

LEGISLATIVE COUNCIL
HUMAN SOURCE MANAGEMENT BILL 2023

(Amendments, suggested amendments and New Clauses to be proposed in Committee by
MATTHEW BACH)

1. **Suggested amendment to the Legislative Assembly -**
Clause 3, page 4, insert the following definition after line 9—

 "*issuing authority* means a person appointed under section 64A;"

2. Clause 3, page 4, insert the following definition after line 17—

 "*lawyer* means a person who is, or was previously—
 (a) an Australian lawyer; or
 (b) a foreign lawyer; or
 (c) an Australian-registered foreign lawyer—
 within the meaning of the Legal Profession Uniform Law (Victoria);".

3. Clause 3, page 5, line 29, omit all words and expressions on this line.

4. Clause 3, page 6, line 2, omit all words and expressions on this line.

5. **Suggested amendment to the Legislative Assembly -**
Clause 10, line 16, after "29" insert ", 29A".

6. **Suggested amendment to the Legislative Assembly -**
Clause 10, page 12, lines 9 to 12, omit all words and expressions on these lines.

NEW CLAUSES

7. Insert the following New Clauses after clause 11—

 "**11A Prohibition on registering lawyers as human sources in certain circumstances**
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The Chief Commissioner must not register a lawyer as a human source if the purpose of the registration is incompatible with the lawyer's obligations to maintain—

- (a) legal professional privilege; or
- (b) confidentiality; or
- (c) any other ethical or professional duties.

11B Prohibition on engaging lawyers in certain human source activity

A police officer must not engage a lawyer in human source activity that is incompatible with the lawyer's obligations to maintain—

- (a) legal professional privilege; or
- (b) confidentiality; or
- (c) any other ethical or professional duties."

8. Clause 19, line 26, omit "condition." and insert "condition; and".
9. Clause 19, after line 26 insert—
 - "(iv) is not a lawyer."
10. Clause 21, line 22, after "person" insert "(other than a lawyer in the circumstances specified in section 11A)".
11. Clause 23, line 3, after "sections" insert "11A,".
12. **Suggested amendment to the Legislative Assembly -**
 Clause 23, page 25, after line 15 insert—
 - "(3) The registration of a person under this section does not take effect until it is confirmed by an issuing authority."
13. Clause 26, lines 21 and 22, omit "**for the purpose of obtaining or disseminating privileged information**".
14. Clause 26, lines 24 to 27, omit "for the purpose of a police officer obtaining, or obtaining and disseminating, privileged information from the person".
15. **Suggested amendment to the Legislative Assembly -**
 Clause 26, line 28, omit "a serious" and insert "an exceptional and compelling".

NEW CLAUSE

16. **Suggested amendment to the Legislative Assembly -**
Insert the following New Clause after clause 29—

"29A Chief Commissioner must apply for confirmation of registration of reportable human source
 - (1) Within 24 hours after registering a person as a reportable human source, the Chief Commissioner must apply to an issuing authority for confirmation of that registration.
 - (2) The Chief Commissioner must give the issuing authority all information that is relevant to the decision to register the person as a reportable human source, including any information of which the Chief Commissioner is aware that is adverse to the person being registered as a reportable human source."

17. **Suggested amendment to the Legislative Assembly -**
Clause 30, line 18, omit "the Chief Commissioner registers" and insert "an issuing authority confirms the registration of".

18. **Suggested amendment to the Legislative Assembly -**
Clause 30, line 21, after "registration" insert "and confirmation".

