

CLAUSE NOTES

Expungement of Historical Offences Amendment Bill 2025

Clause 1 Short Title

This specifies the name of the proposed Act.

Clause 2 Commencement

This provides that the Act commences on Royal Assent.

Clause 3 Principal Act

This provides that the Expungement of Historical Offences Act 2017 is referred to as the Principal Act.

Clause 4 Section 3 amended (Interpretation)

This clause amends definitions in section 3.

Paragraph (a) and paragraph (b) omits the words “offence; or” and inserts “related offence.” The variation expands the definition of “historical offence” to allow for the incorporation of “related offence”.

Paragraph (c) inserts a new definition of “personal information” which is consistent with the definition in the Personal Information Protection Act 2004.

Paragraph (d) provides for a definition of “related offence” which is defined to include under clause (a) an offence against section 34B of the Police Offences Act 1935 which is an offence relating to resisting, obstructing or assaulting police and under clause (b) a provision in an Act that has substantially the same effect. The Department of Justice has been unable to locate historical variants of section 34B; however clause (b) has been inserted to ensure if there are any historical variants they are explicitly included.

Paragraph (e) provides for a definition of “secondary electronic record”. It is inserted to assist with distinguishing it from ordinary records under the Principal Act; which will be managed differently. The definition is based on Victoria’s provision. The definition provides that a secondary electronic record is derived from the “official criminal record”, acts as a duplicate, is derived from or is generated from the official criminal record and is in electronic form.

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

This clause has the effect of omitting the definition of “personal information” and substituting the current definition of “record”.

The definition of “personal information” in section 9 is omitted as it is longer required as the definition in section 3 will be applied, making it consistent with the definition in the Personal Information Protection Act 2004. This will ensure consistent treatment of personal information across legislation and ensure any type of information or opinion or in any recorded format is captured.

The original definition of “record” in section 9 is replaced with a new definition of record. The new definition ensures records are only released which are relevant to the offences which are the subject of the application for expungement. The narrower definition ensures the confidentiality of complainants and responds to feedback from the independent reviewers who were concerned the existing definition had broader application than is necessary.

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

This clause amends section 10. Section 10 sets out the matters to be considered in determining an expungement application.

Paragraph (a) inserts the words “for a homosexual offence or a cross-dressing offence”. These words have been inserted as that part of the section address applications for the expungement of homosexual and cross-dressing offences and not “related offence” applications. This amendment was needed as there is a slightly different process for “related offences” which is outlined in paragraph (b) of the clause.

Paragraph (b) provides for the matters the Secretary is to consider when determining whether to expunge a charge for a related offence. In determining an expungement, the new clause requires the Secretary of the Department of Justice, to be satisfied on reasonable grounds, after considering advice from the Commissioner of Police in relation to the circumstances of the related offence, that the offence which the eligible person was charged is a related offence, and that the eligible person would not have been charged with the related offence but for the fact that the eligible person was suspected of committing a homosexual offence or cross-dressing offence and expunging the charge is not contrary to the public interest.

Paragraph (c) provides for an amendment to section 10(3)(c) of the Principal Act. The amendment omits the words “by the applicant” and substitutes “by the Secretary”. The amendment will ensure when

determining an application for expungement, where the consent of the person to the conduct is in issue, the Secretary (not the applicant) will make reasonable enquiries to locate the other person involved. The change arises from the independent reviewers feedback. The new provision will prevent situations where the victim of a non-consensual act is looked for by the perpetrator of an offence, thereby causing distress to the victim.

Clause 7 Section 12 amended (Determination of application)

This clause amends section 12 of the Principal Act by making amendments that will result in unsuccessful expungement applicants receiving relevant records “except so far as those records contain information relating to a person other than the eligible person”. The amendments, which were proposed by the independent reviewers, provide for additional privacy protections as the applicant will now only receive personal information relating to the eligible person, not third party’s information, when the record is disclosed.

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

Clause 15 sets out what is to happen to the records once a charge or conviction has been expunged. This clause amends section 15 of the Act by omitting and inserting clauses regarding when and how the data controller must annotate or remove official criminal records when a charge is successfully expunged under the Act. The current section annotates an entry about an expunged charge and does not distinguish between the treatment of ordinary records and secondary electronic records. The amendments will mean ordinary records and secondary electronic records are treated differently.

