



---

PARLIAMENT OF TASMANIA

---

Joint Sessional Committee on Gender and Equality

**Inquiry into**

**The Expungement of Historical Offences  
Amendment Bill 2024**

---

MEMBERS OF THE COMMITTEE

Legislative Council

Hon. Mr Edmunds  
Hon. Ms Forrest (Chair)  
Hon. Mr Harriss (Deputy Chair)  
Hon. Ms Thomas

House of Assembly

Mrs Beswick  
Ms Brown  
Ms Rosol  
Mr Street



## TABLE OF CONTENTS

|   |           |
|---|-----------|
| <b>CHAIR'S FOREWORD .....</b>   | <b>5</b>  |
| <b>FINDINGS.....</b>  | <b>9</b>  |
| <b>RECOMMENDATIONS.....</b>   | <b>13</b> |
| <b>1. INQUIRY OVERVIEW .....</b>  | <b>15</b> |
| Conduct of the Inquiry .....  | 15        |
| Structure of this Report .....  | 15        |
| <b>2. EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 .....</b>            | <b>17</b> |
| Background to the Bill.....   | 17        |
| <b>3. INDEPENDENT REVIEW OF EXPUNGEMENT OF HISTORICAL OFFENCES ACT 2017 .....</b> | <b>21</b> |
| <b>4. THE CASE FOR REDRESS .....</b>  | <b>25</b> |
| Context of the expungement scheme .....   | 25        |
| Victim-focused conduct .....  | 26        |
| <b>5. CLAUSE 9.....</b>   | <b>29</b> |
| <b>6. CONSIDERATION OF CLAUSE 9.....</b>  | <b>33</b> |
| Function of Clause 9.....   | 33        |
| Appointment of the Independent Assessor .....                                     | 35        |
| Structure of Compensation Order .....   | 37        |
| <b>7. TASMANIAN GOVERNMENT'S PROPOSED AMENDMENTS .....</b>                        | <b>41</b> |
| <b>8. CONSIDERATION OF THE TASMANIAN GOVERNMENT'S PROPOSED AMENDMENTS .....</b>   | <b>43</b> |
| Function of proposed amendments .....   | 43        |
| Jurisdictional analysis of similar existing schemes.....                          | 45        |
| Other compensation and redress schemes .....                                      | 49        |
| Consideration of ex gratia payments in the Government's proposed amendments ..... | 51        |
| Independent consultant process .....  | 56        |
| <b>9. ADDITIONAL CONSIDERATIONS.....</b>  | <b>65</b> |
| Terminology of payment in the Bill.....   | 65        |
| Further recommendations regarding an independent assessment process .....         | 68        |
| Consideration of payment type and structure .....                                 | 69        |
| Role of the Joint Sessional Committee on Gender and Equality .....                | 81        |
| Broader assessment criteria .....   | 85        |
| <b>10. CLAUSE 10.....</b>   | <b>89</b> |



## CHAIR'S FOREWORD

On 20 November 2024, the Legislative Council referred to the Joint Sessional Committee on Gender and Equality for consideration and report, matters related to gender and equality impacts of the proposed payment of compensation under the Expungement of Historical Offences Amendment Bill 2024 (the Bill).

The Committee received submissions related to the process and possible amount of compensation or redress that should be granted to any eligible persons to give effect to Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017* (Independent Review) of the *Expungement of Historical Offences Act 2017* (the Principal Act), conducted by Melanie Bartlett and Taya Ketelaar-Jones, published in October 2020.

*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 ex-gratia 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.<sup>1</sup>*

The Committee considered the following:

- the amendment proposed by Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, to appoint an independent assessor to determine the mechanism and amount for compensation. This was agreed to by the House of Assembly;
- the proposed Government amendment, referred to in the Government submission, to set an ex gratia payment of \$5,000 (indexed) for an expunged conviction and \$2,500 (indexed) for an expunged charge without conviction;
- the Government's proposed alternate approach of the engagement of an independent consultant to re-consider the amount of any potential ex gratia payment;
- international expungement of historic homosexual offences compensation and/or redress schemes and other relevant compensation schemes;

---

<sup>1</sup> Bartlett, M and Ketelaar-Jones, T, *Independent Review of Expungement of Historical Offences Act 2017 – Report of the Independent Reviewers*, 2020, p.58.

- input from key LGBTIQ+ stakeholders; and
- independent advice provided by Professor Paula Gerber of Monash University, Melbourne, a professor in the Monash University Law Faculty and part of the Castan Centre for Human Rights Law. Professor Gerber specialises in international human rights law, with a particular focus on the rights of LGBTIQ+ people.

The Government's proposed amendment referenced compensation amounts made to those charged and convicted of historic homosexual criminal offences in Germany. Equality Tasmania noted that the German model does not conform to Recommendation 13 of the Independent Review.

Key differences include:

- the application process for payment in the German scheme, which is incompatible with the automatic payment upon expungement recommended in the Independent Review; and
- the potential likelihood of multiple claims from the same individual, due to the German scheme's coverage of annulled charges and years spent imprisoned, and negative experiences as a result of their charge or conviction.

Equality Tasmania's submission stated:

*... 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 ... 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.<sup>2</sup>*

The Government did not consult key stakeholders directly on their proposed amendment, claiming time did not permit such engagement.

The Committee sought and received a submission from Professor Gerber of Monash University, Melbourne. Professor Gerber specialises in international human rights law, with a particular focus on the rights of LGBTIQ+ people. Professor Gerber considered the Government amendment, and the risks associated with setting a fixed amount for redress following expungement. According to Professor Gerber:

*Ideally, compensation should be assessed on an individual basis, according to the harm a person has experienced as a result of the charge or conviction they were subjected to. I understand that the Tasmanian Government favours a fixed, automatic payment of redress following expungement, rather than a scheme involving an assessment of the harm suffered by each individual. Given that background, it is vital that the amount of compensation err on the side of over-*

---

<sup>2</sup> Submission No. 3, Equality Tasmania, p. 9.

*compensating, rather than under-compensating. This is because a failure to recognise the severity of the harm suffered, risks exacerbating the injury already experienced by the individual. Redress of a mere \$5,000, would constitute under-compensation and potentially do more harm than good, because it fails to recognise the severe impact that an individual's encounter with the criminal justice system has, and that the ordeal of being charged and/or convicted has repercussions that last a lifetime.*<sup>3</sup>

The Committee finds the Government's proposed ex gratia payments, of \$5,000 per expunged charge that resulted in the annotation of official criminal records and \$2,500 per expunged charge that did not result in an annotation, to be manifestly inadequate.

The Committee further notes the importance of taking a victim-focused approach, including the need for timely action and the use of the term 'redress' in preference to 'ex gratia' or 'compensation'.

The Committee recommends a three – tiered redress scheme for those who have had their historical homosexual and/or cross-dressing charges and/or convictions successfully expunged as outlined in Recommendation 4. The Committee recommends an automatic payment upon expungement as a one-off payment, not per charge and/or conviction. The Committee notes should this recommendation be accepted by the Parliament of Tasmania, consequential amendments will need to be made to the Expungement of Historical Offences Amendment Bill 2024.

The Committee heard from Mr Rodney Croome Policy Officer, Equality Tasmania, that the organisation holds the view that partners and/or family members of those charged with historical homosexual and/or cross-dressing offences have also lived with the pain and trauma suffered by their loved ones and deserve redress. The Committee did not take further evidence related to this matter however suggest that further consideration be given to this matter by the Government.

Hon. Ruth Forrest MLC

**CHAIR**

**11 March 2025**

---

<sup>3</sup> Submission No. 7, Professor Paula Gerber, pp. 1-2.



## FINDINGS

### The Committee finds:

#### Key finding

1. The Government's proposed ex gratia payments, of \$5,000 per expunged charge that resulted in the annotation of official criminal records and \$2,500 per expunged charge that did not result in an annotation, are manifestly inadequate.

#### Chapter findings

2. Tasmania was the last national jurisdiction to decriminalise homosexuality and the only state to criminalise cross-dressing.
3. The late decriminalisation of homosexuality and cross-dressing in 1997 and 2001 in Tasmania has led to ongoing impacts on the LGBTIQ+ community in Tasmania.
4. The socio-cultural and interpersonal impacts on the LGBTIQ+ community as a result of the former laws and their related outcomes is still felt in the community and on a personal level by those charged or convicted under the laws.
5. Up to 100 individuals may have been charged in Tasmania under the former laws, with a small number of individuals who may be eligible to request an expungement of their record still living, understood to be at an advanced age.
6. A victim-focused approach to the determination of redress is crucial to progressing an appropriate redress scheme.
7. Independent assessment of possible payment to be included in the Expungement of Historical Offences Amendment Bill 2024, as legislated in Clause 9, is supported by key LGBTIQ+ stakeholders.
8. The Government does not support Clause 9 and stated concern that it does not reflect Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*. The Government's concern is not universally shared in the evidence received by the Committee.
9. The following areas of Clause 9 of the Expungement of Historical Offences Amendment Bill 2024 offer key operational considerations:
  - a. The timeliness of the independent assessor process;
  - b. The possibility of one or more disallowance motions related to the compensation order by the House of Assembly or Legislative Council of the Parliament of Tasmania; and
  - c. Potential costs of the appointment of the independent assessor.

10. Whilst originally not supportive of the implementation of Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*, the Government now support an ex gratia payment in the Expungement of Historical Offences Amendment Bill 2024.
11. The Government's proposed amendments allow for a fixed ex gratia payment of \$5,000 per expunged charge that resulted in the annotation of official criminal records and \$2,500 per expunged charge that did not result in an annotation.
12. No other state or territory in Australia currently provides for redress or compensation in relation to expungement of historical offences for homosexuality and cross-dressing.<sup>4</sup>
13. A number of international redress schemes for historical offences related to homosexuality exist, but do not replicate the exact structure of Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*. Schemes exist, or are drafted, in the following countries:
  - a. Germany;
  - b. Austria;
  - c. Spain;
  - d. France; and
  - e. Canada.
14. The Government's proposed amendments are notionally based on the German model of redress, which provides for a two-tiered payment system for annulled convictions. However, the German system also allows for additional payments for years spent imprisoned and other impacts on the individual due to their conviction.
15. The Government's proposed amendments provide for automatic payment for individuals with expunged records, as soon as practicable after expungement.
16. Forms of redress outside of the scope of the expungement of historical homosexual and cross-dressing offences are operational in Australia, including compensation for:
  - a. Wrongful convictions;
  - b. Victims of crime;
  - c. Institutional child abuse;
  - d. Stolen generation; and
  - e. Stolen wages.

---

<sup>4</sup> Noting Tasmania was the only Australian jurisdiction to criminalise cross-dressing.

17. In the formulation of the Government's proposed amendments for an ex gratia scheme, the likely cumulative total of payments was not modelled.
18. The Government's suggested alternative of an independent consultant process proposes a consultative process facilitated through the Attorney-General and Minister for Justice by the Department of Justice. This proposed independent consultant differs in form to the independent assessor currently outlined in Clause 9 of the Expungement of Historical Offences Amendment Bill 2024.
19. Independence, transparency and expertise are considered priorities by LGBTIQ+ stakeholders in informing the development of an appropriate payment in the Expungement of Historical Offences Amendment Bill 2024.
20. The Government's proposed independent consultant process is unlikely to be supported by LGBTIQ+ stakeholders, due to not meeting the criteria of an independent, transparent and informed process.
21. There is no general consensus regarding what would be considered the correct terminology to use for payment in the Expungement of Historical Offences Amendment Bill 2024 with options including:
  - a. Redress (*... carries a connotation of an injustice acknowledged and a serious desire to make amends for past wrongs* <sup>5</sup>);
  - b. Compensation (*The word compensation, ... could be very broad and taken to include all those complex calculations about economic loss, general damages and wrongful imprisonment, which is not what recommendation 13 was about and not what really all of the European schemes are about* <sup>6</sup>); and
  - c. Ex gratia payment (*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* <sup>7</sup>).
22. Care must be taken to arrive at terminology that is compassionate and victim-focused so as not to distract from the significance and intention of expungement and proposed payment for affected individuals.
23. The term compensation is not supported by any LGBTIQ+ stakeholders who took part in the Inquiry, or the Government. While Clause 9 uses the term compensation, the Tasmanian Greens are open to alternate terminology.

---

<sup>5</sup> Submission No. 3, Equality Tasmania, p. 6.

<sup>6</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 6.

<sup>7</sup> Submission No. 3, Equality Tasmania, p. 6.

24. The ex gratia payment amounts of \$5,000 and \$2,500 proposed in the Government's amendments are not supported by LGBTIQ+ stakeholders or the Tasmanian Greens.
25. If an independent assessment process is not supported by the Committee, LGBTIQ+ stakeholders and associated consumer groups reluctantly accept a parliamentary process to give effect to Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*.
26. Consistent evidence, received from key stakeholders, suggested a possible payment range of \$15,000 - \$100,000 for successful expungement.
27. The Inquiry process has provided an opportunity to engage with key LGBTIQ+ stakeholders and seek expert advice in considering the most appropriate mechanism to give effect to Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*.
28. Under the *Expungement of Historical Offences Act 2017*, partners and families of those who may be eligible for expungement are legislatively enabled to lodge the expungement request.
29. The *Expungement of Historical Offences Amendment Bill 2024* proposes the expansion of associated offences to be expunged under the *Expungement of Historical Offences Act 2017*.

## RECOMMENDATIONS

The Committee recommends:

1. A victim-focused approach should be taken by the Committee, the Parliament of Tasmania and the Government in the consideration of redress in the Expungement of Historical Offences Amendment Bill 2024.
2. The term redress be used to describe any proposed payment in the Expungement of Historical Offences Amendment Bill 2024, as this term reflects a compassionate and victim-focused approach.
3. The mechanism for redress recognises timeliness is a critical factor as it is understood many of those eligible for the expungement of historical homosexual and cross-dressing offences are of an advanced age.
4. The Expungement of Historical Offences Amendment Bill 2024 be amended to facilitate the following one-off payment (not a payment per charge and/or conviction) to individuals who have their records successfully expunged, for:
  - a) persons who were charged but not convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve time in jail: \$15,000
  - b) persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve any time in jail: \$45,000.
  - c) persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and served time in jail or were subjected to other forms of punishment, e.g. conversion practices: \$75,000.
5. Payment available in the Expungement of Historical Offences Amendment Bill 2024 be available automatically upon expungement.
6. Consequential amendments be made to give effect to Recommendations 4 and 5.



## 1. INQUIRY OVERVIEW

- 1.1. On 20 November 2024, the Legislative Council referred to the Joint Sessional Committee on Gender and Equality the following reference: -

That the Expungement of Historical Offences Amendment Bill 2024 be referred to the Joint Sessional Committee on Gender and Equality for consideration and report on matters related to gender and equality impacts of the proposed payment of compensation under the Bill.

- 1.2. The Expungement of Historical Offences Amendment Bill 2024 (the Bill) will be discussed further in Chapter 2 of this Report. The Committee will further address the contextual debate regarding the proposed payment of compensation under the Bill throughout the Report.

### Conduct of the Inquiry

- 1.3. The Committee resolved to open submissions to the Inquiry by way of advertisement on the Parliament of Tasmania website. Additionally, the Committee directly invited a number of persons and organisations to provide submissions to the Inquiry.
- 1.4. The Committee received seven submissions and held one public hearing in Hobart, with seven witnesses.

### Structure of this Report

- 1.5. Chapter 1 of the Report provides an overview of the Inquiry process.
- 1.6. Chapter 2 considers the background to the Inquiry through the consideration of the Bill 2024.
- 1.7. Chapter 3 assess Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017* (Independent Review).
- 1.8. Chapter 4 provides information on the Tasmanian context of the Bill.
- 1.9. Chapters 5 and 6 provide context and assessments of Clause 9.
- 1.10. Chapters 7 and 8 detail the Tasmanian Government's (the Government's) proposed amendments to the Bill.
- 1.11. Chapter 9 considers additional areas raised to the Committee regarding payment in the Bill.
- 1.12. Chapter 10 provides a short definition and assessment of Clause 10 of the Bill.

- 1.13. This Report should be read in conjunction with the attached documents.
- 1.14. A list of submissions received is available in Appendix F.
- 1.15. The minutes of the Committee are attached as Appendix G.
- 1.16. The transcript of evidence from the Committee's hearing is available in Appendix H.

## 2. EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024

### Background to the Bill

- 2.1. This chapter will consider the background to the Bill and the context of the Inquiry.
- 2.2. The *Expungement of Historical Offences Act 2017* (the Principal Act) established a scheme to expunge charges and convictions relating to historical homosexual and cross-dressing offences. The Principal Act was passed by the Parliament of Tasmania in November 2017.
- 2.3. Section 32 of the Principal Act required an independent review to be conducted within six months of the second anniversary of the Act's commencement. The Independent Review was conducted by Melanie Bartlett and Taya Ketelaar-Jones, with the final report published in October 2020.
- 2.4. The Independent Review made 13 recommendations as a result of the consultation period, including consideration of the Principal Act and a number of submissions from relevant stakeholders.
- 2.5. Of the 13 recommendations from the Independent Review, the Government committed to implement 12. Recommendation 13, proposing a one-off ex gratia payment for successful expungement applicants, was not supported.
- 2.6. The recommendations of the Independent Review will be discussed in more detail in Chapter 3 of this Report.
- 2.7. In 2023, the Department of Justice opened public consultation on the Expungement of Historical Offences Amendment Bill 2023. This consultation process was in part a response to the recommendations of the Independent Review. Seven submissions were received from interested parties, including Tasmanian stakeholder organisations.
- 2.8. On 2 November 2023, Attorney-General and Minister for Justice, the Honourable Guy Barnett MP, tabled the Expungement of Historical Offences Amendment Bill 2023. Due to the prorogation and dissolution of the House of Assembly on 14 February 2024 for the Tasmanian general election, this Bill was not progressed past the first reading.
- 2.9. The Bill currently under assessment by the Committee, the Expungement of Historical Offences Amendment Bill 2024, was introduced in the House of Assembly on 1 August 2024 by the Attorney-General and Minister for Justice, the Honourable Guy Barnett MP.
- 2.10. The key features of the Bill are:
  - the expansion of the expungement of historical offences scheme to include related offences;
  - further support for a victim-centred approach to investigations;

- measures to support effective record disposal;
- confidentiality of records collected and created in the assessment of an application; and
- improved confidentiality protections for related third parties.

In the first instance, the Government did not support inclusion of amendments to enact Recommendation 13.

- 2.11. In the second reading debate in the House of Assembly, Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens, flagged the intention of her party to propose amendments to the Bill to insert a compensation clause. This proposed insertion, and her broader contribution, supported the actualisation of Recommendation 13:

*The Parliament has worked collaboratively to provide justice for the wrongs of the past, from the bringing in of the expungement legislation to the apology then premier, Will Hodgman, made on behalf of the State of Tasmania. We believe considering redress is important for healing, for closing the loop of the injustices that were done and for fully atoning for the state's harms, loss of life, trauma, humiliation, stigma, discrimination, lifelong shame that many people who were wrongfully convicted of homosexuality and cross-dressing still live with. The majority of Tasmanians would agree that a mechanism for redress should be included in this Bill, as the independent review recommended.<sup>8</sup>*

- 2.12. Alongside her contribution on the second reading, Dr Woodruff MP proposed the adjournment of the debate. This adjournment was proposed to enable the Office of Parliamentary Council (OPC) to finalise the proposed amendments from the Tasmanian Greens. The adjournment was successfully sought.
- 2.13. During Committee of the Whole in the House of Assembly on 10 and 11 September 2024, the Tasmanian Greens moved amendments to insert a New Clause A and B. These clauses sought to introduce a mechanism for compensation into the Bill and make consequential definitional changes. The determination of the compensation payable under this mechanism would be determined by an independent assessor, appointed by the Premier.
- 2.14. These new clauses were agreed to by the House of Assembly on 11 September 2024 and the Bill, as amended, progressed to the Legislative Council. It was read by the Legislative Council for the first time on the same day.
- 2.15. The Legislative Council commenced the second reading debate on the Bill on 20 November 2024. During this debate, the Honourable Ruth Forrest MLC moved that the debate be adjourned. The adjournment was proposed to allow further consultation on amendments that had been foreshadowed in a private briefing by the Leader for the Government in the Legislative Council, the Honourable Leonie Hiscutt MLC.

---

<sup>8</sup> Hansard Transcript, House of Assembly, Tuesday 6 August 2024, p. 101.

- 2.16. The suite of amendments circulated to Legislative Council members regarded the matter of compensation and are identical to that proposed by the Government in its submission to the Inquiry. This is available in Appendix A. The amendments were never formally moved in the Legislative Council, as the Bill did not proceed to Committee of the Whole.
- 2.17. Following the successful adjournment, Ms Forrest MLC then moved that the Bill be referred to the Joint Sessional Committee on Gender and Equality to provide for the in-depth consideration of compensation under the Bill. The motion for the referral was passed in the affirmative.



### 3. INDEPENDENT REVIEW OF EXPUNGEMENT OF HISTORICAL OFFENCES ACT 2017

- 3.1. The Independent Review was published in 2020, proposing 13 recommendations regarding the Principal Act.
- 3.2. Recommendations 2, 3, 4, 6, 8 and 12 did not require legislative amendment. These recommendations focused on the function and administration of the expungement scheme, including access and publicity. These recommendations have been, or are in the process of being, actioned.
- 3.3. Recommendation 1, 5, 7, 9, 10 and 11 did require legislative amendment and were supported for inclusion in the Bill by the Government. These amendments include the broadening of eligible offences for expungement and additional personal information protections, including for involved third parties.
- 3.4. The Government did not originally provide support for Recommendation 13, leading to its exclusion in the Bill as tabled.
- 3.5. Recommendation 13 reads as follows:

*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 ex-gratia 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.<sup>9</sup>*

- 3.6. In proposing Recommendation 13, the independent reviewers noted the strong support from submissions to the Independent Review that access to payment for expunged offences be included in the Principal Act. Ms Bartlett and Ms Ketelaar-Jones detailed in their final report that payment exemplifies the will of the Parliament in establishing the Principal Act as a formal means of acknowledging historical injustices perpetrated upon those charged under the former laws:

---

<sup>9</sup> Bartlett, M and Ketelaar-Jones, T, *Independent Review of Expungement of Historical Offences Act 2017 – Report of the Independent Reviewers*, 2020, p. 58.

