Inquiry into legal privilege and integrated legal assistance services

18 August 2026

Health Justice Australia

Health Justice Australia (HJA) is the national organisation for health justice partnership (HJP) approaches, supporting stronger collaboration across health, legal and social services to improve health, justice and wellbeing outcomes. We connect evidence, practice and policy to strengthen partnerships and help services work better together through:

- Knowledge and evidence translation: translating evidence into practical resources that support practitioners, policymakers, service leaders and funders to help turn evidence into action.
- Building workforce capability: supporting practitioners and services to work collaboratively through shared learning and partnership development skills, strengthening capability across sectors.
- Driving systems change: connecting the experience of people coming through health justice partnerships, and their practitioners, with opportunities for lasting systems change through reforms to policy settings, service design and funding that strengthen collaboration and improves outcomes.

Our goal is to help services work better together, so people and families receive the support they need earlier, more easily and through services they already trust.

Introduction

HJA welcomes this opportunity to provide input into the Victorian Law Reform Commission's (VLRC) inquiry into legal privilege and integrated legal assistance services.

For a decade, HJA has worked at the intersection of evidence, practice and policy to build the capability of cross-sector service practitioners around information sharing and to support and capture insights from cross-sector service integration. Through practice-based evidence from health justice partnership (HJP) and from practitioners working in partnership across legal assistance, health and social services, HJA understands legal privilege is a key issue in the implementation of cross-sectoral integrated services. The focus of this inquiry mirrors the interest in this issue from practitioners working in the field over many years and reflects national conversations[1] about the roles and responsibilities of different professionals working in collaborative partnership.

HJA has identified this inquiry as an opportunity to share insights from practitioners working in HJP and their experience of legal privilege. HJA takes a broad definition of HJP as an approach which includes a range of different models. For example, all three models included in the VLRC's consultation paper, (cooperative, loosely integrated and closely integrated) can represent HJP. Given we anticipate organisations from the legal assistance sector to comment on integrated legal service models through their submissions to this inquiry, HJA's submission will focus on one specific model of HJP; that is, where two separate organisations are partnering in cross-sectoral integrated services. Our submission will draw on input from the field, to provide the VLRC with reflections from a national perspective, and from different professions and sectors.

[1] For example, HJA understands the Community Legal Centres Australia has recently released a revised copy of its Risk Management Guide, which provides advice on information sharing with third parties.

Integrated legal assistance models – health justice partnership

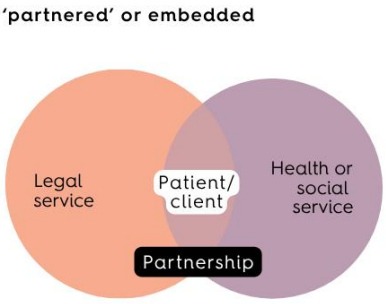
HJP is a service delivery approach where legal assistance is integrated into services that support the health and wellbeing of individuals and families, who are unlikely to turn to legal services for solutions, but who are experiencing intersecting and complex legal, health and social issues.

HJA has identified 154[2] HJPs operating across Australia. These partnerships provide access to legal help through a range of health and community services and settings and vary considerably in their structure and setting. Across health settings, 60 services are present in hospitals, 37 in community settings and 48 in primary health settings and 18 services involve Aboriginal Community Controlled Health or Community Organisations. The legal partners include legal aid commissions, generalist or specialist community legal centres and other types of legal services.

HJP approaches are thought to operate within three broad structural configurations[3]:

- referral only or 'outreach' (legal and health services do not coordinate care)
- 'partnered' or embedded (separate legal and health services or social services collaborate to provide coordinated care beyond the initial referral)
- integrated care (legal and health service collaborate to provide coordinated care as one organisation and are co-located).

Figure 1: Image of 'partnered' or embedded model of HJP



Noting the diversity of HJP approaches currently in implementation, for the purposes of this submission, we will consider one model of HJP, that is where the HJP is made up of **separate legal and health or social services, who collaborate across sectors, to provide coordinated care beyond the initial referral**.

