

LEGISLATIVE COUNCIL
HUMAN SOURCE MANAGEMENT BILL 2023

(Amendments and New Clauses to be proposed in Committee by JACLYN SYMES)

1. Clause 3, after line 27 insert—
"*client legal privilege* includes legal professional privilege;"
2. Clause 3, page 3, line 7, after "23," insert "30C,".
3. Clause 3, page 6, line 32, omit "application;" and insert "application; or".
4. Clause 3, page 6, after line 32 insert—
"(d) an application to the Supreme Court under section 30A;"
5. Clause 3, page 7, line 6, after "23" insert "or 30C".
6. Clause 4, line 33, after "register" insert ", or apply to the Supreme Court for authorisation to register,".
7. Clause 10, line 14, omit "23;" and insert "23 or 30C;"
8. Clause 10, after line 14 insert—
"(ab) the power to approve the making of an application under section 30A;"
9. Clause 12, line 2, omit "**aged 14 years or under**".
10. Clause 12, lines 4 and 5, omit "who is aged 14 years or under".
11. Clause 15, line 2, omit "**14 years of age or under**".
12. Clause 15, line 4, omit "aged 14 years or under".

NEW CLAUSE

13. Insert the following New Clause after clause 15—

"15A Prohibition on tasking a human source where information subject to client legal privilege

A police officer must not task a human source who is registered for the purpose of a police officer obtaining, or obtaining and disseminating, information from the human source that is subject to—

 - (a) client legal privilege; or
 - (b) client legal privilege in respect of which there is an exception to the privilege."

14. Clause 18, line 8, after "register" insert ", or apply to the Supreme Court for authorisation to register,".
15. Clause 21, page 22, before line 1 insert—

"(1A) A police officer must not apply to the Chief Commissioner to register as a reportable human source a person who is reasonably expected to have access to information that is subject to client legal privilege or information in respect of which there is an exception to client legal privilege, for the purpose of obtaining, or obtaining and disseminating, information of that kind."
16. Clause 23, after line 22 insert—

"(1A) The Chief Commissioner must not register a person as a reportable human source under this section if—

 - (a) the person is reasonably expected to have access to—
 - (i) information that is subject to client legal privilege; or
 - (ii) information in respect of which there is an exception to client legal privilege; and
 - (b) the purpose of the registration is for a police officer to obtain, or to obtain and disseminate, information that is subject to client legal privilege or information in respect of which there is an exception to client legal privilege."
 17. Clause 24, line 22, after "Monitor" insert "to the Chief Commissioner".
 18. Clause 25, line 28, after "source" insert "under section 23".
 19. Clause 25, page 26, line 7, after "source" insert "under section 23".
 20. Clause 25, page 26, line 10, after "source" insert "under section 23".
 21. Clause 26, page 27, lines 5 to 8, omit all words and expressions and insert—

"(2) Subsection (1) does not apply if the information that the person is to be registered to provide is subject to—

 - (a) client legal privilege; or
 - (b) an exception to client legal privilege or any other privilege."
 22. Clause 27, line 12, after "source" insert "under section 23".
 23. Clause 28, line 3, omit "The" and insert "Subject to any conditions imposed by the Supreme Court under section 30B, the".
 24. Clause 29, line 12, after "months" insert "or, if applicable, the period fixed by the Supreme Court".
 25. Clause 29, line 15, omit "the registration" and insert "a registration under section 23".

NEW CLAUSES

26. Insert the following New Division after Division 3 of Part 3—

"Division 3A—Application to Supreme Court to register a person as a reportable human source for certain purposes

30A Application to Supreme Court for the registration of a person as a reportable human source for certain purposes

- (1) A police officer, with the approval of the Chief Commissioner, may apply to the Supreme Court for an order authorising the Chief Commissioner to register a person as a reportable human source for the purpose of a police officer obtaining, or obtaining and disseminating, information that is subject to client legal privilege or information in respect of which there is an exception to client legal privilege if the police officer is reasonably satisfied—
- (a) that the use of the person as a human source—
 - (i) is necessary to achieve a legitimate law enforcement objective; and
 - (ii) is proportionate to that objective; and
 - (b) that the risks associated with the person's registration as a human source have been identified and can be adequately managed; and
 - (c) that the registration of the person as a reportable human source is otherwise appropriate and justified; and
 - (d) of either of the following—
 - (i) that—
 - (A) there is a serious and imminent threat to national security, the health or safety of the public or a section of the public, the life of a person or of serious physical harm to a person; and
 - (B) registering the person as a reportable human source is immediately necessary to respond to the threat; and
 - (C) the information or assistance that the person is expected to provide if registered as a reportable human source cannot be obtained through any other reasonable means; or
 - (ii) the information is subject to an exception to client legal privilege of a kind that permits its disclosure to law enforcement officers.
- (2) An application must—
- (a) specify the name of the applicant; and
 - (b) specify the name of the person in respect of whom the application is made; and
 - (c) specify the information proposed to be obtained, or obtained and disseminated; and