The Independent Reviewers agree with the submissions that compensation confirms the expressed wish of Parliament in enacting this legislation that it was intended to send a compelling message that the state is serious in its commitment to remedy, to the extent that it can, the discrimination against, and distress and harm experienced by, Tasmanians in this context. Increasingly, compensation or redress schemes are being used throughout Australia. For example, the Commonwealth National Redress Scheme was created in response to recommendations by the Royal Commission into Institutional Responses to Child Sexual Abuse. The Commonwealth Scheme explicitly acknowledges the suffering experienced by many children who were sexually abused in Australian institutions, holds institutions accountable for this abuse, and affords those individuals who have experienced abuse the opportunity to access counselling, a direct personal response, and a redress payment. It thereby reflects contemporary social policy and thinking.<sup>10</sup>

- 3.7. The report of the Independent Review further noted the likely low administrative burden of a payment under the Principal Act in comparison to the positive social impact:

*Given the low number of anticipated application, the number of payments that would be made is likely to be limited, but such a payment would be seen as a genuine recognition by the Government of its intention to recognise that these matters should never have been crimes and that there has been harm caused. Given there have been no eligible applications under the Act to date which have resulted in the expungement of any record, there will be no prejudice to any previous applicant by the introduction of a payment subsequent to the introduction of the Act.*<sup>11</sup>

- 3.8. Recommendation 13 received strong stakeholder support, including from Equality Tasmania, who stated in their submission to the Committee that:

*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.*<sup>12</sup>

- 3.9. In his second reading speech on the Bill, the Attorney-General and Minister for Justice detailed the Government's decision to, at the time, not implement Recommendation 13:

*The mechanism for those who wish to seek financial compensation that best suits the scheme is the ex gratia payments system that is already available under section 55 of the Financial Management Act 2016. Under that provision, the Treasurer can, if satisfied that it is appropriate because of special circumstances, authorise an amount to be paid to a person, even though the payment would not otherwise be authorised*

---

<sup>10</sup> Bartlett, M and Ketelaar-Jones, T, *Independent Review of Expungement of Historical Offences Act 2017 – Report of the Independent Reviewers*, 2020, p. 57.

<sup>11</sup> Bartlett, M and Ketelaar-Jones, T, *Independent Review of Expungement of Historical Offences Act 2017 – Report of the Independent Reviewers*, 2020, p. 57.

<sup>12</sup> Submission No. 3, Equality Tasmania, p. 2.

*by law. Due to the potential complexity of the expungement assessment process, including the large degree of variance with the individual circumstances of applicants, it is considered that this process remains the best mechanism available to those seeking financial redress as it allows for the Treasurer to determine the application based on the demonstrated special circumstances.*

*Consequently, our Government has not proposed changes in the Bill to allow for a separate statutory compensation or financial redress payment to be made under the expungement regime. Given the low numbers of applications, the administrative cost of setting up a separate compensation scheme is not justified.<sup>13</sup>*

- 3.10. In its submission to the Inquiry, the Government further detailed its reasons for originally abstaining from the inclusion of a compensation clause in both the 2023 and 2024 versions of the Bill. Matters regarding the preclusion for compensation included:
- the lack of comparative schemes in other Australian jurisdictions;
  - the preclusion in Section 22 of the Principal Act for the right to compensation;
  - the existing availability of compensation under Section 55 of the *Financial Management Act 2016*;
  - resource implications; and
  - projected limited take up of the compensation schemes, with only 96 people convicted of the relevant homosexual or cross-dressing offences.<sup>14</sup>
- 3.11. In its submission to the Inquiry, Equality Tasmania discussed the Government's position regarding access to possible compensation under the *Financial Management Act 2016*:
- 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.<sup>15</sup>*
- 3.12. In debate in the House of Assembly, as will be further discussed in Chapter 5 and 6, the Tasmanian Greens successfully inserted amendments for the introduction of a payment in the Bill. This was proposed in the form of an independent assessor, who would conduct work to establish a draft compensation order for consideration by the Houses of the Parliament of Tasmania.
- 3.13. During the progress of the Bill through the Legislative Council and the work of the Committee, the Government changed their position in regard to Recommendation 13. In his appearance before the Committee, the Attorney-

---

<sup>13</sup> Hansard Transcript, House of Assembly, Tuesday 6 August 2024, p. 100.

<sup>14</sup> Submission No. 1, Tasmanian Government, pp. 2-3.

<sup>15</sup> Submission No. 3, Equality Tasmania, p. 5.

General confirmed the Government's changed position towards the implementation of Recommendation 13:

**Mr BARNETT** - ... The Government has now taken a position to support Recommendation 13 in light of the views of the Parliament. We want to cooperate and collaborate, and so we are trying to find a way forward to implement Recommendation 13 of the independent reviewers. That is what we have done and are trying to do, and will continue to do to support cooperative, collaborative Parliament working effectively.

**CHAIR** - To be very specific, the Government now supports the implementation of Recommendation 13 of the review?

**Mr BARNETT** - That's what the submission says, and the submission outlines the reasons for that.<sup>16</sup>

The Government's proposed amendments will be discussed further in Chapters 7 and 8.

---

<sup>16</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 18.

## 4. THE CASE FOR REDRESS

- 4.1. Chapter 4 of the Report will contextualise the proposal of payment under the Bill. The Committee received a significant quantity of evidence supporting the inclusion of payment under the expungement scheme. This chapter will explore this support, the individuals who may apply to the expungement scheme and the necessity of considered practice in regard to the work of the Committee and the expungement scheme.

### Context of the expungement scheme

- 4.2. In their submission to the Inquiry, Equality Tasmania strongly supported the insertion of a payment in the Bill. They provided the following reasons to contextualise, and support, this inclusion:

*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.*<sup>17</sup>

- 4.3. The Committee further received evidence regarding the number of individuals who may be eligible for expungement, and proposed payment, under the scheme. Equality Tasmania noted the Independent Review’s findings on these matters as follows:

*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.*<sup>18</sup>

---

<sup>17</sup> Submission No. 3, Equality Tasmania, pp. 4-5.

<sup>18</sup> Submission No. 3, Equality Tasmania, p.6.

- 4.4. The Chair raised the number of potential applicants under the expungement scheme with the Attorney-General and department representatives at the Committee's hearing, including potential numerous claims from singular individuals:

**CHAIR** - but the 10, or thereabouts, people, or men, who may be eligible, do they have just one charge? Have some of them got 10 charges? Do we have any insight into that matter?

...

**Mr PATERSON** - The short answer is no, because we don't know which 10 might apply and, for confidentiality reasons, we don't drill into historical records looking for people who might be eligible and what the kind of numbers of charges were. The police conducted a couple of very targeted and de-identified case studies for us as part - during the amendments - and I think I mentioned earlier, they only range from one offence to four offences.<sup>19</sup>

### Victim-focused conduct

- 4.5. The Committee also wishes to acknowledge the necessity of providing a victim-focused approach to its conduct, as well as in regard to outcomes and the implementation of proposed changes to the Bill. Community Legal Centres Tasmania's submission noted the particular nature of the Tasmanian setting and the former legal status of homosexuality:

*Although there is no expungement scheme in any Australian jurisdiction which provides for redress there are a number of compelling reasons why Tasmania should be the first. These reasons include that Tasmania was the last Australian State to decriminalise homosexuality and the only state to previously criminalise cross – dressing. This has left a legacy of stigma and discrimination that is more recent than other states.*

...

*We would also note that the provision of compensation or redress is consistent with human rights principles, including the Yogyakarta Principles ("the Principles") which set out the application of international human rights law in relation to sexual orientation and gender identity. Relevantly, the Principles refer to the need for legal procedures to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to redress.<sup>20</sup>*

- 4.6. Equality Tasmania similarly drew the Committee's attention to the historical setting and influential nature of proposed payment in the Bill:

*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*

---

<sup>19</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 9.

<sup>20</sup> Submission No. 6, Community Legal Centres Tasmania, pp. 2-3.

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-LGBTIQA+ 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-LGBTIQA+ 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.<sup>21</sup>

- 4.7. Mr Rodney Croome further emphasised the importance of acknowledging the personal nature of the Bill under consideration at his appearance before the Committee on behalf of Equality Tasmania:

**Mr CROOME** -... the first point I'd like to make today is that in discussing redress ... in discussing redress for those who were charged or convicted for historic crimes in relation to homosexuality or cross-dressing, we need to make sure that our deliberations are victim-focused. Obviously, it is important to get the law right and to get the process right, but we always have to keep in mind who we are talking about and what their experiences were.

...

The other thing to say at the beginning is that it is really pleasing, I think, certainly for me and for other members of the LGBTIQA+ community that the Government now supports the principle of redress, even though we have differences about the amount and the process of determining that amount. The fact that this has cross-parliament support in Tasmania is a really big step forward and something that I could not have imagined when I sat here, or the equivalent, in the 1990s, trying to persuade the Legislative Council to support decriminalisation. I just could not have imagined it happening. So, we need to acknowledge that strong support from across Parliament, including from the Government.<sup>22</sup>

---

<sup>21</sup> Submission No. 3, Equality Tasmania, pp. 15-16.

<sup>22</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, pp. 31-32.

- 4.8. The Committee also heard the importance of ongoing collaboration from all related parties to achieve the provision of an appropriate and effective form of redress:

*Mr CROOME - ... It's wonderful, as I said at the beginning, that we've come to the point where we've decided we need to do that. We should be really proud of that as a Parliament and as a state. We've set ourselves this task, and so we need to make sure that we do it in a way that is cooperative and compassionate. It was really good listening to the Attorney-General say similar things, saying we need to work together on this. Even though we disagree with the Government's amount and with the process, it's a really important step that we're able to do this in a way that is consultative and compassionate, and whatever happens, we should stick to those values. We need to consult and we need to be compassionate and we need to do it in a way that's thoughtful and that's not politicised. At the moment, it's not really politicised, which is fantastic.*

*They're my final comments, that if we stick to that approach, then hopefully it will come up with a good solution to what is a difficult problem, and one that the rest of the nation will go 'Yes, well done, we'll do the same'.<sup>23</sup>*

## FINDINGS

### The Committee finds:

2. Tasmania was the last national jurisdiction to decriminalise homosexuality and the only state to criminalise cross-dressing.
3. The late decriminalisation of homosexuality and cross-dressing in 1997 and 2001 in Tasmania has led to ongoing impacts on the LGBTIQ+ community in Tasmania.
4. The socio-cultural and interpersonal impacts on the LGBTIQ+ community as a result of the former laws and their related outcomes is still felt in the community and on a personal level by those charged or convicted under the laws.
5. Up to 100 individuals may have been charged in Tasmania under the former laws, with a small number of individuals who may be eligible to request an expungement of their record still living, understood to be at an advanced age.
6. A victim-focused approach to the determination of redress is crucial to progressing an appropriate redress scheme.

---

<sup>23</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 43.

## 5. CLAUSE 9

- 5.1. This Chapter provides a breakdown of Clause 9 of the Bill.
- 5.2. Clause 9 was inserted in the House of Assembly. The Clause was moved by Dr Woodruff MP, as New Clause A on 10 September 2024 and agreed to on 11 September 2024.
- 5.3. The Clause can be found in Appendix B.
- 5.4. Clause 9 of the Bill inserts Part 3A into the Principal Act, comprising of 10 subclauses. The submission from Dr Woodruff MP defined the purpose of Clause 9 as follows:

*The Greens amendments provide for an independent assessment of an appropriate method for calculating compensation for persons who have had charges or convictions expunged.*

*The process in our amendment comes in two parts, the first is the process for a compensation amount or amounts to be determined, the second is for the payment of compensation.<sup>24</sup>*

- 5.5. Section 19A provides relevant interpretations for the new Part of the Act, including definitions of compensation order, eligible recipients and the independent assessor.
- 5.6. Section 19B - Independent Assessor prescribes the manner in which the independent assessor would be appointed and function. The independent assessor is to be appointed by the Premier within three months of the commencement of Part 3A, or within three months of a disallowance of a compensation order.<sup>25</sup> The subsection further defines the appointment criteria and prescribed resources for the independent assessor.
- 5.7. Section 19C specifies that, once appointed, the independent assessor must undertake public consultation, with any forthcoming submissions to be considered before the production of a report and draft compensation order.<sup>26</sup>
- 5.8. The independent assessor, under section 19D is required to recommend a method for the calculation of compensation, including consideration of varying personal factors for compensation, within six months of their appointment. This is to be produced as a draft compensation order for consideration by the Houses of the Parliament of Tasmania.

---

<sup>24</sup> Submission No. 2, Dr Rosalie Woodruff MP, pp. 2-3.

<sup>25</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 8.

<sup>26</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 7.

- 5.9. Section 19E defines the process for the consideration of a compensation order, in response to the independent assessor's recommendation. Dr Woodruff MP's submission to the Inquiry explained the process of the compensation order as follows in the attached clause notes:

*Subsections (1) and (2) require the Premier to prepare a draft order to enact the recommendation of the independent assessor. Subsection (3) requires this draft order to be tabled in each House of Parliament.<sup>27</sup>*

- 5.10. The procedural function of the disallowance clause is described further in the clause notes supplied in Dr Woodruff MP's submission:

*Subsection (4) stipulates that if a draft order is approved by both Houses of Parliament, the Premier must make an order on the same terms as the draft order.*

*The process provides for a draft order first because an order, once tabled in Parliament, has effect until such time as it is disallowed. This would mean that, without a process starting with a draft order, there would be the potential for a person to be paid a particular amount that ended up being disallowed by Parliament, with future persons being paid a differing amount.*

*A similar example can be found in the form of draft proclamations under section 18 of the Nature Conservation Act 2002.*

*Subsection (5) sets out that a draft order is approved when a motion approving it is passed by both Houses, if no disapproval (disallowance) motion is tabled within 5 sittings days in either House, or, if such a motion has been tabled, and 5 sitting days from the date of the tabling of the draft motion, if the motion is withdrawn, negatived, or a further five sitting days have passed without the motion being dealt with.<sup>28</sup>*

- 5.11. Section 19G of the Bill provides for retrospective compensation under the compensation order, for individuals whose records were expunged prior to the order being in place. This compensation is to be coordinated within three months after the compensation order is made, by the Secretary of the Department of Justice.<sup>29</sup>
- 5.12. Under Section 19H, if an individual with an expunged record has received any existing ex gratia payments from the Government in relation to the former charge, this amount is to be taken to reduce the amount of compensation owed under the compensation order.<sup>30</sup>
- 5.13. The final Sections of the Clause, 19I, 19J and 19K, provide administrative clarity to potential irregularities in expungement or compensation practices. 19I provides that, if a record ceases to be expunged, any compensation already paid is to be

---

<sup>27</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 7.

<sup>28</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 7.

<sup>29</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 8.

<sup>30</sup> Submission No. 2, Dr Rosalie Woodruff MP, pp. 7-8.

repaid to the Crown.<sup>31</sup> Furthermore, if the amount of compensation paid is incorrect, in the positive or negative, Section 19J provides that the Secretary can manage the matter to ensure the correct compensation has been paid or repaid. Section 19K concludes by providing that the payment of liabilities to the Crown can be managed in instalments or may be considered to be written off if deemed appropriate.<sup>32</sup>

---

<sup>31</sup> Submission No. 2, Dr Rosalie Woodruff MP, pp. 7-8.

<sup>32</sup> Submission No. 2, Dr Rosalie Woodruff MP, pp. 7-8.



## 6. CONSIDERATION OF CLAUSE 9

- 6.1. Chapter 6 considers the legislative function and capacity of Clause 9.
- 6.2. The Committee received evidence assessing Clause 9 and its form of compensation through the work of an independent assessor, including the proposal of a compensation order before the Houses of the Parliament of Tasmania.

### Function of Clause 9

- 6.3. In her submission on behalf of the Tasmanian Greens, Dr Woodruff MP defined the rationale for the proposal of the amendment, now Clause 9, of the Bill. Dr Woodruff MP addressed the Government's original position that individuals with expunged records may access payment through the existing mechanisms of the *Financial Management Act 2016*:

*The government, instead, has suggested there is nothing preventing a person from making an application for an ex-gratia payment through the regular ex-gratia system.*

*Our view is that there are substantial barriers. Most people would not be aware that this avenue exists. It is also entirely discretionary, and the actions of the government do not make us confident that they would be willing to provide ex gratia payments.*

*The government's attitude is made very clear in the second reading speech for this Bill, which states "the redress provided is in the form of expungement of the charge".*

*We do not believe this meets the threshold for redress. Expungement is a recognition that these charges and convictions should not have occurred, but it does not provide redress for the fact that they did.<sup>33</sup>*

- 6.4. The submission further provided a succinct overview of the functions of Clause 9:

*On passage of the bill, the Premier would be required to, within 3 months, appoint an independent assessor to determine how compensation should be determined.*

*This assessment is subject to public consultation and must be completed within 6 months. Once completed, the proposal is brought before Parliament in the form of a draft order, which is a disallowable instrument.*

*If the order is approved, a compensation order is tabled within 30 days and takes immediate effect. If the order is rejected, then a further independent assessment takes place.*

*For clarity, the compensation order is a single order providing for the rules under which all participants compensation is determined, not separate orders for each individual to determine their individual compensation. Unless the order is rejected by Parliament, the process to produce a compensation order will only occur once.*

---

<sup>33</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 2.

*Once the compensation order is in place, any person who has a charge or conviction expunged is compensated in accordance with the compensation order.<sup>34</sup>*

- 6.5. In her contribution before a hearing of the Committee, Dr Woodruff MP further provided the contextual considerations which led to her amendments:

*Dr WOODRUFF - ... When the expungement Bill came to Parliament, there was a very strong view from stakeholders, and more widely, that expunging the conviction was important for correcting the historical record, but it wasn't enough to provide justice for people who had suffered very badly as a result of that. Therefore, we undertook to implement the final of the 13 recommendations from the independent reviewer, in the form of an amendment. We believe the amendment that we proposed is in good faith with the independent reviewer's views and in good faith with stakeholders who have spoken to us about people who are still living in Tasmania with a lot of shame, stigma and the ongoing trauma of things that were done to them.<sup>35</sup>*

- 6.6. In her submission on behalf of the Tasmanian Greens, Dr Woodruff MP defined the rationale for the original proposal of the amendments, leading to installation as Clause 9 of the Bill:

*The rationale underpinning our amendment is that we are not in a position to determine an appropriate compensation value, and we do not trust the government to come up with an appropriate number themselves.*

*Our lack of trust in the government has been justified by their insulting proposal to offer the lowest compensation amount in the world.*

*Our amendments provide for an independent assessment of what appropriate compensation would be, with Parliament rather than the government making the final decision.<sup>36</sup>*

- 6.7. The submission also noted the context for the number of records for potential expungement, and therefore the amount of potential compensation:

*Given the expected low volume of expungement, we would be very surprised if any additional departmental finance staff would need to be recruited to facilitate these payments. As such, we do not consider ongoing administrative costs to be high.*

*Our amendments also provide for a range of other circumstances; overpayment, underpayment, compensation having already been paid, a reversal of expungement, etc.*

*Most of these provisions are unlikely to be necessary and have been included on a 'better to have it and not need it, than need it and not have it' basis. In our opinion these provisions may increase the length of the amendment, but do not have an appreciable impact on the overall complexity of the compensation process.<sup>37</sup>*

---

<sup>34</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 3.

<sup>35</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p. 19.

<sup>36</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 3.

<sup>37</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 4.

- 6.8. In their submission to the Inquiry, Equality Tasmania provided support for the inclusion of Clause 9, as an interpretation of Recommendation 13 of the Independent Review. The contribution also responded to the Government's proposed amendments which will be discussed in Chapters 7 and 8:

*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.<sup>38</sup>*

## **Appointment of the Independent Assessor**

- 6.9. The Government's submission raised concerns regarding the proposed structure of Clause 9, in the appointment and work of the independent assessor in the consideration of a suitable compensation model. The submission proposed that the cost of the establishment, and potential ongoing costs, of the independent assessor may be burdensome:

*The public interest may not be served, as it is anticipated that setting up the compensatory scheme will cost more in establishment costs than may ever be delivered in compensation (noting that, as at June 2024, none of the applications under the Act have met the criteria for expungement). For example, the remuneration for the independent assessor is undetermined in the Bill but could be expected to be anything from \$30,000 - \$100,000 or more depending on negotiations on time required for the assessment process; and further assessment processes following any disallowance motion of a recommendation.*

...

*If the initial assessor recommendation is disallowed, more cost and delay results from having the assessment and consultation process repeated by another appointed independent assessor.<sup>39</sup>*

- 6.10. The Government's submission further defines the proposed model under Clause 9 as follows:

*It is the government's view that it is preferable for ex gratia payment amounts to be specified in the Act rather than creating a separate assessment process that is*

---

<sup>38</sup> Submission No. 3, Equality Tasmania, p. 7.

<sup>39</sup> Submission No. 1, Tasmanian Government, p. 4.

complicated, may lead to inconsistent outcomes, and potentially require resources to establish and administer that are disproportionate to the benefit delivered.<sup>40</sup>

- 6.11. Dr Woodruff MP's submission responded directly to the labelling of Clause 9 as complex by the Government:

*It is instructive that the government has also labelled our proposed amendments on compensation arrangements as 'complex' and argued that administrative costs would be excessive.*

*In our view the label of complex is one of the tools they are using to reject compensation, when the reality is that the government has an ideological opposition to compensation in the proposed circumstances.<sup>41</sup>*

- 6.12. At her appearance before a hearing of the Committee, Dr Woodruff MP also explored the expertise that an independent assessor would provide in the assessment of payment in the Bill:

**Dr WOODRUFF** - It's not correct and appropriate for us, who don't have experience, we're not experienced redress lawyers, and we took the advice of the reviewers in that recommendation, but the reviewers themselves would want to be - anyone should do an independent assessment of what the appropriate methodology would be to determine what redress should look like. Then we believe it's appropriate for it to come back to Parliament so that Parliament can have a look at that and Parliament can be satisfied with that methodology. It is on that basis that we prepared the amendment. We've prepared it in a way that gives Parliament the opportunity obviously to approve or disallow the methodology when it comes back as an instrument. If it were to be disallowed, then it would return for another assessment through the same process as the first time.

*I think you could think about it hypothetically and think maybe that's a system that would never end and that could just go on forever - what's to stop it ending? Well - we think that's implausible because Parliament has already passed - the House of Assembly has already provided a commitment to providing some form of redress. If it was to pass through the Legislative Council, then there's already a commitment from both Houses to have a form of redress and we're not arguing about that matter. We, as members, would be looking at an instrument that comes back, and making an assessment about whether we think an appropriate process has been undertaken and whether it's a fair and reasonable methodology. I think that's probably not plausible to imagine that hypothetical scenario.<sup>42</sup>*

...

