

INQUIRY INTO LEGAL PRIVILEGE AND INTEGRATED LEGAL ASSISTANCE SERVICES

VICTORIAN LAW REFORM COMMISSION (AUGUST 2026)

KEY POINTS

- Community legal centres see the value of integrated legal services¹ for clients every day in addressing the multiple needs of clients in a holistic, trauma-informed way, and improving access to justice.
- Community legal centres welcome this inquiry as an opportunity to clarify and adapt the operation of legal privilege to integrated legal settings so that it keeps pace with modern legal service delivery models.
- Legal privilege should be reframed to protect a wider range of communications between lawyers, social service professionals and clients in integrated legal services.

We welcome the opportunity to provide feedback to the Victorian Law Reform Commission's (VLRC) inquiry into legal privilege and integrated legal assistance services. The Federation of Community Legal Centres Victoria (the **Federation**) has a strong interest in this inquiry, as Victoria's community legal centres are experienced leaders in providing holistic and trauma-informed legal services and have spearheaded the development of best practice integrated legal models.² Integrated practice models have become a key service delivery model for community legal centres, with a majority of our 50 members operating one or more integrated legal models.

Legal privilege is fundamental to legal practice and allows clients to communicate candidly with lawyers so they can receive comprehensive legal advice and make informed decisions. However, the operation of legal privilege has not kept pace with advancements in the delivery of legal services to people experiencing disadvantage who require holistic and trauma-informed responses. The Federation welcomes and supports this inquiry as an important reform opportunity that can strengthen the delivery of services that best meet the needs of the clients our members serve.

In this submission, the Federation draws on the work of our members, including through multiple consultations with the sector, individual discussions with our members, and engagement with other peak bodies and stakeholders. We note that not all members were able to participate in these processes, which should be considered when reading this submission and to inform the VLRC's further consultation plans.

¹ We use the term 'integrated legal services', 'integrated legal models' and 'integrated practice models' in this submission as more concise terms for 'integrated legal assistance services'.

² See, eg Eastern Community Legal Centre, *Integrated Practice: Better Practice Principles* (Report, 2025) <<https://eclc.org.au/wp-content/uploads/ECLC-Better-Practice-Principles-Integrated-Practice-Report.pdf>>; Delwyn Goodrick and Emma Sampson, *Meeting People Where They Are: Delivering Integrated Legal Community Services* (Report, Federation of Community Legal Centres Vic, 2020) <https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/406/attachments/original/1592962210/Meeting_People_Where_They_Are_Delivering_Integrated_Community_Legal_Services_%28FCLC_2020%29.pdf?1592962210>.



ABOUT THE FEDERATION

The Federation is the peak body for Victoria's 50 community legal centres. Our members are at the forefront of helping those facing economic, cultural or social disadvantage and whose life circumstances are severely affected by their legal problem.

For over 50 years, community legal centres have been part of a powerful movement for social change, reshaping how people access justice, creating stronger more equitable laws, and more accountable government and democracy. We want a community that is fair, inclusive and thriving.



THE FEDERATION ACKNOWLEDGES THE TRADITIONAL ABORIGINAL OWNERS OF COUNTRY AND WE PAY OUR RESPECTS TO ELDERS PAST, PRESENT AND EMERGING. WE RECOGNISE THEIR CONTINUING CONNECTION TO LAND, WATER AND COMMUNITY. SOVEREIGNTY WAS NEVER CEDED.



1. SUMMARY OF KEY RECOMMENDATIONS

Set out below are a summary of our recommendations.

The case for reform

1. We recommend that the VLRC explores reforms to legal privilege to provide greater certainty around the operation of legal privilege in integrated legal settings.

Options for reform

We recommend that:

2. the VLRC explores and test options for reframing legal privilege (option 2) that:
 - are not based on a model or type of service (e.g., loosely and closely integrated legal services)
 - would protect communications in the scenarios identified by our members as currently in need of clarification or protection
 - are consistent with the rationale of legal privilege and adapts it to the context of integrated legal assistance.
3. the VLRC is guided by the following key principles to ensure that any reforms to legal privilege:
 - place the client at the centre
 - aim to increase clarity and certainty of the application of legal privilege in integrated legal settings
 - do not erode any existing protections under legal privilege
 - facilitate existing and evolving ways of working in integrated legal settings
 - respects all partners in integrated legal services and their professional obligations.
4. as part of the process of refining the reform options for an extended or new category of legal privilege, the VLRC:
 - tests the different reform options with the community legal sector
 - considers whether the proposed reform options have any unintended consequences for social service professionals in consultation with relevant stakeholders (such as, conflict with other professional duties or disclosure requirements).

Social service professional privilege (option 1)

5. We recommend that if the VLRC is considering proceeding with a new social service professional privilege (option 1), there is further consultation with social service professionals and social service organisations.

Reframing legal privilege (option 2)

6. We recommend that any reframed or new category of legal privilege:
 - be absolute rather than qualified



- extends to community legal centres that are accredited under the National Accreditation Scheme, including their pro-bono partnerships. (We also support Victoria Legal Aid's position in relation to any application to its services)
- does not impose any additional accreditation obligations on community legal centres that are already accredited under the National Accreditation Scheme
- uses an inclusive definition of 'social service professional' to ensure services can adapt and evolve
- does not expand the exceptions to legal privilege for safety reasons beyond existing law
- extends to courts and investigative bodies and covers all communications.

Supporting guidelines and training

7. We recommend that the VLRC supports the development of further resources and education to improve clarity and certainty around the operation of legal privilege in integrated legal settings and its interaction with mandatory reporting and other information sharing schemes. This requires regular and ongoing funding to enable capacity-building, training and resources.



2. DEFINING KEY TERMS

Integrated legal services

We recognise that there are various different types of integrated legal services within the community legal sector. In this submission, unless otherwise specified, when referring to integrated legal services, this is intended to include a broad spectrum of different forms of integration (noting that this is separate to any statutory definition of integrated legal services which is addressed in section 7 below). As set out in the Governance Framework for Multidisciplinary Practice,³ this includes:

- Health justice partnerships: legal services integrated with health care settings
- Social service partnerships: legal services integrated with family violence services, financial counselling, housing services or community support organisations
- Education partnerships: legal services integrated with schools, universities, TAFEs or early childhood education centres
- Integrated practice programs: lawyers employed alongside other professionals (such as social workers, financial counsellors, advocates) within the same organisation to deliver coordinated services
- Embedded community legal centres: community legal services operating as programs within larger community service organisations.
- Co-located services: different professional services sharing physical space with structured collaboration
- Embedded partnerships: legal professionals working within partner organisations with ongoing coordination
- Community partnerships: formal collaboration arrangements between community legal centres and community organisations.

There are a wide variety of integrated service models, many of which have been described within the submissions of our members. As discussed further below, the Inquiry's distinction between loosely and closely integrated legal services is not reflective of the way that all integrated services are designed. We have included a description from one of our members that has not provided a separate submission in Appendix C alongside a case study which exemplifies the member's integrated legal practice.

Social service professionals

A key part of the context for this inquiry is the breadth of engagement with different kinds of 'social service professionals'. A broad range of professionals are involved in integrated legal services, including social workers, financial counsellors, health practitioners (such as nurses and maternal child health nurses), Aboriginal engagement workers, support workers, youth workers, housing workers, case managers, family violence advocates and care coordinators. In our recent survey of members, most community legal centres reported working with at least two types of professionals in their services.⁴ We recognise that these social service professionals have differing professional and information sharing obligations.

³ Eastern Community Legal Centre and Federation of Community Legal Centres Vic, *Governance Framework for Multidisciplinary Practice* (Report, November 2025) 6 <https://eclc.org.au/wp-content/uploads/CLC_Governance_Framework_for_Multidisciplinary_Practice1.pdf>.

⁴ Note that not all community legal centres participated in this survey (approximately 21 community legal centres responded to the survey) and therefore it only captures a sample of the community legal sector.



3. BENEFITS OF INTEGRATED LEGAL SERVICES

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

Integrated legal services provide significant benefits to clients, service providers and the justice system. Integrated service delivery is considered best practice in assisting people who have complex needs and are experiencing disadvantage, family violence and trauma.⁵

The community legal sector has been working in an integrated way with other services for decades. Community legal centres have developed and used integrated service models effectively to provide early intervention services and outreach to people who experience significant disadvantage and would most likely not otherwise seek legal assistance. Community legal centres are adept at leveraging the integrated partnerships built and maintained with other trusted social services to support clients' holistic and complex life issues and to be trauma-informed. Aboriginal Community Controlled Organisations (**ACCOs**) have led holistic and integrated legal responses for Aboriginal communities and these integrated legal models have been critical in embedding culturally safe approaches in the delivery of their services.

