

*I hereby certify that this PUBLIC BILL has finally passed the  
Legislative Assembly of Queensland.*

*Legislative Assembly Chamber,  
Brisbane,*

*The Clerk of the Parliament.*

*23 OCTOBER 20 17*

*In the name and on behalf of the Queen, I assent to this Bill.*

*Paul de Jersey*  
*Government House,*

*Brisbane,*

*23 October*

*2017*



Queensland

**No. 37 of 2017**  
**A BILL for**

**An Act to provide for the expungement of particular historical homosexual convictions or charges and to amend this Act, the Child Protection Act 1999 and the Family Responsibilities Commission Act 2008 for particular purposes**





Queensland

# Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017

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**2017**

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## **A Bill**

for

**An Act to provide for the expungement of particular historical homosexual convictions or charges and to amend this Act, the *Child Protection Act 1999* and the *Family Responsibilities Commission Act 2008* for particular purposes**

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[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1                      Preliminary**

### **Division 1                Introduction**

#### **1                Short title**

This Act may be cited as the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*.

#### **2                Commencement**

This Act commences on a day to be fixed by proclamation.

#### **3                Purpose**

- (1) This Act establishes a scheme for the expungement, on application, of convictions and charges for particular offences involving homosexual activity.
- (2) The scheme only applies to convictions or charges that happened before 19 January 1991.
- (3) To the extent provided in this Act, if a person's conviction or charge for an offence is expunged, the person is to be treated in law as if the person had not been convicted of, or charged with, the offence.

#### **4                Act binds all persons**

- (1) This Act binds all persons, including the State and, as far as the legislative power of the Parliament permits, the Commonwealth and the other States.



- (2) Subsection (1) does not make the State, the Commonwealth or another State liable to be prosecuted for an offence.

**5 Act does not affect lawful acts or entitle person to compensation**

- (1) No provision of this Act affects anything lawfully done before a conviction or charge is expunged.
- (2) A person who has a conviction or charge expunged under this Act is not entitled to compensation of any kind because the conviction or charge becomes an expunged conviction or expunged charge.

## **Division 2 Interpretation**

**6 Definitions**

The dictionary in schedule 1 defines particular words used in this Act.

**7 Meaning of *eligible person***

An *eligible person* is a person who was convicted of, or charged with, an eligible offence before 19 January 1991.

**8 Meaning of *eligible offence***

- (1) An *eligible offence* is—
- (a) a Criminal Code male homosexual offence; or
  - (b) a public morality offence; or
  - (c) another offence prescribed by regulation.
- (2) A regulation under subsection (1)(c) may only prescribe an offence to the extent the offence happened, or allegedly happened, before 19 January 1991.

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## **9 Meaning of *Criminal Code male homosexual offence***

A *Criminal Code male homosexual offence* is—

- (a) an offence against any of the following provisions of the Criminal Code as in force before 19 January 1991—
  - (i) section 208(1) or (3) other than to the extent the offence involved heterosexual activity;
  - (ii) section 209 to the extent the offence involved an attempt to commit an offence mentioned in subparagraph (i);
  - (iii) section 211; or
- (b) an offence of attempting to commit an offence mentioned in paragraph (a); or
- (c) an offence of conspiring to commit an offence mentioned in paragraph (a); or
- (d) an offence of counselling or procuring a person to commit an offence mentioned in paragraph (a).

## **10 Meaning of *public morality offence***

A *public morality offence* is—

- (a) an offence against either of the following provisions as in force before 19 January 1991—
  - (i) an offence against the repealed *Vagrants, Gaming and Other Offences Act 1931*, section 5(1)(b) or 7(e);
  - (ii) an offence against the Criminal Code, section 227(1); or
- (b) an offence of attempting to commit an offence mentioned in paragraph (a)(ii); or
- (c) an offence of conspiring to commit an offence mentioned in paragraph (a); or
- (d) an offence of counselling or procuring a person to commit an offence mentioned in paragraph (a).