**Dr WOODRUFF** - ... The expertise is - I don't know what the Committee's expertise is in this area. From first principles, I would have thought a person who has some history or knowledge of preparing compensation claims or has been involved in redress, people who've been involved in arguing for levels in child sexual abuse and in many other forms of abuse or harm that's occurred to people, maybe somebody who's

---

<sup>40</sup> Submission No. 1, Tasmanian Government, p. 9.

<sup>41</sup> Submission No. 2, Dr Rosalie Woodruff, p. 2.

<sup>42</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p. 20.

worked at the International Criminal Court, I'm not sure, but a person who would have independent expertise. Those two parts are important, I think, to make this assessment because I can see from the material presented that there's quite a lot of breadth in what's being proposed.

The Government's position, Equality Tasmania and all the other material that they're providing in there of other countries, there's a fair breadth in there and, just for the record, we don't think that the Government's amount of \$5000 and \$2500 is in good faith. That's why we wouldn't support the Government having the job of making the determination because their position is that they didn't want to provide a redress. That was their starting position. They voted against it in the House. They don't want to provide it and now they've provided the lowest possible amount that they could. I wouldn't have confidence in the Government having that job and although the independent reviewer might have thought that the Government could do that job, I don't think they've demonstrated their capacity to do that in a fair way.

**Ms THOMAS** - ... I think you probably answered my question in part, which was what sort of experience, background or qualifications might the independent assessor proposed by the Greens amendments hold.

**Dr WOODRUFF** - Probably a legal degree, some practising in the law or a person who's argued for compensation for victims in related areas.

**Ms THOMAS** - Would you expect they would consult with people with lived experience to develop the proposed amount?

**Dr WOODRUFF** - Yes, I would because I think it is a particular case. There would be things that you could bring from other areas, but it's quite a particular experience that people have suffered.<sup>43</sup>

- 6.13. The Committee further questioned Dr Woodruff MP regarding the consideration of the role the Committee may play in facilitating an independent process of available evidence through its Inquiry. This matter is discussed in Chapter 9.

## Structure of Compensation Order

- 6.14. Further objection was raised by the Government in its submission towards a lack of clarity regarding the process and function of the proposed independent assessor, including how compensation totals will be considered:

*The amendments do not provide clarity on the grounds the independent assessor would use as the basis for determining a 'compensation' calculation method for historical convictions. A calculation method implies that amounts will not be fixed but vary according to the person. For example, the independent assessor could recommend the method include calculation of loss of income over the person's lifetime. It is the Government's view that 'compensation' of this kind was not part of the Independent Review's intended scope. The recommended ex gratia payment, as*

---

<sup>43</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, pp. 23 – 24.

*that term is commonly understood, is not designed to 'compensate' a person for losses but reflect a non – legal liability of the State such as an expression of regret.<sup>44</sup>*

- 6.15. The Government's submission to the Inquiry further proposed potential limitations of case-by-case considerations of compensation, including a lack of clear definitional criteria of assessment:

*Whilst the proposed new section 19C creates a process for seeking public submissions as to the payable compensation amount, there are no objective criteria to assess the relevance of any submissions or indicate how they assist in establishing the method for calculation.*

*The proposed new section 19D provides that the method of calculation may vary according to different factors or circumstances and will include indexing. The Government is concerned that this process will be arbitrary, particularly when there have been no successful applicants to consider to date, and the experiences of future applicants may not be the same, even though common characteristics may exist.<sup>45</sup>*

- 6.16. The Honourable Bec Thomas MLC requested further information in relation to the insertion of a disallowable order. Ms Thomas MLC queried if the role of the Parliament of Tasmania in approving or disallowing the compensation order could prompt a repetitive cycle:

**Ms THOMAS** - *The model proposed by the Greens does have that the draft order determined by the independent assessor comes back to Parliament for, I guess possibly, disallowance if so desired by a member with the support of either House. Do you think there's a risk that we could end up in the same position again, given that the model proposed provides for that disallowance?*

**Dr WOODRUFF** - *I would hope that in the process of determining the methodology, that all members would work in good faith and it would be about the Government appointing a person who would be trusted and maybe they could speak to the Committee. I think having the trust in that person to be able to do a good independent job, there is will in the Parliament to provide redress. I think there is will in the Parliament to do that as quickly as possible because a lot of these people are really elderly. I think the will is to get something, to make it fair and to pass it as quickly as possible. That's my sense. I do think we need to get it done as quickly as possible in the first instance.*

*The reason that we propose that it come back to Parliament was to give all members an opportunity to get on board with it because it is a novel process that we're proposing. It seems, because it is a first process that it would be good for Parliament to have oversight of it and to feel confident that it was going to be done and done well. That was our thinking.<sup>46</sup>*

- 6.17. Dr Woodruff MP's submission however critiqued considerations regarding the accusations of cost inefficiency in the provision of the independent assessor,

---

<sup>44</sup> Submission No. 1, Tasmanian Government, p. 4.

<sup>45</sup> Submission No. 1, Tasmanian Government, p. 4.

<sup>46</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p. 24.

including if a disallowance was made by the Parliament of Tasmania regarding the compensation order:

*It is true that, if refused, another assessment is conducted. However, we are of the view that if the Parliament supports an independent assessment, they are likely to accept the recommendation of the assessment. Disallowance is a very rare occurrence. This provision has still been included, however, to retain the autonomy of Parliament.*

*To our mind this is not complex.*

*There would likely be some costs associated with this. However, as an assessment that cannot take more than 6 months, we consider these costs reasonable. We believe these costs are comparable to statutory reviews - such as the statutory review that resulted in this amendment Bill.*

*The Parliament regularly amends legislation to add statutory reviews, and the cost of such a review rarely deters the Parliament from these amendments. We would also note that Parliamentary inquiries, including this one, do not come without cost.*

*This is a once-off cost to determine compensation amounts, it is not an ongoing administrative cost.*

*Once a compensation order is in place, after an expungement is approved a person is compensated in accordance with the order. The most complex element of this is the existing expungement process, which is not impacted by our amendment. After that process is completed, a payment to the person must be made.<sup>47</sup>*

- 6.18. In acknowledging ongoing considerations for a form of compensation clause in the Bill, reflecting Recommendation 13 of the Independent Review, the Government submission noted the following opposition to Clause 9 in relation to the form of compensation proposed in the Clause:

*The Government's concern is that the Greens amendments clearly do not reflect the Independent Reviewer's model. If the Bill is to reflect the recommended model, it should clearly refer to the two – tiered 'ex gratia' fixed payment model; and not a broader 'compensation' model with a method of calculation according to 'different factors or circumstances.'<sup>48</sup>*

- 6.19. Mr Bruce Paterson, Director Strategic Legislation and Policy, Department of Justice, further noted before a hearing of the Committee, that Clause 9 should be assessed to ensure that it accurately reflects Recommendation 13, if it is determined to be the preferred option of the Committee or the Legislative Council:

---

<sup>47</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 4.

<sup>48</sup> Submission No. 1, Tasmanian Government, p. 4.

**Mr PATERSON** - ... I think another thing I should say is that the amendments we have at the moment in the Bill before the Legislative Council, i.e. the Tasmanian Greens' amendments, if they are intended to reflect Recommendation 13, I think they clearly need some work to do that properly. Recommendation 13 is two fixed amounts, one for convictions that are expunged from the record, one for convictions that are expunged not from the record. Whereas the Tasmanian Greens' amendments unfortunately leave that quite open and they talk about compensation based potentially on all sorts of different factors and circumstances.<sup>49</sup>

- 6.20 In her submission to the Inquiry, Taya Ketelaar-Jones reflected that both the insertion of Clause 9 and the Government's proposed amendments, to be discussed in Chapters 7 and 8, could give effect to Recommendation 13:

*... I consider that prima facie both the two alternative proposed amendments could, if enacted, give effect to Recommendation 13.*<sup>50</sup>

## FINDINGS

### The Committee finds:

7. Independent assessment of possible payment to be included in the Expungement of Historical Offences Amendment Bill 2024, as legislated in Clause 9, is supported by key LGBTIQ+ stakeholders.
8. The Government does not support Clause 9 and stated concern that it does not reflect Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*. The Government's concern is not universally shared in the evidence received by the Committee.
9. The following areas of Clause 9 of the Expungement of Historical Offences Amendment Bill 2024 offer key operational considerations:
  - a. The timeliness of the independent assessor process;
  - b. The possibility of one or more disallowance motions related to the compensation order by the House of Assembly or Legislative Council of the Parliament of Tasmania; and
  - c. Potential costs of the appointment of the independent assessor.

---

<sup>49</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 6.

<sup>50</sup> Submission No. 4, Taya Ketelaar-Jones, p. 3.

## **7. TASMANIAN GOVERNMENT’S PROPOSED AMENDMENTS**

- 7.1. This Chapter provides an assessment of the Government’s proposed amendments to the Bill, as found in their submission to the Inquiry.
- 7.2. This suite of amendments is the same as that given to Members of the Legislative Council in November 2024. The proposed amendments are available in full in Appendix A.
- 7.3. The first amendment proposes the removal of Clause 9 of the Bill, being the compensation Clause discussed in Chapters 5 and 6 of this Report.
- 7.4. The second amendment proposes the insertion of New Clause A to follow Clause 8. Proposed New Clause A inserts Part 3A into the Principal Act, to install and define ex gratia payments in the Act. Section 19A provides the mechanism for ex gratia payments to all persons eligible for an expungement of their record under section 12(6) of the Principal Act. This process is to be coordinated under the direction of the Secretary of the Department of Justice.<sup>51</sup>
- 7.5. Section 19B sets the amount of ex gratia payments for eligible persons. This section denotes that the payment due to eligible persons be as follows:
- \$5,000 per expunged charge for persons with annotated official criminal records under Section 15 of the Principal Act; or
  - \$2,500 for persons with expunged charges that did not result in annotations to official criminal records under Section 15 of the Principal Act.
- This section stipulates that these payments are to be indexed to reflect the Consumer Price Index (CPI) for Hobart.<sup>52</sup>
- 7.6. Section 19C defines that if a determination is made that a charge has ceased to be expunged, repayment of any ex gratia payments received are to be paid to the Crown.<sup>53</sup>

---

<sup>51</sup> Submission No. 1 – Attachment 1, Tasmanian Government, p. 1.

<sup>52</sup> Submission No. 1 – Attachment 1, Tasmanian Government, pp. 2-4.

<sup>53</sup> Submission No. 1 – Attachment 1, Tasmanian Government, p. 4.



## 8. CONSIDERATION OF THE TASMANIAN GOVERNMENT'S PROPOSED AMENDMENTS

- 8.1. Chapter 8 considers the functional capacity of the amendments proposed by the Government for insertion in the Bill.

### Function of proposed amendments

- 8.2. The submission from the Government noted the following in regard to the status of the proposed amendments to the Bill:

*These alternative amendments provide for a process for automatic ex gratia payments for eligible persons who have their charges expunged under the Act. This proposal aligns with and gives effect to recommendation 13 of the Independent Review.<sup>54</sup>*

- 8.3. Ms Ketelaar-Jones, in her submission to the Committee, summarised the Government's amendment as follows:

*The government's amendments provide for a one-off ex gratia payment for individuals with expunged charges or convictions.*

*The amount payable is fixed at \$5,000 per expunged charge that resulted in the annotation of an official criminal record and \$2,500 per expunged charge that did not result in the annotation of an official criminal record. The amendments provide for these amounts to be subjected to annual increases for CPI.<sup>55</sup>*

- 8.4. Mr Croome, representing Equality Tasmania, also provided a direct response to the Committee at a hearing regarding the amounts included in the Government's proposed amendments:

**Mr CROOME** - *We also have to keep in mind the value of this amount for the expungement scheme itself. As the Attorney-General and others said, there haven't been any successful expungements yet - that's over the last eight years. Will this amount make the scheme look stronger and encourage people to actually apply for expungement? It needs to be an amount that will do that, and it needs to be an amount that shows the world that Tasmania has moved on, and that we are genuine about redress for the past injustices. Again, \$5000 doesn't really feel like it will do that. It may have the opposite effect, of sending the message that we are only begrudgingly dealing with the injustices of the past.<sup>56</sup>*

- 8.5. The Attorney-General and representatives from the Department of Justice were questioned on the development of the Government's amendments, including their initial circulation to Members of the Legislative Council at a private briefing in November 2024:

---

<sup>54</sup> Submission No. 1, Tasmanian Government, p. 5.

<sup>55</sup> Submission No. 4, Taya Ketelaar-Jones, p. 2.

<sup>56</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 35.

**CHAIR** - This sort of came quite quickly to the Legislative Council in the end, with an amendment passed in the Lower House that was put forward by the Greens, then the Government introducing a competing amendment, if you like, in our House. What consultation was undertaken by yourselves, the Government, with regard to your proposed amendment?

**Mr BARNETT** - My understanding is that the Leader for the Government in the Upper House obviously progressed that amendment. We have tried to be accommodating. We are fully aware of the Greens' amendment, which did get support in the Lower House, which we obviously didn't support. However, we recognise that it was supported, so we have tried to be accommodating and collaborative and tried to respond and to provide - if the Parliament wishes to go down this track - which we didn't support in our second reading speeches, et cetera.

No other jurisdiction in Australia has progressed this way, but if the Parliament wishes to go down this track, we wanted to try to work up a more streamlined, appropriate, balanced and sensible payment, as in ex gratia payment. That's the reason that we've done what we did. We had to obviously respond reasonably swiftly. That's why we are willing to be here today and to try to work through with this Committee and other Members of Parliament to land something that people see that is sensible, balanced and appropriate.

**CHAIR** - To repeat my question, did you or any of your team reach out to organisations who put submissions in to the Bill that we are dealing with? Did you talk to Equality Tasmania? Did you talk to TasCOSS (Tasmanian Council of Social Services)? Did you talk to Community Legal Centres [Tasmania], for example?

**Mr BARNETT** - Yes, I understand where you're coming from and I have to check with the department. I am not sure they did, because we had to move swiftly. It was either progress with the Greens' amendment, which we did not support, or come up with - as quickly as possible - a more balanced, refined approach. Or, the other option was simply to oppose, and then you'd only have one option on the table. We had to act as quickly as possible, but I am happy to check with Bruce or Brad on whether there was any other work done, because they worked so hard and so quickly to get this onto the table to give consideration for Members of Parliament.

**Mr PATERSON** - ... I'm happy to briefly answer that. We didn't consult external stakeholders during the development of the Government's amendments. Our development of them was informed by a lot of consultation we did on the original bill. While the original bill didn't propose a compensation provision at that time, we did get a lot of feedback, obviously, from stakeholders. Many stakeholders thought there should be [an] explicit provision for payment.

We had a meeting with the department's LGBTIQ+ reference group on the original bill. It was discussed in that meeting that most of the people there felt there should be compensation. The consistent theme was that no one identified what the amount of that compensation should be. We were aware, in creating these amendments, that there was support for the review's Recommendation 13 in a two-tiered amount, but

*we haven't had any submissions as to what that amount should be. As the Deputy mentions, because of the time frame, we therefore primarily focused our attention on what the European model, particularly the German model, was doing, and did some translation of value. I think that's the answer to that question.*<sup>57</sup>

- 8.6. Professor Paula Gerber of Monash University, Melbourne, considered the Government amendment, and the risks associated with setting a fixed amount for redress following expungement:

*Ideally, compensation should be assessed on an individual basis, according to the harm a person has experienced as a result of the charge or conviction they were subjected to. I understand that the Tasmanian Government favours a fixed, automatic payment of redress following expungement, rather than a scheme involving an assessment of the harm suffered by each individual. Given that background, it is vital that the amount of compensation err on the side of over-compensating, rather than under-compensating. This is because a failure to recognise the severity of the harm suffered, risks exacerbating the injury already experienced by the individual. Redress of a mere \$5,000, would constitute under-compensation and potentially do more harm than good, because it fails to recognise the severe impact that an individual's encounter with the criminal justice system has, and that the ordeal of being charged and/or convicted has repercussions that last a lifetime.*<sup>58</sup>

### **Jurisdictional analysis of similar existing schemes**

- 8.7. In response to the Legislative Council's reference to the Committee regarding proposed compensation under the Bill, the Government defined its proposed new amendments as being formulated in reference to similar existing schemes:

*The proposed amount of these payments has been determined by reference to amounts paid under the existing German scheme that pays compensation to those convicted of consensual homosexual acts under section 175 of the German Criminal Code that have since been decriminalised. The German scheme ... .. includes 3,000 euros per annulled conviction, which is equivalent to \$4,981.*<sup>59</sup>

- 8.8. The German redress scheme is detailed in the Government submission as follows, in specific reference to the 2019 publication from the German Ministry of Justice titled *Guidelines regarding the payment of compensation to people affected by the criminal prohibition of consensual homosexual activities*:<sup>60</sup>

*A person who was convicted is entitled to received €3,000 per annulled conviction as well as €1,500 for each year spent in prison. The Guidelines also provide 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.*<sup>61</sup>

---

<sup>57</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 2-3.

<sup>58</sup> Submission No. 7, Professor Paula Gerber, pp. 1-2.

<sup>59</sup> Submission No. 1, Tasmanian Government, p. 5.

<sup>60</sup> Submission No. 1, Tasmanian Government, p. 6.

<sup>61</sup> Submission No. 1, Tasmanian Government, p. 6.

- 8.9. In their submission, Equality Tasmania noted that the German model does not conform to Recommendation 13 of the Independent Review. One key difference is the application process for payment in the German scheme, which is incompatible with the automatic payment upon expungement recommended in the Independent Review.<sup>62</sup> The submission also details the potential likelihood of multiple claims from the same individual, due to the German scheme's coverage of annulled charges and years spent imprisoned, as well as negative experiences as a result of their charge or conviction. Equality Tasmania hence suggested a difference in the consideration and compensation between the German scheme and the proposed amendments:

*... 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 ... 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.*<sup>63</sup>

- 8.10. The German model was further discussed at the Committee's public hearing with the Attorney-General and department representatives, in relation to Recommendation 13:

**CHAIR** - Attorney-General, I am sure you and your team have looked at Equality Tasmania's submission, which is quite comprehensive in looking at some of the European, New Zealand and other models - acknowledging there aren't any other jurisdictions in Australia currently that provide some form of redress. Also looking at other redress schemes, which are all different, but can provide some guidance.

*When we look particularly at one that was referred to in the Legislative Council - the model you or the Attorney-General might've referred to just now was in Germany - when you actually read through the Equality Tasmania submission and reference the Irish report that's quoted in their submission, it seems that it doesn't really reflect the reality - or it's not the same. It's taken basically the lower level and not considered the nuances of the German model. Is that a fair statement? We're not really comparing apples with apples here.*

**Mr BARNETT** - I'll let Bruce speak to the detail of that provision, but you did make reference to the fact that no other jurisdiction in Australia has any provision like this in any of their legislation. I'm glad you've acknowledged that, which is the Government's original position. We're trying to collaborate and be supportive and helpful as a Government, in light of the numbers in the Parliament. That's what we're doing and we're using best endeavours to progress that. Bruce and the department have done a lot of good research and looked at other - obviously mainland -

---

<sup>62</sup> Submission No. 3, Equality Tasmania, p. 9.

<sup>63</sup> Submission No. 3, Equality Tasmania, p. 9.

jurisdictions. I'll pass to Bruce to answer the detail in regard to Germany, Austria and other European countries.

**Mr PATERSON** - ... As the Government points it out in its submission, while Germany does have several different kinds of layers in its scheme, we did note during our research and previous briefings to the Legislative Council that, while the base is €3000, which is the amount we essentially based our number on, when they looked at - from memory - 100 or 200 or possibly more German claimants, the average payment was about €3454. Yes, that is slightly more than the €3000 base, but not dramatically more.

I think the Government's submission was that basing the amount on €3000 was a good starting point, and obviously the Government noted that further consideration could be given to that amount. Equality Tasmania is right, of course, to say that Germany has the multi-tiered scheme, but that's not what Recommendation 13 recommended. Recommendation 13 very explicitly recommended a fixed amount per charge that was expunged from a person's criminal record, and a fixed amount per charge that was expunged but didn't actually have to be removed from the criminal record. We based our higher amount on that kind of German entry point for expungement of a charge from a criminal record.

The Tasmanian reviewers didn't recommend that any other factors be considered, such as imprisonment or fines and the like. I'm assuming that that's because they felt that it was the fact of this charge on a person's criminal record that was a very significant impact on that person's life and possibly future employment or other social factors. They were very much focused on setting an amount based on the expungement of the charge. That's why the department suggested to Government, and the Government's amendments base its amount on the expungement per charge. In that sense, they are quite equivalent. They get the same amount of redress - €3000/\$5000 - for charges that are expunged.

In fact, I must say, I think that's the same as Germany - that it's per annulled conviction, which is the same as us. For example, with looking back at some of the case studies within the department's files, like in the police records - some people were charged once, some people were charged many times. If either of those people came forward and were successful, they would get \$5000 per charge - so either \$5000 for one charge or \$20,000 for four charges, and so on.<sup>64</sup>

- 8.11. A further jurisdictional analysis of existing schemes for the expungement of historical homosexual and cross-dressing offences was also provided to the Committee in evidence by the Government and Equality Tasmania. The Government's submission noted that while other expungement schemes of this type for similar previous offences do exist in Australia, none currently offer any form of payment.<sup>65</sup>

---

<sup>64</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 3-4.

<sup>65</sup> Submission No.1, Tasmanian Government, p. 6.

- 8.12. Equality Tasmania's submission noted the following in relation to the nature of the other expungement schemes mentioned by themselves and the Government:

*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.*<sup>66</sup>

- 8.13. The Government's submission detailed the Spanish context of compensation for homosexual prosecutions, as facilitated under the Compensation Commission for Former Social Prisoners, established in the government's 2009 budget:

*This 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. Compensation was 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*<sup>67</sup>

- 8.14. Equality Tasmania further detailed the administrative process of the Spanish scheme:

*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.*<sup>68</sup>

- 8.15. The Government's submission also discussed secondary source references to an arrangement from the Austrian Government to compensate individuals who faced prosecution under previous laws. The available sources suggest that an estimated €33 million was made available for relevant payments.<sup>69</sup> The submission provided the following assessment, with the caveat that the available information has not been independently verified. The payment for those who faced prosecution proposed that individuals convicted were:

*... able to receive €3,000 and an additional amount if they were jailed or suffered in terms of health, economically or in their professional lives. Around 11,000 applications were expected for criminal rehabilitation and compensation. This would equate to €3,000 per applicant.*<sup>70</sup>

- 8.16. The Austrian model was also discussed by Equality Tasmania, noting that homosexuality was decriminalised in 1971 in the country. The submission noted the function of the scheme as follows:

---

<sup>66</sup> Submission No. 3, Equality Tasmania, p. 3.

