

Victorian Law Reform Commission

Review of Legal Privilege and Integrated Legal Assistance Services

Protecting Legal Privilege in Integrated Legal Assistance Services**A rights-based perspective on family violence, client autonomy and access to justice****Submitter**

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Scope note. This submission is made in a personal academic capacity. I do not write as a Victorian legal practitioner and do not claim first-hand empirical experience of Victorian integrated service delivery. The submission therefore focuses on the Commission's Questions 4, 5 and 7 and offers a legal and rights-based analysis of the design of a new privilege, with particular attention to family violence and other situations in which clients face heightened vulnerability.

Executive summary

The central problem identified by the Commission is structural: the people most likely to benefit from closely integrated legal and social support are also those most exposed to the consequences of losing legal privilege. A person experiencing family violence, homelessness, health problems or other forms of disadvantage should not have to choose between holistic assistance and the confidentiality that makes effective legal advice possible.

I support legislative reform. In particular, I support Option 2: a new category of legal privilege for closely integrated legal assistance services. A separate qualified privilege for social service professionals (Option 1) may be useful in loosely integrated settings, but it does not resolve the core problem in closely integrated practice because it leaves different parts of the same client interaction protected to different degrees.

The new privilege should protect the full integrated communication - oral communications, documents, notes, electronic records and necessary inter-professional exchanges - where the client is receiving an eligible integrated legal assistance service. It should apply before courts and investigative bodies and should be presumptively absolute, subject to a narrowly framed statutory safety exception.

The legislation should also make clear that a client does not waive privilege merely by accepting an integrated service, speaking in the presence of an eligible social service professional, or permitting information to be shared within the integrated team for a defined service purpose. Waiver should be express, informed and specific. This is particularly important in family violence matters, where uncertainty about confidentiality can itself become a barrier to help-seeking and records can be sought or weaponised through legal process.

Recommendations at a glance

No.	Recommendation
1	Enact a new statutory legal privilege for closely integrated legal assistance services.
2	Apply the privilege to both court proceedings and investigative or compulsory information-gathering processes.
3	Protect all communications and records created for the integrated service, including necessary communications among eligible professionals.
4	Use a functional definition of eligible integrated services that covers same-organisation models and formal partnerships, while excluding ordinary commercial multidisciplinary services.
5	Do not treat participation in integrated services, the presence of a social service professional, or limited internal information sharing as waiver.
6	Create a narrow safety exception for serious and current risks, with special protection for children, minimum-necessary disclosure and procedural safeguards.
7	Use a simple accreditation or statutory-criteria model that gives clients advance certainty without excluding small community or pro bono partnerships.
8	Provide implementation funding, training and model protocols, and pursue longer-term national harmonisation to reduce cross-border inconsistency.

Response to Question 4: Should the law enhance protection?

Yes. The law should enhance protection for communications between clients, lawyers and social service professionals in integrated legal assistance settings. The Commission's Consultation Paper shows why ordinary legal privilege is a poor fit for genuinely integrated practice: confidentiality can be contested when non-lawyers participate, and the dominant-purpose test becomes difficult where the same conversation simultaneously addresses legal, housing, health and safety needs. The result is uncertainty precisely where certainty is most important (VLRC Consultation Paper, paras 1.4-1.12 and 4.1-4.18).

The case for reform is especially strong in family violence matters. Integrated services are often designed around the reality that legal remedies cannot be separated from immediate safety, housing, health, financial and child-related needs. Requiring rigid professional separation to preserve privilege can undermine the person-centred model itself. Conversely, asking a client to consent to a possible loss of privilege can place the burden of a structural legal problem on the person least able to assess its future consequences. The Commission also records the risk that subpoenas can be used as a form of systems abuse against victim-survivors (paras 5.22-5.24).

This is not simply a matter of convenience. Legal privilege serves the administration of justice by enabling full and frank communication. The Commission also identifies access to justice as a central benefit of integrated service delivery. Reform should therefore aim to make these principles mutually reinforcing rather than mutually exclusive. A rights-based approach also supports this direction: stronger protection of confidential information is consistent with the privacy values reflected in section 13 of the Charter of Human Rights and Responsibilities Act 2006 (Vic), while effective access to legal assistance supports the practical fairness of legal proceedings reflected in section 24. Any reform must at the same time take seriously the protection of children under section 17.