[2] Health Justice Australia. (2026) National Health Justice Landscape Snapshot as of June 2026, Health Justice Australia, website, https://healthjustice.org.au/resource/snapshot/health-justice-landscape-june-2026-snapshot/.
[3] Drabarek, D., Forell, S., Turner, L., Randall, K., Cunich, M. and Ward, L. (2025) The attributes of health justice partnership: a conceptual framework, Health Justice Australia, Sydney

Key themes and HJP practitioner insights

As Australia's national organisation for HJP, HJA convened two exploratory sessions with HJP practitioners on the issue of legal privilege in HJPs. In total, 35 participants attended across the two sessions. Participants were drawn from legal assistance (83%) and health services or social services (14%) [unknown (3%)]; with representation from each jurisdiction except Tasmania, including cross-border services. Participant quotes used throughout the submission are drawn from participants across Australia and not solely Victoria.

Use of language

Throughout this submission, we will use the following terminology:

- **Patient/client:** refers to people who receive support from health and wellbeing services and/or legal assistance services.
- **Practitioner/practitioners:** refers to person working in the field of HJP and/or in the health, social or legal assistance services sectors.
- **Participant/participants:** refers to practitioners who attended HJA convenings to explore the topic of legal privilege and HJP.
- **Integrated legal practice:** refers to multidisciplinary practice within a single legal service or where a legal and health service collaborate to provide coordinated care as one organisation; or the legal service is part of the larger health or community service and is co-located.
- **Health justice partnership or cross-sector collaboration:** where two separate organisations from different sectors partner to provide coordinated care beyond referral.

The following is thematic analysis of the key themes that arose from the convenings.

Legal privilege creates tensions in cross-sector collaborative practice

The challenges associated with legal privilege in integrated legal settings, as outlined in the VLRC's consultation paper, are also evident in HJPs between two separate organisations. Participants drew attention to a range of concerns, which capture the tension between providing patient/client-centred, trauma-informed practice, cross-sector collaboration, and what the law allows and supports.

Examples of where this tension is most evident, include:

- health or social service practitioners being excluded from lawyer-client meetings
- limitations on sharing updates about referrals and outcomes
- challenges conducting joint appointments
- difficulties maintaining truly patient/client-centred and trauma-informed services while protecting legal privilege.

Notably, several participants reflected on these tensions across the lifecycle of support offered to a patient/client. For example:

"Legal privilege can arise in our partnership in a range of everyday situations. It may occur during what initially appears to be a routine secondary consultation where more identifying information is shared than is necessary, during joint appointments where informed consent was obtained at the outset but is not revisited as the discussion evolves, or when professionals are working collaboratively to support a client and information is disclosed that was not essential for the purpose of that collaboration."

- Managing Lawyer; HJP between community legal centre and hospital.

Tension between legal privilege and patient/client-centred, trauma-informed practice

A dominant theme of the convenings was the shared goal to provide collaborative, patient/client-centred, trauma-informed practice and care, alongside the need to protect legal privilege and confidentiality for the patient/client. As summarised by one participant:

"Both professions are committed to achieving the best outcomes for clients and recognise the importance of information sharing where appropriate and with informed consent. However, the more collaborative and fluid the partnership becomes, the greater the need to consciously pause and ask whether the information being shared is necessary, proportionate, and supported by the client's informed consent."

- Managing Lawyer; HJP between community legal centre and hospital.

One participant further highlighted the complexity of this balancing act:

"There are tensions about […] If a client tells a social worker they are thinking of harming themselves. This would traditionally be where a social worker may wish to inform external emergency services. When we are working in a legal service, this causes much more conversation. Does this breach the client's [legal professional privilege]? Does this conflict the client out of being worked with and repped by the service? What if an ambulance is called and the person is unwell and they assault the ambulance driver? They now have charges that they wouldn't have had, if we didn't make that call?"

