

TASMANIA

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**EXPUNGEMENT OF HISTORICAL OFFENCES  
AMENDMENT BILL 2023**

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# **EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2023**

*(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 2023*.

### **2. Commencement**

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

### **3. Principal Act**

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

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\*No. 45 of 2017

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**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 –

- (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);

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***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.

**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”;

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

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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:

(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 –

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- (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 –
    - (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. 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 –

- (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.

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- (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.

**10. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.