<sup>67</sup> Submission No. 1, Tasmanian Government, p. 7.

<sup>68</sup> Submission No. 3, Equality Tasmania, p. 10.

<sup>69</sup> Submission No. 1, Tasmanian Government, p. 7.

<sup>70</sup> Submission No. 1, Tasmanian Government, p. 7.

*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 lives.<sup>71 72</sup>*

- 8.17. According to stakeholder organisation Equality Voices, the compensation provided by the Austrian Government has been criticised as being too low:

*The LGBTIQ+ rights organization Rechtskomitee lauds the compensation but highlights that the amount doesn't match the figures suggested by the European Court of Human Rights.<sup>73</sup>*

- 8.18. Finally, the Government submission noted the current proposed bill before the French National Assembly regarding compensation of individuals convicted of homosexuality from 1942 – 1982.<sup>74</sup> The proposed payment scheme provides the lump sum of €10,000, with an additional €150 for each day of imprisonment.<sup>75</sup> The bill also provides for the reimbursement of any fines incurred. At the time of the submission, the Senate had not yet progressed the bill.<sup>76</sup>

- 8.19. Equality Tasmania's submission also noted the existence of a compensation model in Canada for people arrested under former laws related to: sex between men; any activity between two members of the same sex which may lead to sexual relations; and for individuals 'purged' from the public services due to their sexual orientation.

*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 file.<sup>77</sup>*

*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.<sup>78</sup>*

## **Other compensation and redress schemes**

- 8.20. The Committee heard additional evidence regarding redress schemes for various circumstances to that of the expungement of historical homosexual offences,

---

<sup>71</sup> Submission No. 3, Equality Tasmania, p. 11.

<sup>72</sup> Footnote 8,

<https://www.expatica.com/es/general/spain-compensates-gay-man-jailed-during-dictatorship-36915/>, from Submission No. 3, Equality Tasmania, p. 10.

<sup>73</sup> Equality Voices, 'Austrian Government's Olive Branch: Compensation for Historically Persecuted Gay Men', 2023, accessed 25 February 2025, <https://equalityvoices.org/legislation/austrian-governments-olive-branch-compensation-for-historically-persecuted-gay-men/>

<sup>74</sup> Submission No. 1, Tasmanian Government, p. 7.

<sup>75</sup> Submission No. 1, Tasmanian Government, p. 7.

<sup>76</sup> Submission No. 1, Tasmanian Government, p. 7.

<sup>77</sup> Footnote 12,

<https://www.thecanadianencyclopedia.ca/en/article/lgbtq-purge-in-canada>, from Submission No. 3, Equality Tasmania, p. 12.

<sup>78</sup> Submission No. 3, Equality Tasmania, p. 12.

both in relation to schemes for other forms of LGBTIQ+ discrimination and broader social justice related redress.

- 8.21. Equality Tasmania noted two prominent international schemes for redress for discrimination against members of the LGBTIQ+ community in the United Kingdom and Sweden in its submission:

**United Kingdom**

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

*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".<sup>79</sup>*

*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 discharge.<sup>80</sup>*

**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 \$AUD33,000.<sup>81</sup>*

- 8.22. Redress schemes relating to different topics, victims and experiences were also noted by Equality Tasmania as considerations in the production of an appropriate scheme in the Bill:

**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.*

---

<sup>79</sup> Footnote 13,  
<https://www.bbc.com/news/articles/cn8jw54q81yo> Submission No. 3, Equality Tasmania, p. 13.

<sup>80</sup> Footnote 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>, Submission No. 3, Equality Tasmania, p. 13.

<sup>81</sup> Footnote 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/>, Submission No. 3, Equality Tasmania, p. 13.

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 prison.<sup>82</sup>

### **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 2024.<sup>83</sup>

### **Institutional child abuse**

The National Redress Scheme for people who experienced institutional child abuse ranges from \$10,000 to \$150,000 depending on individual circumstances.<sup>84</sup>

### **Stolen generations**

In Tasmania people removed from their families as children received \$58,000 while children of deceased victims received about \$5000 each.<sup>85</sup>

### **Stolen wages**

In Western Australia the compensation granted by the court amounted to \$16,500 per eligible claimant.<sup>86 87</sup>

## **Consideration of ex gratia payments in the Government's proposed amendments**

- 8.23. These alternate schemes were raised with the Attorney-General and department representatives at the Committee hearing. Questions were asked as to whether a broader assessment of existing redress schemes, across a range of socio-cultural topics, should be considered in proposing a payment amount:

**CHAIR** - Isn't this the reason why the German model wasn't really a suitable model - because it didn't reflect the recommendation of the review? To use it as the principal model ... when the German model did contemplate other mitigating factors ... or other impacts on the individual - because they're not comparable in that regard. We're getting stuck on one jurisdiction here that is possibly an example that maybe shouldn't have been used, because it doesn't reflect the recommendation in the review...

...

There's also other redress for, as you read in Equality Tasmania's submission, other redress schemes for victims of crime and other circumstances like that, which is different. There's quite significant differences between the payment to a victim of

---

<sup>82</sup> Footnote 1, <https://www.theguardian.com/commentisfree/2023/jun/10/will-kathleen-folbigg-be-compensated-for-20-years-in-prison-after-wrongful-conviction>, Submission No. 3, Equality Tasmania, p. 8.

<sup>83</sup> Footnote 2, <https://www.justice.tas.gov.au/victims/financial-assistance#Awards-and-payments>, Submission No. 3, Equality Tasmania, p. 8.

<sup>84</sup> Footnote 3, <https://www.nationalredress.gov.au/apply/what-offer-redress>, Submission No. 3, Equality Tasmania, p. 8.

<sup>85</sup> Footnote 4, <https://www.theguardian.com/world/2008/jan/22/australia.barbaramcmahon>, Submission No. 3, Equality Tasmania, p. 8.

<sup>86</sup> Footnote 4, <https://www.abc.net.au/news/2024-11-27/federal-court-judgement-144-million-stolen-wages-to-families/104644674>, Submission No. 3, Equality Tasmania, p. 8.

<sup>87</sup> Submission No. 3, Equality Tasmania, p. 8.

crime, potentially, and someone who's been the actual victim of an offence that should never have been an offence in the first place. I'm just trying to understand why we're getting stuck on the German model when it doesn't truly reflect the recommendation in the review.

...

**Mr PATERSON** - It is quite a complex landscape in a way. I don't want to appear stuck on the German model for expungements as such, but as I was saying, the German model did decide regardless of whether you're imprisoned or not imprisoned, we will give you an amount for expunged charges. So the reviewer's recommendation in Recommendation 13 was kind of similar in that it didn't take into account whether there was prison or no prison, it said there should just be a fixed payment. That's why we thought it was sensible to look at Germany.

...

Equality Tasmania, and obviously the department too, thought about broader kinds of redress and expungement models that are out there. I think the important underlying principle, at least in the department's mind, and as was mentioned in the New Zealand debate on compensation, is that it's an underlying principle of law that simply because a behaviour stops being illegal doesn't mean that everyone who was prosecuted and potentially imprisoned for that behaviour in the past should be fully compensated for all the effects that that may have had on their lives. That is a precedent that would be very far-ranging. At the same time, the reviewers were saying, clearly, and as the department of Government agreed, the impacts of prosecutions and convictions for homosexual offences were very profound and in retrospect should not have been happening at the time, so they recommended an ex gratia payment.

I think there is really an impossibility, to some degree, you might say, of a payment that truly reflects and compensates every individual for the impacts they might have suffered. It is a payment nonetheless that expresses - as the ex gratia term represents - the word doesn't seem quite right, but a gracious payment or a compassionate payment that recognises and expresses sympathy and regret to the victims of those crimes. I think it is actually quite difficult to find any apples and apples, which is partly why this Committee is now convened, of course, to look at the thinking of various stakeholders and the Government's position, and consider it.

The Government does note in its submission that - one of the concerns of the Greens' amendments was that it is quite an elaborate process and potentially quite an expensive process to have a statutory scheme for an independent assessor to go out and talk to stakeholders and then come back to Parliament with a recommendation. If for some reason Parliament doesn't like and disallows that recommendation, then the whole process has to start again. You have to appoint a new independent assessor and they have to go out to the stakeholders and do a new consultation, and come back to Parliament a second time. But I think the Government submission does acknowledge that if the Committee's view is that there should be more consultation, I

*think that can occur and, in consultation with the LGBT[IQA+] community, you could find a person to do more consideration of an amount. I don't think it would need to be in this kind of elaborate and more expensive and potentially repetitious kind of statutory scheme that we have in the amendments at the moment.<sup>88</sup>*

- 8.24. The submission of Dr Woodruff MP considered the Government's proposal of the amount of ex gratia payments, based on the German model:

*While the government has now put forward their own amendment, it is telling that they have only come to the table after amendments providing for compensation have passed, and that they have chosen the lowest compensation amount offered in any jurisdiction.<sup>89</sup>*

- 8.25. The proposed amount of the ex gratia payments were further noted in the submission from Dr Woodruff MP, with consideration given to the role of the Parliament in selecting a legislative compensation amount:

*The Greens do not believe that the Parliament should be directly setting the compensation amount. Our support for any amendment brought forward by a Member to achieve this would be conditional on that Member attracting stakeholder support for their amendment.*

*....*

*If the Committee determines they would prefer the legislation to directly set a compensation amount, we urge the Committee to take the opposite approach of the government, err on the side of compassion, and aim to exceed the highest current example of compensation being offered.*

*The Greens do not profess to know what a just level of compensation is. Thus our preference is for an expert, independent process to make that recommendation, as provided for in our amendments.<sup>90</sup>*

- 8.26. The Government submission further provided advice from the Department of Justice regarding the feasibility of the installation of an ex gratia payment scheme:

*It is in fact significantly easier to implement the Review's recommendation by determining the fixed-amount ex gratia payment and including that amount in the amendments, in comparison to the Tasmanian Greens amendments which have a review and consultation process on 'compensation criteria,' a disallowance period, and then the application of a calculation method to individual cases.<sup>91</sup>*

---

<sup>88</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 5-6.

<sup>89</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 2.

<sup>90</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 5.

<sup>91</sup> Submission No. 1, Tasmanian Government, p. 8.

- 8.27. The Committee also heard evidence from the Government in relation to the projected payment under any proposed scheme and if this had been factored into considerations of proposed payment amounts:

**Ms THOMAS** - It has been acknowledged that it's likely to be a relatively small number of people seeking redress here. Has the Government done any modelling on what a redress scheme would look like - sorry, what the cost of redress might be? Was that factored in at all to the Government's proposal for the amounts put forward? What is, I guess, the worst possible outcome - does it come down to cost?

... financially what is the fear here if there are higher redress payments proposed or decided on rather than lower? Is it really going to be so terribly detrimental that it's not worth signalling the intent here to properly redress the harm that has been caused?

**Mr BARNETT** - ... I think Bruce summarised that pretty well, earlier in the hearing and I indicated in my opening remarks the 15 applications, of which 14 were not relevant. I mentioned - this obviously goes back to the 1970s and before, so I think there's an understanding there. But, as I've said, no other jurisdiction in Australia is doing this, but if we were to do it, we've done the research in Europe. We think we have the balance right in terms of ex gratia. Bruce said, and I think described it very well, in an expression of regret, every parliament has to be very careful when reflecting on the criminal code of many decades ago and what impact that has on today.

The Government's submission has the balance about right, but it might be good if Bruce would like to add to that answer.

**Mr PATERSON** - ... I think there've been different calculations as to how many people in the community might still potentially come forward and apply for expungement and how many might potentially be successful. It is very hard to assess that, there's probably only 100 people, as the review and I think Equality Tasmania mentioned, who have been charged in the history of the Tasmanian laws and, obviously, many of those people would have sadly passed on.

Equality Tasmania has, at times, thought that there might only be a very small number left with interest, potentially, in applying to the scheme, like a dozen or 10 or less. I'm not sure if I remember them exactly correctly, but that's also the department's view that the most it would seem there might only be 10 people in the community that might be interested or eligible for applying for the scheme. Of those 10, many or most, or perhaps all of them, never will apply. So, I think we probably have up to 10 successful applicants out there if they are motivated and interested to apply.<sup>92</sup>

---

<sup>92</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 7-8.

- 8.28. Mr Paterson further noted that consideration of the number of potential applicants should not necessitate an administrative financial assessment:

**Mr PATERSON** - ... I was just going to go on to say, in determining the figure, I don't think it should be a question of what is the total going to be. I think the question should be what should the amendments set as an appropriate redress payment per individual, per offence, as recommended by Recommendation 13, in a way that's comparable to other schemes of a similar nature. So, the department, and I don't think Government is really worried as to - that we can choose \$5000 or recommend \$5000 because we wanted to keep the total low - we recommend[ed] \$5000 because it was a comparable and appropriate kind of point. And I think there's openness in the submission to essentially having a look at that number and with independent consultant and consultation with the community, I wouldn't have thought that in kind of maintaining the integrity of our scheme versus similar schemes, both in Australia and overseas, I wouldn't expect that the number would go from \$5000 to \$25 or \$75,000.<sup>93</sup>

- 8.29. The matter of whether or not Tasmania should become the first state to offer redress to individuals who have had their records expunged of homosexual or crossing dressing offences and if this matter has any impact on the Government's current considerations was raised at the public hearing:

**Ms THOMAS** - If Tasmania's scheme ends up being far more generous than any other place in the world - noting that, as the Attorney-General has said a number of times, there's no other Australian jurisdiction that yet provides redress for these past historical offences - if Tasmania has the most generous scheme, what's the worst possible outcome that can happen? What do we need to be fearing here in establishing a more generous scheme? Because it seems that that is the concern. The submission does talk about cost, that the independent assessor model will cost more, and you've mentioned the disallowance provisions that that model provides for, so those two things seem to be the key concern with that model for the Government. I'm just trying to get really clear on what's the worst possible thing that can happen if that independent assessor model is the one that's decided upon?

**Mr BARNETT** - We haven't looked at it in terms of that perspective. We've looked at it in terms of trying to get the balance right and get a fair and reasonable redress payment as in terms of an ex gratia payment, and I should note that's already available in the Financial Management Act Section 55. So, it does already exist there and I think Bruce and the department's research is very thorough and quite comprehensive. Of course, we respect and acknowledge other views, including those of Equality Tasmania, but we have to do what's right for the Parliament and for the public and to get the balance right. We think we have got the balance right, but that's a matter for the Parliament. I'll just see if Bruce wants to add to that.

---

<sup>93</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 7-8.

**Mr PATERSON** - Yes, well, I think that neither department or Government is - as you say, Deputy, the focus is on what is the appropriate amount and not about, fear as such, as to how much the amount could cost. So, that was the main point I was going to make.

*I think there is an apprehension from the legal policy point of view though, there is apart from cost, the implications partly of the Greens' amendments as they stand, which allow for this very broad compensation methodology, which could take into account economic loss and so on, so that's - that is a concern from a legal principled perspective because it would be a real departure from those kind of principles that I talked about earlier, which is that when you decriminalise conduct, you don't look back in time and look to fully compensate people for the impacts of being convicted of that conduct, you instead think in a more - you establish a redress type of model which is limited.*

*And I guess, as Equality Tasmania and everyone - I think everyone's now on the same page that it should be a fixed amount and it's more a question of what that amount is, that compensation amount, that's a good thing. I think if it is a very high fixed amount - and I think there is probably value in some further consultation because to ensure that if the amount is increased, it's not increased to an amount that seems disproportionate potentially to other, say victims of violent crime who get \$30,000 under the victims of violent crime scheme, for example, or victims of terrible historical child sexual abuse under the national redress scheme can go up to \$150,000. So, those are two very impactful events and I'm not saying historical convictions aren't impactful, they obviously are too, but I just think we have to keep in mind the potential balancing and not choose an amount for this scheme that potentially, or might be viewed as, out of balance of other schemes that involve very violent crime, for example.<sup>94</sup>*

## **Independent consultant process**

- 8.30. In its submission, the Government provided two formal recommendations to the Committee regarding the status of the Bill and the proposed amendments, including an option to establish a Government facilitated independent consultant process:

*The Government strongly urges the Committee to support the Government's proposed alternative amendments as a sensible and reasonable response to recommendation 13 of the Independent Review, in line with comparable features of the currently operational schemes in Europe for ex gratia payments for expungement of charges.*

*If the Committee does not support those amendments, the Government recommends that the appropriate pathway is for the Government to seek independent advice from a person with appropriate expertise to consult and advise on appropriate amounts.<sup>95</sup>*

---

<sup>94</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 9-10.

<sup>95</sup> Submission No. 1, Tasmanian Government, p. 9.

- 8.31. Further information was requested regarding the independent consultant process at the Committee's hearing:

**Ms THOMAS** - ... the submission from the Government does suggest that:

*If the Committee disagrees with the amounts in the Government's amendments, the Government recommends that the Committee endorse the Government seeking further advice and input from an independent consultant with relevant expertise, who would also consult with stakeholders, on how to determine what those legislated amounts should be. This would be expected to cost less than the 'independent assessor' model while producing a similar result.*

*Have you done any modelling on the estimated cost of an independent assessor versus what the cost of an independent consultant might be?*

...

**Mr PATERSON** - One of the things we had in mind, and the Government submission refers to, is that appointing statutory officers to do work such as the amendments require, particularly given that that work may lead to a disallowed answer which then requires the work to be repeated - we thought that that might potentially be up to - the submission mentions \$30,000 to \$100,000 or more. That's based on our experience with appointing people to do statutory reviews or perform independent statutory functions.

The Government's suggestion is a more direct approach that would not necessarily trigger a repeat of that approach. We don't have a particular modelled figure in mind. We feel it would be cheaper because we would probably find someone who would work more collaboratively with the department, but also use the department's in kind resources for such things as renting rooms and running ads in papers and getting reference groups together. We thought - I'm thinking in my mind, potentially \$20,000. It's probably a process that we would involve, I imagine, discussion with community and the Deputy, and would potentially do some parliamentary briefings in that process. So that the consultant and ultimately the Government's recommendations to the Parliament are kind of informed by all those things, and doesn't run the risk of being disallowed, optimistically, and then have to repeat all over again, which is the model or the aspect of the Greens' amendments that we were concerned about.

The independent assessor, being totally independent, goes off and does their job, and the first thing really that the Parliament knows about it is having the independent assessor's report in front of it. If there's some aspect of that report that Parliament doesn't like, it disallows it, and then the work has to repeat all over again. That's the expense and time that we were trying to avoid.<sup>96</sup>

---

<sup>96</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 7.

- 8.32. Dr Woodruff MP shared with the Committee her view that the cost of the independent assessor process proposed by the Tasmanian Greens, installed as Clause 9 of the Bill, has been mischaracterised by the Government:

**Dr WOODRUFF** - The cost itself of going to independent review I think has been presented by the argument as unnecessary and costly. In our view, in things that we commonly do to make good laws in Tasmania, it comes at a cost. It does come at a cost. Every time we add a statutory review process into the end of a new piece of legislation, that's an independent reviewer and that's a cost. The cost of these committees and having these conversations, that's a cost. In the scheme of the work of Parliament to have fair and just laws, we think it's a very moderate and reasonable cost.<sup>97</sup>

Dr Woodruff MP was not directly questioned about the potential cost of the Government's proposed independent consultant model in comparison to the independent assessor model.

- 8.33. Further questions regarding the potential independent consultant process were also raised at the hearing:

**Ms ROSOL** - I've got a question about the independent assessor [consultant] suggestion recommendation, that's made in your submission. The Greens' amendment outlines a time frame that's very clear in terms of what needs to be done and when, so the process that's followed once an independent consultant [assessor] is appointed. If an independent assessor [consultant] model was used instead, what time frame would you be working to? What would be the process for setting it up? How would you appoint an assessor [consultant] and identify an assessor [consultant]?

...

**Mr PATERSON** - Our thinking was: we've got some past statutory reviews, much like this expungement review, we've been able to progress some quickly, like in two to three months. I think in terms of time frame from finding the right person, I'd say - obviously it's partly a consultation question with community in particular to identify a person who's both independent but also has the respect and trust of the of the LGBT[IQA+] community. We would go through that process and discussion with Equality Tasmania and others on some suggested people, and approach those people and make sure we've got the time and capacity. I would have thought from go to whoa, from start to finish, three months maximum to have a result, and hopefully quite a lot sooner.

Given we've already got a number of submissions coming into this Committee, they're obviously very helpful, and Equality Tasmania has got a clear view, for example. It might be more a question of is there any further context or analysis that we can find necessary for someone to have a look at for us. It might be quite a bit faster than two to three months, but I think that's the ballpark I would put.

---

<sup>97</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p. 21.

**Ms ROSOL** - Just following up, what would be the process for appointing an assessor [consultant]? Like how would you find them? Would it be merit-based? What would you do there?

**Mr PATERSON** - There are a number of options for Government. I think the first step would be if that was the agreed way forward obviously, to talk to the Deputy and his office a little more as to their preferences. I think that an early and important step, is to discuss with Equality Tasmania and perhaps others, perhaps Community Legal Centres [Tasmania], who have obviously given the matter some thought, as to whether there is someone that they would agree would be a useful independent person - both independent but also with understanding and insight into the issues at hand, and to have a look at both their material, but more importantly, is there any other material or analysis that would be useful to bring to the discussion. I think identifying potentially a few people in disclosed discussions of community, or if Government prefers seeking expressions of interest through some kind of national advertising process, that this is the kind of independent expertise we're looking for to have a look at this issue, could some people put their names forward. Then we could discuss those names with community. That's my suggestion. I'm not sure if the Deputy has a view, but there are obviously options that we could take.

**Mr BARNETT** - Yes, I think Bruce has summarised it reasonably well. I think the Government would need to consider who's available and who has the capacity to do that work. I think there may be other tertiary or research institutions, universities, and of course people with the history and background that could add value to the work that's already been done by, obviously, the department, but also this Committee. We consider any other working thoughts coming out of the Committee of course, and liaise with the relevant stakeholders, Equality Tasmania and the legal community, Community Legal Centres [Tasmania] and others. We'd have to take advice on that. I'd take advice from the department and others and, hopefully, land on somebody that is credit-worthy with that experience and background to provide that advice back to Government and back to the Parliament.<sup>98</sup>

8.34. Further information was requested regarding the consideration of potential recommendations from an independent consultant:

**Ms ROSOL** - ... If the independent assessor [consultant] process was what was recommended and we went through, would it then come back to Parliament as legislation or - how would the figure that was recommended by the assessor [consultant], then be enacted? At the moment, we have an amendment that's been passed in the Lower House that outlines the process and makes the process for the figure coming back to Parliament for approval quite clear. Would that happen with the independent assessor [consultant]?