- (d) specify the reasons why the information is likely to be the subject of client legal privilege or subject to an exception to client legal privilege; and
 - (e) specify the required duration of the registration; and
 - (f) if the application is made in writing, be signed by the police officer making the application; and
 - (g) unless the police officer making the application reasonably believes it would be impracticable to do so, be supported by an affidavit setting out the grounds on which the application is made.
- (3) If the police officer making an application under this section reasonably believes that it is impracticable for the application to be made in person, the application may be made by telephone or other electronic communication.
- (4) An application that is made without a supporting affidavit must be accompanied by any information requested by the court.
- (5) A police officer who makes an application without a supporting affidavit must provide a supporting affidavit within 24 hours after making the application.

30B Supreme Court may authorise the registration of a person as a reportable human source for certain purposes

- (1) The Supreme Court may make an order of a kind referred to in section 30A(1) only if the court is reasonably satisfied—
- (a) that the use of the person as a human source—
 - (i) is necessary to achieve a legitimate law enforcement objective; and
 - (ii) is proportionate to that objective; and
 - (b) that the risks associated with the person's registration as a human source have been identified and can be adequately managed; and
 - (c) that the registration of the person as a reportable human source is otherwise appropriate and justified; and
 - (d) of either of the following—
 - (i) that—
 - (A) there is a serious and imminent threat to national security, the health or safety of the public or a section of the public, the life of a person or of serious physical harm to a person; and
 - (B) registering the person as a reportable human source is immediately necessary to respond to the threat; and
 - (C) the information or assistance that the person is expected to provide if registered as a reportable human source cannot be obtained through any other reasonable means; or

- (ii) the information is subject to an exception to client legal privilege of a kind that permits its disclosure to law enforcement officers; and
 - (e) in the case of an application that is not made in person, that it would have been impracticable for the application to be made in person; and
 - (f) in the case of an application that is not supported by an affidavit, that it would have been impracticable for an affidavit to have been prepared and sworn or affirmed before the application was made.
- (2) In considering whether the court is reasonably satisfied of the matters specified in subsection (1), the court must consider the following—
- (a) whether the person is reasonably expected to have access to privileged information or privileged information in respect of which there is an exception to the privilege and, if so, whether that information is related to the information the person is expected to provide to a police officer if registered as a reportable human source;
 - (b) whether the person is reasonably expected to have access to information that is subject to a legal obligation of confidentiality and, if so, whether that information is related to the information the person is expected to provide to a police officer if registered as a reportable human source;
 - (c) any specialist advice regarding the registration of the person as a reportable human source;
 - (d) the person's age;
 - (e) the person's health, including the person's mental and physical health;
 - (f) the purpose for which the person is proposed to be registered as a reportable human source;
 - (g) the conditions that would be imposed on the registration;
 - (h) the length of time for which the person is proposed to be registered as a reportable human source;
 - (i) mitigation of any risk to the safety of the person if the person is registered as a reportable human source;
 - (j) the adequacy of the risk assessment and any other material provided in support of the application;
 - (k) any rewards that are proposed to be given to the person if registered as a reportable human source;
 - (l) if the person is a child—
 - (i) whether registration as a reportable human source is in the best interests of the child; and
 - (ii) any expected impact of registration on the child's wellbeing; and

(m) any submissions made to the court by the Public Interest Monitor.

