

Submission to the Victorian Law Reform Commission

Legal Privilege and Integrated Legal Assistance Services

Introduction

The Victorian Legal Services Board and Commissioner (**VLSB+C**) thanks the Victorian Law Reform Commission (**VLRC**) for the opportunity to provide feedback on its inquiry into legal privilege and integrated legal assistance services (**ILAS**). The VLSB+C strongly supports the ILAS model, which can facilitate access to justice and support the effective administration of justice. We are a long-standing supporter of health justice partnerships (**HJP**) and other ILAS models through research¹ and grants. Since 2011, we have provided over \$7 million in grants to 19 HJP projects.²

We acknowledge the concern that legal privilege may be harder to establish in some ILAS settings, particularly in closely integrated models. In providing this submission, we offer general comments from our perspective as Victoria's legal regulator. In our view, more work is needed to clearly identify the nature and source of that risk before legislative reform is recommended. In particular, it should be clear whether the issue is a gap in the law of privilege, the practical burden of proving privilege, the treatment of third-party involvement or mixed-purpose communications, or an operational issue that could be addressed through guidance or safeguards.

This submission provides information about our role, outlines the benefits of ILAS (question 2), considers whether reform is required (question 4), analyses the proposed reform options (question 5), and identifies potential implications of option two (question 7).

Our role as the legal regulator in Victoria

The Victorian Legal Services Board (**the Board**) and the Victorian Legal Services Commissioner (**the Commissioner**) are the independent statutory authorities responsible for regulating the legal profession in Victoria in accordance with the *Legal Profession Uniform Law* (**Uniform Law**).³ Both authorities are accountable to the Victorian Parliament. The Board and the Commissioner effectively operate as one body, the VLSB+C.

The Board is responsible for several regulatory functions, including making decisions about lawyers' practising certificates, overseeing law practices' trust accounts and external interventions

¹ Mary Anne Noone and Kate Digney, "[It's Hard to Open up to Strangers](#)" *Improving Access to Justice: The Key Features of an Integrated Legal Services Delivery Model - Research Report* (September 2010) Victorian Legal Services Board and Commissioner and La Trobe University.

² Victorian Legal Services Board and Commissioner, '[Health Justice Partnerships](#)', 15 August 2024.

³ As set out in Schedule 1 to the *Legal Profession Uniform Law Application Act 2014* (Vic).

into law practices, and making applications for the removal of lawyers' names from the Supreme Court roll where appropriate.

The Commissioner is responsible for receiving, managing and resolving complaints about lawyers' conduct, including conduct outside of legal practice. The Commissioner has investigative and prosecutorial powers, which may lead to disciplinary action, and plays a central role in educating both the profession and the community about issues relevant to legal services delivery and regulation.

The VLSB+C also undertakes research and policy development to strengthen legal practice and ethics, improve access to justice, and protect and empower consumers.

How we support ethical legal practice

As a risk-based regulator, the VLSB+C seeks to identify and focus on the risks that can cause the most harm to consumers of legal services and the reputation of the profession, and to regulate in ways that mitigate those risks.⁴ Through our risk-based approach, we aim to support ethical professional practice, access to justice, and the effective administration of justice. Our current key areas of concern are set out in our Risk Outlook 2026.⁵

To help lawyers understand and uphold their ethical and professional obligations, we provide guidance to the profession about their obligations on a range of topics, including confidentiality.⁶ We also fund the Law Institute Victoria and the Victorian Bar to provide ethical advice to lawyers.⁷ Where lawyers are concerned about how to act in line with their professional or ethical obligations, we encourage them to seek the advice of those organisations.

We have also provided policy support to organisations concerned with ethical practice and access to justice. For example, in 2022 we supported Victoria Legal Aid's new 'Conflict of Interest Policy', to help them ensure that the right balance was struck between supporting lawyers' professional obligations and recognising the essential role of short legal service provision in the legal assistance sector.⁸

Legal privilege

The VLSB+C does not determine whether legal privilege applies in individual cases. Disputes about privilege are ultimately matters for the courts, assessed on the facts of each case. Our regulatory role is more limited. We may become involved where a lawyer's conduct raises professional or

⁴ Victorian Legal Services Board and Commissioner, '[Regulatory Approach Statement](#)' (Webpage, 2021).

⁵ Victorian Legal Services Board and Commissioner, '[Risk Outlook 2026](#)' (Webpage, 2026).

⁶ Victorian Legal Services Board and Commissioner, '[Confidentiality and its exceptions](#)' (Webpage, 2026).

⁷ Law Institute Victoria, '[Ethics and Practice Support Services](#)', (Webpage, 2026); Victorian Bar, '[Ethics at the Bar](#)', (Website, 2026).

