pp. 47 - 76.

¹⁸ Gino Dal Pont, *Lawyers' Professional Responsibility 8th ed*, Thomson Reuters, 2025 at pp. 390 - 392; *Privilege in Perspective: Client Legal Privilege in Federal Investigations* [2007] ALRC 2; Final Report at pp. 47 - 76.

¹⁹ A cursory look at Robin Creyke (et al) *Control of Government Action: Text, Cases and Commentary*, 7th edition Lexis Nexis: Australia, 2024, amply demonstrates this.

²⁰ Sarah Beardon (et al) "International Evidence on the Impact of Health-Justice Partnerships: A Systematic Scoping Review" *Public Health Rev* 42:1603976, 2021.

²¹ *Ibid.* p. 1.

²² *Ibid.* p. 1.

²³ *Ibid.* p. 5.

²⁴ *Ibid.* p. 5.

²⁵ *Ibid.* p. 8.

²⁶ Consultation Paper at para. 3.11.

²⁷ Australian Solicitors' Conduct Rules (ASCR) R.4, R.5 and R. 8.

²⁸ *Ibid.* R.3, R.4 and R.5.

²⁹ *Ibid.* R.4 and R.5.

³⁰ Consultation Paper at para. 3.23

³¹ *Legal Aid Act* 1978 s.2; *Legal Profession Uniform Law Application Act* 2014 Sch. 1. s.6

³² *Legal Aid Act* 1978 s.2; *Legal Profession Uniform Law Application Act* 2014 Sch. 1. s.6.

³³ Gino Dal Pont, *Lawyers' Professional Responsibility 8th ed*, Thomson Reuters, 2025 at pp. 424 - 426, in particular references in footnote 241.

³⁴ *Legal Profession Uniform Law Application Act* 2014 Sch. 1. ss. 6 and 13.

³⁵ *Pratt Holdings Pty Ltd v Commissioner of Taxation* (2004) 136 FCR 357 at 41 - 43; Gino Dal Pont, *Lawyers' Professional Responsibility 8th ed*, Thomson Reuters, 2025 at pp. 418 - 421.

³⁶ Say, using one of the social justice derived "trustee of the legal system" or "moral activism" or "ethics of care" approaches to providing legal (assistance) services.

³⁷ Say, using one of the social justice derived "trustee of the legal system" or "moral activism" or "ethics of care" approaches to providing legal (assistance) services.

³⁸ *Orrong Strategies Pty Ltd v Village Roadshow Ltd* [2007] VSC 1; 207 FLR 245 at 889.