



Dr Ash Russell
Acting President, Equality Tasmania

[REDACTED]
[REDACTED]

Rodney Croome AM
Policy Officer, Equality Tasmania

[REDACTED]
[REDACTED]

Fiona Murphy
Secretary, Joint Sessional Committee on Gender and Equality
Parliament House, Hobart, Tasmania 7000

[REDACTED]
genderandequality@parliament.tas.gov.au

Dear Ms Murphy,

Please find below Equality Tasmania's submission to the Gender and Equality Committee's inquiry into financial redress under the Government's the Expungement of Historic Offences Amendment Bill 2024.

We appreciate the opportunity to make a submission and thank the Committee for accepting it a couple of days past deadline.

Best wishes,
Ash Russell
Rodney Croome

Equality Tasmania

Equality Tasmania is Tasmania's peak LGBTIQ+ advocacy and law reform organisation. It is the oldest organisation of its kind in Australia. It is funded by the State Government to provide advice on law and policy reform.

Equality Tasmania advocated and lobbied for the repeal of laws criminalising homosexuality and cross-dressing, as well as for the state's legislation that allows for the expungement of historical criminal records for homosexuality and cross-dressing. It has also advocated and lobbied for reform of expungement legislation, including the provision of financial redress.

We are in touch with several elderly men who were charged or convicted under the relevant laws. Two live in Tasmania and the rest live interstate. They support the principle of financial redress.

Executive summary

The Independent Review of Tasmania's law allowing historic charges and convictions for homosexuality and cross-dressing to be expunged recommended financial redress for those people who successfully expunged their record. In particular, the Review recommended an automatic payment upon expungement, a fixed and pre-set amount regardless of individual circumstances, and more for an expunged conviction than an expunged charge.

Equality Tasmania supports this recommendation because redress will acknowledge and help remedy the injustice and deep harm endured by victims of our former laws.

The State Government rejected the redress recommendation and the issue wasn't addressed in legislation amending and updating the expungement statute. The Greens' moved an amendment mandating financial redress and establishing an independent assessor who would determine an amount. This was supported in the House of Assembly. In the Legislative Council the Government proposed a \$5000 payment and the Government's amendment bill was sent to the Gender and Equality Committee to determine a mechanism and criteria for determining the amount of a redress payment.

Equality Tasmania prefers the appointment of an independent assessor and is very reluctant to nominate an amount for a redress payment.

However, after considering various local and national non-LGBTIQ+ redress schemes, as well as overseas schemes for redress of LGBTIQ+ criminalisation and other forms of LGBTIQ+ discrimination, we suggest a

range within which the Tasmanian redress payment for a conviction might fall: \$25,000 - \$75,000.

We also list a number of criteria the Committee should consider if it decides to go down the path of recommending an amount within this range. These include the harm caused to victims, the benefits to victims, the under-payment for some victims because of the absence of individual assessment, the impact on the expungement scheme and on the reputation of Tasmania, and the precedent set for other states. We conclude that it would benefit victims, the expungement scheme, Tasmania and those who follow our precedent to err on the side of a greater rather than a lesser amount.

We also support redress payments to partners and families, and redress for charges and convictions related to charges and convictions for homosexuality or cross-dressing.

Finally, we note that most other countries have relevant redress schemes that provide redress on a case-by-case basis, not through a fixed, pre-set amount. We recommend an organisation like the Tasmanian Law Reform Institute be asked to consider if such an approach is desirable and how it might be implemented.

Background to this inquiry

In 2017, Tasmania enacted legislation allowing for people with historic criminal records for homosexuality and cross-dressing to be expunged. This was accompanied by an apology from then Premier, Will Hodgman, and other political leaders. The legislation was poignant because Tasmania previously had the harshest maximum penalty for homosexuality in the western world (21 years in prison), was the last state to decriminalise homosexuality (in 1997), and was the only state to criminalise cross-dressing (until 2000).

