

FACT SHEET

Expungement of Historical Offences Amendment Bill 2023

The Bill amends the *Expungement of Historical Offences Act 2017* ("the Act") in response to the recommendations of the statutory *Independent Review of Expungement of Historical Offences Act 2017*, undertaken by Independent Reviewers Ms Melanie Bartlett and Ms Taya Ketelaar-Jones.

The Government is committed to improving the Expungement of Historical Offences Scheme to provide better support to affected persons whilst ensuring only relevant and appropriate convictions are expunged.

The key features of the Bill are as follows:

Expansion of Expungement Scheme to include related offences:

The Bill amends section 10 of the Act to expand the expungement scheme to allow related offences to be eligible for expungement. Related offences have been defined to include an offence relating to resisting, obstructing or assaulting police under section 34B of the *Police Offences Act 1935* or any equivalent provision as in force at that time.

Related offences will only be eligible for expungement where the offence which the eligible person was charged is a related offence, when the Secretary of the Department of Justice is satisfied on reasonable grounds after having considered 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 that the eligible person was suspected of committing a homosexual offence or cross-dressing offence and expunging that charge is not contrary to the public interest.

Further support for a victim-centered approach to investigations:

The Bill amends section 10 of the Act to provide that where the consent of the person is in issue, the Secretary (not the applicant) will make reasonable enquiries to locate them to verify facts. The amendments ensure a perpetrator does not look for victims of a non-consensual act.

Measures to support effective record disposal:

The Bill amends section 15 of the Act by distinguishing between the treatment of ordinary records and secondary electronic records.

Secondary electronic records have been defined to mean an official criminal record in electronic form that acts as a duplicate of, is derived from, or is generated as a result of, an already existing official criminal record. Secondary electronic records will not be annotated, as is the case for ordinary records under the Act, but instead permanently removed.

The Bill also provides 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 disclosure of confidential information.

Confidentiality of records collected and created in the assessment of an application:

The Act was silent on its interaction with the *Right to Information Act 2009*. The Bill creates a new section 28A, which will ensure any records, documents or material collected or created in the investigation and determination of an application for expungement will be exempt from its provisions.

Improving confidentiality for other parties

There is concern section 9 of the Act may give rise to potential confidentiality issues for parties other than the applicant, who may be compelled to be involved in the application process. The Bill therefore amends section 9 to provide that the release of records will be limited to include only those records relevant to the expungement. This will ensure the confidentiality of complainants not previously known to the applicant; particularly in cases where a complaint or charge never proceeded.

Section 12(3) of the Act provides that unsuccessful expungement scheme applicants are to receive refusal reasons and relevant records relating to the application. The records may include information obtained from other parties to the conduct. There are concerns regarding the potential identification of parties involved in the conduct, and the consequent distress this may cause them. The Bill amends therefore section 12 to ensure third parties' personal information is not released when a record is disclosed to the eligible person.

The Bill is to commence on Royal Assent.