⁸ Victorian Legal Services Board and Commissioner, 'Commissioner update, May 2022' (Webpage, 2022); Victoria Legal Aid, '[Our new conflict of interest policy receives welcome support](#)' (Webpage, 2022).

ethical concerns, including if privilege were misused, but we are not aware of that issue having arisen in the ILAS context.

The VLRC's consultation paper identifies concerns about whether legal privilege is adequately protected in ILAS settings, particularly where legal and non-legal supports are closely integrated, and information may be shared with non-lawyer professionals. However, the law is clear that legal privilege is a right held by the client, not their lawyer. It must not be breached unless it is waived by the client or another recognised statutory or common law exception applies.

The Australian Solicitors Conduct Rules provide for a number of exceptions to the rule against disclosure, including allowing a lawyer to disclose confidential information 'for the purpose of preventing imminent serious physical harm to the client or to another person'.⁹ The exception is narrow and only applies where the disclosure is to prevent harm that is imminent, serious and physical.

There is no equivalent exception to legal privilege for disclosure to prevent imminent serious physical harm. However, it may be that communications of this kind would not ordinarily be protected by legal privilege in the first place, because privilege only applies where the relevant communication is confidential and made for the dominant purpose of legal advice or litigation. For example, a statement that a person intends to seriously harm another person may fall outside privilege because of the unlawful purpose exception. A statement that a person intends to harm themselves may also be difficult to characterise as a communication made for the dominant purpose of legal advice or litigation, depending on the circumstances.

Benefits of ILAS (Question 2)

The VLSB+C has funded ILAS for over a decade because of the model's demonstrated benefits. ILAS can improve access to justice by helping people with complex needs get legal help earlier, in trusted settings, alongside practical support. They also strengthen service coordination, trauma-informed practice, and earlier resolution of legal problems.

ILAS models can also support lawyer wellbeing – an area of focus for the VLSB+C.¹⁰ Our 2025 research shows that nearly 30% of lawyers report moderate to severe levels of distress, with rates rising even higher for early career lawyers.¹¹ While all lawyers can be susceptible to poor wellbeing, research tells us that there are particular vulnerability factors and psychosocial hazards in legal work that increases risk, including continued exposure to traumatic material and heavy workloads.¹² ILAS can support lawyer wellbeing by reducing these risks. For example, in meetings

⁹ Legal Profession Uniform Law Australian Solicitors' Conduct Rules 2015, Rule 9.2.5.

¹⁰ For more information on our work around lawyer wellbeing, see: Victorian Legal Services Board and Commissioner, '[Lawyer wellbeing](#)' (Webpage, 2026).

¹¹ Holmes, V., Webb, J., Tang, S., Ainsworth, S., & Foley, T, [Lawyer Wellbeing, Workplace Experiences and Ethics. A Research Report](#) (2025) Victorian Legal Services Board + Commissioner, the Law Society of New South Wales and the Legal Practice Board of Western Australia. See also: Hagland, Tenielle, Alice Catherine King, Georgina Rychner, and Nigel J. Balmer, '[Wellbeing in the Legal Profession: Findings from the 2025 Victorian Lawyer Census](#)' (2026) Victorian Legal Services Board and Commissioner.

¹² Holmes, et. al.

where a client is likely to disclose traumatic material, having a social worker present may help reduce vicarious trauma for lawyers, help manage workloads, and reduce lawyers' stress.

Should the law enhance protection for communications in ILAS settings? (Question 4)

To assist the VLRC's consideration of whether law reform is needed, we suggest it would be useful to first identify more precisely the communications or records that require additional protection, and why existing protections may be insufficient. From our perspective, the key question is whether there is a clearly identified gap that requires a legislative response, or whether the concerns could be addressed through existing legal principles, other statutory protections, guidance, or operational safeguards. This section provides general comments on:

- waiver of privilege
- satisfying the dominant purpose test in ILAS settings, and
- existing protections for non-legal records.

Waiver of privilege

Legal privilege is not necessarily waived due to the presence of a social service professional, health worker or other support person during a legal consultation. Privilege may still apply where the communication remains confidential and is made for the dominant purpose of legal advice or litigation. For example, a client with an intellectual disability is unlikely to lose their legal privilege just because they have a trusted support worker present during a legal consultation (as noted in the consultation paper at [5.16]), if the information discussed in that session remains confidential, and is for the dominant purpose of legal advice/litigation.

We recognise that lawyers are concerned that sharing information to help clients access wraparound support services might inadvertently breach privilege, as well as their obligation to maintain confidentiality. However, case law indicates that privilege may not be waived where the information is re-communicated by a lawyer to a third party in a manner that is consistent with the privilege being maintained.¹³

In the consultation paper, it is reported that some ILAS providers inform clients about the potential loss of privilege as part of obtaining client consent to engage with the service.¹⁴ Our view is that clients should not be encouraged to 'contract out' of legal privilege by signing a consent form, because legal privilege is 'an important human right'¹⁵ that arises by virtue of a lawyer-client relationship,¹⁶ and exists when the test for privilege (confidentiality and dominant purpose) can be

¹³ *Mann v Carnell* (1999) 201 CLR 1; *Pratt Holdings Pty Ltd v Commissioner of Taxation* [2004] FCAFC 122.

