

FACT SHEET

Expungement of Historical Offences Bill 2017

In 1997, homosexuality was decriminalised with the repeal of sections 122(a), 122(c) and 123 of the *Criminal Code Act 1924* (the Criminal Code). However, the repeal of these provisions did not address the implications for those with existing criminal records relating to consensual homosexual sexual activity.

The *Expungement of Historical Offences Bill 2017* (the Bill) provides for a scheme to enable charges and convictions for historical offences to be expunged. Historical offences include homosexual offences and cross-dressing offences. Once a charge or conviction has been expunged, it is taken not to form part of the person's criminal record.

The key features of the Bill are as follows:

- The Bill provides for the expungement of charges and convictions for historical offences.
- Historical offence means a homosexual offence or a cross-dressing offence.
- A homosexual offence is a sexual offence or a public morality offence or offences of attempting to commit, or of inciting, instigating, aiding or abetting the commission of a sexual offence or a public morality offence.
- Sexual offence is defined as an offence in force at any time by which sexual activity of a homosexual nature, whether penetrative or non-penetrative could be punished, whether or not heterosexual sexual conduct could also be punished by the offence. This would include the previously repealed provisions of the Criminal Code – sections 122(a), 122(c) and 123.
- A public morality offence is an offence, other than a sexual offence, the essence of which is the maintenance of public decency and morality and by which homosexual behaviour could be punished. This is intended to capture other offences that were used to target homosexual behaviour such as loitering, indecency, and soliciting or importuning for immoral purposes.
- Cross-dressing offence is defined as an offence under section 8(1)(d) of the *Police Offences Act 1935* as in force before 12 April 2001 or an offence of attempting to commit, or of inciting, instigating, aiding or abetting the commission of a cross-dressing offence.
- An application to have a charge and/or conviction expunged may be made by a person who was charged with an historical offence (the eligible person), or if that person is deceased, by various parties including a spouse, child, parent, sibling, niece, nephew or legal personal representative. An application can be made in respect of multiple charges.
- Applications are to be made to the Secretary of the responsible department. The Secretary must make a determination by deciding whether to expunge a charge or not as

soon as practicable after receiving an application. The Secretary can delegate his or her functions or powers under the legislation.

- To expunge a charge in relation to a homosexual offence, the Secretary must be satisfied on reasonable grounds that:
 - the charge relates to a homosexual offence;
 - the eligible person would not have been charged with the offence but for the fact that he or she was suspected of having engaged in the conduct constituting the offence for the purposes of, or in connection with, sexual activity of a homosexual nature; and
 - the conduct constituting the offence would not constitute an offence under the law of Tasmania if engaged in at the time of making the application. In considering this test, the Secretary must have regard to whether any person involved in the conduct consented to the conduct and the ages or respective ages of those persons at the time of the conduct.
- To expunge a charge in relation to a cross-dressing offence, the Secretary must be satisfied on reasonable grounds that the offence was a cross-dressing offence (i.e., an offence under the now repealed section 8(1)(d) of the *Police Offences Act 1935*).
- If the Secretary refuses to expunge a charge, then the applicant can apply to the Magistrates Court (Administrative Appeals) Division for a review of the Secretary's decision. If the Secretary decides to expunge a charge, then the other party to the conduct and/or a data controller can apply for a review of the decision.
- If the Secretary decides to expunge a charge, that charge and any conviction in respect of that charge is expunged at the expiration of 90 days after the date of the decision – this is to allow for any reviews to be dealt with.
- Once a charge and/or conviction has been expunged, the Secretary is to advise the parties who hold criminal records – Tasmania Police, the courts and the Director of Public Prosecutions, and the records are to be annotated accordingly. The annotation is to note that it is an offence to disclose expunged charges and convictions.
- The effects of expungement are as follows:
 - an expunged charge or conviction is taken not to form part of the person's official criminal record and is not required to be disclosed;
 - a question about the person's criminal history, including a question to be answered under oath in legal proceedings, is taken not to refer to an expunged charge or conviction;
 - a person is not required to disclose his or her expunged charge or conviction to any other person including when giving evidence in legal proceedings;
 - a reference to a charge or conviction in any legislation, agreement or arrangement, is taken not to refer to an expunged charge or conviction;

- a reference to a person's character in any legislation, agreement or arrangement is not to be taken to allow or require anyone to take account of an expunged charge or conviction; and
- an expunged charge or conviction, or the non-disclosure of an expunged charge or conviction is not a proper ground for refusing the person any appointment, office, status or privilege, revoking any appointment, status or privilege held by the person or dismissing the person from any office.
- There are offences under the Bill for:
 - unlawful disclosure of information about a person's expunged charge or conviction;
 - fraudulently or dishonestly obtaining or attempting to obtain information about another person's expunged charge or conviction; and
 - giving false or misleading information in answering a question, giving information or providing a document.