Integrated practice models have become a key service delivery structure for community legal centres and have been supported to grow through specific government funding for multidisciplinary service provision. The success of these models has been demonstrated by a number of evaluation reports. A list of more than 40 evaluations of integrated legal services is available on our website.⁶ The community legal sector highly values integrated service delivery models which is reflected in our recent survey, where all community legal centres that responded to the survey rated the benefits of such services as 'extremely beneficial' (the maximum score of 5).⁷

In this section, we have summarised the key benefits of integrated legal services, recognising that many of our members will provide case studies and examples from their integrated legal programs. For additional case studies on the benefits of integrated legal services, we refer the VLRC to select Federation publications on integrated legal services.⁸

Addressing complex needs

Integrated practice models address the reality that legal issues do not occur in isolation and are often part of broader health, social and financial problems. Integrated practice models recognise the interplay of legal and other social issues that can impact a person's life. Community legal centres respond to these needs by working collaboratively with other social service professionals, such as social workers, financial counsellors, school communities and health providers, to provide more holistic support to

⁵ Task Force on Justice, *Justice for All – Final Report*. (New York: Centre on International Cooperation, 2019) < <https://reliefweb.int/report/world/justice-all-report-task-force-justice-april-2019> >

⁶ 'Evaluations of Integrated Services', *Federation of Community Legal Centres* (Web Page) <<https://www.fclc.org.au/evaluations>>.

⁷ Note that not all community legal centres participated in this survey (approximately 21 community legal centres responded to the survey) and therefore it only captures a sample of the community legal sector.

⁸ Federation of Community Legal Centres, *National Legal Assistance Partnership Review – Response to Issues Paper: The Victorian Community Legal Sector Perspective* (Submission, October 2023) 54, 55, 57, 61 < <https://www.sdg16.plus/resources/justice-for-all-report-of-the-task-force-on-justice/> > <https://assets.nationbuilder.com/fclc/pages/715/attachments/original/1701667937/FederationofCLCsVictoria-1700190243.pdf?1701667937>; Federation of Community Legal Centres, *Equal Access to Justice – Victorian Budget Submission* (Submission, February 2021) 8-9, < https://d3n8a8pro7vymx.cloudfront.net/fclc/pages/704/attachments/original/1614813312/FCLC_BS21_Web%2825Feb2021%29.pdf?1614813312 >; Delwyn Goodrick and Emma Sampson, *Meeting People Where They Are: Delivering Integrated Legal Community Services* (Report, Federation of Community Legal Centres Vic, 2020)



people with complex life circumstances.⁹ Service delivery is centred around the person with experts developing strategies that best meet the various areas of support.

Extending the reach of legal services and identifying legal need early

Integrated legal services help people to understand and identify their legal need earlier and reach people before their legal issues escalate, improving access to justice. People are often unaware that their problems are 'legal' or are deterred from engaging with a lawyer due to access barriers, such as costs or negative perceptions of lawyers.¹⁰ People who are experiencing disadvantage have the lowest rate of seeking professional legal assistance of any group and are more likely to speak to a health professional or other frontline service about legal problems than a legal service.¹¹

The Victoria Law Foundation's Public Understanding of Law Survey (PULS) found that many people seek legal advice through non-legal sources, such as health and welfare professionals. PULS noted only 21 per cent of respondents who dealt with their legal problem obtained advice from a legal service.¹² In comparison, 29 per cent of respondents obtained advice from an independent source that was not a legal service, and 16.1 per cent of respondents sought advice from broader professional, health and community services.¹³ This reflects the findings from the Law and Justice Foundation's 2011 Legal Australia-Wide Survey which found that respondents sought the advice of their healthcare professional for over one quarter of their legal problems.¹⁴

Integrated legal services and partnerships ensure that people are connected with legal services wherever they seek help, including at schools, hospitals, maternal health clinics, youth centres, alcohol and drug programs, settlement services and family violence services. This extends the reach of legal services to people that would otherwise not be able to access them or for people who do not realise that their problems have a legal dimension.¹⁵ This also ensures that people in need of help have access to informed advice, critical in times where other sources of information may not help with resolving the legal issue to achieve best outcomes. It enables social service professionals with an existing relationship of trust to link the person into legal services, who may not otherwise be able to engage with a legal service due to disadvantage, trauma, lack of knowledge or trust and other barriers.

It is well documented that this focus on early intervention has a preventative effect in terms of reducing compounding harm for vulnerable groups and can reduce pressures on the justice system and other parts of the service systems down the track. This includes mental health, child protection and the

⁹ Delwyn Goodrick and Emma Sampson, *Meeting People Where They Are: Delivering Integrated Legal Community Services* (Report, Federation of Community Legal Centres Vic, 2020) 10
<https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/406/attachments/original/1592962210/Meeting_People_Where_They_Are_Delivering_Integrated_Community_Legal_Services_%28FCLC_2020%29.pdf?1592962210>.

¹⁰ Dacia Abela and Shifrah Blustein, *Restoring Financial Safety: The Transforming Financial Security Project* (Report, WestJustice and McAuley Community Services for Women, May 2021) 22 <https://westjustice.com.au/cms/uploads/docs/westjustice_restore_fin_safety_web-version.pdf>.

¹¹ Delwyn Goodrick and Emma Sampson, *Meeting People Where They Are: Delivering Integrated Legal Community Services* (Report, Federation of Community Legal Centres Vic, 2020) 10
<https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/406/attachments/original/1592962210/Meeting_People_Where_They_Are_Delivering_Integrated_Community_Legal_Services_%28FCLC_2020%29.pdf?1592962210>.

¹² Nigel Balmer et al, Report to Victoria Law Foundation, *Public Understanding of Law Survey (PULS) Volume 1: Everyday Problems and Legal Need* (30 August 2023) 99, 102 <<https://apo.org.au/node/324129>>.

¹³ Ibid.

¹⁴ Christine Coumarelos et al, *Legal Australia-Wide Survey: Legal Need in Australia* (Justice Report, Law and Justice Foundation of NSW, August 2012)
<<http://www.lawfoundation.net.au/ljf/app/&id=FC6F890AA7D0835ACA257A90008300DB>>.

¹⁵ For example, Victoria Kalapac notes that the healthcare system is an important avenue for the disclosure of family violence, and that evidence indicates health care professionals are a major group consulted by patients for legal advice on how to proceed in a family violence situation. : V Kalapac, *inLanguage, inCulture, inTouch: Integrated Model of Support for CaLD Women Experiencing Family Violence* (Final Evaluation Report, inTouch Multicultural Centre against Family Violence and Jean Hailes for Women's Health, December 2016) 22 <<https://intouch.org.au/wp-content/uploads/2023/04/inlanguage-inculture-report.pdf>>.



criminal legal system.¹⁶ The early resolution of legal problems can reduce the likelihood of matters escalating and leading to complex litigation thereby potentially reducing the demand on legal assistance at the pointy and more complex end.¹⁷ Integrated legal practice can also allow multidisciplinary services to identify macro-level issues and advocate for systemic change to the benefit of communities more broadly.

Trauma-informed and client centred approach

Integrated legal services are critical to providing trauma-informed and effective legal services for people experiencing disadvantage, family violence and trauma. People are more likely to be re-traumatised and disengage from the legal process when they are bounced around different services, given multiple referrals, left to self-represent in court or required to retell deeply personal and distressing information to multiple professionals.

Integrated legal assistance enables people to understand and engage with legal services in ways that is often not otherwise possible without ancillary supports. This is critical to access to justice by ensuring that people have the supports they need to engage with lawyers. It also assists in keeping clients, particularly those who experience trauma, engaged in the legal process and with other core services thereby leading to better outcomes.¹⁸ Improved linkages between services also minimises trauma associated with people having to repeat deeply personal stories to multiple services, which also reduces duplication across services.

Building people's sense of wellbeing

There is evidence that integrated services have a positive impact on people's wellbeing.¹⁹ In an international literature review, Health Justice Australia concluded that health justice partnerships are an effective model to tackle social issues that impact the health of marginalised groups.²⁰ Integrated practices break down service silos,²¹ and focus on addressing the underlying causes of legal problems.²² The Access to Justice Review concluded that integrated and collaborative forms of service delivery better targeted disadvantaged and vulnerable groups and had positive impact on their health.²³

¹⁶ Centre for Innovative Justice, *Strengthening Victoria's Victim Support System: Victim Services Review* (Final Report, November 2020) 149 <<https://cij.org.au/cms/wp-content/uploads/2020/11/strengthening-victorias-victim-support-system-victim-services-review-centre-for-innovative-justice-november-2020.pdf>>.