¹⁴ Victorian Law Reform Commission, '[Legal Privilege and Integrated Legal Assistance Services: Consultation Paper](#)' (June 2026), 37 [5.11-12].

¹⁵ *The Daniels Corporation International Pty Ltd v Australian Competition and Consumer Commission* (2002) 213 CLR 543, [85]–[86].

¹⁶ *Young v State Insurance Office* (1986) 1 VAR 267.

met. We do not view this approach as an effective method of mitigating loss of legal privilege as it does not uphold the fundamental principles underpinning legal privilege.

Dominant purpose

We recognise that determining the dominant purpose of a meeting or document in the context of closely integrated ILAS, where communications are equally directed to both legal and non-legal support, may be complicated. Ultimately, however, this is a matter of fact for the courts to decide in the circumstances of the particular case.

In Case Study 4 in the consultation paper, the legal files were found to be privileged, albeit in a loosely integrated service model.¹⁷ This suggests that the issue to be addressed may be protecting non-legal records, joint records, or mixed-purpose communications from disclosure. In our view, the risk of disclosure of sensitive personal information does not necessarily mean that legal privilege is the appropriate mechanism for protection, particularly where the communication is not connected to legal advice or litigation. There is also a broader public interest in ensuring that relevant information remains available to courts, unless there is a recognised basis for withholding it.

We acknowledge that the cost, delay and stress of defending privilege where it is challenged can be a significant burden for clients and services, even where privilege is ultimately upheld. If the concern is the practical burden of proving privilege, rather than the scope of privilege itself, that distinction should be clearly identified. Further information about the frequency and impact of this issue would assist in determining whether reform is required and, if so, what response would be proportionate.

Protections for non-legal records

If the main concern is protecting sensitive information held by non-lawyers in ILAS from being disclosed in court proceedings, it would be helpful to identify the specific types of records or contexts where existing protections are insufficient. Some sensitive non-legal records are already protected from disclosure through statute, including:

1. **Protected confidences in family law cases:** Since June 2025, in family law proceedings the court can make orders to protect sensitive information shared in confidence with a professional in a health service, a specialist sexual assault service, or a specialist family violence service (e.g. a doctor, counsellor, or specialist service provider) from being used as evidence, if the risk of harm from releasing the records outweighs its benefit to the case.¹⁸ This protected sensitive information can include confidential health records, or records from specialist sexual assault or family violence services.

¹⁷ Victorian Law Reform Commission, '[Legal Privilege and Integrated Legal Assistance Services: Consultation Paper](#)' (June 2026) 34-35.

¹⁸ *Family Law Act 1975*, ss 102BA-102BF.

2. Confidential communications and protected health information in sexual offence

cases: Under the *Evidence (Miscellaneous Provisions) Act 1958* (Vic), the court can prevent confidential communications (in both civil and criminal proceedings) and protected health information (in criminal proceedings) between a victim of a sexual offence and their treating medical practitioner or counsellor from being relied on as evidence in sexual offence cases.¹⁹ The legislation balances the ‘probative value’ and the ‘public interest in preserving the confidentiality’ and harm to a protected person, in relation to the sexual assault communications privilege.²⁰ It is directed at ‘remedying the mischief of sexual assault victims being deterred from reporting or giving full information to doctors or counsellors in the course of their treatment, because of uncertainty and fear about unwarranted access to their records being granted by the courts’.²¹

Our views on the proposed reform options (question 5)

While the VLSB+C supports ILAS and agrees that clients should not lose legal privilege simply because they receive integrated legal assistance services, we would need further information before we could support either proposed reform option.

Option 1: A new social service professional privilege

Option 1 sits largely outside our role as the legal regulator, as it appears to be directed at social service professionals and non-legal records. However, we recognise this may be the more targeted option, if the main concern is disclosure of social service, health or other non-legal professional records.

This option would benefit from greater clarity around the categories of non-legal records that are not adequately protected by existing laws and why a new privilege is necessary. As outlined above, existing protections for certain types of information held by non-lawyers (including ‘protected confidences’ in family law proceedings,²² and ‘confidential communications and protected health information’ in the context of sexual offences²³) may already offer some relevant protections – so additional categories of information requiring protection should be explicitly identified.

