

Fiona Murphy  
Secretary  
Expungement of Historical Offences Amendment Bill 2024 Inquiry  
Joint Sessional Committee on Gender and Equality  
Parliament House  
Hobart TAS 7000

By email only: [genderandequality@parliament.tas.gov.au](mailto:genderandequality@parliament.tas.gov.au)

24 January 2025

Dear Ms Murphy,

**RE: Expungement of Historical Offences Amendment Bill 2024 Inquiry**

Thank you for the opportunity to make a submission in respect of amendments to the Expungement of Historical Offences Amendment Bill 2024 ('the Bill'). Additional thanks for accepting this submission past the original timeframe for submissions.

I was one of the two Independent Reviewers appointed to undertake the independent statutory review of the Expungement of Historical Offences Act 2017 ('the Act').

I co-authored the Independent Review of Expungement of Historical Offences Act 2017 ('the Review') which was tabled in Parliament in November 2020.

On 1 August 2024, the Bill was tabled in the House of Assembly, giving effect to all the legislative recommendations made by the Review, but for Recommendation 13. Recommendation 13 concerns the issue of compensation or redress.

On 10 September 2024, the Tasmanian Greens moved amendments to the Bill in the House of Assembly to include a provision giving effect to Recommendation 13. These amendments were passed by the House of Assembly and are contained in clause 9 of the Bill.

On 11 September 2024 the Bill was tabled in the Legislative Council. On 19 November 2024 the Government proposed alternative amendments to give effect to Recommendation 13.

I understand that the Bill has been referred to the Joint Sessional Committee on Gender and Equality ('the Committee') to consider the two alternative amendments and to 'report on matters related to gender and equality impacts of the proposed payment of compensation under the Bill.'

**The Greens' proposed amendments**

The Greens' amendments provide for the appointment of an independent assessor to determine an appropriate method for quantifying the amount payable as compensation or redress for individuals with expunged charges or convictions.

The independent assessor must be appointed within three months of the Bill's passage and must make a recommendation to the premier for a method to calculate compensation within six months of their appointment.

The recommendation is then presented to Parliament as a draft order. If approved, the order takes effect immediately; if rejected, another assessment is conducted.

As outlined in the Greens' submission, 'the compensation order is a single order providing for the rules under which all participants compensation is determined'.

### **The Government's proposed amendments**

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 subject to annual increases for CPI.

According to the Government submission, the proposed amount payable '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 Review's position**

Recommendation 13 of the Review states:

*The Independent Reviewers recommend 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.*

## **Comments on the proposed amendments**

I have read the submissions made to the Committee by the Government and the Greens.

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 acknowledgment of the injustice suffered. The precise terminology is secondary to the broader intent of offering a meaningful response to those affected.

The Review did not make recommendations as to the amount payable as compensation or redress, or as to the process for determining this amount. Recommendation 13 provides guidance on the fundamental principles any redress or compensation scheme should follow. That is, it should be:

1. A one-off payment of a fixed amount (with the potential for a two-tier payment, based on whether a charge has been recorded on a person's criminal record)
2. Available automatically upon the expungement of a charge or conviction (that is, without requiring a further application process or assessment)
3. An amount determined by the Government to be appropriate

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 toward remedying the wrongs inflicted by the state, acknowledging the pain

endured and restoring dignity to those affected.

Thank you again for your time and consideration of this submission.

Kind regards,

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Taya Ketelaar-Jones (BA-LLB) (Hons)

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