¹⁷ See the four persona journeys that reflect common CLC scenarios which illustrate the benefits of early access to integrated services delivered by CLCs at an individual, community and system level, as well as the costs where integrated community legal assistance is not available: Federation of Community Legal Centres Vic, *Prevent. Protect. Empower. The Case for Funding Community Legal Assistance*. (Submission to the 2026 Victorian Government Budget, 16 February 2026) Appendix A <https://assets.nationbuilder.com/fclc/pages/821/attachments/original/1771192297/Federation_sector_submission_to_the_2026_Victorian_Government_Budget.pdf?1771192297>.

¹⁸ Jan Breckenridge et al, Report to Australia's National Research Organisation for Women's Safety (ANROWS), *Meta-Evaluation of Existing Interagency Partnerships, Collaboration, Coordination and/or Integrated Interventions and Service Responses to Violence against Women* (30 September 2015) 33 <<https://www.anrows.org.au/publication/meta-evaluation-of-existing-interagency-partnerships-collaboration-coordination-and-or-integrated-interventions-and-service-responses-to-violence-against-women-state-of-knowledge-paper/>>.

¹⁹ See, eg, M Camilleri et al, *Central Highlands Health Justice Partnership: Evaluation Report* (Report, Centre for eResearch and Digital Innovation (CeRDI), 2018) <http://www.cerdi.edu.au/cb_pages/files/ch_hjp_evaluation_report.pdf>.

²⁰ Health Justice Australia, *Annotated Bibliography: Resource for the Review of the National Legal Assistance Partnership* (Report, 2 August 2023) 13 <<https://healthjustice.org.au/app/uploads/2024/02/HJAAnotatedBibliography.pdf>>.

²¹ When life gets complex, people rarely experience problems in discrete and neat ways. Yet this is what service structures suggest, creating specialised silos that approach problems as though they are isolated and distinct." Suzie Forell, *Working Together for Client Wellbeing: An Outcome of Health Justice Partnership* (Report, Health Justice Australia, August 2021) 3 <<https://healthjustice.org.au/app/uploads/downloads/Health-Justice-Australia-Working-together-for-client-wellbeing.pdf>>.

²² Law Council of Australia, *Homeless Persons* (The Justice Project, Consultation Paper, August 2017) 36–41 <<https://lawcouncil.au/files/web-pdf/Justice%20Project/Consultation%20Papers/Homeless%20Persons.pdf>>.

²³ Department of Justice and Regulation (Vic), *Access to Justice Review: Report and Recommendations*, vol 1 (Victorian Government, 2016) 150.



Addressing the legal and social needs of clients through integrated practice can reduce stigma and build resilience, wellbeing and a level of social participation.²⁴

Integrated service delivery also allows for increased collaboration between professionals from different disciplines providing important cross-disciplinary learning opportunities and strengthening practice to the benefit of professionals and clients.

4. THE CASE FOR REFORM

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

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

Question 4: Should the law enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance service settings? Why or why not?

There is a strong case for enhancing protection of communications between clients, lawyers and social service professionals in integrated legal settings. The current law on privilege creates uncertainty around the operation of privilege in different integrated legal settings. Legal privilege is a fundamental part of legal practice allowing clients to provide full and frank disclosure without the risk of being compelled to produce sensitive confidential information through subpoenas or other mandatory processes. While community legal centres are adept at designing integrated legal programs in ways that lessen the risk of the client's legal privilege being waived, this still places constraints on multi-disciplinary approaches, with implications for access to justice. It is critical that clients can provide full and frank disclosure without the risk of production in integrated legal settings, so they can receive the legal and other support they need to resolve challenging legal issues. However, the operation of legal privilege has not kept pace with developments in the delivery of integrated legal services to provide holistic and trauma-informed responses.

Our members report that the lack of clarity in relation to legal privilege can be a major barrier to operating integrated legal services and creates important practical challenges. There is strong support among the community legal sector for increasing the clarity and certainty of the operation of privilege in the context of integrated legal services.

Uncertainty around when legal privilege applies

The dominant purpose test creates uncertainty around the application of legal privilege in integrated practice settings. Legal privilege will protect confidential communications and documents made for the dominant purpose of giving or obtaining legal advice or for actual, pending or anticipated proceedings. The operation of the dominant purpose test can be challenging in an integrated legal service context where programs are designed to pursue multiple objectives at once. For example, this could mean that

²⁴ Delwyn Goodrick and Emma Sampson, *Meeting People Where They Are: Delivering Integrated Legal Community Services* (Report, Federation of Community Legal Centres Vic, 2020) 12
<https://d3n8a8pro7vnmx.cloudfront.net/fclc/pages/406/attachments/original/1592962210/Meeting_People_Where_They_Are_Delivering_Integrated_Community_Legal_Services_%28FCLC_2020%29.pdf?1592962210>.



while a court may find that the legal purpose is dominant for discrete advice, it is not the dominant purpose for safety planning, housing advocacy or health-related communications made for a distinct professional purpose.²⁵ Where legal and non-legal purposes are equal or interdependent, no dominant legal purpose may be identifiable.²⁶ This can be a challenging framework for integrated legal services given the focus on lawyers and social service professionals working together collaboratively to address a client's multiple support needs in order to achieve the best outcome for that client.

It is common in integrated legal services for there to be joint appointments with clients consisting of lawyers and social service professionals. This ensures that clients have the necessary support to engage with the legal process, addresses clients various support needs and reduces the need for clients to talk about traumatic experiences with multiple professionals in separate appointments. While this service model is core to integrated legal settings, in some circumstances there can be uncertainty around the operation of legal privilege in joint appointments. For example, if the social service professional's role is confined to enabling the client to communicate with the lawyer, a privilege claim may be available.²⁷ However, where the social service professional provides a distinct service, such as safety planning, counselling or housing support, that distinct function may defeat the dominant purpose test or create waiver risks in some circumstances.²⁸

This is challenging as many social service professionals do not merely facilitate legal communication, but also provide a distinct professional advice or services that affect the client's decision-making, such as safety planning, counselling, treatment, financial counselling, housing advocacy or family violence risk assessment. There can be further complexities where external social service professionals are involved in joint appointments, particularly given that their records or notes may sit on another organisation's systems.

The dominant purpose test is rigid and does not allow for flexibility to adapt to the client's needs during joint appointments. For example, the lawyer and social service professional may have planned that the focus of the appointment be on the requisite legal steps, but this may shift during the appointment if the client is distressed and requires therapeutic support to then engage with advice about their legal options.

Many integrated legal models involve coordinated case planning for clients between lawyers and social service professionals. This is important in ensuring that the complex challenges faced by the client are being addressed in a coordinated way. The operation of legal privilege in these contexts is not always clear. For example, communications between a lawyer and a social service professional without the client present may be privileged where, for example, the lawyer communicates legal advice for the professional to assist the client to act on. However, if the discussion instead concerns, for example, how the support worker will pursue housing, therapeutic support or safety planning for their own professional purpose, the privilege claim may be weaker.²⁹ These nuances require careful systems to be in place that cater for coordinated case planning where this is a central part of the integrated legal program.

Please refer to Appendix A (current law) which illustrates some of the challenges with the dominant purpose test in an integrated legal service context in relation to different scenarios.

²⁵ *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278; (2022) 136 FCR 357, [220].

²⁶ *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122, [30], [50].

²⁷ *Commissioner of Taxation v PricewaterhouseCoopers* [2022] FCA 278; (2022) 136 FCR 357, [41], [86]; *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122, [170], [219].

²⁸ *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122, [56]; *Mann v Carnell* [1999] HCA 66; (1999) 201 CLR 1, [29].

²⁹ *Spotless Group Ltd v Premier Building & Consulting Group Pty Ltd* [2006] VSCA 201; (2006) 16 VR 1, [20], [70].



Constraints on integrated service provision

Community legal centres are experienced at designing their services to address the risks of waiving privilege, but these risk management processes can constrain integrated service delivery in some circumstances.

As highlighted in the Federation's Integrated Practice Toolkit,³⁰ some risk management processes include:

- structuring joint meetings so legal matters are the focus (i.e., remain the 'dominant purpose')
- separating legal service and social service parts of meetings
- creating information barriers and separate files
- marking file notes as confidential and legally privileged
- requiring social service professional to leave a joint meeting where a client may disclose reportable information.³¹

These steps may be prudent risk controls, but may constrain timely and effective integrated service delivery, especially for clients in crisis, and can be resource intensive. This is consistent with member feedback that legal privilege can make operating integrated legal services more challenging. We refer to the submissions of our members which detail some of the challenges in relation to their integrated legal services.