...

---

<sup>98</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 13-14.

**Mr PATERSON** - ... It would come back to the Parliament in the sense, as I mentioned earlier, of Government reformulating its proposed amendments with new figures, for example. I imagine that the Leader of the House and the Leader of Government in the Legislative Council would discuss with other members what the advice of the independent assessor was that Government wanted to feed into its amendments.

That is how it would come back in the form of amended amendments, so to speak. The current amendments are \$5000 and \$2500. It would be Government saying, well, we'd now like to propose different figures in our amendments based on the advice of this independent process and further considerations. And then it's a matter, as it always is, for the Legislative Council in this case, to consider those amendments and whether everyone agrees or not.<sup>99</sup>

- 8.35. The Committee requested Dr Woodruff MP's consideration of the Government's proposal of an independent consultant in comparison to Clause 9:

**CHAIR** - You would have read in the Government submission they're saying, 'Well, the Greens' amendment is clunky, it's time consuming'. There was a statement made in the hearing this morning that it doesn't truly reflect the Recommendation 13 in the Review. I'm just wondering what your thoughts are, Rosalie, on the Government's recommendation to the Committee that if we don't accept the number - \$5000 and \$2500 - that we urge the Government to establish an independent process that's potentially less time consuming because they would report to Government, Government would report to the Parliament, and particularly to the Legislative Council where the Bill is now sitting, potentially with an altered amendment.

**Dr WOODRUFF** - It is hard to imagine a genuine process that would be less than that. The independent reviewer doesn't have to take six months. The independent reviewer could take two weeks. You know, the Government has to choose an independent reviewer.

**CHAIR** - Under your amendment?

...

**Dr WOODRUFF** - Yes, that is what the Government's proposing. They are proposing to do something - to do an assessment themselves, which means they'd have to find somebody to do that assessment. It sounds like they are proposing somebody internally because their second option is to go and get someone - if that fails - to get an independent assessor. Is that how you read it? Their initial process would be within the Government -

**CHAIR** - No. If we don't support the \$5000 to \$2500 figure - this is what they're saying to the Committee - which is ultimately saying it to Parliament, okay? That, if you don't accept that, the Government recommends that an appropriate pathway for the Government is to seek independent advice from a person with appropriate expertise. What they confirmed, this morning, was that they would seek independent expert advice, ask that person to consult with the relevant stakeholders, provide that advice back to the Government and that would then be provided. They did commit to

---

<sup>99</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 15.

providing such advice to the Legislative Council and, obviously, to the House of Assembly, should a different amendment be put - which is, effectively, to determine an amount.

**Dr WOODRUFF** - That sounds very similar to the process that we are recommending -

**CHAIR** - Except there's not the disallowance process in it. It just comes back to the Legislative Council. Then, obviously, depending on what the Legislative Council determines - if this was to happen - and say the independent advice came back and said 'well, actually \$5000 is fine' or it's \$10,000, \$20,000, or \$100,000, then one would expect the Government would support that. Not clear, but in any event, there would be a new amendment unless the amount was \$5000 and \$2500 from the Government.

**Dr WOODRUFF** - Look, we want an outcome for people who have had grave injustices and who are elderly. We want something that is as efficient as possible. The important difference in our amendment is that the Premier appoints an independent assessor, not the Government in that sort of general sense, which would be through the minister and the minister's department. We believe that's important and necessary in this particular matter. I just want to make that point. In any deliberations that the Committee has, I encourage you to draw your mind to that particularity of our amendment that it is the Premier who chooses who the independent assessor would be. But, notwithstanding that point, what the Government's proposed is essentially to do the same sort of proposal as we have - except, as you say, it doesn't have an independent assessor determine a methodology or an amount, and then we propose to Parliament as a disallowable instrument, but what the Government's proposing is directly to the Legislative Council.<sup>100</sup>

- 8.36. Dr Woodruff MP continued to emphasise the preference of the Tasmanian Greens in that the work of an independent assessor, or independent consultant, should be overseen by the Premier's office:

**Dr WOODRUFF** - Unless it was a process that was taken outside of the process which the Government has developed just now to give that figure. We would be very unhappy with that because we don't believe that the Government - the minister's department - has so far been acting in good faith on that matter, for the reasons I've already outlined. And so, it would just be - it's hard to imagine it would be different to what's being proposed because - that's why we think it's important that it goes to the Premier and the Premier appoints an independent assessor, and then the process goes on from there.

Look, the Legislative Council has to be happy with whatever's proposed in order to pass it, and a disallowable instrument, if that was the pathway, would come both to the Council and to the Assembly. And so, either House could approve it or could disallow it.

**CHAIR** - In any event - I mean, I know you've talked about the timelines in this, but when you look at the timelines, it could take over a year. You know, within three months the Premier is to appoint an independent assessor, and then within six months of the appointment - I know these are the maximum amounts; it could be done more quickly. But then you remember - then, we all know what trying to fit things into the sitting schedule. And so -

---

<sup>100</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, pp. 26-27.

**Dr WOODRUFF** - Look, we're quite comfortable if you want to change those times, if you think that they're too long.

**CHAIR** - Well, it's a bit - yes, it's a little bit hard for the Committee to know, I guess, what's a reasonable time in those things, without knowing who might be available to do the job, and how long that person might need.<sup>101</sup>

- 8.37. Mr Croome, representing Equality Tasmania, informed the Committee at a public hearing that the organisation did not provide support for the Government's secondary recommendation to undertake an independent consultant process:

**Mr CROOME** - ... it's great that the Government has come on board with the principle of redress. It seems to me that the Greens' amendment, their appointment of independent assessor, is a stronger, more legitimate process. More politically independent than the Government just deciding, 'Hey, you do it or you do it' because of points like the fact that the Premier will do this and that there will be disallowance and that there is a process there for everyone to see. The process needs to be as transparent as possible because like I said, it needs to be legitimate. The victims need to see the process as legitimate, the LGBTIQ+ community, the Tasmanian community, and, more broadly, the nation. Because this will set a precedent for the whole country, it needs to be seen as good process. The first process must be the best process.<sup>102</sup>

- 8.38. Mr Croome was further questioned as to whether he considered that the proposal of independent consultation would provide victim-focused support to those with expunged records:

**Ms THOMAS** - Rodney, you mentioned the idea of the Government having someone independent look into this further, which is the option that the Government's put forward in its submission rather than an independent assessor.

**Mr CROOME** - An appropriate expert, I think, is the term the Government uses.

**Ms THOMAS** - Thank you, 'an appropriate expert'. You've talked about what's important to people who have suffered wrongs here is that the process is transparent and is separate from Government who was effectively the perpetrator. So that option really isn't one that is supported at all by Equality Tasmania.

**Mr CROOME** - Not really, no.

**Ms THOMAS** - It was least preferred, but if the Committee, being independent from the Government, was to seek advice from an independent expert, and you've mentioned that you've spoken to a few who have suggested they would need to be formally asked and consider it further, more thoroughly if they were to provide expert advice and there may be other people as well.

If the Committee was, and I don't know about the capacity to do that, but to seek that advice and factor that into its recommendations, do you think Equality Tasmania and

---

<sup>101</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, pp. 27-28.

<sup>102</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 37.

the people it represents would see that as being independent enough of Government informing?

**Mr CROOME** - I can't speak on behalf of the elderly men we're talking about. I assume so. I suppose that they would probably ask, you know, 'who's on the Committee?' and all those kinds of questions, but I can't really say.

I've listed the criteria for the process: independent from Government; seen as transparent; and I'll add, informed in a way that you're just indicating there, actually getting that expert advice. Independent, transparent, informed - that's key to the process. The Greens' amendment does that and we've strongly supported that. If this Committee can fulfil that criteria, when you come to your deliberations you may feel that you're the body to do it.<sup>103</sup>

- 8.39. The Attorney-General and representatives from the Department of Justice were also questioned in relation to any role the Committee may play in making specific monetary related recommendations for amendment to the Bill. These matters are discussed further in Chapter 9.

## FINDINGS

### The Committee finds:

10. Whilst originally not supportive of the implementation of Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*, the Government now support an ex gratia payment in the Expungement of Historical Offences Amendment Bill 2024.
11. The Government's proposed amendments allow for a fixed ex gratia payment of \$5,000 per expunged charge that resulted in the annotation of official criminal records and \$2,500 per expunged charge that did not result in an annotation.
12. No other state or territory in Australia currently provides for redress or compensation in relation to expungement of historical offences for homosexuality and cross-dressing.<sup>104</sup>
13. A number of international redress schemes for historical offences related to homosexuality exist, but do not replicate the exact structure of Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*. Schemes exist, or are drafted, in the following countries:
  - a. Germany;
  - b. Austria;
  - c. Spain;
  - d. France; and
  - e. Canada.

<sup>103</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 41.

<sup>104</sup> Noting Tasmania was the only Australian jurisdiction to criminalise cross-dressing.

14. The Government's proposed amendments are notionally based on the German model of redress, which provides for a two-tiered payment system for annulled convictions. However, the German system also allows for additional payments for years spent imprisoned and other impacts on the individual due to their conviction.
15. The Government's proposed amendments provide for automatic payment for individuals with expunged records, as soon as practicable after expungement.
16. Forms of redress outside of the scope of the expungement of historical homosexual and cross-dressing offences are operational in Australia, including compensation for:
  - a. Wrongful convictions;
  - b. Victims of crime;
  - c. Institutional child abuse;
  - d. Stolen generation; and
  - e. Stolen wages.
17. In the formulation of the Government's proposed amendments for an ex gratia scheme, the likely cumulative total of payments was not modelled.
18. The Government's suggested alternative of an independent consultant process proposes a consultative process facilitated through the Attorney-General and Minister for Justice by the Department of Justice. This proposed independent consultant differs in form to the independent assessor currently outlined in Clause 9 of the Expungement of Historical Offences Amendment Bill 2024.
19. Independence, transparency and expertise are considered priorities by LGBTIQ+ stakeholders in informing the development of an appropriate payment in the Expungement of Historical Offences Amendment Bill 2024.
20. The Government's proposed independent consultant process is unlikely to be supported by LGBTIQ+ stakeholders, due to not meeting the criteria of an independent, transparent and informed process.

## 9. ADDITIONAL CONSIDERATIONS

- 9.1. Evidence received by the Committee expanded beyond the bounds of the specific considerations of the existing Clauses of the Bill, or proposed amendments to such Clauses. Chapter 9 of this Report will therefore combine considerations raised regarding the broader status and structure of proposed payment in the Bill.

The Committee notes that such matters have also been raised in specific relation to the aforementioned Clauses and amendments to the Bill and therefore may have been discussed previously in the Report.

- 9.2. Chapter 9 will apply specific focus to the following matters which the Committee considers to be essential to the discussions of payment in the Bill:
- Terminology of proposed payment amendments;
  - Further recommendations regarding an independent assessment process;
  - Consideration of payment type and structure;
  - Role of the Joint Sessional Committee on Gender and Equality; and
  - Broader assessment criteria for payment.

### Terminology of payment in the Bill

- 9.3. The Committee heard evidence regarding the title of payment to individuals with expunged records under the Bill.
- 9.4. The Independent Review's recommendation for payment proposed a one-off ex gratia payment.<sup>105</sup>
- 9.5. The Attorney-General defined the Government's position on definitional terminology in the Bill at the public hearing:

**Mr BARNETT** - You would also be aware of the difference between an ex gratia payment and a compensation model. We don't support the latter. We are happy to support the former if we go down the track for an ex gratia payment.<sup>106</sup>

- 9.6. Mr Paterson, Director Strategic Legislation and Policy, Department of Justice, further expanded upon the Department of Justice's consideration of terminology for payment under the expungement scheme:

**Mr PATERSON** - ... The word compensation, ... could be very broad and taken to include all those complex calculations about economic loss, general damages and wrongful imprisonment, which is not what Recommendation 13 was about and not what really all of the European schemes are about. They are about, at the end of the day, relatively small in the scheme of things - \$5000, \$10,000, \$15,000 numbers - that

---

<sup>105</sup> Bartlett, M and Ketelaar-Jones, T, *Independent Review of Expungement of Historical Offences Act 2017 – Report of the Independent Reviewers*, 2020, p. 56.

<sup>106</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 1.

*are tokens of regret and reparation and redress, I suppose, for these expunged convictions.*<sup>107</sup>

- 9.7. The status of the definition of payment was also raised by Dr Woodruff MP in her submission to the Committee, in the consideration that an appropriate conclusion can be met for the Bill:

*The government has also taken issue with the term 'compensation.' We have no particular attachment to this phrase, nonetheless we are of the view that there is no issue here.*

*Section 22, as amended by our amendments, make it clear that nobody is entitled to compensation beyond what is provided for in our very specific amendments.*

*If there was truly any problems created by the use of this language, the government would have no issue pointing to concrete examples, and would not need to resort to inuendo and nebulous criticism.*<sup>108</sup>

- 9.8. This consideration was expanded upon by Dr Woodruff MP at a hearing of the Committee:

**Dr WOODRUFF** - *The submission from the independent reviewer to this Committee makes it very clear that the conversation that the Government's had around the term 'ex gratia' is really neither here nor there. It's just a term. Compensation, redress, ex gratia can all be used in varying kinds of similar ways. As a Venn diagram, they sort of intersect in lots of ways. In their submission, I can't remember her name, one of the independent reviewers –*

**CHAIR** - *Taya Ketelaar-Jones.*

**Dr WOODRUFF** - *That's right. She makes it clear that people shouldn't get stuck on the word. The point is to provide some redress for injustice, and that the potential for a two-tiered system was what they recommended, but they weren't fully stuck on that either. They said a system of redress, potentially a two-tiered system. Even that they left open.*<sup>109</sup>

- 9.9. Dr Woodruff MP further noted that the titling of the 'compensation order' in Clause 9 of the Bill was not reflective of specific stakeholder consultation and should be considered further in the ongoing debate:

**Ms THOMAS** - *You've touched a bit on terminology and I know you referred to the independent reviewers, mention of 'let's not get too hung up on whether it's ex gratia/compensation/redress'. In the Greens' amendments that passed through the Lower House it does refer to it as a compensation order. Did you give consideration to that terminology and whether it ought to be compensation order, redress or ex gratia?*

---

<sup>107</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p. 6.

<sup>108</sup> Submission No. 2, Dr Rosalie Woodruff MP, p. 5.

<sup>109</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p. 20.

*I note the Equality Tasmania submission does say terminology is important and the term 'redress' is their preferred term because it does have that association of a moral injustice having occurred. I wondered what your thoughts were on that and why you landed on using 'compensation' as the term, noting that it's very difficult, in fact probably near impossible to fully compensate someone for wrongs that occurred all those years ago.*

**Dr WOODRUFF** - *Totally, I 100 per cent agree. We're not, like I said at the start, attached to that term. If the Committee feels that it's more appropriate to change that term and to recommend that it be 'redress' for example, then we're very comfortable with that position. ... I can't remember our thinking about why we did choose compensation in that space. There was a particular purpose, wasn't there?*

**Mr WHITTON** - *There wasn't a particular reason for that choice of language.*

**Dr WOODRUFF** - *Equality Tasmania did have that in their submission, but in our conversations with –*

**CHAIR** - *Submission to the Bill?*

**Dr WOODRUFF** - *To the Bill, but in our conversation with stakeholders the term was being used interchangeably - to be fair. But I think they sort of landed on redress because it captures the moral injustice as well. It is probably the better term.<sup>110</sup>*

- 9.10. Comparatively, in their submission to the Inquiry, Equality Tasmania noted a preference for the use of the phrase redress for any payment scheme included in the Bill:

*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.<sup>111</sup>*

---

<sup>110</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, pp. 24–25.

<sup>111</sup> Submission No. 3, Equality Tasmania, p. 6.

- 9.11. Mr Croome, as a representative of Equality Tasmania, further provided comment regarding the title of a payment scheme before the Committee:

**Mr CROOME** - We have opted for the word 'redress' because that word carries a connotation of making amends for an injustice, and because the single amount recommended by the Independent Review of the expungement legislation is not meant as compensation for all of the harms that were done. It's not compensation in that sense; it's a redress for an injustice done. That's an important distinction. We're not - like everyone else, we're not saying that every harm to every person should or could be redressed at the current time. We're talking about a one-off payment to redress an injustice that was done to people in the past. That doesn't mean we shouldn't consider whether another scheme or approach might be useful, but at the moment that's what we're talking about. Whatever we decide to do, whatever process we decide to adopt or amount we decide to recommend, we need to do it quickly, because these men will not be with us for much longer - particularly those who are in their 90s.<sup>112</sup>

- 9.12. In response to such consideration of terminology, Ms Ketelaar-Jones proposed the following to the Committee in her submission, clarifying the intent of herself and her co-author, Ms Bartlett, of the Independent Review:

*Much has been made of the terminology used in the Review, particularly the use of the words 'redress', 'compensation' and 'ex gratia'. Debate over the precise meaning of the terms and speculation as to the intention behind the choice of those terms has distracted from the core issue.*

*The intention of Recommendation 13 is clear: the state caused significant harm through the application of discriminatory laws, and while no payment can undo this harm, it is a concrete acknowledgement of the injustice suffered. The precise terminology is secondary to the broader intent of offering a meaningful response to those affected.<sup>113</sup>*

### **Further recommendations regarding an independent assessment process**

- 9.13. As discussed in Chapters 6 and 8, the Committee received evidence regarding two proposed schemes for independent assessment. The first being the independent assessor installed in Clause 9 of the Bill, as the result of a successful amendment by the Tasmanian Greens in the House of Assembly.<sup>114</sup> The second assessment process was proposed by the Government in their submission to the Committee in the form of an independent consultant.<sup>115</sup> While both proposing an independent assessment process of some form to consider payment in the Bill, the form of these assessments are varied and have been substantially discussed in their relevant Chapters. Broader evidence was however received by the Committee

---

<sup>112</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 32.

<sup>113</sup> Submission No. 4, Taya Ketelaar-Jones, p. 3.

<sup>114</sup> Chapter 6 of the Report.

<sup>115</sup> Chapter 8 of the Report.

regarding what an independent process could look like, outside of the scopes proposed by the two existing options and thus included in this Chapter.

- 9.14. In their submission, the Tasmanian Council of Social Services (TasCOSS) provided support for the appointment of an independent assessor of some form to develop appropriate payment in the Bill, further noting structural considerations for any such process:

*An independent assessor should be appointed to determine the appropriate amount to be awarded as redress;*

*If an independent assessor is not able to be appointed and the Committee is responsible for determining an appropriate amount for redress, they must consider the extreme and far-reaching injustice and impact of the previous laws, including (but not limited to) loss of employment, estrangement from family and community, shame, stigma, criminalisation and incarceration;*

*That proposed financial redress should not be a tokenistic amount, but rather an amount which confirms the clear commitment from the Government to genuinely acknowledge and provide redress for the significant harm caused to those charged and/or convicted; and*

*That the redress process should be streamlined and payment is an automatic outcome of a successful expungement application.<sup>116</sup>*

- 9.15. Community Legal Centres Tasmania provided additional support for an independent assessment process for the finalisation of a payment amount in the Bill:

*We strongly agree that an independent decision-maker should be appointed to determine the redress paid. Independent decision-making leads to confidence to [sic] in the decision reach [sic] and may encourage more applications.*

*Recommendation: That an independent assessor be appointed to assess the redress paid to victims.<sup>117</sup>*

## **Consideration of payment type and structure**

- 9.16. The Committee received evidence regarding proposals of payment in the Bill. While some of these proposals were explicitly discussed in relation to Clause 9 and the Government's proposed amendments to the Bill, a number also spoke more broadly in relation to what a payment structure may include and how it should be determined.
- 9.17. The Committee received evidence from numerous submitters that, while above all, they supported the conduct of an independent assessment process of some form, they have considered and proposed payment related sums to the Inquiry. This was undertaken to provide the Committee with sufficient relevant

---

<sup>116</sup> Submission No. 5, TasCOSS, p. 1.

<sup>117</sup> Submission No. 6, Community Legal Centres Tasmania, p. 4.

information to make a decision, informed by LGBTIQ+ stakeholders, if a payment scheme was to be recommended by the Committee.

- 9.18. Ms Ketelaar-Jones, co-author of the 2020 Independent Review, provided in her submission the following discussion of Clause 9 and the proposed amendments received by the Committee:

*It is important to note that the recommendation states that the Government should determine the amount of compensation but does not specify how this determination should be made. As I understand it, this is the core of the debate: the Government's proposed amendments establish a compensation scheme with fixed amounts, having already determined what amount they consider to be appropriate. The Greens' amendments introduce an additional step by requiring a statutory process to determine the appropriate amounts before implementing the scheme.*

*With that in mind, I consider that prima facie both the two alternative proposed amendments could, if enacted, give effect to Recommendation 13. I do not consider it appropriate for me to take a position on which amendment is preferable. That said, I believe it is important to refocus on the core intent of the recommendation: that redress (or compensation, if that term is preferred) can have a significant impact in acknowledging and attempting to rectify past wrongs perpetrated by the State.*

*The key is ensuring the scheme serves this purpose in a fair and effective manner. Ultimately, the true measure of this scheme will be its ability to confront past injustices and provide a meaningful step towards remedying the wrongs inflicted by the state, acknowledging the pain endured and restoring dignity to those affected.<sup>118</sup>*

- 9.19. In addressing proposals for the consideration of an independent assessment process or the setting of a singular ex gratia payment amount, Equality Tasmania informed the Committee, via its submission, that while an assessment process is favoured, consideration also needs to be given to alternative payment options which are appropriate in addressing the purpose of the expungement scheme, if this option is selected:

*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.<sup>119</sup>*

- 9.20. Mr Croome emphasised this position of Equality Tasmania before a hearing of the Committee:

**Mr CROOME** - *We were very reluctant to nominate a figure, in part because it's not our area of expertise, and also in part because we want the process for determining the amount to be legitimate, to be seen as legitimate, and for people to have*

---

<sup>118</sup> Submission No. 4, Taya Ketelaar-Jones, pp. 3-4.

