Legal Privilege and Integrated Legal Assistance Services

Submission to the Victorian Law Reform Commission

Mallee Family Care Community Legal Centre | August 2026

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1. About this submission

This submission is made by Mallee Family Care Community Legal Centre, a community legal centre operating across North West Victoria and Far West and South West New South Wales. We welcome the opportunity to contribute to the Commission's review of legal privilege and integrated legal assistance services.

The centre was established in 1996 and has delivered free legal assistance for thirty years. It operates from offices in Mildura, Swan Hill and Broken Hill and reaches 33 towns across its catchment. It is accredited under the National Accreditation Scheme, certified in December 2025 for a further three years, and is funded under separate agreements with Victoria Legal Aid and Legal Aid New South Wales. In 2024-25 the centre completed 2,195 intake assessments and supported 1,655 clients. Of those clients, 16.7 per cent identified as Aboriginal or Torres Strait Islander and 44 per cent were sole parents with dependent children.

At its Mildura site the centre directly employs solicitors and intake officers alongside social workers specialising in family violence, mental health and disaster recovery, and financial counsellors. It is therefore itself an example of the arrangement described in Chapter 7 of the consultation paper under Option 2, a single organisation employing both legal and social service professionals. That staffing is not uniform across our sites. Our Far West New South Wales service employs no social workers or financial counsellors of its own, which is a reminder that integrated practice is resource dependent, and that it is least available in the places where clients have fewest alternatives.

The centre is a program of Mallee Family Care Ltd, a place-based community service organisation established in 1979 which delivers more than 70 programs across a cross-border catchment spanning North West Victoria, Far West and South West New South Wales and the South Australian Riverland. The centre is not a separate legal entity, and the relationship between it and the rest of the organisation is governed by a documented information barrier. The barrier is designed to ensure that confidential information held by the legal centre cannot be accessed by staff of other Mallee Family Care programs or by common intake and assessment workers. Our accreditation requires the barrier to be approved before it is implemented, and it is trained into induction. A summary is published for clients.

The wider organisation delivers services which carry mandatory reporting and information sharing obligations. The barrier exists in part because they do. Integration in our service therefore runs inward, across the disciplines the legal centre itself employs, and stops at the boundary between the legal centre and the rest of the organisation. References in this submission to financial counsellors are to those employed within the legal centre, which are distinct from financial counselling delivered elsewhere in Mallee Family Care.

We note the close resemblance to Case Study 4, which describes an umbrella organisation containing a community legal centre and a counselling service, with separate record keeping systems and information barriers whose security was nonetheless challenged in court. That is a fair description of our structure, and the challenge described in that case study is a realistic prospect for us.

We make this submission from a vantage point that we believe is under-represented in the material before the Commission. Our services are rural, remote and cross-border. For many of our clients there is no second provider to turn to. That context shapes our answers below, and in particular our view of the choice and consent model.

2. Summary of position

1. The law should be changed. The present position withholds the full protection of legal privilege from precisely those clients the legal assistance sector exists to serve.
2. The difficulty is not confined to waiver. Reform must also address whether communications made in integrated legal assistance settings satisfy the confidentiality and dominant purpose requirements in the first place.
3. For loosely integrated legal assistance services, we support consideration of a statutory social service professional privilege operating alongside existing legal privilege.
4. For closely integrated legal assistance services, we support the objective of stronger protection, but prefer that the Commission extend and clarify existing legal privilege rather than create an entirely separate category.
5. The central principle should be that the appropriate participation of an eligible social service professional in the delivery of legal assistance does not, by itself, constitute waiver or loss of privilege.
6. Protection should be equivalent in strength to existing legal privilege, subject only to clearly defined statutory exceptions, and should apply before investigative bodies as well as courts.
7. It should cover joint appointments, preparatory communications and relevant documents, and should provide that a social service professional's independent professional records do not automatically become legal files.
8. Eligibility should turn on function rather than job title, with accountability attaching to the accredited legal assistance service rather than to individual registration.
9. Eligibility should not be tied to Commonwealth or state legal assistance funding, which would exclude philanthropically funded programs including the Commission's own exemplar of closely integrated practice.
10. We favour clear statutory criteria which provide practical certainty, without an administratively burdensome accreditation scheme that smaller or regional legal assistance services may struggle to meet.
11. Any safety exception should be confined to a clearly defined threshold of serious risk of significant harm.
12. The Commission should also consider the position of a client's own support person or family member, whose presence attracts the same warning and performs the same enabling function.