The legislation included a provision for a review which was issued in October 2020 and authored by Melanie Bartlett and Taya Ketelaar-Jones. The review made thirteen recommendations, all of which Equality Tasmania supports. In response to the review, the State Government introduced legislation in 2024 – the Expungement of Historic Offences Amendment Bill - to implement twelve of the recommendations. The Bill omitted the thirteenth recommendation for financial redress.

The Review's thirteenth recommendation was that those people who successfully apply to have a historic record expunged should then automatically receive a one-off, fixed and pre-set payment. The payment structure should be two tiered, one for a conviction expunged and a

smaller amount for a charge expunged. Equality Tasmania supports this recommendation. There is more detail below.

During debate on the expungement amendment bill in the House of Assembly a Greens' amendment was accepted that provided for financial redress and for a mechanism to determine how much, namely the appointment of an independent assessor. During debate on the bill in the Legislative Council, the Government proposed a one-off payment of \$5000 which Equality Tasmania rejected as too low. The Council subsequently voted to send the bill to the Gender and Equality Committee for an inquiry into how to determine the level of financial redress.

Here is the recommendation for financial redress from the Independent Review:

"That a payment should be made available for those whose records are expunged under the Act. The Independent Reviewers recommend that the Government introduces a one-off exgratia payment of a fixed amount as acknowledgement and redress for applicants who have charges and convictions expunged under the Act. This payment should be available automatically on the finalisation of an application in which the Secretary has determined to expunge any charge or conviction. It should not involve a hearing and should be an amount determined by the Government to be appropriate. In considering any such proposal for redress, the Independent Reviewers suggest that the Government consider a two-tiered payment structure; one payment for applicants who have conviction/s or charge/s actually recorded on their official criminal record which is or are expunged, and a second, smaller payment, to applicants who have a charge expunged which did not appear on their criminal record. This distinction recognises that, whilst all applicants whose records are expunged should be acknowledged, a person who has had a conviction or charge recorded on their criminal record is more likely to have encountered discrimination arising from this record than a person who was charged, but the charge did not proceed and consequently does not appear on their official criminal record."

Here is a summary of the case for financial redress. A more expansive case is made in the Equality Tasmania submission to the Department of Justice's consultation on the expungement amendment bill (attachment one).

The case for redress

- Charges and convictions under our former laws led to fines, gaol, aversion practices, involuntary outing, loss of jobs, loss of family, loss of relationships, interstate exile and suicide.

- Victims endured humiliation, shame, stigma, discrimination, pain and trauma.
- For decades after their conviction, having a criminal record made it much harder for those targeted under our old laws to find employment and housing.
- The Government did this and so it is responsible for repairing the damage.
- When the original expungement legislation passed in 2016, Premier Will Hodgman apologised to victims, said their convictions were “unfair and unjust”, and added that homosexuality and cross-dressing should never have been illegal.
- There have been no successful expungement applications, therefore...
 - There are no previous expungements to revisit
 - The number of redress payments will be low
 - Redress may encourage more applications

Responses to the case against redress

Prior to proposing \$5000 for redress during debate on the issue in the Legislative Council, the State Government was against redress. It’s argument was two fold:

- a) The Government said a one-off ex gratia payment by the Treasurer is already available.

Our response was that after a successful application for expungement applicants should not have to go through another application process for a discretionary Government 'gift' they may or may not receive. If this system were sufficient why are there redress schemes for the stolen generation and for victims of abuse in state care? Clearly, it is not sufficient.

- b) The Government also made the point that no other state does this.

Our response was that Tasmania was last state to decriminalise homosexuality and the only state to criminalise cross-dressing. This leaves a legacy that is deeper and more recent than elsewhere. Tasmania has a responsibility to show the path forward.

Terminology

Equality Tasmania uses the word “redress” to refer to the payment recommended by the independent review. We do not use other terms such as “compensation” or “reparation”. This is because the word “redress” carries a connotation of an injustice acknowledged and a serious desire to make amends for past wrongs.

“Compensation” and “reparation” carry the connotation of providing financial restitution for all the financial and psychological harm caused by charges and convictions under the historic laws in question. In some cases this might include loss of employment, gaol-time and/or aversion treatment. In such cases the amount of compensation would likely be very large. In all cases it would need to be individually assessed which runs against the recommendation of the Independent Review. We make a recommendation about individual assessment below.