Obtaining client consent

Some legal practices advise clients about the risks to legal privilege when engaging with integrated legal services and in joint appointments with lawyers and social service professionals. In some circumstances, this can lead clients having to make an impossible choice between accessing integrated legal services after weighing the risks to their privilege or opting out of integrated support. This integrated support may be critical to resolving the complex life challenges they are facing and providing them with the holistic suite of services to enable them to access, and continue to engage, with legal processes. This may place a heavy cognitive burden on clients already facing crisis and requires them to make speculative choices about future litigation and disclosure risk.

Further, clients may assume that the same confidentiality obligations apply on an organisation level and not distinguish between the duties of different professionals, particularly within a single organisation. The current framework of legal privilege is not aligned with the access-to-justice rationale of integrated legal services and their client-focused lens, adding to the case for reform.

Tension with different reporting obligations

In integrated legal services, there can be tension between maintaining confidentiality in line with lawyer's professional duties and social service professional's ethical reporting obligations, such as mandatory reporting and information sharing under the family violence information sharing scheme. Reform to the law governing legal privilege would potentially provide greater certainty to social service professionals as to when they can disclose confidential information obtained in integrated legal service settings.

³⁰ Federation of Community legal Centres (Vic), *Integrated Practice Toolkit – A guide to help understand privilege and mandatory reporting in integrated practices*, (Guide, Federation of Community Legal Centres, Vic, September 2018 <https://assets.nationbuilder.com/fclc/pages/570/attachments/original/1542952161/Integrated_Practice_Toolkit_-_Privilege_and_mandatory_reporting.pdf?1542952161>.



Recommendation 1

We recommend that the VLRC explores reforms to legal privilege to provide greater certainty around the operation of legal privilege in integrated legal settings.

5. OPTIONS FOR REFORM

Question 5: Are you in favour of establishing:

- a. a social service professional privilege that would enhance protection for communications between clients and social service professionals in loosely integrated legal assistance service settings and/or*
- b. a new category of legal privilege that would enhance protection for communications between clients, lawyers and social service professionals in closely integrated legal assistance service settings?*

Why or why not?

While there was consensus among members that the aim of the reform should be to provide clarity and certainty around the operation of privilege in integrated legal settings, there are different views about how privilege could be reframed to best achieve this. Based on the feedback we have received to date:

- there was greater support for reframing legal privilege (option 2), than introducing a social service professional privilege (option 1) (recognising that some members did support the development of a social service professional privilege),
- most members were supportive of legislative changes to legal privilege (option 2) rather than developing guidelines based on current law to improve certainty (although we recognise some members preferred the latter).

There were concerns that applying different types of privilege to loosely and closely integrated legal services did not reflect the diversity of integrated practices across the sector. The fact that our membership's preferences were varied is in itself a reflection of the diversity of ways that integrated practice is used across the sector.

We have set out some general principles that should underpin any reform and then address the possible options for reform set out in the Consultation Paper in the following sections. We recommend that legal privilege (option 2) is reframed to improve certainty and clarity in an integrated legal context and that there be further consultation of different legislative formulations.

Distinction between loosely and closely integrated legal services

The Consultation Paper proposes two reform options which distinguish between loosely and closely integrated legal services. The key distinguishing factor is whether there are information barriers between the lawyers and social service professionals in these models. In the Consultation Paper, loosely integrated legal services are defined as imposing strict information barriers between lawyers and social service professionals, while closely integrated legal services promote joint delivery of legal



and social services to clients.³² The VLRC has proposed the creation of a social service professional privilege for loosely integrated legal services and a new category of legal privilege for closely integrated legal services.³³

We have received feedback that this distinction was not necessarily reflective of the diverse ways in which integrated legal services are designed or delivered or how they may evolve over time. For example, in a recent survey of a portion of the community legal sector,³⁴ five community legal centres identified as falling within the definitions of loosely or closely integrated model. Others identified as operating services that were loosely and closely integrated at different points, operating both loosely and closely integrated legal services, and five identified as operating all forms of service – loosely, closely, and services that were loose and close at different points of the service. When asked how well the VLRC's model of loosely and closely integrated legal services fit their services, the average score was 3.29 out of 5.³⁵

While this distinction was less of a concern for members that only deliver closely integrated legal services, it presented challenges for those members who have a diversity of integrated legal approaches. Given the diversity of integrated practice across the community legal sector, these definitions may not be a reliable way of distinguishing between different levels of privilege. It could cause complexity where different types of privilege apply to different programs, particularly where a client may move through loosely and closely integrated legal programs as their matter evolves, and where centres operate multiple types of services at the same time. A reform option that is tied to a form of service could also discourage services from adapting or changing their models over time, which would be inconsistent with our key reform principles.

Some members have framed alternate definitions of integrated legal assistance, for example, where the substantive purpose is to provide legal assistance (e.g., social service support is complementary) or where the social service is provided in connection, or partnership, with the delivery of a legal service to further the administration of justice. We have considered this further below (see section 7) in relation to statutory definitions of integrated legal services for any reframed or new category of legal privilege (which is likely to involve different definitions for each proposed statutory test).

Key principles for reform

In this section, we discuss the key principles for reform that have guided our exploration of the reform options below.

The client comes first

As discussed above, the value of integrated legal services is that it is a client-centred model, and that any reforms should similarly take a client-centred approach. This principle means that any proposed reforms should always be tested in terms of its practical and legal impact on the client at the centre of the service.

Reforms should aim to increase clarity and certainty

³² Victorian Law Reform Commission, *Legal Privilege and Integrated Legal Assistance Services* (Consultation Paper) 6 <<https://www.lawreform.vic.gov.au/publication/legal-privilege-and-integrated-legal-assistance-services-consultation-paper/>>.

³³ *Ibid*, 43.

³⁴ Please note that not all community legal centres participated in this survey (approximately 21 community legal centres responded to the survey) and therefore it only captures a sample of the community legal sector.

³⁵ *Ibid*.



The principal aim of any reforms should be to increase clarity and certainty around the operation of legal privilege in integrated legal settings, including the intersection between legal privilege, mandatory reporting and other information sharing and confidentiality obligations. The aim should be to increase clarity and certainty so that all professionals and partners have a clear understanding of what information will and will not be privileged throughout the service, including lawyers, social service professionals and those managing and designing these services. This clarity is essential for clients as it is their legal privilege that is ultimately impacted.

These reforms should:

- build upon, rather than undermine, the current law of legal privilege,
- not require clients to make a choice that presents risks to waiving privilege and accessing the services they need
- enable services to be designed in a trauma-informed and holistic way which reduce clients having to retell traumatic experiences multiple times to different professionals
- support effective partnerships between lawyers and social service professionals by improving clarity and certainty about when information is protected and when information can and should be shared, consistently with the ethical, professional and legal obligations of all professionals involved in the services.

The lack of clarity and certainty stems from the uncertainty in the current law and its application to integrated legal services. As set out in Appendix A, there are a range of common scenarios in these services where the application of legal privilege is unclear, and this complexity is increased where this intersects with other legislative frameworks, such as mandatory reporting and obligations under the Family Violence Multi-Agency Risk Assessment and Management (**MARAM**) Framework and information sharing. We therefore support a reform of the law that would clarify and adapt the law to integrated legal services. We also support improved guidance and training and greater support and resources for service design, as a supplement to legislative reform, as discussed below in section 8 of this submission.

Reforms should add to the existing framework and not erode existing protections

It is important that any proposed legislative reforms should be in addition to the existing framework of legal privilege, so that any existing protections of legal privilege are not undermined. Otherwise, clients of integrated legal services would in effect have lesser protection than clients who access traditional legal services, and services would be forced to redesign existing models. We recommend that any legislative reform model should make clear that it is not intended to decrease any protection under existing legal privilege.

Reforms should facilitate existing and evolving ways of working

A key principle of any reforms is that they need to respect and facilitate the existing and evolving ways of designing and delivering integrated legal services. The aim should be to support integrated legal services through increased clarity and certainty, rather than to require legal services to redesign their services, or to add new barriers or layers of complexity.

This means that any reforms should recognise the diversity, flexibility, and fluidity of different models of integrated services. As discussed above, many community legal services do not fit neatly within the suggested models in the Consultation Paper of loosely and closely integrated legal services.

Reforms should respect all partners in integrated legal services and their obligations



Any reforms need to respect the professional, legal and ethical obligations of partners in an integrated legal service. This should include recognising the existing complexity of the obligations that partners are under and ensuring that any reforms do not undermine the obligations and practices of other professions involved in delivering integrated legal services.