<sup>119</sup> Submission No. 3, Equality Tasmania, pp. 2-3.

confidence in that process. So, us coming up with a figure is part of the debate, but it's not the final point. The Government coming up with a figure is part of the debate, but not the point we want to reach. Just as we have a vested interest in this, because we want to represent the people who were historically convicted and charged, the Government has a vested interest too - I mean, let's be honest, it was the perpetrator.

That's why we have all the way along supported an independent process. We supported the Greens' amendment, consulted with the Greens about their amendment and supported that amendment because it is a separate and independent process which would be seen as being legitimate, particularly given that we're setting a precedent here for the whole nation.

We also realised that this Committee would ask, 'Well, what do you think would be a good outcome for whatever independent process we have?' We were realistic about that. The independent assessor, if they're actually appointed, would ask the same thing. So, we should have some idea, and that's why we put forward a range, rather than a specific amount, a range, which as you know is from \$25,000 to \$75,000.<sup>120</sup>

- 9.21. This statement from Mr Croome further added emphasis to the statement in Equality Tasmania's submission regarding the duality of the organisation's feelings towards proposing support for an independent process, as well as giving consideration to a range of potential payment for the Committee to consider:

***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.<sup>121</sup>*

- 9.22. The submission from Equality Tasmania provided further information about a potential payment range in the Bill:

*Non-LGBTIQA+ redress schemes in Australia and LGBTIQA+ 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 went through the criminal justice*

---

<sup>120</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 32.

<sup>121</sup> Submission No. 3, Equality Tasmania, p. 7.

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.

....

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.<sup>122</sup>

- 9.23. The Committee questioned the Attorney-General and department representatives in relation to the range proposed by Equality Tasmania, querying if the Government supported the concept of the banded payment:

**Ms THOMAS** - ... The Equality Tasmania submission reluctantly puts forward a range, if you like, an amount if there were to be an amount legislated that would perhaps be deemed more reasonable than the amounts put forward by the Government. Do you believe there needs to be more work done by a consultant, further to the work that's been presented through the Equality Tasmania submission, who really are key stakeholders here?

**Mr BARNETT** - ... I will pass to Bruce, noting again that every other jurisdiction in Australia does not have any of these provisions. The ex gratia payment in Recommendation 13 is what the Government's responding to, that recommendation, based on the research that the department's done through the good work of Bruce and others there, Meegan and others put forward in the submission. I'll ask Bruce to add to that answer, please, thanks, Bruce.

**Mr PATERSON** - Yes, I must say I haven't had a lot of time to read through the Equality Tasmania submission. I think it must have gone up fairly recently. Obviously, they are suggesting...

**CHAIR** - \$25,000 to \$75,000, that's what it suggests.

---

<sup>122</sup> Submission No. 3, Equality Tasmania, pp. 13-14.

**Mr PATERSON** - - yes. Although at the same time it does say in one part:  
... 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.

*I think this is a general comment. I can obviously understand that Equality Tasmania has taken a very broad view of broader schemes, as I mentioned earlier, including schemes that work quite differently to European schemes, and in my view work quite differently to what the reviewers had in mind, including, potentially, schemes that are more compensatory rather than ex gratia. From the department's point of view, I think we would just say that jumping from \$5000 to somewhere between \$25,000 and \$75,000 would need a lot more work. On the face of it, it just seems kind of out of kilter to me and really demonstrably different to what people are receiving for expungement of homosexual offences in other jurisdictions in a roughly comparable kind of scheme to Tasmania. It might be consistent with the UK veterans, for example. As I mentioned earlier, the UK veterans is really a different kettle of fish. It's about essentially a government taking responsibility for its own employment decisions in the armed forces in the past.*

*I think the short answer is, I can understand why when Equality Tasmania looks at a very broad range of compensation schemes and expungements schemes across a very broad range of settings, including victims of crime and stolen generations and so on, that's why they've come to that amount. I don't think that would have been the amount that the independent reviewers would have had in mind. I think the Government's amendments are more in line with that.<sup>123</sup>*

- 9.24. The Committee received further verbal evidence from Mr Croome on behalf of Equality Tasmania regarding the assessment process undertaken for the proposal of the suggested range of payment:

**Mr CROOME** - Our assessment - and we did this in conjunction with LGBT[IQA+] law academics here in Tasmania and in Victoria and NSW, in discussions with them - of what would be the reasonable amount that we could expect someone in Europe who's applying for this to receive, we looked at all those jurisdictions, not just Germany. If they lost their job or their income was reduced or if they had PTSD, or whatever, as a result of their mistreatment, the amount that we came up with was \$25,000.

*When we did that, we also took into account the schemes that had been discussed here, that the Government mentioned - Tasmanian Victims of Crime scheme, which is \$33,000 or something, child sexual abuse schemes - up to \$150,000. There was a point at which Bruce Paterson said that we can't have a payment that's out of kilter with existing payments. It seems to me that their proposal of \$5000 is way out of kilter with \$30,000 for someone who's been the victim of a crime, or up to \$150,000 for someone who was sexually abused.*

---

<sup>123</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 7-8.

*In saying that, I am not comparing someone who was historically charged, convicted and went to jail, or whatever, to someone who suffers child sexual abuse. That's a comparison that I don't think any of us can actually make. My point is that if we're talking about trauma in general and trauma inflicted by the state either deliberately, in the case we're talking about now, or by not protecting people, in the case of people who were sort of, let's say, abused in state care, then \$5000 seems begrudgingly, pettily low.*

*The higher end of the range we came to, again, based on the discussion of what we thought, given all of those factors that are taken into account in Europe, the highest amount that we would imagine people would receive in that situation.<sup>124</sup>*

- 9.25. Mr Croome continued to explain the status of payment under the proposed range and what considerations should be made in relation to this matter:

**CHAIR** - *Just to clarify, Rodney, some of these people who have experienced this trauma may - let's just pluck a figure: \$30,000, let's say. They had significant time in prison, they were subject to aversion therapy and a range of other things that had lifelong impacts on their health. They would still get the \$30,000, even though they'd had perhaps more trauma than someone who was convicted but didn't experience that level of - I mean, trauma is a very individual thing. It's really difficult here.*

**Mr CROOME** - *I know your point and it's a really important point. We discussed this in the submission. We say, if we are talking about a fixed amount, a fixed pre-set amount, which is what the Independent Review recommended, then we have to take into consideration the fact that while there may be someone who was just charged and the charge wasn't recorded and they just left and it hasn't affected them much in their lives. That might be someone who applies, and has their record expunged. There could also be someone who has experienced all of the things you just mentioned, with lifelong health consequences and lifelong consequences for what they wanted to do with their lives - their career and all the rest.*

*If we are only talking about one amount, the compassionate thing to do is to take that into account. Will this amount mean anything to someone who has gone through all of that? That is why we suggested in our submission that, if it's a one-off amount, it needs to be higher. It needs to respond to people in those circumstances - who lost their job, lost their partner, lost their family, moved interstate, may have attempted suicide, may have undergone some kind of archaic treatment. All of those things. They may have had lifelong PTSD. If it's a single amount, then the compassionate thing to do is to think, 'Well, what will this mean to that person?' They're the person we need to keep in mind most of all. That is why we suggested it be higher rather than lower.*

*That's the primary consideration if you are dealing with one amount. The other considerations, of course, are - the main consideration is the impact on the victim. Is it an amount that will mean anything to them, that will be able to help them now, late in life, to move on and for their life to be improved? \$5000 doesn't feel like an amount that would help people improve their lives. They could buy a new TV or go on a holiday*

---

<sup>124</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 33.

to New Zealand, maybe. However, is it an amount that will make them feel like, 'Oh yes, things have really changed. Yes, I can move on. It seems that everyone else has. Yes, I can invest this in something in my life that will make a real difference'. That is what we have to keep in mind. That's what the amount should be.<sup>125</sup>

- 9.26. After commencing the Inquiry, the Committee requested a submission from academic, Professor Gerber, seeking expert advice regarding a potential payment amount in the Bill. The invitation to participate in the Inquiry included, in part, the following:

*Throughout the Inquiry, the Committee has heard numerous proposals for payment, including that from Equality Tasmania. Evident as a result of these proposals is the necessity for an understanding of the mechanisms and criteria for consideration of payment, including existing schemes of a similar nature. The Committee understands your existing expertise in such matters.*

*In evidence received from Mr Rodney Croome of Equality Tasmania, the Committee was advised that advice had been sought from academics, including yourself, in the preparation of the organisation's submission.*

*The Committee would appreciate your further input into this matter with specific regard to:*

- 1. the determination of either a specified one off payment as redress that recognises the harm experienced by those who were charged or charged and convicted of historic offences related to homosexuality and cross-dressing as proposed under the Bill and what that amount could/should be; and/or*
- 2. the considerations required when determining such a suitable amount; and/or*
- 3. the most appropriate process to determine such a payment amount.<sup>126</sup>*

The invitation to provide a submission is available in full in Appendix C and Professor Gerber's full submission in Appendix D.

- 9.27. Professor Gerber outlined for the Committee several important considerations when attributing amounts to compensation payments:

*The determination of a suitable amount should be done with respect for the human rights of the individual at the fore. It has been observed that when it comes to wrongful convictions,*

*The remedies are of particular importance. They not only aim to compensate the victim for the damage that occurred, but also have a wider impact on shaping the overall perception of how individuals are treated by the state and how the state responds to its malfunctioning. This in turn is crucial for building confidence in state policies and actions.<sup>127</sup>*

---

<sup>125</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, pp. 34-35.

<sup>126</sup> Invitation to submit to Professor Paula Gerber from the Chair of the Joint Sessional Committee on Gender and Equality, dated 4 February 2025.

<sup>127</sup> Footnote 1, Wojciech Jasiński and Karolina Kremens, 'In quest of the optimum model for compensating wrongful convictions' Chapter 11 in Wojciech Jasiński & Karolina Kremens (eds) *Compensation for Wrongful Convictions A Comparative Perspective* (2023) Taylor & Francis, 200. Accessed at: <https://library.oapen.org/handle/20.500.12657/62228> in Submission No. 7, Professor Paula Gerber, p. 3.

When determining the quantum of compensation to be paid to persons who have lived with having been charged or convicted of cross dressing or engaging in consensual same-sex sexual conduct, it is important to note that,

Beyond that a conviction was wrongful, it is difficult to identify the factors that need to be present for a wrongfully convicted person to be compensated, nor how such compensation will be quantified.<sup>128 129</sup>

9.28. Professor Gerber continued, outlining core principles to be applied when determining a suitable compensation amount:

There are, however, some core principles that should be applied. First, the sum should represent a genuine recognition of the harm suffered. It should not be a tokenistic gesture, which risks adding insult to injury. It has been observed that ‘awarding inadequate compensation undermines the effectiveness and legitimacy of the remedy for wrongfully convicted persons’.<sup>130</sup> Thus, the redress provided by the Tasmanian Government should be set at an amount that allows those who were subjected to these egregious laws, to feel a sense of justice and closure.

Guidance on the quantum of compensation payable, can be gleaned from how courts assess general damages payable to persons who have suffered a tortious wrong. Such damages for non-economic loss are calculated according to the severity and impact on quality of life, the pain and suffering they have endured, the loss of enjoyment of life and emotional distress they have experienced. As set out in the response to question 1 above, there are numerous factors that should be considered when calculating the amount of redress payable. Most importantly, there must be recognition of economic, as well as non-economic loss and damage.

Guidance can also be gained from looking at compensation that has been paid for general wrongful convictions. It has been noted that, ‘the state has a moral and legal obligation to provide compensation for harm, loss or injury that the individual has incurred as a result of the wrongful conviction.’<sup>131</sup> An analysis of the reasons given for payments to individuals wrongfully convicted of crimes, include ‘to express regret’ and ‘to correct mistakes of the State’.<sup>132</sup> These rationales are applicable to the state of Tasmania when determining the quantum of redress to persons charged with, or convicted of, offences relating to cross-dressing or consensual same-sex sexual conduct. That is, the amount should reflect the regret that the state has for these past wrongs, and its commitment to correcting this historic mistake.<sup>133</sup>

<sup>128</sup> Footnote 2, Adrian Hoel, ‘Compensation for wrongful conviction’ (2008) 356 *Trends & Issues in Crime and Criminal Justice*, 3. Accessed at: <https://www.aic.gov.au/sites/default/files/2020-05/tandi356.pdf>, in Submission No. 7, Professor Paula Gerber, p. 3.

<sup>129</sup> Submission No. 7, Professor Paula Gerber, p. 3.

<sup>130</sup> Footnote 3, Adrian Hoel, ‘Compensation for wrongful conviction’ (2008) 356 *Trends & Issues in Crime and Criminal Justice*, 3. Accessed at: <https://www.aic.gov.au/sites/default/files/2020-05/tandi356.pdf> at 222, in Submission No. 7, Professor Paula Gerber, p. 3.

<sup>131</sup> Footnote 4, Rachel Dioso-Villa ‘“Out of Grace”: Inequity in post-exoneration remedies for wrongful conviction’ (2014) 37(1) *UNSWLJ* 349, 366, in Submission No. 7, Professor Paula Gerber, p. 3.

<sup>132</sup> Footnote 5, Rachel Dioso-Villa ‘“Out of Grace”: Inequity in post-exoneration remedies for wrongful conviction’ (2014) 37(1) *UNSWLJ* 349, 358, in Submission No. 7, Professor Paula Gerber, p. 4.

<sup>133</sup> Submission No. 7, Professor Paula Gerber, pp. 3-4.

- 9.29. Similarly to Equality Tasmania who provided options of payment for the Committee's consideration, Community Legal Centres Tasmania provided a recommendation for consideration of payable amounts, to support the Committee in any potential recommendations of this nature:

*In their response to the Royal Commission into Institutional Responses to Child Sexual Abuse, the Tasmanian Government reflected on what made a successful redress scheme, noting that the experiences of those seeking redress "varies greatly, dependent on individual circumstances. Redress schemes should therefore respond to the needs and experiences of individuals..."<sup>134</sup> We strongly agree that redress should be tailored to the individual circumstances of the victim, taking into account factors including suicide ideation, loss of employment, stigmatisation and ostracization. Our preferred model would be a single redress scheme with a maximum amount stipulated. In the Abuse in State Care Review, which was open to victims from 2003 – 2013, the State Government made clear that redress of up to \$60,000 would be paid. Similarly, we believe the best model is one in which the Gender and Equality Committee recommends a maximum amount that will be paid. In our opinion, the maximum redress paid to an applicant should be \$100,000.*

*However, in the event that the Gender and Equality Committee prefers the independent review's two-tiered redress scheme, we recommend that a range be adopted such as \$15,000 - \$25,000 for applicants who have a charge expunged which did not appear on their criminal records and \$25,000 - \$100,000 for applicants who have conviction/s or charge/s actually recorded on their official criminal records which is or are expunged.*

*Recommendation: That a redress scheme is implemented that provides for a maximum amount payable but is flexible enough to take into account the individual circumstances of the victim.<sup>135</sup>*

- 9.30. Mr Croome provided a verbal response to the Committee regarding the similarity of a ranged approach provided by Equality Tasmania and Community Legal Centres Tasmania:

**CHAIR** - On the amount, before you go on to something else, Rodney, you probably haven't seen the Community Legal Centre's submission? It is up on the website now. You did refer to that.

**Mr CROOME** - Yes, which was \$25,000-\$100,000?

**CHAIR** - Yes, that's for a conviction.

**Mr CROOME** - Yes, per conviction.

**CHAIR** - It was \$15,000-\$25,000 for a charge expunged that did not appear in the criminal record and \$25,000-\$100,000 for applicants who have a conviction or charge

---

<sup>134</sup> Footnote 6, Tasmanian Government, Submission to the *Royal Commission into Institutional Responses to Child Sexual Abuse - Issues paper 6 - Redress Schemes* (Submission No. 4 7). As found at <http://www.childabusecroyalcommission.tas.gov.au/issues-papers> (accessed 24 January 2025), in Submission No. 6, Community Legal Centres Tasmania, pp. 3-4.

<sup>135</sup> Submission No. 6, Community Legal Centres Tasmania, p. 4.

actually recorded on their official criminal record which is expunged. This is in the ballpark of what Equality Tasmania is saying. Do you want to make any comment about that? We're not actually directly hearing from them, other than by their submission.

**Mr CROOME** - No, that's roughly the same. I am pleased to see that there's some kind of consensus there. In terms of this point that you've asked, Ruth, about multiple convictions, let's say someone is convicted for homosexuality and they're also convicted for resisting arrest because they didn't think that their arrest was fair, for whatever reason, at the time. The amendments being made to the expungement legislation will allow both of those convictions to be expunged.<sup>136</sup>

- 9.31. Evidence received by the Committee regarding proposed payment schemes and options also provided an opportunity for a comparative analysis of proposals for once off payments for all applicants or criteria-based payments on a case-by-case basis for all applicants.

- 9.32. Equality Tasmania raised in its submission that, while they supported the Independent Review's recommendation for a fixed payment amount in the Bill, existing schemes around the world of a similar nature do not utilise this mechanism:

*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.<sup>137</sup>*

- 9.33. With this consideration of existing practice, Equality Tasmania further raised possible criteria in the consideration of payment, whether installed as a fixed or case-by-case basis:

*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*

---

<sup>136</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, pp. 35-36.

<sup>137</sup> Submission No. 3, Equality Tasmania, p. 17.

- 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.<sup>138</sup>

- 9.34. Mr Croome was invited to further clarify the potential for a broader assessment of whether case-by-case, criteria-based assessments of expunged charges and convictions should be considered for possible redress:

**Mr CROOME** - ... all of the schemes that we've spoken about, both Australian and international, they have a case-by-case basis, I'm not sure about victims of crime, but certainly child sexual abuse and stolen wages and the German and Austrian and French and Canadian, UK schemes. My point is that if it's thought that that is something worth investigating, then that could go to the TLRI [Tasmania Law Reform Institute] to look at whether that makes sense. We're not recommending that that happen instead of this process, absolutely not. This process should continue and should be expedited. That was just an acknowledgement that our scheme would be the only one to have a single payment.

Given that other jurisdictions have gone down different paths then maybe that's worth looking at.

**CHAIR** - To clarify, Rodney, we should deal with the redress matter now.

**Mr CROOME** - Yes, 100 per cent.

**CHAIR** - If there's to be further consideration of a staged or stepped process considering other matters, then it should be investigated by a body like the TLRI at a later time?

**Mr CROOME** - Yes, at a later time.

---

<sup>138</sup> Submission No. 3, Equality Tasmania, pp. 14-15.

**CHAIR** - I was a little uncertain.

**Mr CROOME** - I understand that it is ambiguous and that is not meant to get in the way in any way, or to supplant in any way this process. We have our recommendation that an Independent Review came up with. That's what we're talking about. That's what we have to deal with.

*The academics I spoke to also made that point that, that is the fact in other places, so that's worth looking at, but it's not part of this process.*<sup>139</sup>

- 9.35. Professor Gerber's submission provided her consideration of the most appropriate process for determining any payment amount. The Professor indicated a preference for individual assessment but conceded that in the case of a small number of individuals such as is the case for the Bill, a fixed amount may suffice:

*The most appropriate process for determining the amount of redress is for each individual to have their situation assessed and the quantum calculated according to their specific circumstances. However, I understand that the number of potential claimants in Tasmania is likely to be small and therefore may not justify the expenditure required to set up a system for individual assessment. In these circumstances, the payment of a fixed amount can be justified, provided that the quantum is not tokenistic, and has been calculated in a way that genuinely recognises the harm inflicted by Tasmania's historical laws targeting men who engaged in consensual same-sex sexual conduct or cross-dressing.*

*The payment of a fixed amount, rather than calculating the quantum of redress for each individual, can also be justified on the basis that it will remove the element of discretion which research has found can result in inequitable disparities in terms of the quantum of payments made to persons wrongfully convicted of crimes.*<sup>140 141</sup>

- 9.36. In consideration of payments of redress under the Bill, Professor Gerber made the following recommendations to the Committee:

*... it is my opinion that the Committee should recommend that Parliament enact laws providing for the following levels of redress:*

- 1. For persons who were charged but not convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve time in jail: \$15,000*
- 2. For persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve any time in jail: \$45,000*
- 3. For persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and served time in jail or were subjected to other forms of punishment, e.g. conversion practices: \$75,000.*

<sup>139</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 42.

<sup>140</sup> Footnote 6, Rachel Dioso-Villa "'Out of Grace': Inequity in post-exoneration remedies for wrongful conviction' (2014) 37(1) *UNSWLJ* 349, 358, in Submission No. 7, Professor Paula Gerber, p. 4.

<sup>141</sup> Submission No. 7, Professor Paula Gerber, p. 4.

*These amounts appropriately reflect the likely harm that individuals in each of the three categories have suffered. They are intended to be a one-off payment to eligible individuals, not a payment per charge or conviction.<sup>142</sup>*

## **Role of the Joint Sessional Committee on Gender and Equality**

- 9.37. One matter repeatedly raised in evidence was the role of the Committee in considering what payment outcome is most appropriate and practical for the Bill. Here, the Committee again notes the Tasmanian Greens amendment, via the inclusion of Clause 9, for an independent assessor and the Government's proposed amendments to include a once off ex gratia payment scheme. Further, the Committee draws attention to the Government's proposal to conduct an independent consultation process.
- 9.38. Dr Woodruff MP was questioned in relation to the work of the proposed independent assessor and if the current work of the Committee would potentially be repeated by any such appointment:

**CHAIR** - *An independent reviewer is notionally going to look at schemes around the world, of which there are none directly comparable. There are none in the country that you can compare with, obviously, there are none at all. The independent reviewer would need to, one would expect, consult with the key stakeholders, which are Equality Tasmania, Community Legal Centres [Tasmania] and those people directly impacted. Most of the people directly impacted here are not young, anymore, and are being represented through their key stakeholder groups.*

*The Committee's doing that. We're hearing from those groups. What would your view be on the situation that if we're hearing the same thing from the same people that an independent reviewer was, that the Committee, through a proper parliamentary process, could consider what submissions are put forward and put forward an amount? Or would that not be appropriate? The Parliament ultimately makes the decision regardless.*

**Dr WOODRUFF** - *The independent reviewer would need to develop a methodology for determining what's fair and reasonable. You are right, there are, as I understand it, a limited number of places around the world that have enacted redress for these past laws. I don't imagine that would be the only place that you'd get information from. There is redress for other matters. There are issues of providing financial redress for injustices which aren't identical to the crime of homosexuality and cross-dressing, but similar.*

...