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## Part 2                      Application for conviction or charge to be expunged

### 11      Who may apply

- (1) An eligible person may apply to the chief executive for a conviction or charge of the eligible person for an eligible offence to be expunged.
- (2) If the eligible person is an adult with impaired capacity, the application may be made by—
  - (a) if the eligible person has a guardian—the guardian; or  
*Note—*  
See the *Guardianship and Administration Act 2000*, sections 12 and 33.
  - (b) if the eligible person does not have a guardian but has appointed an attorney under an enduring power of attorney—the attorney; or
  - (c) if the eligible person does not have a guardian and has not appointed an attorney under an enduring power of attorney—
    - (i) a member of the eligible person’s support network; or
    - (ii) another person approved by the chief executive.
- (3) If the eligible person died after 19 January 1991, the application may be made by the first of the following who is available—
  - (a) the personal representative of the eligible person;
  - (b) a person who was the eligible person’s spouse on the day the eligible person died;
  - (c) a parent of the eligible person;
  - (d) an adult child of the eligible person;
  - (e) an adult sibling of the eligible person;

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(f) an adult who was in a close personal relationship with the eligible person immediately before the eligible person died.

(4) In this section—

**adult child**, of an eligible person, means a child of the person who is 18 years or more.

**adult sibling**, of an eligible person, means a sibling of the person who is 18 years or more.

**enduring power of attorney** means an enduring power of attorney under the *Powers of Attorney Act 1998*.

**guardian** means a guardian appointed under the *Guardianship and Administration Act 2000*.

**impaired capacity** see the *Guardianship and Administration Act 2000*, schedule 4.

**spouse**, of an eligible person who died before 1 April 2003, includes a person who would have been, on the day the eligible person died, the eligible person's de facto partner had the *Acts Interpretation Act 1954*, section 32DA been in force.

**support network** see the *Guardianship and Administration Act 2000*, schedule 4.

## 12 Requirements for application

(1) The application must—

- (a) be in the approved form; and
- (b) state the following information about each eligible offence to which the application relates to the extent the information is available to the applicant—
  - (i) the date of the conviction or charge;
  - (ii) the place and court (if any) where the eligible person was convicted or charged;
  - (iii) the particulars of the offence;

*Examples of the particulars of an offence—*

- the nature of the offence
  - the act or omission constituting the offence
  - the place where the offence was committed or allegedly committed
  - the provision of the Act that was contravened or allegedly contravened
- (iv) if the eligible person was convicted of the eligible offence—whether the eligible person was convicted on a plea of guilty;
- (v) the details of any sentence imposed; and
- (c) include the applicant's consent to the making of inquiries of, and the exchange of information with, each criminal record holder for the purpose of deciding whether to expunge a conviction or charge the subject of the application.
- (2) The application must be accompanied by—
- (a) evidence of identity for the applicant; and
  - (b) if the eligible person has died—a death certificate for the eligible person; and
  - (c) any other document prescribed by regulation.
- (3) The application may be accompanied by any other information or document the applicant reasonably considers may help the chief executive in deciding whether to expunge a conviction or charge the subject of the application.

*Examples of other information or a document—*

- a statement by the applicant addressing the criteria the chief executive must consider in deciding whether to expunge the conviction or charge
  - written evidence of a person involved in the act or omission constituting the eligible offence about the eligible offence
- (4) The application may relate to more than 1 conviction or charge of the eligible person for an eligible offence.
- (5) In this section—

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*death certificate*, for an eligible person, means a certificate of the eligible person's death issued under the *Births, Deaths and Marriages Registration Act 2003* or a law of another jurisdiction that corresponds to that Act.

*evidence of identity* means the evidence of identity prescribed by regulation.

### **13      Withdrawing all or part of application**

The applicant may, by notice given to the chief executive, withdraw—

- (a) all of the application at any time before the applicant receives a notice under section 22 in relation to any conviction or charge the subject of the application; or
- (b) part of the application relating to a particular conviction or charge at any time before the applicant receives a notice under section 22 in relation to the particular conviction or charge.

### **14      Chief executive may request further information or document from applicant**

- (1) The chief executive may, by notice given to the applicant, ask the applicant for further information or a document the chief executive reasonably requires to decide whether to expunge a conviction or charge the subject of the application.
- (2) If the chief executive makes a request under subsection (1), the chief executive may give the applicant any information or a document about the conviction or charge in the chief executive's possession or control.
- (3) Subsection (2) does not apply to the extent the information or document contains confidential information about a person other than the applicant or eligible person.
- (4) If the chief executive makes a request under subsection (1), the chief executive may make a decision under section 17 to expunge or refuse to expunge the conviction or charge

regardless of whether the applicant gives the further information or document requested.