Recommendation 2

We recommend that the VLRC explores and test options for reframing legal privilege (option 2) that:

- are not based on a model or type of service (e.g., loosely and closely integrated legal services)
- would protect communications in the scenarios identified by our members as currently in need of clarification or protection
- are consistent with the rationale of legal privilege and adapts it to the context of integrated legal assistance.

Recommendation 3

We recommend that the VLRC is guided by the following key principles to ensure that any reforms to legal privilege:

- place the client at the centre
- aim to increase clarity and certainty of the application of legal privilege in integrated legal settings
- do not erode any existing protections under legal privilege
- facilitate existing and evolving ways of working in integrated legal settings
- respects all partners in integrated legal services and their professional obligations.

Recommendation 4

We recommend that as part of the process of refining the reform options for an extended or new category of legal privilege, the VLRC:

- tests the different reform options with the community legal sector
- considers whether the proposed reform options have any unintended consequences for social service professionals in consultation with relevant stakeholders (such as, conflict with other professional duties or disclosure requirements).



6. SOCIAL SERVICE PROFESSIONAL PRIVILEGE (OPTION 1)

Question 6: If you support a social service professional privilege for loosely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

The VLRC's option 1 would create a professional privilege for social service professionals, likely modelled on the professional confidential relationship privilege in New South Wales and other jurisdictions.³⁶ It would protect confidential communications between clients and social service professionals in loosely integrated legal settings, while legal privilege would continue to protect lawyer-client communications. We note that it is likely that, as in other jurisdictions, it would be a qualified privilege.

While some of our members have noted that this type of privilege could have utility, most have focused on reframing legal privilege (option 2). Option 1 could have value for separated service delivery. For example, where the social service support has little or no nexus to a legal matter (e.g., it is continuing after the legal issue has ended and the social service records can be kept within a separate confidentiality framework). It is also comparatively conservative because it operates alongside, rather than within, the existing legal privilege doctrine. As some of our members have noted, there is potential value of consistency across different states and territories in its application of the privilege, although we observe any proposed reform in this inquiry would be limited to integrated legal services (and not extend to all social service organisations like in other jurisdictions).

However, its utility is limited because a qualified privilege may be overridden by a court and because it does not answer the waiver and dominant purpose risks that arise when lawyer and social service professional functions are intertwined. Option 1 may therefore be useful as a supplementary reform but is unlikely to address the principal problem identified by community legal centres operating integrated legal services.

If the VLRC was considering proceeding with the introduction of a new social service professional privilege, we would suggest further consultation with social service professionals and social service organisations who would be well placed to comment on the impact of such a reform on their practice. In line with our reform principles, any reform proposals should respect the legal, professional and ethical obligations of other social service professionals, and recognise the diversity of social service professionals whose obligations vary. Many of these professionals already work in complex legislative and regulatory environments in relation to information sharing and mandatory reporting. It would be important to ensure that the introduction of a new social service professional privilege would not increase complexity for social service professionals.

The drafting of this privilege would need to address whether controlled disclosure within a social service organisation remains confidential, how the privilege interacts with discretionary information sharing obligations, and whether mandatory reporting obligations remain unaffected. In terms of scope, confining the privilege to court proceedings would not necessarily protect communications from investigative bodies or compulsory information gathering powers, so we would anticipate that it should have broader coverage. Option 1 may reduce some disclosure pressure on social service professionals, but would not fully resolve the professional uncertainty described by our members.

³⁶Evidence Act 1995 (NSW) ss 126A-126F.



Recommendation 5

We recommend that if the VLRC is considering proceeding with a new social service professional privilege (option 1), there be further consultation with social service professionals and social service organisations.

7. REFRAMING LEGAL PRIVILEGE (OPTION 2)

Question 7: If you support a new category of legal privilege for closely integrated legal assistance service settings, do you have a view on the scope, elements, eligibility requirements or implications of the privilege? If so, what is it?

Most members supported reframing legal privilege (option 2) so that it is better adapted to integrated legal settings, while ensuring that existing protections under legal privilege are not eroded. However, there was not a clear consensus on how the test should be reframed or what type of integrated legal services it should extend to. The diversity of contexts and services in which our members operate requires a context-sensitive approach to reform (beyond the distinction between loosely and closely integrated legal services).

A key question in our view is defining a boundary between what is and what is not appropriate to be privileged that is consistent with the purpose of legal privilege (i.e., its legal rationale) but adapted to the context of integrated legal services. We consider that there is value in reframing the test in a way that continues to focus on the relevant purpose of legal privilege, while adapting it to clarify and/or extend the nexus between the purpose and the work of integrated legal services.

We consider that a productive way forward would be to begin by identifying the key scenarios in which there is significant support for legislative clarification. This would then provide a sounder foundation for identifying when it would be appropriate to extend protection, and to test which reform options may best achieve the intended purpose.

We set out some common scenarios that occur in integrated legal settings that were considered by members in relation to an extended or new category of legal privilege:

- joint client appointments between lawyers and social service professionals who are both part of a single organisation (e.g. a community legal centre), including where legal advice is provided alongside non-legal assistance from social service professionals, such as safety planning, financial counselling and housing support.
- joint client appointments between lawyers and social service professionals that are external (i.e., are employed by a partner organisation), particularly where this is part of a formal partnership with a clear memorandum of understanding (**MOU**) around privilege, confidentiality and record keeping. This could potentially include outreach appointments at a social service organisation as part of a partnership.
- joint case meetings between lawyers and social service professionals about a client's matter, without the client present. For example, where a lawyer is updating the social service professional on what support is required as part of the legal matter and the social service professional is sharing information they have received from the client relevant to the legal matter alongside actions they will take to support the client.
- confidential communications between a client and a social service professional, for example, in relation to support which is connected to the legal matter, such as housing support, counselling,



financial counselling or safety planning . This includes where the social service professional is the entry point for legal advice (i.e., they identify the client's legal need and link them to the legal team).

The implications of reframing legal privilege for social service professionals employed by a single organisation (i.e., community legal centre) is distinct from external social service professionals employed by partner organisations. There is greater complexity for external social services because their records and professional obligations may sit outside the community legal centre's direct control. Some members raised concerns around extending legal privilege in a way that constrains the ability of external social service professionals to carry out their professional duties as part of their own organisation's mandate, including around mandatory reporting and information sharing schemes. When reframing legal privilege and considering the most appropriate test, these factors should be considered.

Appendix A provides an example, where we have suggested scenarios and compared them across the reform options we discuss below. As part of this process, we would be happy to assist in facilitating a roundtable with our members to test proposed reform models against their diverse services and contexts.

In the section below, we discuss some of the benefits and disadvantages of the tests set out in the Consultation Paper.

Reframing legal privilege – different formulations

Option 2A: Lowering the threshold from 'dominant purpose' to 'appreciable purpose'

As set out in the Consultation Paper, one option would be to lower the threshold from 'dominant purpose'. A possible option would be to protect confidential communications where 'obtaining legal services' is an 'appreciable purpose'.

An advantage of this framing is that it directly addresses the issue where legal advice is not the dominant purpose, for example due to the provision of safety planning, counselling, financial counselling or other social support alongside legal advice. It could operate as an absolute privilege if framed as a category of legal privilege, and it is therefore the stronger form of protection under option 2 for truly joint appointments in which legal and non-legal work are interdependent.

With this approach the test remains focused on the purpose of legal advice, so it continues to have a clear relationship with the rationale of legal privilege. It also does not require a precise definition of integrated legal assistance which may make this simpler from a drafting perspective.

An appreciable purpose test departs from the dominant purpose test and significantly expands the privilege beyond its existing limits, especially if it is tied to 'obtaining legal services'. We note the High Court's concern about the breadth of an 'appreciable purpose' test that led to its adoption of the 'dominant purpose' test.³⁷ Obtaining legal services could be interpreted much more broadly than obtaining legal advice. This option would require careful drafting of scope so it does not extend legal privilege to purely social services work that has little or no connection with a legal matter. That is, social service communications where legal services are merely historical or incidental. For example, in closely integrated legal partnerships where the social service professional continues to support a client after the legal matter has ended.

³⁷ *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 71, 80, 120; *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 675, 688–689; see also *Guardian Royal Exchange Assurance of New Zealand Ltd v Stuart* 596, [605].



A potential disadvantage is that the 'appreciable' test, while flexible, suffers from a lack of clarity as it has not been the subject of consideration in case law. However, this could also be an advantage in that it is clear that the intention is to depart from the 'dominant' purpose. As discussed below, the lack of clarity could be mitigated by other legislative methods.