We also do not use the term “ex gratia”, even though that is used by the Independent Review. Ex gratia means “out of grace” rather than a debt owed for an injustice. It implies the state has a choice about granting redress, which negates the Independent Review’s recommendation that the payment be automatic upon expungement.

The number of people involved

The Independent Review estimated about 100 people were charged under the relevant Tasmanian statutes from 1945 until their repeal. A handful of these people are known to Equality Tasmania. They are all elderly. However, there have been no successful applications for expungement thus far.

This may be because the expungement scheme has not been widely publicised, something the current Government seeks to rectify. It may also be because those with historic records have put their conviction behind them as a way to cope with what happened, or harbour deep fear and suspicion of the Tasmanian Government.

The same pattern can be seen in the other states. Very few successful expungements have occurred.

It is possible the availability of redress might increase the number of successful applicants, but it is unlikely to be a large or sudden increase given how few possible applicants remain alive.

On the basis of this, we feel confident in predicting that there will not be many payments of financial redress.

The questions before the Gender and Equality Committee

An independent assessor

The Committee has been given the task of considering how a fair and appropriate amount of financial redress can be determined. This could be through an independent, statutory mechanism to determine the amount, or through a direct determination of an amount by the Committee.

Equality Tasmania's preference is for there to be an independent, statutory mechanism. It would be at arm's length from the political process and would be able to take into account all relevant information, including public submissions and overseas schemes. Our desire for an independent process was increased by the Government's proposal for a \$5000 redress payment based on the German precedent. The amount was very low and the German scheme was misrepresented. The State Government is, in effect, the perpetrator, and has a conflict of interest in setting an amount. Because of this, we support the Greens' amendment to establish an independent assessor.

Concern has been expressed by the Government about the cost of an independent assessor and by Legislative Councillors about the complexity of the Greens' amendment. Equality Tasmania would be open to attempts to rein in costs and reduce complexity so long as the principle of independence was not compromised.

The Committee recommends an amount or range for the amount to fall within

Determination of an amount by the Gender and Equality Committee is not our preferred option. This is because specialist knowledge of redress schemes may be required. However, we acknowledge that a Gender and Equality Committee recommendation would have the advantage of being one step removed from the Government.

Should the Committee decide to recommend an amount, or a range within which the amount should fall, we have included the following information for it to consider. At the end we suggest a range, acknowledging that we also have a vested interest given we represent those who will benefit from redress payments.

Australian and Tasmanian redress schemes

In Australia, there are no other redress schemes for victims of historical laws against homosexuality and cross-dressing. Tasmania's would be the first.

There are other redress schemes that could inform discussion of financial redress.

Compensation for wrongful convictions or imprisonment

In Australia, compensation for wrongful convictions or for wrongful imprisonment is ad hoc and applications are decided on a case-by-case basis. It does not provide useful guidance.

In New Zealand \$NZ150,000 is provided for each year in custody, \$NZ100,000 for each year of lost earnings and \$NZ50,000 for readjustment to life after prison¹.

Compensation for victims of crime

The primary victim of a single criminal offence under the Tasmanian Victim of Crimes Act 1976 is eligible for \$33,134 as of June 30th 2024².

Institutional child abuse

The National Redress Scheme for people who experienced institutional child abuse ranges from \$10,000 to \$150,000 depending on individual circumstances³.

Stolen generations

In Tasmania people removed from their families as children received \$58,000 while children of deceased victims received about \$5000 each⁴.

Stolen wages

In Western Australia the compensation granted by the court amounted to \$16,500 per eligible claimant⁵.