- (5) The chief executive may, by notice given to the applicant, ask the applicant to verify by statutory declaration any information or document the applicant gives, or has given, the chief executive.

## **15 Chief executive may request information from criminal record holder**

- (1) This section applies if the chief executive has the applicant's consent to make inquiries of, and exchange information with, a criminal record holder.
- (2) The chief executive may ask the criminal record holder for a public record containing information about a conviction or charge the subject of the application.
- (3) The criminal record holder must comply with the request if the criminal record holder holds the record.

## **16 Chief executive may request information from another person or entity**

- (1) This section applies if the chief executive considers a person other than the applicant, or an entity other than a criminal record holder, may have information or a document the chief executive reasonably requires to decide whether to expunge a conviction or charge the subject of the application.
- (2) The chief executive may, by notice given to the person or entity, ask the person or entity for the information or document.
- (3) If the information or document is not publicly available, the chief executive may only make a request under subsection (2) with the applicant's written consent.
- (4) The chief executive may, by notice given to the person or entity, ask the person or entity to verify by statutory declaration the information or document.

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## **17 Consideration of and decision on application**

- (1) The chief executive must consider the application and decide to—
  - (a) expunge a conviction or charge the subject of the application; or
  - (b) refuse to expunge a conviction or charge the subject of the application.
- (2) In acting under subsection (1), the chief executive must not hold an oral hearing.

## **18 Criteria for Criminal Code male homosexual offence**

- (1) This section applies if a conviction or charge the subject of the application is for a Criminal Code male homosexual offence.
- (2) The chief executive may decide to expunge the conviction or charge for the offence only if the chief executive is satisfied, on the balance of probabilities, that—
  - (a) the other person who engaged, or allegedly engaged, in the act or omission constituting the offence—
    - (i) consented to the act or omission; and
    - (ii) was 18 years or more at the time the offence was committed or alleged to have been committed; and
  - (b) the act or omission constituting the offence—
    - (i) would not constitute an offence under the law of Queensland if it were done by the eligible person at the time the application was made; or
    - (ii) meets the criteria in subsection (2A).
- (2A) For subsection (2)(b)(ii), the criteria are—
  - (a) the act or omission—
    - (i) was done, or allegedly done, in a public place; and
    - (ii) would not constitute an offence under the law of Queensland if it were done at the time the



application was made, other than in a public place;  
and

- (b) a person, other than a person engaging in the act or omission, would not have been able to observe the act or omission without taking abnormal or unusual action.

*Example of taking abnormal or unusual action—*

looking under the door of a cubicle in a public toilet

- (3) In considering the criteria mentioned in subsection (2) or (2A), the chief executive must have regard to—
  - (a) any public record containing information about the conviction or charge the chief executive has received from a criminal record holder; and
  - (b) any information or document the chief executive has received under section 16 about the application.

- (4) In this section—

***consent*** see the Criminal Code, section 348.

## **19 Criteria for public morality offence**

- (1) This section applies if a conviction or charge the subject of the application is for a public morality offence.
- (2) The chief executive may decide to expunge the conviction or charge for the offence only if the chief executive is satisfied, on the balance of probabilities, that—
  - (a) the offence involved homosexual activity; and
  - (b) the act or omission constituting the offence—
    - (i) would not constitute an offence under the law of Queensland if it were done by the eligible person at the time the application was made; or
    - (ii) meets the criteria in subsection (2A).
- (2A) For subsection (2)(b)(ii), the criteria are—
  - (a) the act or omission—

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- (i) was done, or allegedly done, in a public place; and
  - (ii) would not constitute an offence under the law of Queensland if it were done at the time the application was made, other than in a public place; and
- (b) a person, other than a person engaging in the act or omission, would not have been able to observe the act or omission without taking abnormal or unusual action.

*Example of taking abnormal or unusual action—*

looking under the door of a cubicle in a public toilet

- (3) In considering the criteria mentioned in subsection (2) or (2A), the chief executive must have regard to—
- (a) any public record containing information about the conviction or charge the chief executive has received from a criminal record holder; and
  - (b) any information or document the chief executive has received under section 16 about the application.