- Legal Service Lead; HJP between community legal service and broader community service.

Many felt that patients/clients benefit from having trusted professionals or support workers involved in legal appointments, but legal privilege rules often prevent this from being possible. For example, acknowledging that there are instances where the support person might be asked to sit out of a lawyer-patient/client meeting, there are occasions where their presence is requested by the patient/client; or in cases where the support person is not at the meeting, they might still be called on by the patient/client to clarify questions or next steps in relation to the legal advice.

Tension between legal privilege and facilitating access to justice

Several participants pointed out this is an access to justice issue because participation in legal processes is often dependent on professionals or others providing support and assisting the patient/client.

"If we don't have this health worker, allied health worker, family member, whoever else needs to be in the room, this person isn't going to be able to tell us what we need to know."

- Lawyer/Deputy Director; HJP between community legal centre and hospital.

Thus, it highlights how the current legal privilege framework can unintentionally compromise patient/clients' access to supports in a safe, inclusive, patient/client-centred way. As one participant explained:

"The clients are the ones that lose out when we get really strict on these privilege and [confidentiality] rules. I know as lawyers we have to be, but the clients are the ones that don't get the outcomes that come from our really great partnership work as easily."

- Managing Lawyer; HJPs between community legal centre and a range of health and social services.

Tension between informed consent and patients/clients' ability to understand long-term implications

Patients/clients often face what some participants termed as an unfair choice to have to decide between support, collaboration and legal protection. Many participants questioned whether patients/clients can truly provide informed consent when legal privilege is a complex and technical subject, that carries significant long-term legal implications. A major concern was that patients/clients are being asked to make decisions on waiving privilege, when they are experiencing multiple pressures, and that this may lead them to prioritise immediate support over future legal risk. It was noted that this is a particularly complex issue because the risk may not be triggered until several years down the track. One participant articulated a trade-off between a comprehensive collaborative approach to service delivery, and the ability for patients/clients to maintain legal protections.

"[…] provides a comprehensive form of integrated legal help that involves ongoing collaboration between the lawyer and the health professional. The current law puts too much pressure on clients to understand and manage legal privilege in these settings. Clients are often asked to make decisions about information sharing at moments of significant stress and vulnerability, when their main concern is sorting their legal problems. For clients with complex needs – the very clients our model is designed to service – this is unfair and unrealistic. Clients shouldn't have to compromise their fundamental right to legal privilege to access the holistic support they need."

- Community legal centre; HJPs between community legal centre and healthcare services.

The impact on partnership and the growth of cross-sectoral collaborations

Several participants observed that the legal protections framework has not evolved to complement modern service delivery models, such as HJPs. This was reflected in the discussions regarding the impacts of legal privilege on effective partnership practice, and the negative consequences this can have in meeting the needs of patients/clients. For example, one participant made the following observation:

"A lot of the time it can kind of feel like they [health or social services practitioners] have been left out or we are forcing them out of a conversation, when they think they should be in the room and we do our very best obviously to explain, why it is that way, but ultimately it can be pretty hard to overcome, when you are wanting to work as closely as possible to deliver the best service for your client."

- Lawyer; HJP between community legal centre and a child and family centre.

More broadly, participants observed that systemic barriers, such as legal privilege, may have constrained the growth of the integrated cross-sectoral service sector (including HJPs). Although workarounds have been created, this can feel like a compromise, and rather than seeing the expansion of partnerships between different organisations, health or social services may be brought in-house into legal services, which brings its own complexities.

Tensions relating to legal privilege manifesting as fear and uncertainty for all

"[Legal professional privilege] shows up as fear. Fear of getting [it] wrong. Fear of the unknown. Fear of the risk and fear of the consequences."

- Lawyer, Principal; HJPs between community legal centre and a range of health or social services.