International redress schemes for historic criminal offences

Germany

¹ <https://www.theguardian.com/commentisfree/2023/jun/10/will-kathleen-folbigg-be-compensated-for-20-years-in-prison-after-wrongful-conviction>

² <https://www.justice.tas.gov.au/victims/financial-assistance#Awards-and-payments>

³ <https://www.nationalredress.gov.au/apply/what-offer-redress>

⁴ <https://www.theguardian.com/world/2008/jan/22/australia.barbaramcmahon>

⁵ <https://www.abc.net.au/news/2024-11-27/federal-court-judgement-144-million-stolen-wages-to-families/104644674>

Between 1945 and 1969 an estimated 50,000 men were convicted under laws criminalising homosexuality. It is estimated 5000 were still living in 2017 when compensation was first allowed.

Surviving victims receive €3,000 in compensation along with €1,500 per year spent in gaol⁶. They also receive compensation for preliminary investigations and pre-trial detention as well as disadvantages in regards to their employment, finances and health.

During debate in the Legislative Council, the State Government gave the German precedent as its preferred model. However, it is clear from the following description of the German model from a 2023 Irish Government report into the expungement of criminal records, that this model does not conform to the recommendations of the Tasmanian Independent Review⁷. For example, in Germany there is a separate application process and each applicant's circumstances are individually assessed.

Furthermore, during the Upper House debate the Government offered \$5000 redress, based on the German figure of €3000 per annulled conviction, as a guide to what should be offered in Tasmania. However, it is clear from the Irish Government report (see below) that almost all Germans who successfully apply would receive more than this. This is because almost all applicants would a) have spent time in gaol, b) have spent time in preliminary investigations and/or on remand, and/or c) be able to demonstrate negative impact on their employment, finances and/or health. This means the German base amount is not appropriate for Tasmania.

Here is the relevant extract from the Irish Government report about the German scheme:

The 2017 Act to Criminally Rehabilitate Persons Who Have Been Convicted of Performing Consensual Homosexual Acts After May 8, 1945 and to Amend the Income Tax Act, provides for the payment of compensation to persons who after May 8, 1945 who were prosecuted or sentenced for consensual sexual activity with other men.

The 2019 Guideline regarding the payment of compensation to people affected by the criminal prohibition of consensual homosexual activities by the German Ministry of Justice provided for compensation for people convicted under criminalising laws. In order to access this compensation the person has to submit a request for compensation to the Federal Office of Justice up until July 21, 2027. The compensation request must be

⁶ <https://www.bbc.com/news/world-europe-40380064>

⁷ <https://www.gov.ie/ga/foilsuichan/50699-final-report-of-the-working-group-to-examine-the-disregard-of-convictions-related-to-consensual-sexual-activity-between-men/>

submitted by the person who was convicted. A person who was convicted under these laws is entitled to receive €3000 per annulled convictions as well as €1,500 for each started year spending in prison. The Guidelines also provides for compensation in the event of preliminary investigations , detention on remand or other temporary measures involving deprivation of liberty as well as when exceptionally negative impairments occurred outside of criminal prosecution as a result of the existence of criminal provisions (i.e. in the case of exceptional professional, economic, health or other comparable disadvantages).

Spain

Historians estimate between 1,000 and 5,000 gay men were gaoled in Spain between 1939 and 1979 when homosexuality was decriminalised.

Compensation has been fixed at €4,000 for men who were imprisoned for between one to six months, €8,000 for those who spent between six months and three years behind bars and €12,000 for those who spent over three years in gaol⁸.

Like Germany's compensation scheme, Spain's scheme requires a separate application and assesses each individual case. It is not clear if the relevant conviction is expunged, but compensation does not appear to rely on successful expungement of a conviction.

Here is a summary from the aforementioned Irish Government report about the Spanish scheme⁹:

Neither the Law on Historical Memory nor the Spanish Criminal Code specifically provide for compensation for those prosecuted under provisions governing 'homosexuality'. The Law of Historical Memory specifically states that right to obtain a declaration of reparation and individual recognition does not represent admission of liability by the State and does not constitute a right to claim compensation from the State, or a right to obtain economic compensation from the Administration.