*It is far more appropriate when we're talking about - we wouldn't in any other matters have a parliamentary committee to determine an appropriate amount of compensation for a child sexual abuse, or for - we believe there should be some sort of compensation for people who are forcibly adopted - the Greens do. It doesn't seem*

---

<sup>142</sup> Submission No. 7, Professor Paula Gerber, pp. 4-5.

appropriate for Members of Parliament to actually sit down and come up with a number, because we have lots of expertise and we can hear information, but we are not nonetheless experts in that area. So, I would expect that the Government would get a person who is an expert, independently capable of making an assessment of redress in matters like this. That would be an appropriate person to do that work.

**CHAIR** - So, even though the independent review would be considering the same information that notionally the Committee is, you still don't think that would be appropriate?

**Dr WOODRUFF** - Well, I'm not sure that they would just be considering the same information.

**CHAIR** - What else do you think they would need to consider?

**Dr WOODRUFF** - I think there are other areas which are, like I said, similar, not different. And when you say that that's mentioned in the Equality Tasmania-

**CHAIR** - Some of the other forms of redress are, yes.

**Dr WOODRUFF** - Yes, the ones in Spain and Austria and so on.

**CHAIR** - No, most of those are in relation to homosexual offences, but they also do talk about other redress, which are redress schemes, but not totally comparable. The numbers of impacted individuals is quite different in a lot of those, too.

**Dr WOODRUFF** - Yes. It just seems like a kind of a highly technical process to go through that, and do anything other than come up with a number, which is possibly a bit arbitrary. I just don't think - and it's no comment at all on the Committee - but I just don't know that independence and the skill set - not the independence; the skill set required to look through all those, as you say, quite different circumstances and different places, and to look at comparable situations that the Committee would have access to that information.<sup>143</sup>

- 9.39. Mr Croome, representing Equality Tasmania, was also questioned in relation to the potential work of the Committee in providing a proposed redress payment and, if in this case, this would be supported by the relevant LGBTIQ+ stakeholders:

**CHAIR** -The Greens' amendment looks to be quite lengthy in its process, potentially. It might not be, but it has the potential to be. As I put to the Government, we could agree with that amendment and it goes through the House, so then it's law because it's already been through downstairs and then we could find that it takes almost 12 months or more to get it in place. You could end up with the same outcome as what's being recommended by you - sort of suggested as a range by the Community Legal

---

<sup>143</sup> Transcript of Evidence, Tasmanian Greens, 28 January 2025, p.22.

Centres [Tasmania] and yours has been guided by the evidence of some other people with expertise in this area.

I know that you and the Community Legal Centres [Tasmania] acknowledged that the Committee could make a decision about an amount, but they didn't see that as the favourable, preferred option. They preferred another separate process. Is there a harm of the Committee going down that path and saying, 'Well, we've got this evidence, we've heard from you, we've heard from others'. I'm just trying to understand whether this is an appropriate way forward because if it's not, we shouldn't do it.

But if it is an option, and the Committee can make its own decisions, I'm just trying to understand from the perspective that you bring to the table, which is representing the people who are directly impacted by this, would they see that as an affront that the Parliamentary Committee had the audacity to say, 'Well, actually we think we can make a recommendation based on the evidence we've heard'?

I know it's putting you in a difficult spot. I do appreciate that.

**Mr CROOME** - I can't pre-empt what people might think about that. That is not a question I've put to the people I know. Obviously, I haven't had a chance to do that, so I don't know what their thoughts would be. I can only suppose that their focus is on the outcome rather than the process and they want a just outcome.

I can't say what their thoughts would be on the process. I've had a chance obviously to discuss the situation with a couple of the people concerned, including the person who called me after the Legislative Council debate and the very elderly man in New South Wales and it was the Greens' amendment that was on the table and they supported whatever process would be independent of the Government. Let's be honest, that's what they really wanted.

They didn't want the Government to set the amount because like I said, the Government is the perpetrator, historic governments –

**CHAIR** - In any event, the Parliament has to make the decision because even with the Greens' amendment, it has to come back to the Parliament for its ratification. If the Government went off and did their own separate independent process as described by them in their submission and earlier today then it's still got to come back to the Parliament.

**Mr CROOME** - On the one hand, like I've said, we want a process that is independent of the Government to the extent possible; a legitimate, transparent process and that's why we have supported the Greens' proposal. That's on the one hand. On the other hand, we need a process that is going to expedite this because the longer we go on and we've gone on for a long time, the more likely it is that people won't have redress of the injustices they faced. So there's that important consideration.

*Of all the processes that are on the table, the Government's proposal for an independent expert sounds the least attractive because there are really no checks or balances or guardrails on that one. It's like whatever they feel. Again, the Government shouldn't have so much power over that process.*

*Apart from that, I think it's for you to decide what you think is the process that's going to be the most transparent and separate from Government, seen as fair and just, versus one that's going to get this done as quickly as possible...<sup>144</sup>*

- 9.40. Evidence received at the hearing regarding the Government's proposed secondary recommendation to install an independent consultant to further consider payment in the Bill, was prompted in consideration of the role the Committee could play in operationalising an investigative path:

**CHAIR** - To respond, and this is partly to comment on or ask a further question about what Bruce [Paterson] said earlier. This seems like a huge jump from \$5000 to \$25,000 or up to \$75,000. It is a significant increase in what's being suggested. I don't dispute that at all, but if we go down the pathway of the Government's recommendation, if the Committee doesn't agree with \$5000 being an appropriate amount or \$2500, then we ask the Government to get an independent consultant. The independent consultant could hear the same information we are hearing now from Equality Tasmania, from the Community Legal Centres Tasmania and decide, 'well, actually we think it should be at least \$25,000'.

*I find it difficult to accept that if we are hearing from the people who are the key stakeholders who have a vested interest in this matter - and I'm speaking on behalf of those men who may be able to have these offences expunged and these charges expunged - then surely they're going to be hearing from the same people, so the consultant could come back with a very similar approach, whether it's done through the Greens' amendment or whether it's done through a more targeted independent consultant approach that you have suggested in your submission.*

**Mr BARNETT** - ... Again, the Government is trying to be cooperative and collaborative with this Committee and the Parliament. We recognise we are in minority, but we are trying to think of other ways to progress so that we can land something that the Parliament would be supportive of that is agreeable. We don't say that we have all the answers. We are putting forward what we think is balanced and reasonable.

...

**CHAIR** - I did want to know what the benefits are, than, the work that the Committee would do, above and beyond.

**Mr PATERSON** - ... At the time the submission was prepared, I suppose the Government was keeping its mind open. It wasn't sure what approach the Committee would take, for example. It obviously is an option, as the Deputy mentioned, for the Committee to recommend a figure and that is a matter for Government to respond to. I suppose, at the time, we and the Government suggested it could do further work depending on whether the Committee got enough information to make a decision. It would be one factor. I mean, I had thought from my point of view, through that work we could seek

---

<sup>144</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, pp. 39-40.

out whether there are any other kinds of experts, kinds of jurisprudential or legal advice, as to the effects of expungement in a more academic or principled sense. I think on the submissions that I've seen from Equality Tasmania, they're making a strong case for the impact on people whose charges were expunged. I suppose I was just thinking the department's tried to reflect more independently, I suppose, to say, 'Well, we very much acknowledge those impacts and the aspirations of the community as to what they would like the scheme to look like. But how do we balance that against other schemes and precedent and future models?' Either the department could do more work on that or it could potentially find a consultant, to both discuss with community, but also potentially the jurisprudential experts or similar to think about what is the right amount or range. Obviously it is a matter for the Committee as to whether it thinks it has enough information to do that.

One thing I did want to add is that if some submissions are talking about \$25,000 to \$100,000, I would have thought they must be talking about that amount as a total rather than per expunged charge. I think possibly it's a bit unclear from the submissions, because I read them quickly, no criticism of the authors, but I would have assumed that if they're advocating for such a high amount, it must be as a kind of total or global payment rather than a payment per charge.

**CHAIR** – The Committee can clarify that.

**Mr PATERSON** - Obviously the Committee has to cast a critical eye both on the Government's logic and also the other stakeholders' logic, and think critically about what the right approach is here. I don't think there's necessarily an assumption that any player has got it totally right, because I think it's actually a very difficult job to determine a figure. The department and Government therefore started with what it felt was comparable models elsewhere. I think as you start to step away from more directly comparable models to either quite different or very different other models, it becomes harder to know what is the right approach. I think obviously they've got four European jurisdictions that have given it a lot of time and attention and come out at somewhere between €5000 and €14,000. That would seem to be the kind of ballpark that's at least comparable to what the Tasmanian scheme is trying to do.

**CHAIR** - No, €3,000.

**Mr PATERSON** - Sorry, €3,000 to €14,000.<sup>145</sup>

## **Broader assessment criteria**

- 9.41. The Committee also heard evidence regarding additional circumstances under which payment may be considered, including in relation to redress for third parties acting on behalf of individuals with expunged records and the charges and convictions for which payment should be applicable.

---

<sup>145</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, pp. 12-13.

- 9.42. Equality Tasmania proposed that redress for partners and families of individuals who are eligible under the expungement scheme should be able to apply on their behalf:

*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.<sup>146</sup>*

- 9.43. In their submission, Equality Tasmania also addressed the Bill's expansion of charges and convictions which can be expunged under the scheme, questioning whether individuals with such records should also be eligible for payment:

*Previously, they were only charge [sic] 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.<sup>147</sup>*

- 9.44. Mr Croome also clarified this position at his appearance representing Equality Tasmania at a hearing of the Committee:

**Mr CROOME** - *When the independent report was done, it recommended that there be the capacity to expunge further convictions and charges that were in relation to the main conviction or charge, like for resisting arrest, or whatever. And we've said yes, we think there should be redress for that as well. If those charges and convictions are to be potentially expunged, then there should be recognition of the damage that those extra charges or convictions caused.*

*The independent assessor or this Committee or whomever might decide that that's a lesser amount, but if that's what the law says, that those convictions and charges can be expunged, then that needs to be recognised as well.<sup>148</sup>*

---

<sup>146</sup> Submission No. 3, Equality Tasmania, No. 16.

<sup>147</sup> Submission No. 3, Equality Tasmania, No. 16.

<sup>148</sup> Transcript of Evidence, Equality Tasmania, 28 January 2025, p. 33.

## FINDINGS

### The Committee finds:

21. There is no general consensus regarding what would be considered the correct terminology to use for payment in the Expungement of Historical Offences Amendment Bill 2024 with options including:
  - a. Redress (*... carries a connotation of an injustice acknowledged and a serious desire to make amends for past wrongs* <sup>149</sup>);
  - b. Compensation (*The word compensation, ... could be very broad and taken to include all those complex calculations about economic loss, general damages and wrongful imprisonment, which is not what recommendation 13 was about and not what really all of the European schemes are about* <sup>150</sup>); and
  - c. Ex gratia payment (*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* <sup>151</sup>).
22. Care must be taken to arrive at terminology that is compassionate and victim-focused so as not to distract from the significance and intention of expungement and proposed payment for affected individuals.
23. The term compensation is not supported by any LGBTIQ+ stakeholders who took part in the Inquiry, or the Government. While Clause 9 uses the term compensation, the Tasmanian Greens are open to alternate terminology.
24. The ex gratia payment amounts of \$5,000 and \$2,500 proposed in the Government’s amendments are not supported by LGBTIQ+ stakeholders or the Tasmanian Greens.
25. If an independent assessment process is not supported by the Committee, LGBTIQ+ stakeholders and associated consumer groups reluctantly accept a parliamentary process to give effect to Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*.
26. Consistent evidence, received from key stakeholders, suggested a possible payment range of \$15,000 - \$100,000 for successful expungement.
27. The Inquiry process has provided an opportunity to engage with key LGBTIQ+ stakeholders and seek expert advice in considering the most appropriate mechanism to give effect to Recommendation 13 of the *Independent Review of Expungement of Historical Offences Act 2017*.

---

<sup>149</sup> Submission No. 3, Equality Tasmania, p.6.

<sup>150</sup> Transcript of Evidence, Tasmanian Government, 28 January 2025, p.6.

<sup>151</sup> Submission No. 3, Equality Tasmania, p.6.

28. Under the *Expungement of Historical Offences Act 2017*, partners and families of those who may be eligible for expungement are legislatively enabled to lodge the expungement request.
29. The *Expungement of Historical Offences Amendment Bill 2024* proposes the expansion of associated offences to be expunged under the *Expungement of Historical Offences Act 2017*.

## 10. CLAUSE 10

- 10.1. Chapter 10 notes the insertion of Clause 10 in the Bill.
- 10.2. Clause 10 was inserted in the House of Assembly in Committee of the Whole. The Clause was moved by Dr Woodruff MP.
- 10.3. Clause 10 of the Bill can be found in full in Appendix E.
- 10.4. Clause 10 amends Section 22 of the Principal Act, as a consequential change reliant on the insertion of compensation under Clause 9. The Clause ensures that the compensation in the Principal Act is only afforded in one form to eligible applicants.
- 10.5. No extensive debate was had in either the House of Assembly or Legislative Council regarding Clause 10 prior to the reference to the Committee.
- 10.6. The Committee did not receive any detailed consideration of Clause 10 and will not provide a formal assessment, other than to note its consequential nature on the passing of Clause 9. The Committee does however note that the Principal Act currently provides for potential claims under the *Financial Management Act 2016*. This fact should be considered in any future discussions of the Bill in either the House of Assembly or Legislative Council of the Parliament of Tasmania for consequential impacts.



# Appendix A: Tasmanian Government's proposed amendments

## *Amendments (Leader of the Government)*

### CLAUSE 9

Vote against the clause.

### NEW CLAUSE A

To follow clause 8.

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

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

#### **PART 3A – Ex gratia payments payable under Act**

##### **19A. Ex gratia payment for charges expunged**

- (1) This Part applies in respect of a person whose charge is expunged under this Act, regardless of whether that charge is expunged before or after the commencement of this Part.
- (2) The Secretary must make an ex gratia payment under this Part to a person whose charge has been expunged under section 12(6) as soon as practicable after that charge has been expunged, but in any case within 3 months after whichever of the following days occurs later:
  - (a) the day on which this Part commences;
  - (b) the day on which the charge is 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 an ex gratia payment to be made to them under this Part.

##### **19B. Amount of ex gratia payment**

- (1) In this section –

***CPI figure for Hobart*** means the Consumer Price Index (All Groups) Number for Hobart published by the Australian Statistician

under the authority of the *Census and Statistics Act 1905* of the Commonwealth;

**percentage change**, in relation to a financial year, means the percentage change published by the Australian Statistician under the authority of the *Census and Statistics Act 1905* of the Commonwealth between –

- (a) the average CPI figure for Hobart in respect of the 4 quarters ending on 31 December immediately preceding the financial year; and
- (b) the average CPI figure for Hobart in respect of the 4 quarters immediately preceding the 4 quarters referred to in paragraph (a);

**subsequent financial year** means a financial year after the financial year that ends on 30 June 2025.

- (2) The amount of an ex gratia payment to be paid to a person under this Part in respect of an expunged charge for the financial year ending on 30 June 2025 is –
  - (a) \$5 000 per expunged charge that results in the annotation of an official criminal record under section 15; and
  - (b) \$2 500 per expunged charge that does not result in the annotation of an official criminal record under section 15.
- (3) The amount of an ex gratia payment payable to a person under this Part in respect of an expunged charge for a subsequent financial year is the greater of the following:
  - (a) the amount calculated by increasing the amount payable for the expunged charge for the immediately preceding financial year by the percentage change for the subsequent financial year;
  - (b) the amount payable for the expunged charge for the immediately preceding financial year.

#### **19C. 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 ex gratia payment paid under this Part to a person in respect of that charge is to be repaid.

- (2) If the Secretary makes a determination under subsection (1) that an ex gratia payment is to be repaid, that payment is a debt due and payable to the Crown by the person who received that payment.



# Appendix B: Clause 9 of the Expungement of Historical Offence Amendment Bill 2024

## 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;

**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.

(2) The Premier may, at other times, appoint an independent assessor to conduct as 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 – 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 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 –

- (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 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 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 –

- (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.



# Appendix C: Invitation to submit letter to Professor Paula Gerber



*Joint Sessional Committee on Gender and Equality*

4 February 2025

## Invitation to submit to the Expungement of Historical Offences Amendment Bill 2024 Inquiry

I write regarding the work of the Joint Sessional Committee on Gender and Equality's Expungement of Historical Offences Amendment Bill 2024 Inquiry. As you may be aware, the Inquiry commenced in November 2024 with the following reference from the Legislative Council of the Parliament of Tasmania:

“That the Expungement of Historic Offences Amendment Bill 2024 be referred to the Joint Sessional Committee on Gender and Equality for consideration and report on matters related to gender and equality impacts of the proposed payment of compensation under the Bill.”

Additional information regarding the work of the Committee, including submissions and the evidence received, can be found on the Inquiry [webpage](#).

Throughout the Inquiry, the Committee has heard numerous proposals for payment, including that from Equality Tasmania. Evident as a result of these proposals is the necessity for an understanding of the mechanisms and criteria for consideration of payment, including existing schemes of a similar nature. The Committee understands your existing expertise in such matters.

In evidence received from Mr Rodney Croome of Equality Tasmania, the Committee was advised that advice had been sought from academics, including yourself, in the preparation of the organisation's submission.

The Committee would appreciate your further input into this matter with specific regard to:

1. the determination of either a specified one off payment as redress that recognises the harm experienced by those who were charged or charged and convicted of historic offences related to homosexuality and cross-dressing as proposed under the Bill and what that amount could/should be; and/or
2. the considerations required when determining such a suitable amount; and/or
3. the most appropriate process to determine such a payment amount.

Parliament House, Hobart 7000 Telephone (03) 6212 2139  
Email: [genderandequality@parliament.tas.gov.au](mailto:genderandequality@parliament.tas.gov.au)



*Joint Sessional Committee on Gender and Equality*

As Chair of the Committee, I thereby wish to extend you a formal invitation to provide a written submission to the Inquiry regarding these matters. I will take this opportunity to inform you that it is standard procedures for submissions to committee inquiries to be received and published, meaning they are publicly accessible. This process has been undertaken thus far in this Inquiry. Other options for publication are available if required, however I note that such options can limit the use of the submission by the Committee.

As a result of the establishing resolution of the Committee, the Inquiry is due to report to the Houses of Parliament on Thursday, 13 March 2025. Given this swift timeframe, I would appreciate your understanding in providing a completed submission as soon as possible, by Wednesday, 19 February 2025 at the latest.

Please kindly circulate your completed submission, or any questions, to the Committee Secretary at [genderandequality@parliament.tas.gov.au](mailto:genderandequality@parliament.tas.gov.au).

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Ruth Forrest'.

Hon Ruth Forrest  
Committee Chair

## Appendix D: Submission 7 – Professor Paula Gerber



24 February 2025

Hon Ruth Forrest  
Committee Chair  
Joint Sessional Committee on Gender and Equality's  
Expungement of Historical Offences Amendment Bill 2024 Inquiry  
Parliament of Tasmania

Via Email: [genderandequality@parliament.tas.gov.au](mailto:genderandequality@parliament.tas.gov.au)

Dear Committee Chair,

**Re: Quantification of compensation following expungement of historic offences**

Thank you for the opportunity to make a submission to the Committee regarding the payment of compensation to those charged or convicted of offences relating to same-sex sexual conduct or cross dressing, from the time when these matters were criminalised.

I am a Professor in the Monash University Law Faculty and part of the Castan Centre for Human Rights Law. I specialise in international human rights law, with a particular focus on the rights of LGBTIQ+ people. I have authored and edited many books and journal articles in this area, including the three-volume collection [\*Worldwide Perspectives on Lesbians, Gays and Bisexuals\*](#), published by Bloomsbury, in 2021.

Set out below are my responses to the three specific questions posed by the Committee.

**1. The determination of a specified one-off payment as redress that recognises the harm experienced by those who were charged or charged and convicted of historic offences related to homosexuality and cross-dressing as proposed under the Bill and what that amount could/should be.**

Ideally, compensation should be assessed on an individual basis, according to the harm a person has experienced as a result of the charge or conviction they were subjected to. I understand that the Tasmanian Government favours a fixed, automatic payment of redress following expungement, rather than a scheme involving an assessment of the harm suffered by each individual. Given that background, it is vital that the amount of compensation err on the side of over-compensating, rather than under-compensating. This is because a failure to

1

---

recognise the severity of the harm suffered, risks exacerbating the injury already experienced by the individual. Redress of a mere \$5,000, would constitute under-compensation and potentially do more harm than good, because it fails to recognise the severe impact that an individual's encounter with the criminal justice system has, and that the ordeal of being charged and/or convicted has repercussions that last a lifetime. The consequences of a having a criminal record for engaging in conduct that should never have been criminalised are many, and include,

1. Inability to secure employment or change jobs because of the risk of prospective employers undertaking criminal record checks and exposing the conviction;
2. Difficulties securing housing due to the lingering effects of the criminal record;
3. Inability to undertake certain types of volunteer work because of the prospect of not being able to pass the mandatory checks e.g., working with children;
4. Stigma, shame, humiliation and embarrassment;
5. Discrimination and reputational damage;
6. Poor mental health, including post-traumatic stress disorder, anxiety and depression;
7. Self-isolation because of a fear that others will find out that you have a criminal record; and
8. Relationship and trust issues that can lead to strained intimate relationships and difficulties with family members.

In addition, the immediate harmful impacts of being convicted of these crimes, include, having to pay a fine, being fired from their job, being ostracised from family and friends and being evicted from their home. Indeed, for some individuals the experience of being charged and/or convicted was so traumatic that they felt the need to move to another state.

Thus, individuals who were convicted of the "crimes" of cross-dressing and/or engaging in same-sex sexual conduct suffered both economic and non-economic loss, that is, loss of income and earning potential, as well as, intangible harm from psychological pain and poor mental health and well-being.

I have had the opportunity to review the submission made by Equality Tasmania and note that it sets out in detail the compensation schemes in other jurisdictions, particularly Europe and Canada, for homosexuality related "crimes". I endorse their research and submission regarding how these comparators can be used by the Committee as a guide to potential upper and lower ranges of redress.

My submission regarding the precise quantum of redress is set out in section 4 below, following my analysis of the process and factors that should be considered in setting a fixed amount that is payable to all persons who were charged or convicted under these laws.