The Commission should address the jurisdictional reach of any protection, including how it would operate for cross-border services and in federal proceedings.

3. Question 1: implementing the two models in practice

Both models can be implemented, and both operate within our service. Closely integrated practice requires deliberate governance and practice safeguards.

In our Intervention Order Support Service, health justice partnership and domestic violence unit programs and in the Mabels program a solicitor and a social worker may meet jointly with a client and work together throughout the matter. That is closely integrated practice as the Commission defines it. Our financial counselling relationship operates differently. Financial counsellors hold their own appointments, maintain their own records under their own professional framework and do not ordinarily attend appointments alongside the solicitor and social worker. On the Commission's definitions that sits closer to loosely integrated practice.

The practical point is that these are not two separate services. They are different modes of integrated practice within one service, and a single client's matter can move between them. The multidisciplinary and interdisciplinary distinction used in integrated practice guidance is useful here: in multidisciplinary practice, legal and social service professionals may collaborate or refer while maintaining distinct professional roles; in interdisciplinary practice, practitioners work more closely together around the client's needs. Our broader service can operate in the former way, while programs such as the health justice partnership and Mabels can operate in the latter. Financial counselling will often operate more independently, although the degree of integration can increase where financial and legal issues intersect. The degree of integration is therefore a property of the matter and service response rather than of the organisation or professional title, and it can change part-way through. A reform which assumes that a service sits permanently in one model will not describe how integrated practice actually works.

The safeguards we apply in closely integrated practice include joint first appointments at which the client is given an explanation of legal privilege, confidentiality and relevant mandatory reporting obligations; clear professional roles, with solicitors responsible for legal advice and social service professionals not providing it; separate legal and social service records, so that legal advice is not recorded in social work case notes; careful information sharing limited to what is necessary for the agreed purpose; and opportunities for the client to speak privately with the solicitor.

These safeguards are not informal. The centre maintains a documented policy on legal privilege, trains staff on it at induction, and reviews it when a new service or program is introduced. Compliance is assessed externally through the National Accreditation Scheme.

They assist, but they do not remove the underlying uncertainty about whether the presence or involvement of a social service professional may affect privilege.

Two features of rural and remote delivery make the safeguards harder to sustain than they would be in a metropolitan service. The first is court. Our Intervention Order Support Service provides a duty lawyer at the Mildura, Robinvale, Swan Hill and Kerang Magistrates' Courts. The Commission observes that rigid protocols are not always easy to follow within the time and space constraints of court. That is our experience. The second is scale. Our Far West service covers 146,871 square kilometres from a single office, with monthly outreach to Wilcannia. Infrastructure that a larger service can duplicate, including separate premises, separate reception and separate systems, cannot be duplicated at that scale.

We would add one observation about the choice and consent model the Commission describes in Chapter 5, under Sector guidelines. Our framework does offer clients a choice, and a client who prefers not to proceed in an integrated program may instead see a solicitor only. But the choice is not between two equivalent service models. It may in practice be between the integrated service best suited to the client's needs and a service model that does not provide the same level of coordinated support, and the client is asked to make that trade at the point of crisis, on the strength of an explanation of a legal risk that is difficult to convey and impossible to quantify.

4. Question 2: the benefits of integrated legal assistance services

The principal benefit is access to effective legal assistance. For some clients, social work involvement is not an optional addition but part of what enables the client to attend, communicate, understand advice, provide instructions and remain engaged.

Clients come to us frightened, distressed and overwhelmed. They may be unable to process information, unable to articulate their circumstances clearly, or unsure what is legally relevant. A social worker may prepare a client before a legal appointment so that the client is able to attend at all. During the appointment the social worker may help the client understand the solicitor's explanation, support communication, help the client manage distress and enable them to keep participating. After the legal matter concludes the social worker may continue to support the client, because social need does not end when a legal matter does.

Integrated practice also reduces the repeated retelling of traumatic experiences, supports safety and practical needs alongside legal issues, and improves continuity between legal and non-legal services.