## **20 Criteria for other eligible offences**

- (1) This section applies if a conviction or charge the subject of the application is for an eligible offence other than a Criminal Code male homosexual offence or a public morality offence.
- (2) The chief executive may decide to expunge the conviction or charge for the offence only if the chief executive is satisfied, on the balance of probabilities—
  - (a) that the offence involved homosexual activity; and
  - (b) of the criteria prescribed by regulation for the offence.

## **21 Proposed refusal to expunge conviction or charge**

- (1) If the chief executive proposes to refuse to expunge a conviction or charge the subject of the application, the chief executive must give the applicant a notice—

- (a) stating the chief executive proposes to refuse to expunge the conviction or charge (the *proposed refusal*); and
  - (b) informing the applicant of the reasons for the proposed refusal; and
  - (c) inviting the applicant to make a submission to the chief executive, within a stated period, in relation to the proposed refusal.
- (2) Also, the chief executive must give the applicant any information or document—
  - (a) obtained by the chief executive from a person or entity other than the applicant; and
  - (b) in the chief executive's possession or control; and
  - (c) relied on by the chief executive to support the proposed refusal.
- (3) Subsection (2) does not apply to the extent the information or document contains confidential information about a person other than the applicant or eligible person.
- (4) The applicant may make a written submission about the proposed refusal to the chief executive in the period mentioned in subsection (1)(c) (an *accepted submission*).
- (5) After the period mentioned in subsection (1)(c) has ended, the chief executive must—
  - (a) if the applicant has made an accepted submission—consider the submission; and
  - (b) whether or not the applicant has made an accepted submission—decide to expunge or refuse to expunge the conviction or charge.

## 22 Notice of decision

- (1) If the chief executive decides to expunge a conviction or charge the subject of the application, the chief executive must give notice of the decision to—
  - (a) the applicant; and

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- (b) each criminal record holder.
- (2) The decision takes effect on the day the notice is given to the applicant.
- (3) If the chief executive decides to refuse to expunge a conviction or charge the subject of the application, the chief executive must give the applicant a QCAT information notice for the decision.

## **23 Subsequent expungement application**

- (1) This section applies if the chief executive decides to refuse to expunge a conviction or charge the subject of an expungement application (an *original application*).
- (2) A person may make a later expungement application in relation to the conviction or charge only if the chief executive is satisfied evidence relevant to the original application that was not available, or could not with reasonable diligence have been available, to the applicant before the chief executive decided to refuse to expunge the conviction or charge has become available.

# **Part 3 Consequences of expungement**

## **Division 1 General**

## **24 Effect of expunged convictions and charges**

- (1) A reference in an Act, other than this Act, to a conviction or charge does not include an expunged conviction or expunged charge.
- (2) Without limiting subsection (1), if a conviction or charge of a person for an offence is an expunged conviction or expunged charge—

- (a) it is lawful for the person to claim, on oath or otherwise, including in a proceeding before any court or tribunal, that the person was not convicted of, or charged with, the offence; and
  - (b) evidence is not admissible in a proceeding before any court or tribunal to prove the person was convicted of, or charged with, the offence; and
  - (c) a question about the person's criminal history is taken not to refer to the conviction or charge; and
  - (d) the person is not required to disclose information about the conviction or charge to anyone; and
  - (e) for the purpose of any Act, agreement or arrangement—
    - (i) the conviction or charge is not part of the person's criminal history; and
    - (ii) a reference to the person's character, however expressed, does not require or allow anyone to take the conviction or charge into account; and
  - (f) the conviction or charge, or non-disclosure of the conviction or charge, is not a proper ground for—
    - (i) refusing to appoint the person to any office, profession or employment; or
    - (ii) excluding or dismissing the person from any office, profession or employment; or
    - (iii) otherwise prejudicing the person in any way in any office, profession or employment; and
  - (g) if, before the conviction or charge was expunged, an application by the person under an Act for an authority was refused wholly because of the conviction or charge, the person may reapply for the authority without waiting any minimum period.
- (3) A reference in subsection (2) to the happening of, or information about, a conviction or charge of a person for an offence includes the happening of, or information about—

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- (a) an investigation associated with the conviction or charge; or
  - (b) a prosecution of the person for the offence; or
  - (c) the sentencing of the person for the offence; or
  - (d) another legal process associated with the conviction or charge.
- (4) In this section—
- authority* includes licence, permit and approval.
- profession* includes any occupation.
- tribunal* includes any entity with power to decide a question affecting a person's rights, privileges or liabilities.