- (3) An order must specify—
- (a) whether the information that is proposed to be obtained, or obtained and disseminated, is likely to be subject to client legal privilege or an exception to client legal privilege of a kind that permits its disclosure to law enforcement officers; and
 - (b) the purpose for which the Chief Commissioner may register the person as a reportable human source; and
 - (c) the date of making of the order; and
 - (d) the maximum period for which the registration of the person in respect of whom the application is made may be in effect, being a period that is not longer than 7 days; and
 - (e) any conditions to which the order is subject.
- (4) An order must not—
- (a) authorise the registration of a person as a reportable human source for the purpose of tasking the person; or
 - (b) be varied, extended or renewed.
- (5) If an order is not made in writing, the court must provide the police officer with a copy of the order as soon as it is practicable to do so.
- (6) An application under this section must not be heard in open court.

30C Chief Commissioner may register a person as a reportable human source following court order

- (1) The Chief Commissioner may register a person as a reportable human source if the Supreme Court makes an order under section 30B authorising the Chief Commissioner to register the person.
 - (2) Before registering the person, the Chief Commissioner must ensure that the person has given informed consent to the registration and that the Chief Commissioner has a record of that person's informed consent, as required by section 20."
27. Clause 38, line 18, after "registration" insert "or a registration under section 30C".
28. Clause 38, line 30, after "registration" insert "or a registration under section 30C".
29. Clause 40, after line 20 insert—
- "(1A) A police officer must not apply to the Chief Commissioner for emergency registration of a person as a human source a person who is reasonably expected to have access to information that is subject to client legal privilege or information in respect of which there is an exception to client legal privilege, for the purpose of obtaining, or obtaining and disseminating, information of that kind."
30. Clause 41, after line 21 insert—

"(1A) The Chief Commissioner must not register a person as a human source on an emergency registration application if—

- (a) the person is reasonably expected to have access to—
 - (i) information that is subject to client legal privilege; or
 - (ii) information in respect of which there is an exception to client legal privilege; and
- (b) the purpose of the registration is for a police officer to obtain, or to obtain and disseminate, information that is subject to client legal privilege or information in respect of which there is an exception to client legal privilege."

31. Clause 45, after line 20 insert—

"(4) Despite subsection (3), in the case of a registration under section 30C that is the subject of a further application to the Supreme Court under section 30A, the Chief Commissioner must suspend the registration of the human source at the expiry of the registration period determined under section 29(1) until the further application has been determined by the court."

32. Clause 47, page 44, line 2, after "registration" insert "unless a human source registered under an emergency registration has unexpectedly provided information which is subject to client legal privilege or information that is subject to client legal privilege in respect of which there is an exception to the privilege".

33. Clause 50, line 24, after "23," insert "30C,".

34. Clause 52, line 8, after "source" insert "under section 23".

35. Clause 52, after line 17 insert—

"(ab) to appear at the hearing of an application under section 30A to test the content and sufficiency of the information relied on and the circumstances of the application;"

36. Clause 52, page 47, line 20, omit "(a)." and insert "(a); and".

37. Clause 52, page 47, after line 20 insert—

- "(c) for the purpose of performing the function under subsection (1)(ab)—
- (i) make submissions to the court by telephone or other electronic communication; and
 - (ii) ask questions of any person giving information in relation to the application; and
 - (iii) make submissions to the Supreme Court as to the appropriateness of granting the application."

38. Clause 54, line 11, omit "an application" and insert "any application".

39. Clause 54, after line 12 insert—

"(1A) The Chief Commissioner, as soon as practicable after the making of an application under section 30A and in accordance with the regulations (if any), must provide the Public Interest Monitor with—

- (a) a copy of the application; and
- (b) a copy of any affidavit in support of the application and of any information provided to the court."

40. Clause 54, line 18, after "is made" insert "to the Chief Commissioner or the Supreme Court".

41. Clause 54, line 19, after "Commissioner" insert "or the Supreme Court".

42. Clause 54, line 20, after "application" insert "(as the case requires)".

43. Clause 55, line 5, after "source" insert "under section 23".

44. Clause 55, line 17, after "source" insert "under section 23".

45. Clause 62, page 55, after line 13 insert—

"(ga) the number of times the Public Interest Monitor was notified under section 54 of an application to the Supreme Court under section 30A; and".

NEW CLAUSE

46. Insert the following New Clause after clause 72—

"72A Chief Commissioner to report on applications to the Supreme Court

The Chief Commissioner must give a report to IBAC at least once every 3 months which specifies the number of applications made under section 30A and, of those—

- (a) the number that were granted by the court; and
- (b) the number that were refused and the reasons each was refused."