Financial counsellors within the centre perform a related function from a different direction. They frequently identify a legal need in the course of their own work and support the client to reach a legal appointment, sharing information with the client's permission. Where a financial counsellor identifies that a client needs emotional support beyond their own role, they seek the client's permission and ask the social worker to make contact. Integrated practice therefore creates entry points to legal assistance for people who did not approach us with a legal problem, which is one of the access benefits the Commission identifies in Chapter 3, arising here outside a health setting.

Our outcomes data supports this. In 2024-25, 67 per cent of clients reported reduced stress and anxiety following our support, with practitioners observing the same in 82 per cent of cases, and 68 per cent reported feeling better equipped to plan for the future. Ninety-three per cent of clients accessed assistance in a timely manner, at an average of 6.7 days from first contact to appointment, improved from 8.4 days in the previous year.

> **Case study 1: interconnected legal and social need**
> *A woman in her fifties was referred to the centre by a specialist family violence service with interconnected family violence, property, children and victims of crime issues, alongside financial hardship, physical disability and continuing control by a former partner. She received integrated support from a family violence solicitor, social worker and financial counsellor. Legal advice addressed intervention order conditions, property recovery and a victims of crime application. The social worker provided emotional support, safety planning and family violence education. The financial counsellor advocated with agencies on her behalf. She left the relationship permanently, had two debts waived, lodged a financial*

assistance application and established a manageable medical payment plan. No single discipline acting alone would have produced that outcome.

Case study 2: support that made participation possible

A client sought a family violence intervention order through our duty service at the Mildura Magistrates' Court. She lives with bipolar affective disorder and physical disability, and her child is autistic. The orders sought were framed to reflect departmental supervised visit arrangements. She was supported throughout by our social worker and by her own personal support worker, and obtained a full two-year no contact order together with a flexible support package for home security. Had she been required to attend the legal consultation without that support, it is doubtful the application would have proceeded as it did.

These benefits are not incidental to integrated practice. **They are the reason it exists, and they are what is placed at risk when services restrict integration in order to protect privilege.**

5. Question 3: managing information disclosure requirements

This can be difficult because confidentiality, legal privilege, consent and professional disclosure obligations are related but distinct, and because several frameworks operate at once over the same client, in the same room, held by different members of the same team.

Our solicitors are subject to the confidentiality obligations of the Legal Profession Uniform Law and to the narrow exceptions in the Solicitors' Conduct Rules. Our financial counsellors are bound by the Australian Financial Counselling Code of Ethical Practice, must maintain membership of their state association in order to practise, and act on signed authorities when advocating on a client's behalf. Our social workers are subject to their professional code of ethics and to their own disclosure obligations, which differ from a solicitor's.

Those obligations also differ across the border we work on. In New South Wales a social worker is a mandated reporter of child abuse and neglect. In Victoria the same professional is not.

The wider organisation delivers services carrying mandatory reporting and information sharing obligations. Those obligations sit on the far side of the information barrier, and the barrier exists in part because they do. The tension the Commission describes in Chapter 4 is therefore a structural feature of our arrangements, managed at real cost, and that cost is incurred because the law is unclear rather than because our clients' interests require it.

Consent does not resolve this. We explain privilege, confidentiality and reporting obligations to clients at the outset, and we do so carefully. But consent to receive an integrated service is not the same as understanding the legal consequences of information sharing, and it is not the same as understanding the difference between confidentiality and privilege. Informed consent remains essential to integrated practice, but it should not operate as a substitute for clear legal protection or as the mechanism by which uncertainty about privilege is transferred to the client. A client in crisis is otherwise being asked to make a speculative decision about a future legal risk at the moment they are least able to evaluate it.

We would put one further matter before the Commission. Our own written explanation to clients states that privilege may not cover all communications within an integrated program, and that this risk exists because the security of privilege in the program has never been challenged or tested in a court. That is an accurate statement and we have not found a way to improve on it.

It also marks the limit of what consent can achieve. We are asking clients to accept a risk whose magnitude we cannot describe, because no court has told us what it is. A client who needs a social worker present to participate meaningfully in a legal consultation should not have to choose between that support and the protection of privilege.

The advocacy function raises a distinct difficulty. Social service professionals routinely use client information, with consent, to advocate to third parties. Our financial counsellors negotiate with creditors and utilities on behalf of clients experiencing family violence, which is precisely the example the Commission gives in Chapter 7 under Option 1. That advocacy is not incidental to the service. It is the service. A privilege which could not accommodate it would be unusable.