## Division 2                      Public records

### 25            Definitions for division

In this division—

*public authority* means a public authority under the *Public Records Act 2002*.

*public record* means a record kept by a public authority that contains information about a conviction or charge.

### 26            Disclosing information from public records about expunged convictions or charges

- (1) This section applies to a person who—
- (a) has access to information in a public record about an expunged conviction or expunged charge; and
  - (b) knows, or ought reasonably to know, the conviction or charge is an expunged conviction or expunged charge.
- (2) The person must not disclose the information to anyone unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (3) Subsection (2) does not apply to a disclosure of information—
- (a) to the extent necessary to perform a function under this Act; or  
*Example of a function under this Act—*  
annotating a public record under section 28
  - (b) to the extent necessary to perform a function under the *Public Records Act 2002*; or
  - (c) to, or with the written consent of, the person to whom the expunged conviction or expunged charge relates; or
  - (d) in a form that could not identify any person to whom the information relates.

## **27 Dishonestly obtaining information from public records about expunged convictions or charges**

A person must not dishonestly obtain, or attempt to obtain, information about an expunged conviction or expunged charge contained in a public record.

Maximum penalty—100 penalty units.

## **28 Annotation of public records about expungement**

- (1) This section applies if—
- (a) the chief executive gives notice to a criminal record holder under section 22 of the expungement of a conviction or charge; and
  - (b) the criminal record holder holds a public record containing information about the conviction or charge.
- (2) The criminal record holder must—
- (a) annotate the public record by—
    - (i) making any necessary changes to the public record to show the conviction or charge is an expunged conviction or expunged charge; and

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- (ii) including any statement or information prescribed by regulation; and
- (b) give the chief executive notice that the annotation has been made.
- (3) On receiving the notice under subsection (2)(b), the chief executive must give the applicant for the expungement of the conviction or charge notice of the annotation.

## **29 Changes to public records on revival of expunged conviction or charge**

- (1) This section applies if—
  - (a) the chief executive gives notice to a criminal record holder under section 35 of a decision that an expunged conviction or expunged charge is no longer an expunged conviction or expunged charge; and
  - (b) the criminal record holder holds a public record containing information about the conviction or charge.
- (2) The criminal record holder must—
  - (a) make any necessary changes to the public record so the record no longer indicates the conviction or charge is an expunged conviction or expunged charge; and
  - (b) give the chief executive notice that the changes have been made.
- (3) On receiving the notice under subsection (2)(b), the chief executive must give the applicant for the expungement of the conviction or charge notice of the changes.

## **30 Deletion of information from public records**

This Act does not require or authorise a person to destroy a public record or omit information about an expunged conviction or expunged charge from a public record.



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## Part 4                      Revival of expunged conviction or charge

### 31            Chief executive may decide to revive expunged conviction or charge

The chief executive may decide that an expunged conviction or expunged charge is no longer an expunged conviction or expunged charge if the chief executive is satisfied the conviction or charge became an expunged conviction or expunged charge because of false or misleading information.

### 32            Show cause process

- (1) Before making a decision under section 31 about an expunged conviction or expunged charge, the chief executive must give the applicant for the expungement of the conviction or charge a notice (a *show cause notice*)—
  - (a) stating the chief executive proposes to decide that the expunged conviction or expunged charge is no longer an expunged conviction or expunged charge (the *proposed decision*); and
  - (b) informing the applicant of the reasons for the proposed decision; and
  - (c) inviting the applicant to make a submission to the chief executive, within a stated period, in relation to the proposed decision.
- (2) The applicant may make a written submission about the show cause notice to the chief executive in the period mentioned in subsection (1)(c) (an *accepted submission*).