There could be different formulations of the appreciable purpose test. For example, legal privilege could protect communications that have an 'appreciable' purpose of a lawyer giving legal advice in connection with an integrated legal service, rather than 'legal services'. This would not necessarily require the lawyer to be in the same room when a communication is made, provided it meets the requisite appreciable purpose of a lawyer giving legal advice. This would be narrower than 'legal services' which may address the High Court's concern about the breadth of an 'appreciable purpose' test.³⁸ We have not had an opportunity to test this formulation with the community legal sector, but based on the feedback we have received, we envisage that there may be concerns that this formulation will not sufficiently capture the full spectrum of collaborative work undertaken by integrated legal services delivered by community legal centres.

Option 2B: the dominant purpose of obtaining 'integrated legal assistance services'

Another option raised in the Consultation Paper is to reframe privilege so it would retain the dominant purpose test but redefine the protected purpose as 'obtaining integrated legal assistance services'. This option would retain the connection to the purpose of the communication.

On a provider-based model, the inquiry would focus on the client's purpose in accessing the integrated provider's combined services, rather than attempting to weigh the legal and social components of each appointment. Its advantage is doctrinal familiarity as it retains the dominant purpose test, and it may make privilege more accessible from intake where a client's legal need becomes apparent only after an initial social service presentation.

This formulation has been supported by a number of members as it is seen to extend more clearly to many common scenarios in an integrated legal context. An advantage identified by members is that it is a flexible test that could potentially capture various forms of collaboration between lawyers and social service professionals when providing integrated legal assistance and support to clients. For example, confidential communications between the client, lawyer and social service professional, the client and each professional separately and between the lawyer and social service professional (e.g., case planning meetings).

While an advantage of this test is that it does cover a broad range of scenarios in integrated legal practice, it may apply quite broadly in some circumstances, even where there is no meaningful legal connection. Its operation is especially uncertain for external social service professionals. There would be a significant gap if external social service professionals were excluded. This recognises that many community legal centres work closely with social service professionals as part of partnerships to deliver integrated legal services to clients. However, if social service professionals from external organisations are included too broadly this could cover communications outside of the legal assistance relationship. This is distinct from social service professionals employed within a legal service as they are working within a legal framework and non-legal support is generally provided to enable clients to resolve their legal issues.

³⁸ *Baker v Campbell* [1983] HCA 39; (1983) 153 CLR 52, 71, 80, 120; *Grant v Downs* [1976] HCA 63; (1976) 135 CLR 674, 675, 688–689; see also *Guardian Royal Exchange Assurance of New Zealand Ltd v Stuart* 596, [605].



There would need to be a carefully drafted definition of ‘integrated legal assistance services’ that captures different models of integrated legal practice without extending legal privilege to unrelated social services. Some of these complexities could also be managed through program design.

Other ways of improving clarity

The options we have canvassed are flexible tests, which have the advantage of being sensitive to context. However, there may be ways to mitigate against the uncertainty caused by such flexibility, such as:

- including in the legislation clarification of the ways in which integrated legal services further the purpose of giving legal advice
- including examples of common scenarios that would be covered in legislation, legislative material such as guidelines, or in extrinsic material to guide interpretation of the provision.

Further clarity and certainty could be supported through other non-legislative reforms, including resourcing training and model guidelines or materials (see section 8 below).

Key elements

We have set out below our views on key elements that apply across different formulations of an extended or new category of legal privilege.

Absolute or qualified

We support any new privilege (option 2) being absolute, consistent with existing legal privilege. A qualified privilege was seen as potentially undermining the existing legal privilege and being too uncertain to be useful.

Eligibility for a reframed legal privilege

Any new privilege should extend to community legal centres that are accredited under the National Accreditation Scheme and their pro-bono partnerships. For example, Justice Connect’s model uses pro bono partners extensively. We support Victoria Legal Aid’s position in relation to any application to its services.

Sometimes legal practices title themselves as community legal centres,³⁹ but are not accredited under Community Legal Centres Australia’s National Accreditation Scheme. There will be different eligibility considerations for these practices, and they should not be automatically included as they do not have the same accreditation process as Federation members.

As eligibility would be based on accredited community legal centres (and Victoria Legal Aid in line with its position), we do not consider that there would be a need to define the clients accessing eligible integrated legal services.

The Consultation Paper raised whether a new privilege should apply to integrated legal services within commercial practices or pro-bono practices in commercial law firms. We received mixed feedback in relation to this and note that the priority for our sector is its application to community legal centres and Victoria Legal Aid in line with their position.

³⁹ The name ‘community legal centres’ cannot be trademarked and so it cannot be automatically assumed that an organisation calling itself a ‘community legal centre’ is accredited under the National Accreditation Scheme. Accreditation provides quality assurance of an organisation’s governance and practices, and is therefore relevant to this discussion around the relevant protections and parameters that could be put in place.



There was consensus that any eligibility should not be tied to accreditation of integrated legal services. As described in Appendix B, all our members are currently accredited under the National Accreditation Scheme that includes consideration of information sharing.⁴⁰ This framework accredits the organisation, rather than individual programs/services. Layering another level of accreditation would increase complexity for our members, rather than facilitating the development and delivery of integrated legal services. For similar reasons, we do not support a scheme that would require Ministerial approval, as this would also add administrative and legal complexity without any real benefit. We recommend a simpler approach, such as a descriptive legislative definition, which could be narrowed by tying the scope of the privilege to a community legal centre or legal assistance provider.

As highlighted in the Consultation Paper, we would anticipate that a reframed privilege should apply to a single organisation employing both legal and social service professionals or where legal and social services are delivered through partnerships. We envisage that the definition of 'social service professional' could be a general description, with an inclusive list of categories based on those we have already identified (see above), or legislative examples for the purpose of clarity. However, the precise statutory definitions of these terms would need to be carefully drafted depending on each of the above reform options and should be further tested with members in this context.

Safety exception

The VLRC suggested that an exception to legal privilege could be introduced that allows (or possibly requires) professionals in possession of privileged information to share that information to prevent harm to the client or others (the 'safety exception').⁴¹ This is intended to recognise the information sharing and reporting obligations that may apply to social service professionals (but not to lawyers). There were some members who considered that a new privilege should be subject to information sharing for safety reasons, mandatory reporting and other statutory requirements. There was also support for a targeted and carefully designed safety exception for closely integrated legal services involving social workers that would balance the differing thresholds for disclosure based on harm. However, many members were concerned that a new safety exception would risk undermining existing legal privilege and did not support adding any new safety exceptions to legal privilege.

While we recognise that it is important to balance social service professionals' ethical disclosure obligations and carefully consider the impact of any new privilege on social service professionals, we are concerned that adding new safety exceptions to legal privilege could erode the absolute nature of legal privilege. It is important to avoid an outcome where clients accessing integrated legal services potentially have weaker protection under legal privilege than if they were engaging with traditional legal services.

We observe that legal privilege is not otherwise of itself ordinarily subject to a general safety exception – privilege is only capable of being displaced by recognised exclusions (e.g. crime, fraud and improper purpose), waiver, or clear statutory abrogation.⁴² The professional conduct rules permitting lawyers to disclose confidential and privileged information for limited safety purposes (e.g., preventing imminent serious physical harm) should not necessarily be treated as a basis for creating a broad statutory exception to privilege. The VLRC would also need to consider whether there would be any difficulty accommodating any changed safety exception within uniform legal professional rules.

⁴⁰ 'Accreditation', CLCs Australia (Web Page) <<https://clcs.org.au/services/accreditation-2/>>.

⁴¹ Victorian Law Reform Commission, *Legal Privilege and Integrated Legal Assistance Services* (Consultation Paper) [7.48] <<https://www.lawreform.vic.gov.au/publication/legal-privilege-and-integrated-legal-assistance-services-consultation-paper/>>.

⁴² See, eg, *R v Cox and Railton* (1884) 153; *Evidence Act 1995* (NSW) s 125.



Scope of application

For the reasons indicated by the VLRC in its Consultation Paper and for the purposes of consistency with existing principles, privilege should extend to courts and investigative bodies and to all communications.

As highlighted in the Consultation Paper, as the privilege would be set out in Victorian legislation, it would only apply to matters heard in Victorian courts. This could raise challenges for community legal centres that operate across jurisdictions. It is unclear whether it could apply in federal courts sitting in Victoria, such as the Federal Circuit and Family Court, pursuant to section 79 of the *Judiciary Act 1903* (Cth). There would be significant gaps if any new form of legal privilege did not apply to federal matters heard in Victoria, such as family law and migration matters. The majority of our members provide legal assistance to victim survivors of family violence and this often intersects with family law, as well as migration law for women on temporary visas who experience family violence. However, even considering this potential gap, enhancements to privilege in Victoria are still important and could be used as a template for reform in other jurisdictions.