However, within the context of the Law on Historical Memory, under the Spanish Budget of 2009 a Compensation Commission for Former Social Prisoners was established to deal with compensation claims made by former social prisoners of the Franco dictatorship. As a result this budget provided for some limited compensation for persons interned due to their sexual orientation under the Law on Vagrants and Crooks Act 1954 and the Law on Dangerousness and Social Rehabilitation 1970. This provision

⁸ <https://www.expatica.com/es/general/spain-compensates-gay-man-jailed-during-dictatorship-36915/>

⁹ *ibid*

provided compensation based on the period of time the individual was interned as follows:

- *From one month to six months: €4,000*
- *From six months and one day to less than three years: €8,000*
- *Three years or more: €12,010.12.*
- *For each additional three full years from three years: €2,402.02*

In the cases of deceased persons this compensation may be claimed by a spouse not legally separated or in the process of separation or marriage annulment or, where appropriate, the person who had been living with the beneficiary or beneficiary with a relationship of similar affect to that of the spouse for, at least, the two years prior to the time of death, unless they had children in common, in which case mere cohabitation will suffice.

In order to claim this compensation individuals, or if deceased their beneficiary, must submit an application accompanied by a document proving the judicial decision or administrative resolution that imposed the measures, as well as the certification proving the period of their internment.

This budgetary measure was limited in the budget of 2013 to require all such applications be submitted by the end of 2013. After this, between 2013 and 2022, no further applications were accepted. However, in October 2022, this provision in the 2013 budget was repealed by the 2022 Law of Democratic Memory, reinstating entitlement to this compensation.

Austria

Austria criminalised homosexuality until 1971. After that there was a higher age of consent for gay men. It is estimated 11,000 people were convicted.

Gay men who were investigated under the now-repealed laws get €500. Those who were convicted get compensation starting at a base level of €3,000 and increasing depending on whether they were gaoled or suffered in terms of health, economically or in their professional lives¹⁰.

This scheme resembles Germany's and differs in the same ways to the recommendation of the Tasmanian independent Review.

France

¹⁰ <https://www.theguardian.com/world/2023/nov/13/austria-puts-aside-millions-for-gay-people-who-suffered-under-law>

An estimated 60,000 men were convicted under anti-gay laws that existed between 1942 and 1982. The Government estimates that 200 to 400 people could still be alive and eligible for compensation.

The National Assembly has debated legislation that provides victims with a lump sum of €10,000, €150 for each day spent in gaol and the reimbursement of fines¹¹.

It is not clear if this scheme has become law and/or commenced.

Canada

The Canadian Government has provided compensation for those people who were a) arrested under Canada's former laws against sex between men, b) arrested under the country's former laws against any activity that could lead to sexual relations between two men or two women (including dancing, gathering in a bar or attending a private party), and c) were "purged" from the public service during the Cold War because of their homosexuality.

Successful applicants received between \$CAD5,000 and \$CAD175,000, depending on the circumstances of their case. Compensation was graded into three levels. Assessment of the highest level was in the hands of an assessor. Successful applicants also received a letter of apology and relevant notation to their file¹².

Like the other schemes outlined above, the Canadian scheme required an independent application and was individually assessed. Given the broad range of available compensation, the lowest amount of \$CAD5000 is not an appropriate model for Tasmania.

International redress schemes for other forms of LGBTIQ+ discrimination

United Kingdom

Between 1967 and 2000 the UK military discharged all personnel who were known to be homosexual, bisexual or transgender.

¹¹ <https://www.bbc.com/news/world-europe-68504715>
<https://www.voanews.com/a/french-senate-to-weigh-compensation-for-victims-of-anti-gay-laws/7363726.html>
<https://www.france24.com/en/france/20231121-french-senate-debates-compensation-for-gay-men-jailed-under-homophobic-laws>
https://www.lemonde.fr/en/france/article/2023/11/23/how-le-monde-articles-inspired-a-bill-to-rehabilitate-people-convicted-for-homosexuality-before-1982_6282143_7.html

¹² <https://www.thecanadianencyclopedia.ca/en/article/lgbtq-purge-in-canada>

The previous UK Government provided £12,500 payments to those LGBT service personnel who were discharged from the UK military because of their sexual orientation or gender identity.

Veterans' groups said £12,500 was "inadequate and unacceptably low" and "does not bring about the sense of justice these veterans deserve"¹³.