## 2. The considerations required when determining such a suitable amount

The determination of a suitable amount should be done with respect for the human rights of the individual at the fore. It has been observed that when it comes to wrongful convictions,

The remedies are of particular importance. They not only aim to compensate the victim for the damage that occurred, but also have a wider impact on shaping the overall perception of how individuals are treated by the state and how the state responds to its malfunctioning. This in turn is crucial for building confidence in state policies and actions.<sup>1</sup>

When determining the quantum of compensation to be paid to persons who have lived with having been charged or convicted of cross dressing or engaging in consensual same-sex sexual conduct, it is important to note that,

Beyond that a conviction was wrongful, it is difficult to identify the factors that need to be present for a wrongfully convicted person to be compensated, nor how such compensation will be quantified.<sup>2</sup>

There are, however, some core principles that should be applied. First, the sum should represent a genuine recognition of the harm suffered. It should not be a tokenistic gesture, which risks adding insult to injury. It has been observed that 'awarding inadequate compensation undermines the effectiveness and legitimacy of the remedy for wrongfully convicted persons'.<sup>3</sup> Thus, the redress provided by the Tasmanian Government should be set at an amount that allows those who were subjected to these egregious laws, to feel a sense of justice and closure.

Guidance on the quantum of compensation payable, can be gleaned from how courts assess general damages payable to persons who have suffered a tortious wrong. Such damages for non-economic loss are calculated according to the severity and impact on quality of life, the pain and suffering they have endured, the loss of enjoyment of life and emotional distress they have experienced. As set out in the response to question 1 above, there are numerous factors that should be considered when calculating the amount of redress payable. Most importantly, there must be recognition of economic, as well as, non-economic loss and damage.

Guidance can also be gained from looking at compensation that has been paid for general wrongful convictions. It has been noted that, 'the state has a moral and legal obligation to provide compensation for harm, loss or injury that the individual has incurred as a result of the wrongful conviction'.<sup>4</sup> An analysis of the reasons given for payments to individuals

---

<sup>1</sup> Wojciech Jasiński and Karolina Kremens, 'In quest of the optimum model for compensating wrongful convictions' Chapter 11 in Wojciech Jasiński & Karolina Kremens (eds) *Compensation for Wrongful Convictions A Comparative Perspective* (2023) Taylor & Francis, 200. Accessed at: <https://library.oapen.org/handle/20.500.12657/62228>.

<sup>2</sup> Adrian Hoel, 'Compensation for wrongful conviction' (2008) 356 *Trends & Issues in Crime and Criminal Justice*, 3. Accessed at: <https://www.aic.gov.au/sites/default/files/2020-05/tandi356.pdf>.

<sup>3</sup> Above n2 at 222.

<sup>4</sup> Rachel Dioso-Villa "'Out of Grace": Inequity in post-exoneration remedies for wrongful conviction' (2014) 37(1) *UNSWLJ* 349, 366.

wrongfully convicted of crimes, include 'to express regret' and 'to correct mistakes of the State'.<sup>5</sup> These rationales are applicable to the state of Tasmania when determining the quantum of redress to persons charged with, or convicted of, offences relating to cross-dressing or consensual same-sex sexual conduct. That is, the amount should reflect the regret that the state has for these past wrongs, and its commitment to correcting this historic mistake.

The Innocence Project in the US has compiled a table setting out quantum of compensation payable to persons wrongfully convicted of crimes that resulted in them spending time in jail. [This table](#) may be a useful resource for the Committee to consider as a comparator.

Ultimately, charges and convictions arising from the criminalisation of consensual adult behaviour, requires a nuanced and tailored approach, given the sensitive nature of these cases and the lack of an agreed standardised approach.

### 3. The most appropriate process to determine such a payment amount

The most appropriate process for determining the amount of redress is for each individual to have their situation assessed and the quantum calculated according to their specific circumstances. However, I understand that the number of potential claimants in Tasmania is likely to be small and therefore may not justify the expenditure required to set up a system for individual assessment. In these circumstances, the payment of a fixed amount can be justified, provided that the quantum is not tokenistic, and has been calculated in a way that genuinely recognises the harm inflicted by Tasmania's historical laws targeting men who engaged in consensual same-sex sexual conduct or cross-dressing.

The payment of a fixed amount, rather than calculating the quantum of redress for each individual, can also be justified on the basis that it will remove the element of discretion which research has found can result in inequitable disparities in terms of the quantum of payments made to persons wrongfully convicted of crimes.<sup>6</sup>

### 4. Conclusion

Based on all the information and analysis outlined above, it is my opinion that the Committee should recommend that Parliament enact laws providing for the following levels of redress:

1. For persons who were charged but not convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve time in jail: \$15,000
2. For persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and did not serve any time in jail: \$45,000

---

<sup>5</sup> Ibid, 358.

<sup>6</sup> Ibid.

3. For persons who were convicted of offences relating to cross-dressing and/or consensual same-sex sexual conduct and served time in jail or were subjected to other forms of punishment, e.g. conversion practices: \$75,000.

These amounts appropriately reflect the likely harm that individuals in each of the three categories have suffered. They are intended to be a one-off payment to eligible individuals, not a payment per charge or conviction.

Please do not hesitate to contact me if I can be of further assistance to the Committee.

Yours faithfully,



Professor Paula Gerber  
Law Faculty  
Monash University  
Clayton, Vic, 3800

Phone:

Email:





## **Appendix E: Clause 10 of the Expungement of Historical Offence Amendment Bill 2024**

### **NEW CLAUSE B**

To follow clause 8.

- A. Section 22 amended (No compensation payable other than under this Act)

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



## **Appendix F: List of Submission**

1. Tasmania Government
2. Dr Rosalie Woodruff MP, Leader of the Tasmanian Greens
3. Equality Tasmania
4. Taya Ketelaar-Jones
5. TasCOSS
6. Community Legal Centres Tasmania
7. Professor Paula Gerber



# Appendix G: Minutes

**TUESDAY, 10 December 2024**

The Committee met in Committee Room 1, Parliament House, Hobart at 3:02 p.m.

## Members Present:

Ms Thomas

Via WebEx:  
Mrs Beswick  
Ms Brown  
Mr Edmunds  
Ms Forrest  
Ms Rosol  
Mr Street

## APOLOGIES

Mr Harriss was an apology.

## MINUTES

The minutes of the meeting held on 9 August 2024 were agreed to (Ms Thomas).

At 3.02 p.m. Mr Edmunds joined the meeting via WebEx.

## CORRESPONDENCE

Resolved, to receive and accept the referral of the *Expungement of Historical Offences Amendment Bill 2024* from the Legislative Council, dated 20 November 2024, noting its proscribed focus on proposed compensation in the Bill (Mr Street).

## EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 INQUIRY

The Committee considered the Expungement of Historical Offences Amendment Bill 2024 Inquiry process, including the tentative program.

Resolved, that a targeted Inquiry process be undertaken, with a focus on participation from agreed upon stakeholders (Ms Thomas).

At 3.10 p.m. Mrs Beswick joined the meeting via WebEx

## SUBMISSIONS

Resolved to open submissions from 11 December 2024 – 20 January 2025. Agreed that no

newspaper advertisement will be placed regarding the opening of submissions (Mr Street).

## SUBMISSIONS AND PUBLIC HEARINGS INVITATIONS

Resolved, That a letter be sent to the following individuals and organisations by the Secretary, seeking a submission to the Inquiry and indication of interest to attend public hearings. This letter will note the focus of the Inquiry on compensation and the short reporting timeframe (Ms Forrest):

Hon Guy Barnett MP – Attorney General and Treasurer;

Community Legal Centres Tasmania;

Equality Tasmania;

TasCOSS;

The National Redress Scheme organisers;

The Actuaries Institute;

Civil Liberties Australia;

Professor Kathleen Daly; and

The Tasmanian Audit Office.

Noted that Ms Rosol will discuss with the Leader of the Tasmanian Greens regarding their involvement in the Committee.

## PUBLIC HEARING DATES

Resolved, that the following dates be tentatively held for public hearings, with a preference for hearings on a single day (Ms Forrest):

Tuesday 28 January 2025; and

Wednesday 29 January 2025.

Resolved, that the Deputy Premier, the Hon Guy Barnett MP, in his capacity as Attorney – General and Treasurer be invited to attend a hearing on either of these dates, for a period of 1.5 hours. Those witnesses who have registered interest in attending a hearing will then be contacted to attend (Mr Street).

## DELIBERATIVE MEETING DATES FOR REPORT CONSIDERATIONS

Resolved, that the following dates be tentatively held for deliberative meetings of the Committee for the consideration of the draft report:

Monday 24 February 2025 from 9 a.m. – 5 p.m.

Tuesday 25 February 2025 from 9 a.m. – 11 a.m.; and

Friday 7 March 2025 from 12.30 p.m. – 1.30 p.m.

#### **OTHER MATTERS**

None.

At 3:34 p.m. the Committee adjourned until Tuesday; 28 January next.

Confirmed,

#### **THURSDAY, 23 January 2025**

The Committee met in Committee Room 1, Parliament House, Hobart and via WebEx at 9:31 a.m.

#### **Members Present:**

*Mr Harriss*

Via WebEx:

*Mrs Beswick*

*Ms Brown (arrived at 9.34 a.m.)*

*Mr Edmunds*

*Ms Forrest*

*Ms Rosol*

*Mr Street*

*Ms Thomas*

#### **APOLOGIES**

There were no apologies.

#### **MINUTES**

The minutes of the meeting held on 10 December 2024 were agreed to (*Mr Street*).

#### **CORRESPONDENCE**

There was no correspondence received.

#### **EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 INQUIRY**

Ordered, That the following submissions be received and published in full. (*Mr Street*):

Submission No. 1: Tasmanian Government

Submission No. 2: Dr Rosalie Woodruff,  
Leader of the Tasmanian Greens

#### **PROPOSED ADDITIONAL MEETING DATE**

Resolved, to hold an additional meeting on Friday 24 January 2025 at 4.30 p.m. to accept late submissions to the Inquiry, to allow for their publication prior to the public hearing (*Mr Harriss*)

#### **MEDIA RELEASE**

Resolved, that a media release detailing the public hearing be circulated to the relevant outlets (*Ms Forrest*)

#### **OTHER MATTERS**

Resolved, to request the Parliamentary Research Service to provide the Committee with information regarding: -

- With reference to the Government submission, existing expungement of offences compensation schemes in other jurisdictions; and
- redress schemes and ex-gratia payments for wrongful convictions in Tasmania and Australia. (*Ms Thomas*)

At 9.45 a.m. the Committee adjourned until Friday, 24 January next.

Confirmed,

#### **FRIDAY, 24 January 2025**

The Committee via WebEx at 4:32 p.m.

#### **Members Present:**

*Ms Forrest*

*Mr Harriss*

*Ms Rosol*

*Mr Street*

*Ms Thomas (via phone)*

#### **APOLOGIES**

*Mrs Beswick*, *Ms Brown* and *Mr Edmunds* were apologies.

#### **MINUTES**

The minutes of the meeting held on 23 January 2025 were agreed to (*Ms Rosol*).

#### **CORRESPONDENCE**

There was no correspondence received.

## **SUBMISSIONS TO EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 INQUIRY**

*Ordered*, That the following submissions be received and published in full with personal details removed (*Mr Harriss*):

Submission No. 3: Equality Tasmania

Submission No. 4: Taya Ketelaar-Jones

Submission No. 5: TasCOSS

### **OTHER MATTERS**

None.

At 4.35 p.m. the Committee adjourned until Tuesday, 28 January next.

Confirmed,

### **TUESDAY, 28 January 2025**

The Committee met at Parliament House Hobart in Committee Room 1 and via WebEx at 8:24 a.m.

#### **Members Present:**

*In person:*

Ms Brown  
Ms Forrest  
Mr Harriss  
Mr Street  
Ms Thomas

*Via Webex:*

Ms Rosol

### **APOLOGIES**

No apologies.

### **DELIBERATIVE MEETING**

#### **MINUTES**

The minutes of the meeting held on 24 January 2025 were agreed to (*Ms Forrest*).

## **SUBMISSIONS TO THE EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 INQUIRY**

*Ordered*, That the following submissions be received and published in full with personal details removed (*Ms Thomas*):

Submission No. 6: Community Legal  
Centres Tasmania

Suspension of sitting 8.26 a.m. to 8.44 a.m.

Ms Brown joined the table at 8:28 a.m.

## **PUBLIC HEARINGS EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024 INQUIRY**

### **WITNESSES**

At 8.44 a.m. the following witnesses were called and examined by the Committee in public:

- Hon Guy Barnett, MP, Deputy Premier, Attorney – General, Treasurer, Minister for Justice;
- Mr Bruce Paterson, Director Strategic Legislation and Policy, Department of Justice;
- Ms Meegan Essex, Principal Legislation and Policy Officer, Department of Justice; and
- Mr Brad Wagg, Director Policy and Stakeholder Engagement, Department of Justice.

Mr Paterson, Ms Essex, and Mr Wagg made the statutory declaration.

At 9.58 a.m. the witnesses withdrew.

Suspension of sitting from 9.58 a.m. to 10.16 a.m.

### **WITNESSES**

At 10.16 a.m. the following witnesses were called and examined by the committee in public:

- Dr Rosalie Woodruff, MP, Leader of the Tasmanian Greens; and
- Mr Tom Whitton, Senior Policy Advisor, Tasmania Greens were called.

Mr Whitton made the statutory declaration.

At 11.00 a.m. the witnesses withdrew.

Mr Street left the table at 11.01 a.m.

Suspension of sitting from 11.01 a.m. to 11.29 a.m.

### **WITNESS**

At 11.29 a.m. Mr Rodney Croome, Policy Officer, Equality Tasmania was called, made the statutory

declaration, and was examined by the committee in public.

At 12.22 p.m. the witness withdrew.

Suspension of sitting from 12.22 p.m. to 12.26 p.m.

#### **DELIBERATIVE MEETING**

#### **CORRESPONDENCE**

None.

#### **OTHER MATTERS**

*Resolved*, to request submissions from stakeholders who have previously engaged with Equality Tasmania to: -

- Provide expert advice to the Committee regarding the process of a proposed redress scheme and an appropriate amount payable;
- Consider other instances of redress and compensation schemes in other jurisdictions;
- Provide the Committee with their submissions by 7 February 2025. (Ms Brown)

The Committee discussed the Chair's draft report, noting that it will include evidence regarding the following: -

- Consultation efforts made by the Government and the Tasmanian Greens in the production of their amendments;
- Using a victim-centred approach to expungement and redress;
- The lack of existing schemes that are directly comparable to Recommendation 13;
- The adoption of certain terminology in the Bill;
- The importance of timely decision making; and
- The number of people eligible for redress under the proposed scheme.

#### **PROPOSED ADDITIONAL MEETING DATE**

*Resolved*, to hold an additional meeting on Friday 14 February 2025, from 10 a.m. to 1.00 p.m., to discuss the draft report and consider the additional submissions to the Inquiry. (Ms Forrest)

*Resolved*, to extend the existing meeting scheduled for Tuesday 25 February 2025 to conclude at 1.00 p.m. (Ms Forrest)

#### **PUBLICATION OF THE TRANSCRIPT OF THE PUBLIC HEARINGS**

*Resolved*, that the transcript of the hearing be published when available. (Ms Brown)

At 12.49 p.m. the Committee adjourned until Friday, 14 February next.

Confirmed,

#### **FRIDAY, 14 February 2025**

The Committee met at Parliament House Hobart in Committee Room 3 and via WebEx at 10:02 a.m.

#### **Members Present:**

*In person:*

Ms Forrest (Chair)  
Mr Harriss  
Mr Street

*Via Webex:*

Mrs Beswick  
Ms Brown  
Mr Edmunds  
Ms Rosol

#### **APOLOGIES**

Ms Thomas was an apology.

#### **MINUTES**

The minutes of the meeting held on 28 January 2025 were agreed to (Ms Forrest).

#### **CORRESPONDENCE**

None.

#### **CONSIDERATION OF CHAIR'S DRAFT REPORT**

The Committee considered the Chair's draft report.

Members to assess Chapter 1 – 3 out of session in preparation for formal consideration in the next meeting of the Committee.

Deliberation of the Chair's draft report continued up to paragraph 6.20.

At 11.02 a.m. the Committee adjourned until Monday, 24 February next.

Confirmed,

## **MONDAY, 24 February 2025**

The Committee met at Parliament House Hobart in Committee Room 1 and via WebEx at 9:01 a.m.

### **Members Present:**

*In person:*

Mrs Beswick  
Ms Forrest (Chair)  
Mr Harriss  
Mr Street (via Webex from 11.36 a.m.)  
Ms Rosol

*Via Webex:*

Ms Thomas

### **APOLOGIES**

Ms Brown and Mr Edmunds were apologies.

### **MINUTES**

The minutes of the meeting held on 14 February 2025 were agreed to (Ms Forrest).

### **CORRESPONDENCE**

Noted receipt of the Research Paper from the Parliamentary Research Service on 11 February 2025.

Noted invitation to submit letter circulated to Professor Paula Gerber to be uploaded for access via Members.

### **SUBMISSIONS**

Consideration of outstanding submission, Submission No.7, deferred to next meeting.

### **CONSIDERATION OF CHAIR'S DRAFT REPORT**

The Committee continued consideration of the Chair's draft report.

Suspension of sitting from 9.57 a.m. to 11.35 a.m.

Ms Thomas returned to the meeting at 11.37 a.m.

Consideration of the Chair's draft report continued.

Suspension of sitting from 1.01 p.m. to 1.59 p.m.

Consideration of the Chair's draft report continued.

Suspension of sitting from 3.39 p.m. to 3.48 p.m.

Consideration of the Chair's draft report continued up to Chapter 10.

At 4.49 p.m. the Committee adjourned until Tuesday, 25 February next.

Confirmed,

## **TUESDAY, 25 February 2025**

The Committee met at Parliament House Hobart in Committee Room 1 and via WebEx at 9:00 a.m.

### **Members Present:**

*In person:*

Mrs Beswick  
Ms Forrest (Chair)  
Mr Harriss  
Ms Rosol  
Mr Street

*Via Webex:*

Ms Thomas

### **APOLOGIES**

Ms Brown and Mr Edmunds were apologies.

### **CORRESPONDENCE**

Nil.

### **CONSIDERATION OF CHAIR'S DRAFT REPORT**

The Committee continued consideration of the Chair's draft report.

Suspension of sitting from 10.21 a.m. to 10.41 a.m.

Consideration of the Chair's draft report continued.

Mr Street withdrew at 11.32 a.m. and returned at 11.40 a.m.

Consideration of the Chair's draft report continued.

Cover Page, as read, agreed to.

Table of Contents, as read and noting potential administrative amendments, agreed to.

Chapter 1 – Inquiry Overview, paragraphs 1.1 to 1.18, as amended and noting pending administrative changes to the alphabetisation of appendices, agreed to.

Chapter 2 – Expungement of Historical Offences  
Amendment Bill 2024, paragraphs 2.1 to 2.17, as  
read, agreed to.

Chapter 3 – Independent Review of  
Expungement of Historical Offences Act 2017,  
paragraphs 3.1 to 3.13, as read, agreed to.

Chapter 4 – The Case for Redress, paragraphs 4.1  
to 4.8, as read, agreed to.

Chapter 5 – Clause 9, paragraphs 5.1 to 5.13, as  
read, agreed to.

Chapter 6 – Consideration of Clause 9,  
paragraphs 6.1 to 6.20, as read, agreed to.

Chapter 7 – Tasmanian Government’s Proposed  
Amendments, paragraphs 7.1 to 7.6, as read,  
agreed to.

Chapter 8 – Consideration of the Tasmanian  
Government’s Proposed Amendments,  
paragraphs 8.1 to 8.39, as read, agreed to.

Chapter 9 – Additional Considerations,  
paragraphs 9.1 to 9.44, as read, agreed to.

Chapter 10 – Clause 10, paragraphs 10.1 to 10.6, as  
read, agreed to.

The Chair’s Foreword, Findings,  
Recommendations and Appendices deferred  
until next meeting. (Ms Forrest)

At 12.05 p.m. the Committee adjourned until  
Friday, 7 March next.

Confirmed,

#### **FRIDAY, 7 March 2025**

The Committee met at Parliament House Hobart,  
in Committee Room 1, and via Webex at 12:32 p.m.

Members Present:

*In person:*

Mrs Beswick

Mr Harriss

Ms Rosol

*Via Webex:*

Ms Brown

Ms Forrest (Chair)

Mr Street

Ms Thomas (from 12.34 p.m.)

#### **APOLOGIES**

Mr Edmunds was an apology.

#### **MINUTES**

The minutes of the meetings held on 24  
and 25 February 2025 were agreed to  
(Mrs Beswick).

At 12.34 p.m. Ms Thomas joined the  
meeting via Webex.

#### **CORRESPONDENCE**

[REDACTED]

#### **SUBMISSIONS**

Ordered, that the following submission  
be received and published in full with  
personal details removed (Ms Forrest):

Submission No. 7: Professor Paula Gerber

#### **CONSIDERATION OF CHAIR’S DRAFT REPORT**

The Committee continued consideration  
of the Chair’s draft report.

Findings

Finding 1, as amended, agreed to.

Finding 2, as read, agreed to.

Finding 3, as read, agreed to.

Finding 4, as read, agreed to.

Finding 5, as read, agreed to.

Finding 6, as read, agreed to.

Finding 7, as read, agreed to.

Finding 8, as read, agreed to.

Finding 9, as read, agreed to.

Findings 10 to 13, as read, agreed to.

Findings 14 to 17, as read, agreed to.

Findings 18 to 21, as read, agreed to.

Findings 22 to 25, as read agreed to.

Finding 26, as amended, agreed to.

Finding 27, as amended, agreed to.

Findings 28 to 29, as read, agreed to.

Recommendations

Recommendation 1, as read, agreed to.

Recommendation 2, as read, agreed to.

Recommendation 3, as read, agreed to.

Recommendation 4, as read, agreed to.

Recommendation 5, as read, agreed to.

Recommendation 6, as read, agreed to.

Appendices, as read, agreed to.

Chair's Foreword, as read, agreed to.

*Resolved*, that the Chair's draft report, as amended, be the Report of the Committee (*Ms Forrest*).

*Resolved*, that the unconfirmed minutes from today's meeting be included in the Report (*Ms Thomas*).

#### **TABLING OF REPORT**

*Resolved*, that the Report be tabled on Wednesday 12 March 2025 by Mr Street in the House of Assembly and by the Chair in the Legislative Council (*Ms Forrest*).

#### **MEDIA RELEASE**

*Resolved*, that a media release detailing the recommendations from the Report be circulated upon the tabling of the Report (*Ms Forrest*).

#### **NEXT MEETING**

At 12.57 p.m. the Committee adjourned *sine die*.

Unconfirmed,



## **Appendix H: Transcript of Evidence**