Recommendation 6

We recommend that any reframed or new category of legal privilege:

- be absolute rather than qualified
- extends to community legal centres that are accredited under the National Accreditation Scheme, including their pro-bono partnerships. (We also support Victoria Legal Aid's position in relation to any application to its services).
- does not impose any additional accreditation obligations on community legal centres that are already accredited under the National Accreditation Scheme
- uses an inclusive definition of 'social service professional' to ensure services can adapt and evolve
- does not expand the exceptions to legal privilege for safety reasons beyond existing law
- extends to courts and investigative bodies and covers all communications.

8. SUPPORTING GUIDELINES AND TRAINING

Alongside legislative reform to legal privilege highlighted above, we suggest that this is supplemented with further guidelines, resources and education to improve clarity and certainty around the operation of legal privilege in integrated legal settings. This would build upon valuable work already done.⁴³ This would require funding for ongoing capacity-building, training and strengthening of practice.

⁴³ In addition to material already cited, this includes projects completed under the previous Integrated Services Fund administered by the Federation, and existing professional networks and partnership supports.



This work should be led and designed by our members and their partners, as they would be best suited to understand the needs and the practical and legal contexts in which integrated legal services work, and have the relevant expertise in integrated service delivery.

We have received feedback from members that it would be beneficial to have clearer guidance on the intersection between legal privilege, mandatory reporting and other information sharing frameworks (such as, MARAM). Resources and training should address the interaction of legal privilege and other disclosure obligations on social service professionals.

Recommendation 7

We recommend that the VLRC supports the development of further resources and education to improve clarity and certainty around the operation of legal privilege in integrated legal settings and its interaction with mandatory reporting and other information sharing schemes. This requires regular and ongoing funding to enable capacity-building, training and resources.

9. NEXT STEPS

We thank the VLRC for the opportunity provided by this inquiry and its thoughtful engagement so far with us, our members and their partners. As discussed above and in our consultation, we believe it would be useful to convene a follow-up roundtable with our members to test further any possible reform models to ensure it meets the key aims and aligns with our key reform principles.

If we can be of any assistance, we would be happy to provide any further information or discuss this inquiry as the VLRC refines its recommendations.

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APPENDIX A: SCENARIOS COMPARED ACROSS CURRENT LAW AND REFORM OPTIONS

This annexure is intended as an indicative scenario analysis for illustration purposes only. It assumes that the relevant communications are confidential unless otherwise stated, and that the application of any reform option would ultimately depend on the final statutory language, including the definitions of “social service professional”, “integrated legal assistance service”, eligible providers and covered records.

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
Scenario 1: Lawyer, client and internal social service professional in a joint appointment Example fact pattern: A community legal centre (CLC) lawyer advises on a family violence intervention order while an internal support worker undertakes safety planning, or a counsellor supports a distressed client before the lawyer outlines debt or payment-plan next steps. Variable being tested: Whether an internal social service professional’s concurrent support creates	Possibly. Discrete lawyer-client advice may be privileged, but the full appointment record may be at risk where safety planning or counselling has a distinct non-legal purpose. The practical difficulty is separating the privileged legal advice from the support worker’s own professional purpose in a single integrated discussion.	No. Option 1 is directed to separated social service communications, not joint legal-social communications in closely integrated appointments. It may protect a separate client-support worker communication, but it does not solve the dominant purpose or waiver problem for the joint appointment.	Yes. Option 2A may protect joint communications where obtaining legal services is an appreciable purpose, even if safety planning or counselling occurs concurrently. Its weakness is that purely social support after the legal component ends may fall outside protection.	Yes. This option may protect communications with an appreciable purpose of a lawyer providing legal advice, including communications that help the client receive, understand or act on that advice. It is narrower than the other options because purely therapeutic, safety or financial support with no continuing legal-advice nexus would not be protected.	Yes. Option 2B may protect the appointment if the client’s dominant purpose is accessing the provider’s integrated legal assistance service. There would need to be a robust definition that captures the integrated service without extending privilege to unrelated social services.

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
dominant-purpose, waiver or record risks in a closely integrated joint appointment.					
Scenario 2: Lawyer, client and external social service professional in a joint appointment. Example fact pattern: An external professional who is not part of the CLC's integrated service or existing partnership attends the legal appointment to provide support or safety planning. Variable being tested: Whether privilege protection changes where the social service professional is external, has a distinct role and may keep records outside the CLC's control.	Possibly. Severable confidential legal advice may be privileged, but the claim is weaker because the external professional's distinct role and separate records increase confidentiality and waiver risk. The main added risk is that external records may sit outside the CLC's control and be harder to manage in response to subpoenas or information requests.	No. Option 1 does not extend legal privilege and only assists separate confidential social service communications if that statutory privilege applies. The CLC would still need formal information barriers, confidentiality protocols and careful limits on what legal advice is shared externally.	Possibly. Option 2A would not protect the joint communication merely because the external professional attends. Protection is more likely only if the legislation treats the external professional as participating in an eligible integrated legal assistance service and the communication has an appreciable legal-services purpose.	Possibly. This formulation would protect only if the external professional is covered by an eligible integrated arrangement and the communication has an appreciable legal-advice purpose. Informal external attendance without a formal partnership, engagement or confidentiality framework may remain outside the extension, but that would be subject to design.	Possibly. Option 2B would not necessarily protect the appointment unless the external professional is delivering services as part of an eligible integrated legal assistance service. If external partners are excluded, there would be significant gaps and protection may fail. If they are included too broadly, privilege may extend beyond the legal assistance relationship.
Scenario 3: Joint case meetings between lawyers	Possibly. Privilege may apply where the	No. Option 1 may protect separate social	Yes. Option 2A may protect joint case	Yes. This may protect case meetings where the	Yes. Option 2B may protect joint case

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
and social service professionals about clients, without the client present. Example fact pattern: A lawyer explains child protection order requirements so the support worker can assist the client with services and compliance. Variable being tested: Whether lawyer-social service professional case coordination is privileged where legal advice, case management and social support are mixed and the client is absent.	meeting is for the dominant purpose of legal advice or litigation-related legal services, rather than general multidisciplinary case coordination. The claim is stronger where the lawyer communicates legal advice so the professional can help implement it for the client, and weaker where the discussion is mainly social support.	service records, but not the lawyer's disclosure of legal advice to the social service professional or any resulting waiver risk. The meeting would still need to be structured and recorded as a legal implementation meeting to maximise current privilege protection.	meetings where obtaining legal services remains an appreciable purpose. It gives improved protection for multidisciplinary case planning, but still requires the service to identify when the legal purpose has ceased.	lawyer explains advice, seeks necessary social service input or coordinates implementation of advice for the client. It would also protect a social service professional-led case conference if there is an appreciable purpose of a lawyer providing legal advice, such as where the professional gathers information to enable the lawyer to advise or carefully, and where appropriate to do so, relays legal advice to assist implementation.	meetings within an eligible integrated service delivery to a greater extent. Its strength is operational coverage for internal coordination. It could capture all client discussions regardless of legal content (which may be quite broad in some circumstances).
Scenario 4: Lawyer-social service professional communications about housing, safety planning or practical support in the client's legal context.	Possibly. Privilege is stronger if the housing or safety planning discussion is directed to legal advice, anticipated proceedings or legal	No. Option 1 may protect separate confidential communications between the client and social service professional, but it	Possibly. Option 2A may protect the communication where obtaining legal services remains an appreciable purpose, such as where	Possibly. This option may protect housing, safety or practical support discussions that assist the lawyer to provide legal advice or help the client act on	Possibly. Option 2B may protect the communication if the discussion forms part of eligible integrated service delivery. Housing or safety discussions may be

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
Example fact pattern: In a family violence matter, a lawyer and support worker discuss how the support worker will assist with a housing application. Variable being tested: Whether practical support communications linked to a legal matter are privileged, or instead remain distinct social support communications.	strategy, but weaker if it serves a distinct housing, therapeutic or support purpose. The practical difficulty is that housing and safety planning may be essential to the legal remedy but not themselves legal advice, and the social service professional's own professional purpose may not align with the dominant purpose test.	would not protect the lawyer-social service professional communication as legal privilege. Its utility depends on whether services are delivered separately with information barriers and whether the qualified privilege is not overridden.	support is coordinated so the client can pursue a family violence intervention order or comply with child protection requirements. Protection may cease once the discussion becomes solely about housing support.	that advice. Independent housing advocacy with no legal-advice nexus would remain outside the extension.	protected simply because they occur within the integrated provider even where no legal issue is raised (which may be quite broad in some circumstances).
Scenario 5: Outreach appointment at a social service organisation where legal advice is not likely to be the dominant purpose. Example fact pattern: A financial counsellor discusses debts and payment plans while a lawyer discusses Work Development Permit next	Possibly. Severable legal advice may be privileged if confidential and identifiable, but the whole appointment is unlikely to be protected where the dominant purpose is financial counselling, counselling, redress	Possibly. Option 1 may assist if the social and legal components are delivered separately or can be separated with information barriers. It provides improved protection for loosely integrated outreach where the social service professional's	Possibly. Option 2A may protect more of the appointment if obtaining legal services is an appreciable purpose, even though it is not dominant. The key limitation is that legal services must be more than incidental,	Possibly. This option would protect communications with an appreciable legal-advice purpose, but not broader financial counselling, counselling or redress-support communications without that nexus. It is narrower than the other	Possibly. Option 2B may protect the appointment if the client's dominant purpose is characterised as accessing an eligible integrated legal assistance service. It is less likely for an ordinary social service organisation or where the dominant purpose is