The current Government has increased the base payment to £50,000 for all relevant former personnel with an additional £20,000 for those who were negatively impacted by the ban and their discharge¹⁴.

Sweden

The Swedish Government allows compensation for transgender people who were forcibly sterilised between 1972 and 2013. Until 2013 transgender Swedes had to be sterilized before they could legally change their gender. Sweden was the first country to compensate trans people for past injustices.

It is estimated that up to 800 people are eligible. The compensation is 225,000 Swedish crowns or about \$AUD33,000¹⁵.

Criteria for determining payments

A possible range within which the payments might fall

Non-LGBTIQ+ redress schemes in Australia and LGBTIQ+ redress schemes overseas vary greatly in the amounts they provide successful applicants.

However, it is clear the amount most successful applicants receive is more than the \$AUD5000 proposed by the Tasmanian Government during debate on this issue in the Legislative Council.

Little data is available to us showing how much applicants receive on average. But any German, French, Spanish or Austrian applicant who

¹³ <https://www.bbc.com/news/articles/cn8jw54q81yo>

¹⁴ <https://www.bbc.com/news/articles/ce8xm5pem5eo>
<https://www.gov.uk/government/news/lgbt-veterans-to-receive-up-to-75-million-in-financial-recognition-for-historic-wrongs>

¹⁵ <https://www.sbs.com.au/voices/article/sweden-to-compensate-transgender-people-who-were-forcibly-sterilised/i61pyo64f>
<https://www.rfsl.se/en/aktuellt/historic-victory-trans-people-swedish-parliament-decides-compensation-forced-sterilizations/>
<https://www.reuters.com/article/world/sweden-to-offer-compensation-for-transgender-sterilizations-idUSKBN16Y1XA/>

went through the criminal justice system, was gaoled or fined, and suffered any loss of employment, reduced income or impaired health, is likely to receive at least €15,000 (\$AUD25,000).

If the Gender and Equality Committee is to consider a range of possible amounts for redress, the above figure of \$25,000 would be the appropriate lower end of that range.

Of course, many European applicants would receive much more than this depending on their individual circumstances. Also, payments in the UK to those sacked from the military - a form of discrimination comparable in its effects to being convicted for gay sex or cross-dressing - are also much higher at £50,000 - £70,000 (\$AUD100,000 to \$AUD140,000).

At the very least the upper limit of range should be thrice the lower limit, that is \$75,000. This amount is not the maximum amount available under some Australian non-LGBTIQA+ redress schemes and some overseas LGBTIQA+ redress schemes including the UK military scheme. But it is comparable to the higher end of payments we assume to be likely under European schemes dealing with redress for historic gay convictions.

To be clear, we are not saying \$25,000 - \$75,000 should be the range of redress payments. We are saying that, when considering what a reasonable, fixed, pre-set, redress payment would be, this is the range it could be within.

The Independent Review recommended a two-tier payment system, with one amount for an expunged conviction and a lower amount for an expunged charge. In the case of charges the range could be \$10,000 lower, that is, somewhere between \$15,000 - \$65,000 proportional to the conviction payment.

Criteria for where in that range the payments might fall

When considering where to set the amount within the range outlined above we urge the Committee to take a number of factors into account.

The harm experienced by some of those who were charged and convicted under the state's former laws against homosexuality and cross-dressing included,

- loss of employment
- loss of family
- loss of partner
- public shame and ridicule
- exile from the state
- prison
- fines
- aversion treatment with electric shocks or nausea-inducing drugs

- anxiety, depression, PTSD and other mental health problems
- self-harm
- suicide

The Independent Review recommended there only be one fixed, pre-set redress payment with no individual circumstances taken into account.

Therefore, when determining what this payment is, the Committee must consider whether the payment is appropriate redress for these harms, individually or in combination.

With the harms in mind, the Committee must also consider how the amount it settles on will be seen by the recipient and how it will serve them. Will the recipient consider it an act of justice, a mockery of their suffering or something in between? Will the amount be sufficient to allow them to improve their life in some way?