Risk and uncertainty were regularly raised by participants, with many reflecting that legal privilege creates anxiety for lawyers, social workers and nurses in particular, as well as patients/clients. This is considered to have an impact on practice decisions, partnership relationships and ultimately, on the services provided to the patient/client. Participants talked about the many ways that uncertainty is evident in their day-to-day practice:

- regarding inadvertent waiver of privilege
- different professional reporting standards
- fear of subpoenas
- future legal proceedings that cannot be predicted.

Mediating the challenges

Participants emphasised the strengths of working in HJP to support access to justice outcomes for patients/clients. These perspectives are consistent with HJA's position on the rationale for cross-sector service collaboration.[4] One participant's reflections highlight this:

"Our health Justice partnership grew out of clients' reluctance to access legal services or clients that were accessing mainstream legal services often felt unheard and confused. We have witnessed the power of working in partnership to support clients to access legal information, advice and support. Under the HJP model and providing an integrated process […] we have been able to work in a more responsive and flexible way for clients."

- Child and Family Centre Manager; HJP between a community legal centre and a child and family centre.

It's from this foundation, and belief in the overarching benefits of HJP, that participants identified their workarounds to maintaining legal privilege whilst partnering effectively for patient/client health and justice outcomes.

Ongoing communication and education

Training, relationship-building and shared understanding were repeatedly identified as the most effective way of managing the partnership challenges associated with legal privilege. Participants stressed the importance of ongoing cross-sector learning and training, not only to address knowledge gaps, but for the health of the partnership. As one participant explained:

"Part of the relationship building in the partnership building is to have that exchange and those opportunities to exchange knowledge of understanding of what legal privilege is, how the health services works. It's great to have the lawyer sitting in that outreach or building referral pathway, however that partnership works, but I think building worker's capacity, both in the legal services, as well as the health professionals and health practitioners to understand the limitations and how we can work around them and how we can assist the clients to get the best outcome possible is extremely important for the client."

- Community Development/Principal-Partnerships; HJPs between community legal centre and mental health services and hubs.

[4] Health Justice Australia, 2019. *The rationale for health justice partnership*, Health Justice Australia: Sydney.

The focus on education and training reflects one of the core components of partnership work – building workforce capability through the exchange of knowledge between cross-sectoral HJP practitioners. Consistent with HJA's role in building workforce capability across sectors, we are one of several organisations who has developed resources, tools and provided training to HJP practitioners around professional boundaries and information sharing. This includes delivering HJP tutorials, and producing a toolkit, *5 ways to talk about mandatory reporting, confidentiality and legal privilege in health justice partnership*.[5]

Participants also described a range of other activities which are conducted over the course of a partnership to address the partnership challenges of legal privilege, for example regular training about legal privilege, raising the issue in staff meetings and developing common language and expectations. Some participants concluded that continuous education rather than legislative change alone is preferable, particularly in a partnership context.

Ongoing and open communication was highlighted as a key element, not only of partnership practice, but in managing the uncertainty and ambiguity that legal privilege can introduce into day-to-day cross-sector collaborative work.

"A recurring pattern is that legal privilege is rarely compromised through intention, but rather through assumptions, time pressures, or a desire to work efficiently together. The key safeguards are continually asking whether the information needs to be shared and whether consent remains informed and current.

Junior staff members may sometimes remain silent, particularly if they lack confidence or are uncertain about the boundaries of legal privilege and information sharing. Creating an environment where questions and clarification are encouraged is an important safeguard.

External factors, including time pressures, high caseloads, and the urgency of responding to client needs, can all influence behaviour. These pressures can make it easier to overlook safeguards, reinforcing the importance of having consistent processes and regularly revisiting principles of privilege, confidentiality, and informed consent."

- Managing Lawyer; HJP between community legal centre and hospital.

Workarounds in partnership settings

Acknowledging that workarounds are not always optimal, there was vibrant discussion across both convenings about the practical strategies that have been adopted to overcome the challenges associated with legal privilege. These included examples such as:

- limiting notetaking in joint meetings
- creating information sharing rules
- using health or social services workers selectively in meetings
- obtaining detailed consent forms.