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
steps, or a counsellor supports a client while a lawyer gives redress scheme information and limitation advice. Variable being tested: Whether privilege can attach where legal advice is provided in a social-service-led outreach appointment and legal advice is not likely the dominant purpose.	support or another social service. Third-party social service communications with a distinctive function will generally remain exposed.	communications with the client can be distinguished from the lawyer's advice, but limited protection where the appointment is truly joint and integrated.	and protection becomes uncertain once the legal component ends.	options in circumstances where legal advice is only a minor component.	ordinary counselling or financial counselling.
Scenario 6: Social service professional communicates potentially privileged information to a third party. Example fact pattern: A social worker helping with a housing application tells a housing provider that the client is likely to be evicted in VCAT proceedings. Variable being tested: Whether onward disclosure	No. An external housing advocacy communication for a distinct social support purpose is unlikely to be privileged under current law and may waive privilege over underlying privileged communications if inconsistent with confidentiality. A safer practice is to communicate the	No. Option 1 may protect a confidential client-social service professional communication in a loosely integrated setting, but is unlikely to protect onward disclosure to an external third party. Because option 1 is likely to be qualified, a court may still override the	No. Option 2A may protect internal social service communications where obtaining legal services remains an appreciable purpose, but onward disclosure to an external housing provider may fall outside the privilege.	No. This option may protect the underlying legal-advice-linked communication, but would not ordinarily protect external housing advocacy.	No. Option 2B may protect underlying information arising within an eligible integrated legal service, but onward disclosure remains uncertain and may depend on the definition of integrated legal assistance services.

Scenario	Current law (dominant purpose test)	Option 1 (social service professional privilege)	Option 2A (appreciable purpose of obtaining legal services)	Option 2A (appreciable purpose of the provision of legal advice)	Option 2B (dominant purpose of obtaining integrated legal assistance)
outside the integrated- service relationship creates waiver risk.	practical need in general terms rather than repeat legal advice about VCAT prospects or other privileged matters.	protection even where it applies.			

APPENDIX B: ACCREDITATION AND THE RISK MANAGEMENT GUIDE

The **National Accreditation Scheme (NAS)** is the quality assurance and accreditation framework for Community Legal Centres, developed by Community Legal Centres Australia (**CLCA**). It provides an independent process for assessing whether community legal centres meet recognised good practice and industry standards, giving confidence to clients, communities, funders and other stakeholders that services are delivered effectively and responsibly. The NAS promotes continuous quality improvement and incorporates flexibility to accommodate centres of different sizes, service models and levels of organisational maturity.

In Victoria, the Federation administers the NAS through a structured accreditation cycle that operates on a three-year basis. The process includes self-assessment, desktop and on-site review, consultation, accreditation reporting, improvement planning, accreditation decisions, and ongoing monitoring of progress. Centres must demonstrate compliance with, or progress towards, NAS standards through a documented evidence-based assessment process. The scheme is further supported by peer review and annual cross-check processes that strengthen accountability, risk management and service quality across the sector.

The NAS is closely aligned with the **Risk Management Guide (RMG)**, the community legal sector's national risk management framework. The RMG establishes mandatory standards and minimum requirements to ensure community legal centres deliver safe, ethical and high-quality legal and related services. It covers key areas including governance of legal practice, supervision, confidentiality, client legal privilege, privacy, information security, conflicts of interest, information barriers, and the management of multidisciplinary and non-legal support services. Compliance with the RMG is a core component of both NAS accreditation and the sector's professional indemnity insurance framework.

The RMG is particularly relevant to this inquiry into legal privilege and integrated legal assistance services because it provides a practical governance framework for managing the legal and ethical challenges that arise within multidisciplinary and integrated practice models. Relevant standards include Confidentiality (Standard 6), Client Legal Privilege (Standard 7), Privacy (Standard 9), Non-Legal Support Services (Standard 10), Auspiced Services and Specialist Programs (Standard 16), and Information Barriers (Standard 17). Together, these standards recognise the benefits of integrated service delivery while establishing safeguards to protect privileged communications, maintain confidentiality, manage conflicts of interest and regulate information sharing between legal and non-legal professionals.

In Victoria, implementation of the RMG is further supported by the **Professional Standards and Support Committee (PSSC)**, a committee of experienced Principal Lawyers who collectively undertake the functions of the State Professional Indemnity Insurance (PII) Representative. The PSSC provides guidance to Community Legal Centres on legal practice risk, ethical issues, interpretation of the RMG, information barriers, and cross-check processes, supporting both continuous improvement and consistent application of risk management standards across the sector.

APPENDIX C: SPECIFIC COMMUNITY LEGAL CENTRE EXAMPLES

We understand that many community legal centres have made separate submissions with descriptions of their integrated legal services which we understand will be considered by the VLRC as part of this inquiry. This description services is provided by Moonee Valley Legal Service (MVLS), as they did not make a separate submission and have requested that it be included here.

MVLS provides integrated services along a spectrum of integration. MVLS's various approaches to integrated services are listed roughly from most to least integrated:

Short-medium term social work support: by a staff social worker to eligible clients who consent to a referral. This model is only available to clients who are receiving legal assistance at MVLS at the time of the referral to social work; other eligibility criteria also apply due to resourcing restraints. The type of social work provided has varying degrees of association to the legal issue for which the client presented and can continue after a legal file has closed. The social worker may do joint appointments with lawyers where useful but will otherwise meet with client separately. Social workers may collaborate frequently with lawyers for one client but have little to no discussion with lawyers for another, depending on the focus and need. Social work files are separate but 'related' to a legal file on MVLS's case management system.

Social work student support: by social work students from local universities engaged as part of their placement. Under the supervision of the staff supervisor, the student will provide similar (as above), although often less complex support to eligible clients.

Bicultural work: by staff bicultural workers (BCWs) to multicultural, particularly East African, community members, via a model which sits outside of the mainstream MVLS processes. BCWs don't use or have access to the case management system. Any community member can receive information or assistance with discrete tasks that strengthen their understanding of Australian systems and provide early intervention and identification of legal problems. BCWs are present at community spaces and events, raising awareness and removing barriers to MVLS and other services. BCWs can refer community members into MVLS' legal or social work teams. Set out below is an example of MVLS's integrated model.

MVLS case study – integrated legal support

Jane attended MVLS at a time when she was at imminent risk of being evicted from her home. After an urgent appointment with the MVLS tenancy lawyer, it was identified that Jane was in significant arrears for her public housing property. The lawyer identified that a set of challenging life circumstances - complex mental health conditions and being a victim-survivor of family violence - had made it very hard for Jane to get on top of her rent issue without help. She also did not have her own bank account, or the identification cards/documents needed to open a new one.

With Jane's consent, MVLS began providing integrated legal-social work support with the tenancy lawyer bringing in a staff social worker to support Jane with her non-legal needs. The social worker worked with Jane to get key identification documents back and to eventually open her own bank account. By applying for grants of funding, MVLS was able to support Jane to address the bulk of her arrears, creating the conditions for the tenancy lawyer to negotiate with the housing provider/tribunal for a solution that was acceptable to them to keep Jane is safe and secure housing.

Shortly after, Jane was remanded. MVLS kept in touch with Jane during this time and took steps to ensure she was able to meet her rental

obligations so she had safe housing upon release. The tenancy lawyer also supported Jane to connect with a specialist criminal lawyer elsewhere. Once released, Jane visited MVLS for support to get on top of her energy bills, and to be connected with an employment support service.

Jane has not always found it easy to stay engaged with service providers, but the place-based and integrated nature of the MVLS service made it accessible for her. With simultaneous legal and social work support, MVLS was able to stabilise Jane's tenancy during a tumultuous time that might otherwise have led to homelessness.