Response to Question 5: Preferred reform model

Primary preference: Option 2. I support a new category of legal privilege for closely integrated legal assistance services. The key reason is coherence. A single integrated interaction should not be divided into legally privileged, professionally confidential and unprotected fragments according to which professional happened to ask a question or record an answer. That fragmentation is difficult for professionals to administer and almost impossible for a client in crisis to understand.

The Commission notes that Australian law already recognises third-party participation where the third party is sufficiently connected to obtaining legal advice, including the reasoning in *Pratt Holdings Pty Ltd v Commissioner of Taxation*. Closely integrated legal assistance services present an even stronger access-to-justice rationale: the social service professional is not merely an external convenience but may be essential to making the legal service safe, intelligible and usable (VLRC Consultation Paper, paras 7.28-7.30).

Supplementary role for Option 1. A social service professional privilege can still be useful for loosely integrated services and should be considered as a complementary reform. However, because it would likely be qualified, it cannot provide the same assurance as legal privilege and should not be treated as a substitute for Option 2 in closely integrated services. The Commission itself notes that qualified privileges can be under-used or displaced, leaving clients uncertain about whether sensitive information will ultimately be protected (paras 7.25-7.27).

Response to Question 7: Design of the new privilege

1. Scope: courts, tribunals and investigative bodies

The privilege should apply consistently to court processes and to compulsory investigative or information-gathering powers. A privilege that protects the same record in one forum but not another would be difficult to explain to clients and difficult for services to administer. The Commission correctly identifies this as a practical problem (paras 7.31-7.35). For family violence clients, the most harmful disclosure may arise through child-protection, family-law or related processes rather than a single conventional court proceeding.

2. Nature of protection: absolute by default

The new privilege should be absolute by default, as ordinary legal privilege is, subject to clearly specified statutory exceptions. If every subpoena or disclosure request triggers a discretionary balancing exercise, the reform may reproduce the very uncertainty and litigation burden it is intended to solve. Clients experiencing disadvantage should not need to finance satellite litigation merely to discover whether an integrated-service record is protected.

3. Communications and records covered

Protection should extend to oral and written communications, joint meetings, intake notes, case plans, internal referrals, emails, digital case-management records, and communications among the lawyer and eligible social service professionals where they are reasonably connected to delivery of the integrated service. The legislation should avoid a distinction that protects a spoken conversation but leaves the professional's necessary record of that conversation exposed (paras 7.37-7.40).

Limited disclosure for a defined service purpose should not automatically destroy confidentiality. For example, a social worker may need to provide a housing service with enough information to secure emergency accommodation, or a health professional may need to provide a lawyer with a medical record relevant to a family violence application. The law should distinguish such contained, authorised service use from broad external disclosure.

4. Purpose test

The purpose test should reflect the integrated nature of the service and should not simply re-import the existing dominant legal purpose test. A workable formulation would protect a communication made for the dominant purpose of obtaining or providing an eligible integrated legal assistance service, provided that legal assistance is a genuine and appreciable component of that service. This preserves an objective connection to legal assistance while recognising that the immediate purpose of a particular question may be safety, housing, health or another issue that enables the legal assistance to function.

5. Definition of closely integrated legal assistance services

Eligibility should turn on function and safeguards, not only organisational form. The definition should cover both: (a) an organisation that employs legal and social service professionals within a coordinated program; and (b) two or more organisations operating under a formal partnership or protocol to deliver coordinated legal and social support to the same client (paras 7.41-7.45).

To protect the integrity of the privilege, the service should include a qualified legal practitioner providing free or legal-assistance-sector services; at least one social service professional acting in a professional capacity and subject to confidentiality obligations; a documented integrated service arrangement; clear client information about confidentiality and exceptions; and appropriate record-management and governance arrangements. Ordinary commercial multidisciplinary services should remain outside the reform unless separately considered by Parliament.

6. Eligibility and accreditation

The Commission's suggestion of advance accreditation is attractive because certainty should exist before a client discloses sensitive information, not after a court dispute (paras 7.52-7.56). However, accreditation should be proportionate. A resource-intensive ministerial designation scheme could unintentionally favour larger organisations and exclude small community partnerships. I therefore favour statutory eligibility criteria supported by a light-touch opt-in registration or accreditation mechanism, with recognition of existing legal-assistance accreditation where possible.

