

TASMANIA

EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024

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EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

LAURA ROSS, *Clerk of the House*
11 September 2024

*(Brought in by the Minister for Justice, the Honourable Guy
Barnett)*

A BILL FOR

An Act to amend the *Expungement of Historical Offences Act 2017*

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Expungement of Historical Offences Amendment Act 2024*.

2. Commencement

This Act commences on the day on which this Act receives the Royal Assent.

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3. Principal Act

In this Act, the *Expungement of Historical Offences Act 2017** is referred to as the Principal Act.

4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “offence;” from paragraph (b) of the definition of *historical offence* and substituting “offence; or”;
- (b) by inserting the following paragraph after paragraph (b) in the definition of *historical offence*:
 - (c) a related offence;
- (c) by inserting the following definition after the definition of *official criminal record*:

personal information has the same meaning as in the *Personal Information Protection Act 2004*;
- (d) by inserting the following definitions after the definition of *regulations*:

related offence means an offence against –

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- (a) section 34B of the *Police Offences Act 1935*; or
- (b) a provision in an Act that has substantially the same effect as an offence referred to in paragraph (a);

secondary electronic record means an official criminal record in electronic form that acts as a duplicate of, is derived from, or is generated as a result of, an already existing official criminal record, regardless of whether that secondary electronic record is held by the same entity as the already existing record or by a different entity;

5. Section 9 amended (Disclosure of records to applicant)

Section 9(1) of the Principal Act is amended by omitting the definitions of *personal information* and *record* and substituting the following definition:

record, in relation to an application, means a record of the investigation of, or a record of proceedings relating to, a historical offence to which the application relates.

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6. Section 10 amended (Matters to be considered in determining application)

Section 10 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “for a homosexual offence or a cross-dressing offence” after “expunge a charge”;
- (b) by inserting the following subsection after subsection (1):

(1A) The Secretary must not decide to expunge a charge for a related offence under section 12(2)(a) unless the Secretary –

- (a) has received advice from the Commissioner of Police in relation to the circumstances of the related offence; and
- (b) is satisfied on reasonable grounds, after considering that advice, that –
 - (i) the offence for which the eligible person was charged is a related offence; and
 - (ii) the person charged with the related

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offence would not have been so charged but for the fact that the eligible person was suspected of committing a homosexual offence or cross-dressing offence; and

(iii) expunging the charge is not contrary to the public interest.

(c) by omitting from subsection (3)(c) “by the applicant” and substituting “by the Secretary”.

7. Section 12 amended (Determination of application)

Section 12(3)(b) of the Principal Act is amended by inserting “except so far as those records contain personal information relating to a person other than the eligible person” after “Secretary”.

8. Section 15 amended (Removal or annotation of official criminal records)

Section 15 of the Principal Act is amended by omitting subsections (2) and (3) and substituting the following subsections:

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- (2) On receipt of a notification under subsection (1), the relevant data controller must, within 28 days –
 - (a) in the case of any secondary electronic record under the data controller's management or control that includes information about an expunged charge –
 - (i) erase or remove the secondary electronic record; or
 - (ii) remove any information from the secondary electronic record that identifies the person whose charge was expunged; or
 - (iii) remove any link between the secondary electronic record and data that could potentially identify the person whose charge was expunged; and
 - (b) in the case of any other official criminal record under the data controller's management or control that contains an entry that includes information about an expunged charge, annotate that entry, with a statement to the effect that –

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- (i) the entry includes information about an expunged charge; and
 - (ii) it is an offence to disclose information about an expunged charge.
- (2A) If a data controller is unable, due to technological limitations, to comply with subsection (2)(a) in respect of a secondary electronic record, that data controller may annotate that record in accordance with subsection (2)(b).
- (3) A data controller must notify the Secretary of any action taken under subsection (2) or (2A) as soon as possible after the action is taken.