Cross-border delivery multiplies the difficulty. The centre operates across a state border. It is funded under separate agreements with Victoria Legal Aid and Legal Aid New South Wales, and it serves clients who live in New South Wales from a Victorian office. New South Wales has a professional confidential relationship privilege. Victoria does not. Whether any protection is available for a client's social service communications may therefore turn on which jurisdiction the client's matter proceeds in, rather than on anything about the service the client received or the professionals who delivered it.

Finally, there is the risk of subpoena. The systems abuse the Commission identifies in Case Study 4 is a live risk for our client group, whose two most common matter types are family and domestic violence orders and family and domestic violence. We note that in that case study the perpetrator's lawyer advanced a waiver argument based on the organisation's own client agreement. That is a sobering illustration of how a document designed to inform a client can be turned against them, and the risk applies to any service which, like ours, provides clear written explanations of confidentiality and disclosure.

6. Question 4: should the law enhance protection

Yes. The current uncertainty can disadvantage the very clients for whom integrated legal assistance is designed.

A client who can attend a solicitor's office alone, understand advice unaided and give instructions without support enjoys the full protection of legal privilege. A client who requires a social worker to be present in order to do those same things may not. The protection available to a person therefore turns on their capability, which is the opposite of what access to justice requires.

Where another professional's involvement is reasonably necessary to enable a client to obtain, understand, participate in or effectively use legal assistance, that involvement should not of itself result in the loss or waiver of legal privilege. Reform should provide greater certainty while preserving professional boundaries, appropriate information sharing and existing legal and professional obligations.

The present position also places services in an untenable position. Governments fund integrated legal assistance because it works. The law then treats the integration as a threat to a fundamental right. Services are left to manage that contradiction through practice safeguards and consent processes, which transfers a legal problem onto clients and frontline workers.

The difficulty is not confined to waiver

We want to be precise about what needs to be fixed, because the framing of the problem determines whether a reform will work.

Much of the discussion of this issue proceeds on the basis that the risk is waiver, that a client who accepts integrated support may be taken to have acted inconsistently with the maintenance of confidentiality. That risk is real. But it is the second of two problems and it is the smaller one.

The first problem is whether privilege attaches at all. Privilege requires that a communication be confidential and that its dominant purpose be legal, as the Commission sets out in Chapter 2. The difficulty of applying that to integrated legal assistance services is the one the Commission identifies in Chapter 4, under Complying with the requirements of legal privilege. Where third party communications are made to support the provision of legal advice, privilege will not apply if an equally important non-legal purpose can be inferred from the related but distinct area of expertise involved, and it is less likely that privilege will attach to the records a social service professional makes, stores, shares and actions. On that reasoning, a social worker's contribution to a joint appointment may never have been privileged, regardless of consent, records practice or waiver. A rule providing that participation does not constitute waiver would not assist, because there would be nothing to waive.

This is not an abstract concern for us. Our integrated practice framework already addresses the risk by structuring the program so that when a client communicates with the community service professional, the dominant purpose of that communication remains the obtaining of legal advice. That reflects the reality of the service, because the dominant purpose for which a client approaches a community legal centre is legal advice. We built the framework that way because we understand the dominant purpose test to be where the exposure lies. A reform which addressed waiver alone would leave untouched the very thing the framework was designed to manage.

Reform therefore needs to address both limbs. The formulation we propose under Question 7 is directed at both.

The enabling function

In its discussion of the common law in Chapter 2, the Commission notes that privilege attaches to communications between a client and a lawyer and to agents of either, and that agents such as employees or interpreters step into the shoes of the client or lawyer and do not independently consider and act upon the communications exchanged. The distinction drawn in the authorities the Commission reviews in that chapter is between that role and the role of a third party contributing independent expertise.

In our closely integrated practice, a social worker may perform an enabling function by assisting a client who is distressed, frightened or unable to process information to communicate with and participate effectively in legal assistance. In that respect there is a useful analogy with an interpreter or other person whose presence is necessary to facilitate communication. The analogy should not, however, obscure the social worker's distinct professional role. A social worker may also exercise independent professional expertise in areas such as safety planning, risk assessment, trauma-informed support and case coordination. The relevant question for privilege should therefore be whether the professional's participation in the particular communication is reasonably connected to enabling the client to obtain, understand, participate in or effectively use legal assistance, rather than whether the professional can be characterised solely as an agent of the lawyer or client. New South Wales legislation already recognises the related principle that a communication may remain confidential despite the presence of a third party where that person's presence is necessary to facilitate communication.