7. Waiver, consent and client autonomy

The legislation should expressly state that privilege is not waived merely because the client accepts an integrated service, participates in a joint meeting, allows an eligible professional to be present, or authorises limited information sharing within the integrated team. These are features of the service, not evidence that the client intends to surrender confidentiality.

Where waiver is possible, it should be express, informed and specific to the information and purpose concerned. A generic intake consent should not amount to wholesale waiver. In family violence cases, consent must also be assessed with particular care because urgency, fear, dependency and coercive control can affect how meaningful a purported choice is. The legal framework should not rely on a "choice and consent" model as the principal solution to a problem created by the law itself.

8. Safety exception

A safety exception is justified, but it should be narrow enough that clients can still predict the consequences of disclosure. If the exception is framed too broadly, the new privilege will offer little more certainty than ordinary professional confidentiality. At the same time, an absolute rule with no safety mechanism could place professionals in conflict with obligations designed to protect children and people facing serious harm (paras 7.46-7.51).

I recommend an exception permitting - and where existing law requires, requiring - disclosure when there are reasonable grounds to believe that disclosure is necessary to prevent a serious and current risk of death or serious harm to the client or another person, or to protect a child from significant harm. "Serious harm" should be defined with sufficient precision to include serious physical or sexual harm and other forms of harm that present a comparable safety risk, while avoiding routine disclosure for ordinary distress, financial difficulty or non-imminent concerns.

The exception should include procedural safeguards: disclosure should be limited to the minimum information reasonably necessary; the professional should record the basis for disclosure; the client should be informed where it is safe and lawful to do so; and services should have access to consultation or escalation procedures for difficult cases. These safeguards can reduce both under-reporting and unnecessary over-disclosure.

9. Family violence, subpoenas and systems abuse

The Commission highlights the risk that records may be subpoenaed and used by a person perpetrating family violence as a form of systems abuse. The new privilege should therefore operate as a clear statutory barrier to compelled production of eligible records, rather than merely as a factor in a discretionary balancing test. Service providers should also be empowered to assert the privilege on behalf of the client, with notice to the client where feasible, so that protection does not depend on a victim-survivor personally identifying and litigating a technical privilege issue.

10. Implementation and national consistency

Implementation should include funded training, model notices for clients, record-management guidance and protocols for responding to subpoenas and information-sharing requests. The Commission also identifies a genuine cross-jurisdiction problem: a Victorian privilege may not protect the same communication elsewhere (paras 7.59-7.67). Victoria should not delay reform for that reason, but the final report should recommend that the issue be raised through national evidence-law and legal-assistance forums with a view to longer-term harmonisation.

Conclusion

Integrated legal assistance services are designed to respond to the reality that legal problems rarely occur in isolation. The law on privilege should recognise that reality. A person seeking safety from family violence, stable housing, health care and legal protection through one coordinated service should not obtain less confidentiality than a client whose needs can be addressed by a lawyer alone.

A carefully designed new legal privilege can preserve the core rationale of legal privilege while supporting contemporary access-to-justice models. The strongest model is one that gives clients advance certainty, protects the integrated communication as a whole, respects client autonomy, limits waiver, and contains a precise safety exception. Option 2, supplemented where appropriate by a professional privilege for loosely integrated services, best achieves that balance.

Selected authorities and materials

Victorian Law Reform Commission, Legal Privilege and Integrated Legal Assistance Services: Consultation Paper (June 2026), especially Chapters 4-7 and Questions 4, 5 and 7.

Evidence Act 2008 (Vic), Part 3.10 (client legal privilege).

Evidence (Miscellaneous Provisions) Act 1958 (Vic), including provisions concerning confidential communications privilege.

Charter of Human Rights and Responsibilities Act 2006 (Vic), ss 13 (privacy), 17 (protection of families and children) and 24 (fair hearing).

Pratt Holdings Pty Ltd v Commissioner of Taxation [2004] FCAFC 122; (2004) 136 FCR 357.

R v Bell; Ex parte Lees [1980] HCA 26; (1980) 146 CLR 141.

Victorian Equal Opportunity and Human Rights Commission, guidance on Charter rights to privacy, protection of children and a fair hearing.

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