Under the clause once a charge has been expunged in the case of a second electronic record, the data controller has 28 days to have the affected secondary electronic records either erased or removed, de-identified from the secondary electronic record that identifies the person whose charge was expunged, or have any link between the secondary electronic record and data that could potentially identify the person whose charge was expunged removed. This will minimise the number of records which refer to an expunged conviction, thereby decreasing the risk of unintentional or accidental disclosure. The Bill also allows for an exception to this process that will allow the expungement for secondary electronic records to be that applied for ordinary records where it is not possible to permanently delete records due to technical limitations.

In the case of official criminal records to be expunged the data controller has 28 days to annotate the official criminal record under their management or control to indicate that the charge or conviction has been expunged and with a notation that is an offence to disclose expunged charges or convictions.

The data controller must notify the Secretary of any action taken as soon as possible after the action is taken.

Clause 9

Part 3A Inserted (Redress payments payable under Act)

Part 3A reflects the recommendations provided by the Report of the Joint Sessional Committee on Gender and Equality on a redress scheme. This part inserts sections 19A to 19G into the Act.

Section 19A defines who is eligible to receive a redress payment under the Act, as someone who has one or more charges expunged under the Act.

Section 19B requires the Secretary to make redress payments under Part 3A either as soon as reasonably possible after the charge or convictions are expunged under the Principal Act or, if the charges have already been expunged, after the commencement of this Part.

Section 19C provides for the amount to be paid to people eligible for redress payments, which is: \$15,000 for an individual who was charged but not convicted; \$45,000 for an individual who was convicted but not subject to any court-imposed sanctions; and \$75,000 for an individual who was convicted and was subject to at least one court-imposed sanction.

The section states that these amounts are applicable until 30 June 2026, and will adjust in accordance with the CPI figure for Hobart each subsequent year. Eligible recipients will receive the higher of the figure from the year their records have been expunged and the proceeding year. Under this section, a person is only entitled to one redress payment regardless of the number of relevant charges, convictions or sanctions the individual has on their record.

Section 19D provides for matters relating to redress payments to individuals who have received an ex gratia payment in relation to their expunged charges or convictions prior to the amendment of the Principal Act.

Section 19E provides that if the Secretary determines that a charge ceases to be expunged, the recipient of any redress payment in relation to that charge made under this Act will be liable to repay that amount in full to the Crown.

Section 19F provides a mechanism for varying incorrect redress payment amounts. It allows the Secretary to vary the amount of a redress payment if they determine that a payment made in respect of an expunged record was calculated incorrectly. The Secretary must notify the relevant person of the variation. The Secretary must ensure that any additional amounts are paid to the person if it is determined that their original redress payment was too low. Alternatively, if the Secretary determines that the redress payment provided to an individual was too high, the Secretary may require that the person pay as a debt the amount in excess of their varied redress payment.

Section 19G relates to outstanding debts payable to the Crown in relation to overpayments under section 19F or payments for charges which have ceased to be expunged under section 19E. It provides the Secretary with the authority to enter into an agreement for an outstanding liability payable to the Crown or to write the whole or part of a debt payable to the Crown if they determine it be impractical or unwarranted to pursue the debt.

Clause 10 Section 22 amended (No Entitlement to compensation)

This clause amends section 22 of the Principal Act so that individuals who have their charges or convictions successfully expunged are not excluded from receiving a payment under Part 3A. Section 22 of the Principal Act states that a person is not entitled to compensation if they have a charge or conviction expunged under section 12(6) of the Principal Act. Clause 10 provides an amendment so that a person is not entitled to compensation, 'other than as entitled under this Act', allowing for the provision of payments under Part 3A.

Clause 11 Section 28A inserted (Exemption from Right to Information Act 2009 in certain circumstances)

This new clause provides that the Right to Information Act 2009 does not apply to information in the possession of a relevant person, as defined for the purposes of this section, unless the information relates to the administration of a public authority within the meaning of this Act. The clause was proposed by the independent reviewers of the Act, who noted that in the investigation and determination of applications there was the creation of secondary documents that contain sensitive, private and confidential information. The exemption safeguards the confidentiality of a person's expunged charge or conviction if a Right to Information application arises.

Clause 12 Repeal of Act

This automatically repeals the amending legislation after the first anniversary of the day on which it commenced, as the amendments will be incorporated into the Principal Act.