[5] Health Justice Australia (2025), 5 ways to talk about mandatory reporting, confidentiality and legal privilege, Health Justice Australia, Sydney.

One participant shared an example of where the workaround was working successfully, having identified an issue that had emerged in the partnership.

"Case managers [were] putting referrals into our legal partners and because of legal privilege, not getting updates or outcomes and just continuing to email or call.

We had a really great information session with our partners, and we came up with a way to balance it. If legal privilege was involved, we would use a code word. Then as soon as the case manager [heard the code word], they knew they [the patient/client] were being worked with, and everything that needed to be happening…was happening, but because of legal privilege, weren't able to give any more information.

Everyone was happy on both ends. The emails stopped; the calls stopped. And everybody got what they needed. Risk was reduced and the client remained safe."

- Family Violence Response Lead; HJP between community legal centre and community health centre.

Reform opportunities

The inquiry, and discussion about the role of legal privilege, was welcomed by many participants, not only in Victoria but in other jurisdictions too, as well as amongst other professions who work collaboratively with legal assistance services. It therefore warrants further consideration and exploration.

There was no consensus amongst participants about a preferred pathway for reform. Although many participants recognised the flaws in the current system, several strongly opposed extending privilege to non-legal professionals. There were a range of reasons for this: shifting the burden of legal privilege to other professions; the need to preserve professional responsibilities, such as mandatory reporting obligations; the complexity of resolving differing risk and safety thresholds across different professions; and the potential wellbeing impacts on staff. Reflections about workarounds were brought up in this context, where some participants spoke of the need to strengthen partnership practices as a part of the solution.

Unintended consequences of any potential reforms

Discussions touched on the need to fully explore the 'unintended consequences' of any proposed changes to extend legal privilege. In some circumstances, this may be considered inappropriate, for example where HJPs are working on issues such as family, domestic and sexual violence or child protection. Participants described the value in each professional (whether it is a lawyer, a nurse or a social worker) upholding their respective professional boundaries to ensure the safety of patients/clients, and to enable a partnership approach where the whole family is supported.

Participants also considered the need for risk or safety exemptions in a context of shared legal privilege, acknowledging it could be quite challenging to reach agreement as each profession has a differing view of what constitutes risk and safety. Some participants raised concerns about what proposed changes to privilege could mean, both for patient/client willingness to engage with services, should exemptions create uncertainty about professional obligations; and how it would impact upon the workforce, who may have to adapt to working in vastly different ways to their established practice.

Reforms must be focused on patients/clients

A strong theme through the discussion, was that should there be reforms, the focus should be on ensuring a patient/client-centred approach that makes navigation of complex systems easier. As one participant articulated:

"[H]ow great would it be if it kind of worked in the opposite way [to inadvertent or implied waiver]. It's not something that automatically becomes an issue because there is another person in the room. The law should recognise that if the person is there [it] is [to] support, to access legal advice for the client, that it's not an automatic assumption of a waiver or implication that the privilege has been waived by the client. So some sort of extra hurdle before the assumption is made."

- Lawyer/Deputy Director; HJP between community legal centre and hospital

Summary

Drawing on their professional insights from practice, practitioners working across Australia in HJP, demonstrated commitment to collaborative practice and consistently referred to the strengths of working in this way for patients/clients. There was acknowledgement that legal protection is an important component of service delivery, but the current framework creates barriers and tensions in collaborative practice. This creates challenges not only for patients/clients, but for practitioners and the health of the partnership, and the growth of collaborative practice between two cross-sectoral organisations. Furthermore, it does not reflect the realities of people's lives and how they experience intersecting legal, health and wellbeing challenges. While acknowledging these constraints, there were mixed views about how to approach reforms, but a consistent view that it is essential to centre the patient/client and their needs, particularly safety and wellbeing, in any reform process.

As Australia's national organisation for HJP, HJA welcomes further discussions with the VLRC about the options for reform and where the greatest opportunities for impact may be identified and so services can continue working better together to improve health, justice and wellbeing outcomes.

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