7. Question 5: the proposed privilege options

We address the two options separately, because our position differs between them.

For loosely integrated services, we support consideration of a statutory social service professional privilege operating alongside existing legal privilege. This could provide additional protection for confidential social service communications and records while allowing social service professionals to perform their legitimate professional functions.

For closely integrated services, we support the objective of stronger protection but prefer that the Commission consider extending and clarifying existing legal privilege rather than creating an entirely separate category. The central principle should be that the appropriate participation of an eligible social service professional in the delivery of legal assistance does not, by itself, constitute waiver or loss of privilege. This approach more closely reflects the function of the social service professional in our integrated programs, and avoids creating weaker or unnecessarily complex protection for clients who require additional support.

We offer three further reasons for that preference.

- The rationale of legal privilege already accommodates the case. Privilege exists to enable full and unreserved communication between a client and their lawyer. Where a client can only communicate fully with assistance, protecting that assistance furthers the rationale rather than departing from it.
- A separate category invites litigation about which category applies. The New Zealand experience the Commission describes in Chapter 6, under Expand legal privilege to accommodate integrated legal practice, is instructive. A two-tier proposal was abandoned in part because of the prospect of having to go to court to determine which tier applied to a given communication.
- A single clarifying principle is easier for frontline practitioners to apply than a third body of law layered over two existing ones.

8. Question 6: design of a social service professional privilege

If a social service professional privilege is introduced for loosely integrated legal assistance services, we offer the following views on its design.

- Scope. It should protect confidential communications made in the legitimate course of the social service professional's role, and the relevant records created through that service.
- Eligibility should be functional. It should be based on an appropriately qualified professional performing a recognised social service function within an integrated legal assistance service, rather than an unnecessarily narrow list of job titles.
- Accountability should attach to the service rather than to the individual. Some of the professionals who matter most in this setting are not registered under a statutory scheme. Financial counsellors must hold mandated qualifications and maintain

membership of their state association in order to practise. Social work is self-regulated in Australia and membership of the professional association is voluntary, so an individual social worker may not be bound by that association's code at all. A test built on individual registration would therefore be both under-inclusive and unpredictable. Eligibility should instead turn on the professional working within an accredited legal assistance service which is answerable for their qualifications, supervision and professional conduct.

- Advocacy must be preserved. The protection should not prevent a social service professional, with appropriate authority or consent, from using client information for legitimate functions such as practical assistance and advocacy, and it should operate consistently with clearly defined mandatory disclosure obligations. Our financial counsellors act on signed authorities to negotiate with creditors. A protection that made that unlawful or uncertain would remove a service on which clients depend.
- Investigative bodies. The protection should extend beyond court proceedings. For our clients the more common exposure is to child protection and police, not to a contested hearing.

9. Question 7: design of enhanced protection for closely integrated legal assistance services

The principle

We support a functional approach. Protection should apply where an eligible social service professional's participation is reasonably connected to enabling the client to obtain, understand, participate in or effectively use legal assistance. It should be capable of applying to community legal centres, Victoria Legal Aid, health justice partnerships and other recognised legal assistance programs, including formal partnerships between organisations.

We suggest the following formulation. Where an eligible social service professional participates in a communication between a client and a lawyer, and that participation is reasonably connected to enabling the client to obtain, understand, participate in or effectively use legal assistance, the communication should not lose the character of a privileged communication by reason of that participation, and the participation should not of itself constitute waiver.

Both limbs matter. The first addresses whether privilege attaches. The second addresses whether it is lost. A rule dealing only with the second would leave the harder problem untouched.

What should be covered

- Joint appointments involving the client, the solicitor and the social service professional, where the required connection to legal assistance is established.
- Preparatory communications, where the social service professional is facilitating the client's access to legal assistance. In our practice a client experiencing significant mental health difficulty may meet the social worker beforehand simply to become settled enough to attend.
- Documents as well as communications. As the Commission observes in Chapter 7 under Option 2, the Evidence Act protects communications with third parties for the purpose of litigation but only documents prepared by third parties for the purpose of legal advice. That distinction is unworkable in this setting.

