

## **DRAFT SECOND READING SPEECH**

**HON GUY BARNETT MP**

### ***Expungement of Historical Offences Amendment Bill 2025***

*\*check Hansard for delivery\**

Madam Speaker, I move that the Bill now be read a second time.

The Bill demonstrates the Government's ongoing commitment to right the wrongs of the past. Until 1997, the *Criminal Code Act 1924* contained several offences prohibiting male homosexual activity. Homosexuality was decriminalised in 1997 with the repeal of section 122(a), 122(c) and 123 of the *Criminal Code Act 1924*. Not long after the *Anti-Discrimination Act 1998* came into effect making it unlawful to discriminate against a person based on their sexual orientation or lawful sexual activity. Then in 2001 the offence of cross-dressing was repealed under the Police Offences Act 1935. Further legislative reform occurred when the *Expungement of Historical Offences Act 2017* passed; recognising that criminalising consensual homosexual conduct was unjust, caused harm, and resulted in discrimination and disadvantage.

The purpose of this Bill is to amend the *Expungement of Historical Offences Act 2017* in response to recommendations from the Independent Review of Expungement of Historical Offences Act 2017 made by independent reviewers Ms Melanie Bartlett and Ms Taya Ketelaar-Jones, and the report of the Joint Sessional Committee on Gender and Equality, to which this Bill was referred by the Legislative Council. I wish to thank and acknowledge Ms Bartlett's, Ms Ketelaar-Jones' and the Committee's work reviewing the Scheme and for making the recommendations our Government is now responding to.

The independent statutory review recommended legislative amendments that will expand the operation and administration of the Act to include related offences, further support a victim centred approach to investigations, improve measures to support effective record disposal, and improve the confidentiality of records for all parties. The Review also made a number of recommendations that did not require legislative amendment which our Government have or will implement to ensure a more streamlined process and ensure greater promotion of the Scheme.

Our Government originally committed to implementing 12 of the 13 recommendations made by the Independent Reviewers. The 13<sup>th</sup> recommendation related to the establishment of a one-off ex-gratia payment for applicants who have their charges and convictions expunged. Our Government's original position was that this was not necessary given existing ex gratia mechanisms. However, our Government supports an amended redress scheme as proposed by the report of the report of the Joint Sessional Committee on Gender and Equality. That scheme is now incorporated into the Bill.

Madam Speaker, I will now address the substantive clauses of the Bill.

Clause 4 of the Bill addresses amendments to the definitions section of the Principal Act.

The Bill:

- amends the definition of “historical offence” to include a “related offence”;
- inserts a definition of “personal information” to make it consistent with the Personal Information Protection Act 2004;
- inserts a definition of “related offence” to include offences against section 34B offences or substantially similar provisions in other Acts; and
- inserts a definition of “secondary electronic record” to assist with delivering the intent of the review to only retain records which are necessary for historical purposes.

Clause 5 of the Bill amends section 9 of the Principal Act, which deals with the disclosure of records to the applicant. The clause omits the definition of personal information in the current section, which is inconsistent with the definition in the *Personal Information Protection Act 2004*, and provides for a narrower definition of record. This definitional change accords with the reviewer’s recommendation to ensure the Secretary doesn’t inadvertently provide the applicant a third party’s personal information.

The Principal Act currently provides for the expungement of charges or convictions for historical offences. A historical offence is defined as a homosexual offence or a cross-dressing offence. Under the Bill the definition of historical offence has been expanded to also include a “related offence”.

Clause 6 of the Bill amends section 10, Matters to be considered in determining an application.

The first change being made to that section reflects that “related offences” can now be expunged. Related offences have been defined to include charges or convictions for resisting, obstructing or assaulting police under section 34B of the Police Offences Act 1935 or substantially similar provisions in other Acts. Related offences will only be eligible for expungement where the Secretary of the Department of Justice is satisfied on reasonable grounds, after having received advice from the Commissioner of Police in relation to the circumstances of the related offence that the eligible person would not have been charged with the related offence but for the fact the eligible person was suspected of committing a homosexual offence or cross-dressing offence and expunging the charge is not contrary to the public interest.

The second change to that same section is small but important. Section 10(3)(c) of the Principal Act is being amended to provide that in determining a historical offence expungement application, the reasonable enquiries that may be necessary to make as to the location of the other party are to be made by the Secretary. The amendments mean that where the consent of the person is in issue, the Secretary, not the applicant, will make reasonable enquiries to locate the other party to verify facts.

Clause 7 of the Bill amends section 12 of the Bill, which provides that the Secretary must provide an applicant with “a copy of any relevant records relating to the application” when explaining the reasons for intending to refuse an application. The recommended change will mean that when unsuccessful applicants receive refusal reasons and relevant records relating to the application, information will only relate to their personal information not third parties.

Clause 8 of the Bill amends section 15 of the Bill. Section 15 sets out what is to happen once a charge or conviction has been expunged and provides for a process for annotating records. The Reviewers recognised the benefits of treating secondary records different to ordinary records. The Act is therefore being amended so section 15 provides that when a record is expunged secondary electronic records will not be annotated, as is the case for ordinary records, but instead permanently removed. The Bill also allows for an exception that will allow the process of expungement for secondary electronic records to be that applied for ordinary records where it is not possible to permanently delete records due to technical limitations. These changes will minimise the number of records which refer to an expunged conviction, thereby decreasing the risk of unintentional or accidental disclosure.

Clause 9 of the Bill inserts a Part 3A into the Act for the purpose of providing a redress scheme for people who have successfully had their charges or convictions expunged. The clause reflects the arising recommendations from the Joint Sessional Committee on Gender and Equality’s Report which addressed the provision of compensation payable under the Principal Act. I would like to thank and acknowledge the work of the Honourable member for Murchison in the other place, the Committee and all those who made submissions. The Government reviewed the Report and accepts its recommendations.

The new Part 3A provides for redress payment amounts and the associated indexation method to allow for CPI changes. The Government had also considered CPI indexation is an important feature and is pleased to support this measure. The Government also notes “sanction” is defined broadly to include but is not limited to a fine or penalty, community service, a probation order, a custodial or suspended sentence, mandatory counselling or treatment. Our understanding is that if there is a successful applicant who has their conviction expunged, it is very likely they would have had such a sanction applied, particularly as fines were relatively common. They will therefore be eligible for the highest amount.

Part 3A also includes other housekeeping matters in relation to the redress scheme.

Clause 10 of the Bill amends section 22, which ordinarily precludes compensation to persons who have any charges or convictions expunged. The section has been amended to allow compensation to be provided to a person if they are entitled to it under the Act. This will allow redress payments to be provided under Part 3A.

Clause 11 of the Bill creates a new section 28A, which responds to the Reviewers’ recommendation that the Act requires an amendment to provide that any records, documents or material that has been collected or created in the investigation and determination of an application for expungement are exempt from the provisions of the Right to Information Act 2009.

Madam Speaker, this Bill appropriately responds to the recommendations of the Independent Review and the concerns raised in the Report by the Joint Sessional Committee on Gender and Equality.

The Government was pleased to bring forward all the other legislative amendments necessary to implement the recommendations of the Independent Reviewer's Report, in support of improving the expungement scheme for people affected so negatively by these historic offences that should never have existed. We acknowledge all the community stakeholders, and victims of these historical laws, and continue to give our commitment to support people in accessing this important scheme, and importantly the redress now being proposed under these amendments.

We embrace the changes made and will continue to update the legislation where necessary to ensure it is consistent with our community's expectations.

Madam Speaker, I commend the Bill to the House.