In regard to these questions, we remind the Committee that a fixed, pre-set amount for every recipient means that some recipients may receive much less than they would receive if each case was individually assessed. We believe this is a reason to err on the side of a larger pre-set amount rather than a lesser amount.

The Committee should also consider what impact the amount will have on the expungement scheme. Will it discredit the scheme or provide it with positive promotion? Will it encourage those who were convicted to apply for expungement, or will it reinforce suspicions they may have that the Tasmanian Government doesn't care and hasn't changed? Obviously, we believe the amount should reflect positively on the scheme and encourage expungements. This also points to a larger rather than a lesser amount.

Finally, the Committee should consider the message the amount will send regarding the cost of anti-LGBTIQ+ discrimination and about Tasmania.

Our state is the first to consider redress for historic homosexual and cross-dressing crimes. Indeed, there are no other schemes in Australia which deal with the historic impact of anti-LGBTIQ+ discrimination at all. The amount Tasmania settles on will be considered a precedent for the other states when they consider redress for the same crimes and for the Commonwealth if and when it considers redress for discrimination at a national level.

The amount will also be regarded interstate and overseas as an indication of Tasmania's willingness to come to terms with the fact ours was the last state to decriminalise homosexuality, the only state to criminalise cross-dressing, and that lives were lost because the debate over these reforms was sometimes cruel and hateful. The amount selected should show a

genuine desire to make amends for, reconcile ourselves with, and heal and move on from, those dark times.

All these considerations point towards a larger rather than a lesser amount.

Related issues

Should a redress payment be made for a victim who is deceased?

A further issue to consider is whether payments should be made to partners or families in the case of the victim being deceased.

In our view a redress payment should be available to anyone who is currently able to apply for expungement of a historic charge or conviction. This would include a partner or a family member. Partners and family members have also lived with the pain and trauma suffered by their loved one and deserve redress.

The Committee might also consider whether a successful applicant for expungement has the option to direct their redress payment to an organisation of their choice. This would provide applicants with an opportunity to direct their payment to organisations that continue to support LGBTIQ+ Tasmanians and deal with the legacy of criminalisation.

Should a redress payment be made for charges and convictions that are not charges and convictions for homosexuality or cross-dressing?

The State Government's expungement amendment bill expands the scope of charges and convictions which can be expunged.

Previously, they were only charge and convictions for homosexuality or cross-dressing. Now charges and convictions can also be expunged if they arose in the course of police action in regard to the primary crimes. This includes, for example, resisting arrest for a charge of homosexuality or cross-dressing.

Equality Tasmania strongly believes redress payments should be available for this broader range of charges and convictions. This is because such charges and convictions would also have caused harm to the victim, harm which would not have occurred had homosexuality or cross-dressing not been against the law.

Individual assessment

Assessing and providing redress on a case-by-case basis was not a recommendation of the Independent Review. It recommended a fixed, pre-set amount for everyone who successfully applied for their criminal record to be expunged. We support this recommendation.

However, most of the redress schemes cited above, including all of the European schemes for redress of historical gay convictions, allow for payments to be assessed individually. Some provide fixed amounts for a victim's experiences over and above a charge or conviction, for example time in gaol. Some allow for the impact of a conviction on employment, income and health to be individually assessed.

Although it is beyond the scope of this inquiry, we believe such a system could have important implications for remedying injustice, discharging moral responsibility and ensuring the wellbeing of those who were wronged.

We recommend that an appropriate body such as the Tasmanian Law Reform Institute be asked to investigate the legal and moral implications of individual assessment and to make recommendations to Government about whether individual assessment is desirable and how it might be implemented.

Conclusion

Equality Tasmania thanks the Gender and Equality Committee for its consideration of this issue.

We acknowledge it can be daunting to make decisions that will affect the lives of people you have not met, for which there are few precedents and which bear on an important part of Tasmanian history stretching back decades.

But the other side of that coin is that you have an opportunity to play an important part in improving the lives of people who have suffered greatly and helping heal historic wounds. We urge you to approach this inquiry in that positive and hopeful light.

[End]