19. Clause 31, line 19, after "person" insert "(other than a lawyer in the circumstances specified in section 11A)".

20. Clause 33, line 25, omit "section" (where secondly appearing) and insert "sections 11A and".

21. Clause 40, line 12, after "person" insert "(other than a lawyer in the circumstances specified in section 11A)".

22. Clause 41, line 3, after "section" insert "11A, section".

23. **Suggested amendment to the Legislative Assembly -**
 Clause 41, after line 32 insert—
- "(4) Subject to subsection (5), the registration of a person under this section remains in effect until the issuing authority confirms the registration of the person as a reportable human source.
- (5) If the issuing authority does not confirm the registration of the person as a reportable human source within 2 business days after the registration of the person under this section, any information or assistance provided by the person while the subject of the emergency registration may not be used in any proceeding."
24. **Suggested amendment to the Legislative Assembly -**
 Clause 46, after line 25 insert—
- "(ca) in the case of a registration made for the purpose of obtaining or disseminating privileged information, the Chief Commissioner is no longer satisfied of the matters in section 26(1)(a); or"
25. **Suggested amendment to the Legislative Assembly -**
 Clause 58, omit this clause.

NEW CLAUSES

26. **Suggested amendment to the Legislative Assembly -**
 Insert the following New Division after Division 1 of Part 5—

"Division 1A—Issuing authority

64A Appointment of issuing authority

- (1) The Attorney-General, by instrument, may appoint a person as an issuing authority.
- (2) An issuing authority must be—
- (a) a former Supreme Court judge; or
 - (b) a former judge of a Supreme Court of another State or a Territory; or
 - (c) a former judge of the Federal Court of Australia.
- (3) An instrument made under subsection (1) is a legislative instrument to which the **Subordinate Legislation Act 1994** applies.
- (4) An appointment under this section of a former Supreme Court judge does not affect any pension or other rights or privileges that the person has as a former judge.

64B Functions and powers of issuing authority

- (1) An issuing authority has the following functions—

- (a) to confirm, or refuse to confirm, the registration of a person as a reportable human source;
 - (b) any other functions conferred on an issuing authority under any Act of law.
- (2) An issuing authority has all the powers necessary to perform the issuing authority's functions.
 - (3) An issuing authority must not confirm the registration of a person as a reportable human source unless the issuing authority is satisfied that—
 - (a) there is an exceptional and compelling threat to—
 - (i) national security; or
 - (ii) the community; or
 - (iii) the life and welfare of any person; and
 - (b) the information that the person is expected to provide if registered as a reportable human source cannot be obtained through any other reasonable means.
 - (4) An issuing authority must not confirm the registration of a person as a reportable human source if, in the opinion of the issuing authority, the registration would be in contravention of, or is reasonably likely to lead to a contravention of, section 11A or 11B.
 - (5) If an issuing authority confirms or refuses to confirm the registration of a reportable human source, the issuing authority must immediately notify the Chief Commissioner of that decision.
 - (6) An issuing authority must confirm, or refuse to confirm, the registration of a person as a reportable human source within 2 business days after receiving the application to do so from the Chief Commissioner.

64C Terms and conditions of appointment

- (1) The appointment of an issuing authority is to be for the period, not exceeding 3 years, set out in the instrument of appointment.
- (2) The appointment of an issuing authority is to be on the terms and conditions set out in the instrument of appointment.
- (3) An issuing authority is entitled to be paid the remuneration and allowances set out in the instrument of appointment.
- (4) An issuing authority may be reappointed.
- (5) The **Public Administration Act 2004** applies to an issuing authority.

64D Employment of staff

Without limiting section 64B(2), an issuing authority may employ under Part 3 of the **Public Administration Act 2004** any employees that are necessary to enable the issuing authority to perform the issuing authority's functions.

64E Confidentiality

- (1) An issuing authority must not disclose information obtained, or that came to the person's knowledge, in the course of, or as a result of, the performance of the issuing authority's functions except as permitted by this Act.
- (2) A person who assists an issuing authority must not disclose information obtained, or that came to the person's knowledge, in the course of, or as a result of, the person's role in assisting an issuing authority except as permitted by this Act.

64F Immunity

- (1) An issuing authority is not personally liable for anything necessarily or reasonably done or omitted to be done in good faith—
 - (a) in the performance of a function or the exercise of a power under this Act; or
 - (b) in the reasonable belief that the act or omission was in the course of the performance of a function or the exercise of a power under this Act.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to an issuing authority attaches instead to the State."