9. Part 3A inserted

After section 19 of the Principal Act, the following Part is inserted:

PART 3A – COMPENSATION PAYABLE UNDER ACT

19A. Interpretation of this Part

In this Part –

assessment means an assessment carried out by an independent assessor to determine the amount of compensation to be paid to eligible recipients under this Act;

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compensation order means an order made by the Premier under section 19E(4);

eligible recipient means a person whose charge has been expunged under this Act;

independent assessor means a person appointed under section 19B;

initial compensation order means the first compensation order made by the Premier after the commencement of this Part;

initial decision means the first decision of the Secretary to expunge a charge under section 12 that occurs after the commencement of this Part.

19B. Independent assessor

- (1) The Premier must appoint an independent assessor to conduct an assessment under this Act –
 - (a) within 3 months after the initial decision; and
 - (b) if a compensation order is disallowed under section 19E, within 3 months of the disallowance.

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- (2) The Premier may, at other times, appoint an independent assessor to conduct an assessment under this Act, if the Premier considers that the appointment is necessary to ensure that appropriate compensation is paid to eligible recipients under this Act.
- (3) The Premier may only appoint a person as an independent assessor under this section if satisfied that the person has relevant knowledge, expertise and experience to make an assessment under this Act.
- (4) The appointment of an independent assessor is to be on such terms and conditions as the Premier thinks fit.
- (5) An independent assessor has the power to do all things necessary or convenient to be done, in connection with, or incidental to, the conduct of an assessment.
- (6) The Secretary is to arrange for –
 - (a) the services of State Service officers and State Service employees employed in the Department; and
 - (b) facilities; and
 - (c) other assistance –

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to be made available or provided to an independent assessor to enable the independent assessor to make an assessment.

19C. Submissions in relation to compensation

- (1) After a person has been appointed as an independent assessor, that person must cause a notice to be published inviting public submissions in respect of compensation payable under this Act.
- (2) A notice under subsection (1) is to –
 - (a) be published in a newspaper circulating generally in the State; and
 - (b) specify the day by which submissions may be made, being a day not less than 30 days after the notice is first published in a newspaper.
- (3) The independent assessor must consider any submissions received under this section before providing the Premier with a report under section 19D(1)(b).

19D. Determination of compensation payable

- (1) An independent assessor must, within 6 months after the independent assessor's appointment –

- (a) conduct an assessment; and
 - (b) provide the Premier with a report that recommends a method for calculating the amount of compensation to be paid to eligible participants.
- (2) The method for calculating an amount of compensation under subsection (1)(b) may –
 - (a) vary according to different factors or circumstances; and
 - (b) include indexing on an annual or other basis.

19E. Compensation order

- (1) Within 30 days after being provided with a report under section 19D(1)(b), the Premier must prepare a draft order which specifies the method for calculating the amount of compensation to be paid under this Act to eligible participants.
- (2) The method specified by the Premier in a compensation order must be the method recommended to the Premier by the independent assessor under section 19D(1).
- (3) The Premier must cause a draft of the compensation order prepared under subsection (1) to be laid before each

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House of Parliament on the first sitting-day of that House after the day on which the draft order is prepared.

- (4) After a draft order has been approved by both Houses of Parliament, the Premier must make an order in the same terms as the draft order within 30 days.
- (5) A draft order is approved by a House of Parliament –
 - (a) when the House passes a motion approving the draft order; or
 - (b) at the end of 5 sitting-days after the draft order was laid before the House if no notice of a motion to disapprove the proposal is before the House; or
 - (c) if such a notice is before the House at the end of that period, when the first of the following occurs:
 - (i) the notice is withdrawn;
 - (ii) the motion is negatived;
 - (iii) a further period of 5 sitting-days ends.
- (6) A compensation order made under this section –

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- (a) is a statutory rule for the purposes of the *Rules Publication Act 1953*; and
 - (b) is not an instrument of a legislative character for the purposes of the *Subordinate Legislation Act 1992*.
- (7) The Premier may only amend or revoke a compensation order to give effect to a recommendation of an independent assessor under section 19D(1).

