

## TASMANIA

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# EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2025

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# **EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2025**

*(Brought in by the Minister for Justice, Corrections and  
Rehabilitation, 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 2025*.

### **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. Part 3A inserted**

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

### **PART 3A – REDRESS PAYMENTS PAYABLE UNDER ACT**

#### **19A. Meaning of eligible recipient**

For the purposes of this Part, a person is an *eligible recipient* if –

- (a) an application is made –
  - (i) by that person under section 6(2); or
  - (ii) if that person is unable to make an application under that subsection due to a lack of legal capacity, by another person on that person's behalf under section 6(3); and

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- (b) as a result of that application, one or more charges against that person are expunged under this Act.

**19B. Redress payment for expunged charges**

- (1) This Part applies in respect of an eligible recipient regardless of whether the eligible recipient's charge or charges is or are expunged before or after the commencement of this Part.
- (2) The Secretary must make a redress payment under this Part to an eligible recipient –
  - (a) if the charge or charges is or are expunged before the commencement of this Part, as soon as reasonably possible after the commencement of this Part; or
  - (b) if the charge or charges is or are expunged on or after the commencement of this Part, as soon as reasonably possible after the charge or charges is or are so expunged.
- (3) Subsection (2) does not apply in respect of an eligible recipient if, at the time at which the application was made to have the eligible recipient's charge or charges

expunged, the eligible recipient was deceased.

**19C. Amount of redress payment**

(1) In this section –

*adjustment figure*, in respect of a financial year, means the number calculated by dividing the CPI figure for Hobart for the immediately preceding December quarter by the CPI figure for Hobart for the December quarter one year earlier;

*CPI figure for Hobart* means the Consumer Price Index Number (All Groups) for Hobart published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

*sanction* means any punitive or coercive measure including, but not limited to, the following:

- (a) a fine or penalty;
- (b) community service;
- (c) a probation order;
- (d) a custodial or suspended sentence;

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- (e) mandatory counselling or treatment;

***subsequent financial year*** means a financial year after the financial year ending 30 June 2026.

- (2) The amount of redress payment to be paid under this Part to an eligible recipient is –

- (a) if the eligible recipient was not convicted in respect of any expunged charge –

- (i) if the charge is expunged before 30 June 2026 – \$15,000; or

- (ii) if the charge is expunged in a subsequent financial year – the amount calculated under subsection (3) for the subsequent financial year; or

- (b) if the eligible recipient was convicted in respect of one or more expunged charges but was not subject to any court-imposed sanctions in respect of any such charge –

- (i) if the charge is expunged before 30 June 2026 – \$45,000; or

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- (ii) if the charge is expunged in a subsequent financial year – the amount calculated under subsection (3) for the subsequent financial year; or
- (c) if the eligible recipient was convicted in respect of one or more expunged charges and was subject to at least one court-imposed sanction in respect of any such charge –
  - (i) if the charge is expunged before 30 June 2026 – \$75,000; or
  - (ii) if the charge is expunged in a subsequent financial year – the amount calculated under subsection (3) for the subsequent financial year.
- (3) The amount of redress payment to be paid in respect of a subsequent financial year (a *subsequent year*) is the greater of the following amounts:
  - (a) the amount calculated by –
    - (i) multiplying the amount payable, for the financial year immediately preceding the subsequent

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year, by the adjustment figure for the subsequent year; and

(ii) rounding up to the nearest whole dollar amount;

(b) the amount payable for the financial year immediately preceding the subsequent year.

(4) Before the commencement of a subsequent financial year, and for the duration of the subsequent financial year, the Department is to publish, on a website maintained by or on behalf of the Department, the amounts of redress payments that are payable under this Part for that subsequent financial year.

(5) For the avoidance of doubt, an eligible recipient is only entitled to one redress payment under this Part as determined under subsection (2).

**19D. Ex gratia payments**

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

**19E. Cessation of expungement**

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

**19F. Incorrect redress paid**

- (1) In this section –

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

*variation amount*, in respect of an expunged charge or charges, means the difference between the varied redress amount for that charge or those charges and the original redress amount paid in respect of that charge or those charges;

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***varied redress amount***, in respect of  
an expunged charge or charges,  
means the redress amount for that  
charge or those charges as varied  
under subsection (2).

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



**19G. 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 –

- (a) the Secretary; or
- (b) a data controller; or

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- (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.