

TASMANIA

EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024

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EXPUNGEMENT OF HISTORICAL OFFENCES AMENDMENT BILL 2024

*(Brought in by the Minister for Justice, the Honourable Guy
Barnett)*

A BILL FOR

**An Act to amend the *Expungement of Historical Offences
Act 2017***

Be it enacted by Her Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Expungement of
Historical Offences Amendment Act 2024*.

2. Commencement

This Act commences on the day on which this
Act receives the Royal Assent.

3. Principal Act

In this Act, the *Expungement of Historical
Offences Act 2017** is referred to as the Principal
Act.

*No. 45 of 2017

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4. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by omitting “offence;” from paragraph (b) of the definition of *historical offence* and substituting “offence; or”;
- (b) by inserting the following paragraph after paragraph (b) in the definition of *historical offence*:
 - (c) a related offence;
- (c) by inserting the following definition after the definition of *official criminal record*:

personal information has the same meaning as in the *Personal Information Protection Act 2004*;

- (d) by inserting the following definitions after the definition of *regulations*:

related offence means an offence against –

- (a) section 34B of the *Police Offences Act 1935*; or
- (b) a provision in an Act that has substantially the same effect as an offence referred to in paragraph (a);

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secondary electronic record means an official criminal record in electronic form that acts as a duplicate of, is derived from, or is generated as a result of, an already existing official criminal record, regardless of whether that secondary electronic record is held by the same entity as the already existing record or by a different entity;

5. Section 9 amended (Disclosure of records to applicant)

Section 9(1) of the Principal Act is amended by omitting the definitions of *personal information* and *record* and substituting the following definition:

record, in relation to an application, means a record of the investigation of, or a record of proceedings relating to, a historical offence to which the application relates.

6. Section 10 amended (Matters to be considered in determining application)

Section 10 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “for a homosexual offence or a cross-dressing offence” after “expunge a charge”;

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(b) by inserting the following subsection after subsection (1):

(1A) The Secretary must not decide to expunge a charge for a related offence under section 12(2)(a) unless the Secretary –

(a) has received advice from the Commissioner of Police in relation to the circumstances of the related offence; and

(b) is satisfied on reasonable grounds, after considering that advice, that –

(i) the offence for which the eligible person was charged is a related offence; and

(ii) the person charged with the related offence would not have been so charged but for the fact that the eligible person was suspected of committing a homosexual offence or cross-

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dressing offence;
and

(iii) expunging the
charge is not
contrary to the
public interest.

(c) by omitting from subsection (3)(c) “by
the applicant” and substituting “by the
Secretary”.

7. Section 12 amended (Determination of application)

Section 12(3)(b) of the Principal Act is amended
by inserting “except so far as those records
contain personal information relating to a person
other than the eligible person” after “Secretary”.

**8. Section 15 amended (Removal or annotation of
official criminal records)**

Section 15 of the Principal Act is amended by
omitting subsections (2) and (3) and substituting
the following subsections:

(2) On receipt of a notification under
subsection (1), the relevant data
controller must, within 28 days –

(a) in the case of any secondary
electronic record under the data
controller’s management or
control that includes information
about an expunged charge –

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- (i) erase or remove the secondary electronic record; or
 - (ii) remove any information from the secondary electronic record that identifies the person whose charge was expunged; or
 - (iii) remove any link between the secondary electronic record and data that could potentially identify the person whose charge was expunged; and
 - (b) in the case of any other official criminal record under the data controller's management or control that contains an entry that includes information about an expunged charge, annotate that entry, with a statement to the effect that –
 - (i) the entry includes information about an expunged charge; and
 - (ii) it is an offence to disclose information about an expunged charge.
- (2A) If a data controller is unable, due to technological limitations, to comply with

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subsection (2)(a) in respect of a secondary electronic record, that data controller may annotate that record in accordance with subsection (2)(b).

- (3) A data controller must notify the Secretary of any action taken under subsection (2) or (2A) as soon as possible after the action is taken.

9. 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.

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- (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.

10. Repeal of Act

This Act is repealed on the first anniversary of the day on which it commenced.