19F. Compensation for charges expunged before initial compensation order

- (1) This section applies in respect of a charge that is expunged before the initial compensation order is made.
- (2) The Secretary must, as soon as practicable and in any case within 3 months after the making of the initial compensation order, notify the person who applied to have the charge expunged that compensation is payable under this Act.
- (3) If an applicant who receives notification under this section confirms that compensation is to be paid under this Act, the Secretary must, as soon as practicable and in any case within 3 months after receiving confirmation, pay

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compensation to the person whose charge has been expunged.

- (4) The amount of compensation payable under this section is to be calculated in accordance with the initial compensation order.

19G. Compensation for charges expunged after initial compensation order

- (1) This section applies in respect of a charge that is expunged after the initial compensation order is made.
- (2) The Secretary must, as soon as practicable and in any case within 3 months after a charge has been expunged under section 12(6), pay compensation under this section to the person whose charge has been expunged.
- (3) Subsection (2) does not apply if the person whose charge has been expunged notifies the Secretary in writing that the person does not wish for compensation to be paid to them under this section.
- (4) The amount of compensation payable under this section is to be calculated in accordance with the compensation order in effect at the time.

19H. Ex gratia payments

If an ex gratia payment is, or has been, made by the State to an eligible recipient in respect of a charge, the amount of compensation payable to that eligible recipient under this Part in respect of that charge is to be reduced by the amount of that ex gratia payment.

19I. Cessation of expungement

- (1) If the Secretary makes a determination under section 20(1) that a charge has ceased to be expunged, the Secretary may determine that any compensation that has been paid under this Part in respect of that charge is to be repaid.
- (2) If the Secretary makes a determination under subsection (1) that compensation is to be repaid, that compensation is a debt due and payable to the Crown by the person who received that compensation.

19J. Incorrect compensation paid

- (1) In this section –

original compensation amount means a compensation amount paid under this Part to an eligible recipient;

variation amount, in respect of an expunged charge, means the

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difference between the varied compensation amount for that charge and the original compensation amount paid for that charge;

varied compensation amount, in respect of an expunged charge, means the compensation amount for that charge as varied under subsection (2).

- (2) If the Secretary is satisfied that a compensation payment paid in respect of an expunged charge under this Part was calculated incorrectly, the Secretary is to vary the compensation amount payable in respect of that charge and is to notify the person to whom the compensation has been paid of that variation.
- (3) If the amount paid as the original compensation amount in respect of an expunged charge is greater than the varied compensation amount for that charge, the Secretary may recover the variation amount from the person whose charge has been expunged as a debt due and payable to the Crown.
- (4) If the varied compensation amount payable for an expunged charge is greater than the original compensation amount paid in respect of that charge, the Secretary must pay the variation amount

to the person whose charge has been expunged.

19K. Payment of outstanding amounts

- (1) The Secretary may enter into an arrangement for a liability outstanding to the Crown under this Part to be paid by instalments.
- (2) The Secretary may write off the whole, or any part, of a liability to pay an amount to the Crown under this Part, if satisfied that any action, or further action, to recover the outstanding amount is impracticable or unwarranted.

10. Section 22 amended (No entitlement to compensation)

Section 22 of the Principal Act is amended by omitting “If a” and substituting “Other than as entitled under this Act, if a”.

11. Section 28A inserted

After section 28 of the Principal Act, the following section is inserted in Part 4:

28A. Exemption from *Right to Information Act 2009* in certain circumstances

- (1) In this section –

relevant person means –

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- (a) the Secretary; or
 - (b) a data controller; or
 - (c) a person required, or engaged by, the Secretary or a data controller to do or not to do a thing; or
 - (d) a person engaged in the administration of this Act; or
 - (e) a person prescribed for the purposes of this section.
- (2) The *Right to Information Act 2009* does not apply to information in the possession, for the purposes of this Act, of a relevant person unless the information relates to the administration of a public authority within the meaning of that Act.

12. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.