A key threshold question for Option 1 is whether ‘social service professional’ can be defined with enough clarity and precision to provide legal certainty, given the range of non-legal professionals who may work in or alongside ILAS. The consultation paper’s case studies reference various professionals, including social workers, specialist family violence workers, Aboriginal engagement and liaison workers, Aboriginal cultural safety officers and other social service professionals including midwives, nurses and psychologists. That breadth could be problematic because the proposed class would include professionals performing very different functions and operating

¹⁹ *Evidence (Miscellaneous Provisions) Act 1958*, s 32C. Rule 27 of the Magistrates’ Court Criminal Procedure Rules 2019 governs subpoenas relating to confidential communications and protected health information and sets the formal requirements for seeking court leave under section 32C of the *Evidence (Miscellaneous Provisions) Act 1958*.

²⁰ *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 32D.

²¹ *KR v BR & Anor* (2018) VSCA 159 [32].

²² *Family Law Act 1975* (Cth), ss 102BA-102BF.

²³ *Evidence (Miscellaneous Provisions) Act 1958* (Vic), s 32C.

under different professional, statutory and ethical obligations, and may include roles where it is unclear who is formally recognised or registered as a professional. Any new protection should therefore be tailored to the nature and purpose of the particular communication that requires protecting from disclosure. It should not assume that all information held by, or shared with, those professionals warrants the same treatment.

Option 2: A new legal/social service professional privilege

Option 2 involves the creation of a new category of privilege that covers a clients' records and communications with both lawyers and social service professionals – for both legal and non-legal purposes – in the context of closely integrated ILAS. This option appears to involve a broader form of protection than existing legal privilege doctrine, which does not provide blanket protection for all communications connected to a legal service. Under current principles, each document or communication must be assessed to determine whether it meets the legal test for privilege.

A proposal to extend legal privilege should be approached cautiously, particularly where it would make it harder for courts or statutory bodies to test the basis for a claim. In the corporate commercial context, federal authorities (including the Australian Taxation Office) have been seriously hampered in recent years in seeking to discharge statutory functions as a result of dubious claims of privilege relating to large quantities of documents (see *Commissioner of Taxation v PricewaterhouseCoopers & ors* [2022] FCA 278 – i.e. the 'PwC case'). In 2023, the Australian Government announced a joint review by the Attorney-General's Department and Treasury into the use of legal professional privilege in Commonwealth investigations, following concerns about legal privilege claims in matters (including the PwC case). Similar concerns about overbroad or inappropriate privilege claims have also been raised in other contexts, including the 2022 Report on Star Casino in New South Wales.²⁴ While those examples arise in different contexts, they underline the importance of ensuring legal privilege is appropriately confined and capable of being tested where necessary.

Option 2: implications to consider in design (Question 7)

If Option 2 is pursued, its design should be driven by the specific legal gap it is intended to address. Some relevant considerations include:

1. **Claims must remain capable of being tested:** Any new protection should preserve the ability of the courts, regulators or other decision-makers to scrutinise whether privilege is properly claimed. This is particularly important if Option 2 creates a broader or more setting-based protection than existing legal privilege.
2. **The basis for the claim should be clear:** The new legislative provision should make clear what must be shown before the protection applies, including the connection between the communication and legal advice or litigation. Without clear criteria, disputes may simply shift from dominant purpose to other threshold questions, such as whether the service is

²⁴ Adam Bell, '[Review of The Star Pty Ltd: Report of the Inquiry under sections 143 and 143A of the Casino Control Act 1992 \(NSW\)](#)' (31 August 2022) Independent Casino Commission (NSW). Professional Standards Unit, '[Ethics & Standards Quarterly: legal professional privilege](#)' (24 February 2023) LSJ Online.

‘closely integrated’ or whether the communication falls within the new protection. This could have the unintended consequence of increasing interlocutory litigation, which would be a poor reform outcome in terms of access to and administration of justice.

3. **The protection should be confined to its purpose:** Any new privilege should not create blanket protection for all documents, records or communications generated or held in a closely integrated ILAS, particularly where they have no clear connection to legal advice or litigation. The reform should be clear about who can assert and waive the protection.
4. **Other obligations should not be obscured:** The ability to test a privilege claim is also important where communications involve non-lawyer professionals who may have separate mandatory reporting, information-sharing, safety or professional obligations. The reform should make clear how those obligations interact with any new privilege.

Alternative options to legislative reform

The VLRC may wish to consider whether non-legislative responses could address some of the concerns identified in ILAS settings, particularly if the issue is practical uncertainty rather than a gap in the law. For example, judicial guidance,²⁵ professional guidance, or operational safeguards may help clarify how privilege and confidentiality should be managed, while minimising unnecessary disclosure or collateral harm for clients experiencing vulnerability.

Conclusion

We thank the VLRC for the opportunity to provide feedback and hope these comments are helpful. [REDACTED]

[REDACTED]

Yours faithfully,

[REDACTED]

Fiona McLeay
Victorian Legal Services Board CEO and Commissioner

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²⁵ For example, like the Judicial College of Victoria’s guidance on [‘Confidential Communications and protected health information’](#).