- Continuing support. The conclusion of legal assistance should not retrospectively remove protection from communications or documents that attracted protection while integrated legal assistance was being provided. Where a social service professional continues to provide independent social services after the legal assistance has ended, subsequent communications should not automatically be treated as legally privileged and should instead fall to be considered under any applicable social service professional protection.

What should not change

- Professional roles remain distinct. Solicitors remain responsible for legal advice and social service professionals remain responsible for their own professional practice.
- The reform does not require a single shared client file and should not be read as requiring one. Our disciplines maintain separate records under separate professional frameworks, and that separation is a safeguard we would wish to keep.
- The law should distinguish independent social work records from communications or documents genuinely forming part of protected legal assistance. Social service records should not automatically become legal files, and the creation of a record should not of itself defeat privilege over a protected communication.
- Existing professional obligations continue.

The client's own support person

A related gap sits just outside the Commission's two options, and we raise it because our practice framework confronts it directly.

Our policy on third parties requires that where a client is assisted by a support person, an advocate or a family member, the solicitor sees the client alone first and then tells the client that their right to confidentiality may be lost if that person is present for the discussion. The policy allows some flexibility where the client has a cognitive or learning disability, which is to say it allows flexibility precisely where the support is most necessary.

We are therefore obliged to warn the clients least able to proceed unaided that the assistance they need may cost them a legal right. The support person in that situation may perform the same enabling function as an employed social service professional, and the reasoning that justifies protecting the one applies with force to the other. We recognise that extending protection to a person who is not a professional raises different questions of scope and accountability, and we do not suggest the answer is simple. We ask only that the Commission consider it, because a reform which protects the professional but not the family member will not reach every client who needs it.

Strength of protection

We support protection equivalent in strength to existing legal privilege, subject only to clearly defined statutory exceptions. A broadly qualified protection would require clients experiencing disadvantage to establish their claim in court, repeatedly, in circumstances where they frequently cannot afford representation. Case Study 4 describes a self-represented client being required to review documents and decide whether to claim privilege while the opposing party was legally represented. That is the outcome a broadly qualified protection produces. Any exception should therefore be narrow, predictable and capable of being understood by clients and applied by frontline practitioners.

The protection should apply before investigative bodies as well as courts. Applying it in one arena but not the other would be unworkable, because a service cannot adopt delivery and record keeping practices that are protected in one setting and self-defeating in the other.

Eligibility

We would favour clear statutory criteria which provide practical certainty, without imposing an administratively burdensome accreditation scheme that smaller or regional legal assistance services may struggle to meet. Recruitment and retention of solicitors in Mildura, Swan Hill and Broken Hill is a persistent difficulty, and a scheme carrying significant compliance overhead would fall hardest on the services with the least capacity to meet it and whose clients have the fewest alternatives.

We understand the Commission's concern that a purely functional test leaves privilege to be determined case by case, which clients experiencing disadvantage cannot afford, and we note the accreditation and ministerial designation options canvassed in Chapter 7 under Eligibility for the new legal privilege. If a certification mechanism is thought necessary to provide certainty in advance, we suggest it be optional and built on the existing National Accreditation Scheme rather than established separately. Our own accreditation already requires us to maintain a documented policy on legal privilege, to train staff on it at induction and to review it when a new service is introduced, and our compliance is externally assessed. A certification pathway could build on machinery of that kind rather than duplicate it. Certification should be a route to certainty rather than a precondition of protection.

We offer two further design cautions.

- Eligibility must not be conditioned on structural separation of legal and social services. A requirement of that kind would exclude the services that most need the protection, including ours.
- Eligibility must not be tied to Commonwealth or state legal assistance funding. Case Study 2 uses the Mabels program as the Commission's example of closely integrated practice. We deliver a Mabels program in Mildura in partnership with Eastern Community Legal Centre and Mildura Rural City Council, and it is philanthropically funded. If eligibility were aligned with national legal assistance funding agreements, as canvassed in Chapter 7 under Eligibility for the social service professional privilege, the Commission's own exemplar of the model this reform is designed to protect would fall outside it in our region.

Any definition must also accommodate partnerships of more than two organisations, and partnerships involving local government. Our Mabels program involves two community legal centres and a local council whose maternal and child health nurses are both mandated reporters and Information Sharing Entities.