### 33            Ending show cause process without further action

If, after considering any accepted submission, the chief executive is no longer satisfied the expunged conviction or expunged charge became an expunged conviction or

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expunged charge because of false or misleading information, the chief executive—

- (a) must not take further action about the show cause notice; and
- (b) must give notice to the applicant for the expungement of the conviction or charge that no further action is to be taken about the show cause notice.

### **34 Decision to revive expunged conviction or charge**

- (1) If, after considering any accepted submission, the chief executive is still satisfied the expunged conviction or expunged charge became an expunged conviction or expunged charge because of false or misleading information, the chief executive must—
  - (a) decide the expunged conviction or expunged charge is no longer an expunged conviction or expunged charge; and
  - (b) give the applicant for the expungement of the conviction or charge a QCAT information notice for the decision.
- (2) The decision takes effect on the day the QCAT information notice is given to the applicant.

### **35 Notice of revival of expunged conviction or charge to criminal record holder**

- (1) This section applies if the chief executive decides that an expunged conviction or expunged charge is no longer an expunged conviction or expunged charge and—
  - (a) the applicant for the expungement of the conviction or charge has not applied for a review of the decision within the time allowed under the QCAT Act, section 33(3); or
  - (b) if the applicant for the expungement of the conviction or charge applied for a review of the decision—the review has been finally decided and the expunged conviction or

expunged charge is no longer an expunged conviction or expunged charge.

- (2) The chief executive must give each criminal record holder notice that the expunged conviction or expunged charge is no longer an expunged conviction or expunged charge.

## **Part 5**

# **Reviews, evidence, legal proceedings and offences**

### **36 Review by QCAT**

A person given, or entitled to be given, a QCAT information notice for a decision may apply, as provided under the QCAT Act, to QCAT for a review of the decision.

*Note—*

The QCAT Act, section 22(3) provides that QCAT may stay the operation of the decision, either on application by a person or on its own initiative.

### **37 Evidentiary provisions**

- (1) This section applies to a proceeding under this Act.
- (2) The appointment or power of the chief executive must be presumed unless a party to the proceeding, by reasonable notice, requires proof of—
  - (a) the appointment; or
  - (b) the power to do anything under this Act.
- (3) A signature purporting to be the signature of the chief executive is evidence of the signature it purports to be.
- (4) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—

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- (a) that a conviction or charge of a stated eligible person for a stated eligible offence was or was not expunged under this Act;
  - (b) on a stated day, a stated person was given a stated notice under this Act;
  - (c) on a stated day, a stated request was made of a stated person or entity.
- (5) In a complaint starting the proceeding, a statement that the offence in the complaint came to the complainant's knowledge on a stated day is evidence of the matter.

### **38 Proceeding for offences**

- (1) A proceeding for an offence against this Act must be taken in a summary way under the *Justices Act 1886*.
- (2) A proceeding may be started within—
  - (a) 1 year after the offence is committed; or
  - (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

### **39 False or misleading information**

- (1) A person must not, in relation to the administration of this Act, give the chief executive information the person knows is false or misleading in a material particular.  
Maximum penalty—100 penalty units.
- (2) Subsection (1) does not apply to a person if the person, when giving information in a document—
  - (a) tells the chief executive, to the best of the person's ability, how the document is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

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## **40 Confidentiality of information**

- (1) This section applies to the following persons (each an *informed person*)—
  - (a) a person who acquires or gains access to confidential information through the person's involvement in the administration of this Act or because of an opportunity provided by the person's involvement in the administration of this Act;
  - (b) a person who acquires or gains access to confidential information, whether directly or indirectly, from a person mentioned in paragraph (a).
- (2) The informed person must not disclose or give access to confidential information acquired or gained by the person to anyone other than under subsection (3).

Maximum penalty—100 penalty units.

- (3) The informed person may disclose or give access to confidential information—
  - (a) for or under this Act; or
  - (b) as authorised or required under another law; or
  - (c) to, or with the written consent of, the person to whom the information relates; or
  - (d) for a proceeding under this Act.

## **Part 6 Miscellaneous**

### **41 Chief executive may appoint lawyer to help**

- (1) The chief executive may appoint a lawyer of at least 5 years standing to help the chief executive in relation to an expungement application.
- (2) The lawyer holds office on the conditions stated in—
  - (a) the lawyer's instrument of appointment; or

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- (b) a notice signed by the chief executive and given to the lawyer.
- (3) A lawyer appointed under this section is appointed under this Act, and not under the *Public Service Act 2008*.

#### **42 Royal prerogative of mercy**

This Act does not affect the royal prerogative of mercy.

#### **43 Delegation**

- (1) The chief executive may delegate the chief executive's functions under this Act to an appropriately qualified senior executive or senior officer under the *Public Service Act 2008*.
- (2) In this section—  
*function* includes power.

#### **44 Approved forms**

The chief executive may approve forms for use under this Act.

#### **45 Regulation-making power**

The Governor in Council may make regulations under this Act.

## **Part 7 Amendment of Acts**

### **Division 1 Amendment of this Act**

#### **46 Act amended**

This division amends this Act.

**47 Amendment of long title**

Long title, from ‘and to amend’—  
*omit.*

**Division 2                      Amendment of Child Protection Act  
1999**

**48 Act amended**

This division amends the *Child Protection Act 1999*.

**49 Amendment of s 159C (What is *relevant information*)**

(1) Section 159C(5)—

*renumber* as section 159C(6).

(2) Section 159C—

*insert*—

(5) Relevant information does not include information about an expunged conviction or expunged charge.

(3) Section 159C—

*insert*—

(7) In this section—

*expunged charge*—

(a) means—

(i) a charge expunged under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*; or

(ii) a charge of an offence that resulted in a conviction that is an expunged conviction; but

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- (b) does not include a charge that, under section 34 of that Act, is no longer expunged.

*expunged conviction—*

- (a) means a conviction expunged under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*; but
- (b) does not include a conviction that, under section 34 of that Act, is no longer expunged.

## Division 3

## Amendment of Family Responsibilities Commission Act 2008

### 50 Act amended

This division amends the *Family Responsibilities Commission Act 2008*.

### 51 Amendment of s 91 (What is *relevant information*)

Section 91(4), after ‘conviction’—  
*insert—*

or information about an expunged conviction or expunged charge under the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*



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## Schedule 1 Dictionary

### section 6

***accepted submission***, for part 4, see section 32(2).

***applicant***, for parts 3 and 4, for the expungement of a conviction or charge, means the person who applied for the conviction or charge to be expunged.

***approved form*** means a form approved under section 44.

***charge*** does not include a charge of an offence that resulted in a conviction.

***confidential information*** includes information about a person's affairs but does not include—

- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

***conviction*** means a finding of guilt, or the acceptance of a plea of guilty, by a court, whether or not a conviction is recorded.

***court registrar*** means—

- (a) the person holding appointment as the principal registrar of Magistrates Courts under the *Magistrates Courts Act 1921*, section 3A(2); or
- (b) the person holding appointment as the principal registrar under the *District Court of Queensland Act 1967*, section 36(1); or
- (c) the person holding appointment as the principal registrar under the *Supreme Court of Queensland Act 1991*, section 69(1).

***Criminal Code male homosexual offence*** see section 9.

***criminal record holder*** means—

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- (a) the commissioner of the police service; or
- (b) a court registrar; or
- (c) the director of public prosecutions; or
- (d) the chief executive of the department in which the *Corrective Services Act 2006* is administered.

***eligible offence*** see section 8.

***eligible person*** see section 7.

***expunged charge***—

- (a) means—
  - (i) a charge expunged by the chief executive under this Act; or
  - (ii) a charge of an offence that resulted in a conviction that is an expunged conviction; but
- (b) does not include a charge that, under section 34, is no longer expunged.

***expunged conviction***—

- (a) means a conviction expunged by the chief executive under this Act; but
- (b) does not include a conviction that, under section 34, is no longer expunged.

***expungement application*** means an application made to the chief executive under section 11.

***homosexual activity*** includes an activity that before 19 January 1991 may have been regarded as an activity of a homosexual nature.

***Example***—

a person wearing gender nonconforming clothing

***notice*** means written notice.

***public authority***, for part 3, division 2, see section 25.

***public morality offence*** see section 10.

***public place*** means a place to which the public are permitted to have access, whether on payment of a charge for admission or not.

***public record*** see section 25.

***QCAT information notice*** means a notice complying with the QCAT Act, section 157(2).

***show cause notice***, for part 4, see section 32(1).

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