A safety exception

We support a safety exception, and we consider its design to be the most consequential detail in the reform.

- The exception should be narrow, clearly defined and expressed in terms a frontline worker can apply without legal advice. Certainty matters more than breadth. A vague exception would reproduce the present problem in a new form.

- Our starting view is that disclosure should not be justified by general welfare concerns or a broad public interest test. Any safety exception should be confined to a clearly defined threshold of serious risk of significant harm, with the precise level, immediacy and categories of harm expressly addressed in the legislation and aligned, so far as practicable, with existing mandatory reporting and information sharing frameworks.
- Mandatory reporting obligations should be distinguished from the question whether a communication is privileged, so that practitioners and clients can understand the consequences of disclosure.
- The exception should be capable of being explained to a client in plain language at the start of a service relationship, because that is when it must be explained.

Jurisdictional reach

We ask the Commission to address the jurisdictional reach of any protection, because it bears directly on services like ours.

A Victorian protection would apply to matters in Victorian courts. Our practice does not sit neatly within them. The centre is funded under separate agreements with Victoria Legal Aid and Legal Aid New South Wales, and it serves clients who live in New South Wales from a Victorian office.

The Commission illustrates this difficulty in Chapter 7, under Inconsistency with other Australian jurisdictions, observing that Victorian providers operating across state borders would not be able to rely on the privilege for fear of inadvertently extinguishing their client's privilege elsewhere, and giving the example of a service at Albury-Wodonga. That description fits us, and for us the inconsistency arises within a single office rather than between two.

We also ask the Commission to resolve the question it raises in that same section, whether a Victorian protection would be picked up under section 79 of the Judiciary Act 1903 (Cth) in federal courts sitting in Victoria. Family law is a significant part of the legal need in our catchment, and a protection which did not reach federal proceedings would be of limited practical value to those clients.

We encourage the Commission to recommend that Victoria pursue national adoption through the relevant intergovernmental processes. A protection available only in Victoria would require a cross-border service either to maintain two practice models or to forgo the protection entirely in order to avoid inadvertently prejudicing clients elsewhere.

Cost shifting to the sector

We agree with the Commission's observation, in Chapter 7 under Potential financial burden on the legal assistance sector, that additional administration and training costs may fall on providers who take up a new protection, and that litigation testing the circumstances in which it applies would impose a further burden on clients and services. Unless implementation is funded, the effect is a cost shift onto community sector not-for-profit organisations. The mechanism is straightforward. A community legal centre cannot recover a new compliance cost from its clients, because its services are free, and it cannot recover it from its funder within an existing agreement. The cost is absorbed from the only part of the budget with any give in it, which is service delivery.

The Commission's example, in Chapter 7 under Impact on professionals, describes a community legal centre providing services that are not integrated alongside a closely integrated health justice program, and needing additional processes, case management systems and training to operate both. Our position matches that example and extends it. As we set out in answer to Question 1, our service spans legal assistance without integration, financial counselling that operates closer to the loosely integrated model, and closely integrated programs, and the degree of integration can change part-way through a matter. We would carry the cost of managing those boundaries.

Where that cost lands matters. The reform is designed to protect clients experiencing disadvantage, and if the cost of delivering it is absorbed by the services those clients depend on, the protection is bought with service capacity. A reform intended to widen access to justice should not narrow it in the places where it is already thinnest.

We therefore ask that the cost of implementing any new protection be recognised and met rather than assumed. Clarity in the drafting is part of the answer, because certainty is cheaper to administer than ambiguity, and it reduces the prospect of the protection's boundaries being settled through litigation that services of our size could not fund and could not take part in.

10. Concluding remarks

The Commission has identified a systemic catch-22. We would put the point slightly differently. The difficulty is not that integrated practice is incompatible with confidentiality. Our service demonstrates that it is not. Professional boundaries, separate records and clear roles can all be maintained, and we maintain them. The difficulty is that the law currently treats the professional support which enables a disadvantaged client to participate in legal assistance as a threat to the protection that participation should attract.

A client should not have to choose between the support they need to use a legal service and the privilege that makes the legal service worth using. Across much of our catchment that is not a choice at all.

We would welcome the opportunity to discuss this submission with the Commission, and would particularly welcome the chance to speak to its cross-border and rural dimensions.

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