

HARRINGTON FAMILY LAWYERS

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Our Ref: SRP/ms

Your Ref:

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The Acting Committee Secretary
Legal Affairs and Community Safety Committee
Parliament House
Brisbane***By email – lacsc@parliament.qld.gov.au***

Dear Sir/Madam

***SUBMISSION AS TO CRIMINAL LAW (HISTORICAL HOMOSEXUAL CONVICTIONS
EXPUNGEMENT) BILL 2017***

It is a fundamental principle of our democracy, of which we should be very proud, that each of us are equal before the law.

Regrettably, the law has discriminated against some of us.

I am grateful to the Committee to be able to make a submission about this Bill.

As members of the Committee are probably well aware, for the last 20 years I have sought that there be equality in the law concerning LGBTI people. I strongly commend this Bill.

I note the Queensland Law Reform Commission Report. I note that the Commission contained eminent jurists, such as the Honourable Justice David Jackson and the Honourable Margaret Wilson QC.

In my view, the Report by the Commission is extremely thorough and adequately:

- Sets out the rationale for why there ought to be an expungement scheme;
- Why there ought to be a separate legislation on the point;
- The offences to be covered; and
- The administrative procedures proposed for the scheme.

I would commend the Report to the Committee.

The helpful overview of the scheme contained an executive summary (v) and the comparative guide to the approaches in other jurisdictions at (vi) – (x) make it very easy to understand how the proposed scheme would work and how it would work in comparison to other jurisdictions.

I note that the Attorney in her second reading speech sets out some slight variation on what the Commission said in its report. I consider these variations to be reasonable, sensible and commendable.

The Commission refers in its Report to the Yogyakarta Principles. These are non-binding international principles about human rights concerning LGBTI people, as adopted by the International Commission of Jurists and International Service for Human Rights. The proposed scheme is in accordance with those principles. In the preamble, the international panel of experts in the principles state, relevantly:

“RECALLING that all human beings are born free and equal in dignity and rights, and that everyone is entitled to the enjoyment of human rights without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status;

DISTURBED that violence, harassment, discrimination, exclusion, stigmatisation and prejudice are directed against persons in all regions of the world because of their sexual orientation or gender identity, that these experiences are compounded by discrimination on grounds including gender, race, age, religion, disability, health and economic status, and that such violence, harassment, discrimination, exclusion, stigmatisation and prejudice undermine the integrity and dignity of those subjected to these abuses, may weaken their sense of self-worth and belonging to their community, and leave many to conceal or suppress their identity and to live lives of fear and invisibility;

AWARE that historically people have experienced these human rights violations because they are or are perceived to be lesbian, gay or bisexual, because of their consensual sexual conduct with persons of the same gender or because they are or are perceived to be transsexual, transgender or intersex or belonging to social groups identified in particular societies by sexual orientation or gender identity...

OBSERVING that international human rights law affirms that all persons, regardless of sexual orientation or gender identity, are entitled to the full enjoyment of all human rights...

NOTING that international human rights law imposes an absolute prohibition of discrimination in regard to the full enjoyment of all human rights, civil, cultural, economic, political and social, that respect for sexual rights, sexual orientation and gender identity is integral to the realisation of equality between men and women and that States must take measures to seek to eliminate prejudices and customs based on the idea of the inferiority or the superiority of one sex or on stereotyped roles of men and women, noting further that the international community has recognised the right of persons to decide freely and responsibly on matters relating to their sexuality, including sexual and reproductive health, free from coercion, discrimination, and violence.”

Principle 2 of the Yogyakarta Principles sets out the rights to equality and non-discrimination. These include:

“Everyone is entitled to enjoy all human rights without discrimination on the basis of sexual orientation or gender identity. Everyone is entitled to equality before the law and the equal protection of the law without any such discrimination whether or not the enjoyment of another human right is also affected. The law shall prohibit any such discrimination and guarantee to all persons equal and effective protection against any such discrimination.

Discrimination on the basis of sexual orientation or gender identity includes any distinction, exclusion, restriction or preference based on sexual orientation or gender identity which has the purpose or effect of nullifying or impairing equality before the law or the equal protection of the law, or the recognition, enjoyment or exercise, on an equal basis, of all human rights and fundamental freedoms... States shall:

- (b) repeal criminal and other legal provisions that prohibit or are, in effect, employed to prohibit consensual sexual activity among people of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;*
- (c) adopt appropriate legislative and other measures to prohibit and eliminate discrimination of the public and private spheres on the basis of sexual orientation and gender identity”*

Principle 6 sets out the right to privacy. It provides, relevantly:

“Everyone, regardless of sexual orientation or gender identity, is entitled to the enjoyment of privacy without arbitrary or unlawful interference, including with regard to their family, home or correspondence as well as to protection from unlawful attacks on their honour and reputation. The right to privacy ordinarily includes the choice to disclose or not to disclose information relating to one’s sexual orientation or gender identity, as well as decisions and choices regarding both one’s own body and consensual sexual and other relations with others.

States shall:

- (a) take all necessary legislative, administrative and other measures to ensure the right of each person, regardless of sexual orientation or gender identity, to enjoy the private sphere, intimate decisions, and human relations, including consensual sexual activity among persons who are over the age of consent, without arbitrary interference;*
- (b) repeal all laws that criminalise consensual or sexual activity among persons of the same sex who are over the age of consent, and ensure that an equal age of consent applies to both same-sex and different-sex sexual activity;*
- (c) ensure that criminal and other legal provisions of general application are not applied de facto to criminalise consensual sexual activity among persons of the same sex who are over the age of consent;*
- (f) ensure the right of all persons ordinarily to choose when, to whom and how to disclose information pertaining to their sexual orientation or gender identity, and protect all persons from arbitrary or unwanted disclosure, or threat of disclosure of such information by others.”*

Principle 28 provides, relevantly:

“The right to effective remedies and redress

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral

to the right to effective remedies and redress.

States shall:

- (a) establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;*
- (b) ensure that remedies are enforced and implemented in a timely manner;*
- (d) ensure that all persons have access to all necessary information about the processes for seeking remedies and redress.”*

In my view, the Bill is consistent with the Yogyakarta Principles and upholds the fundamental principle that all of us are equal before the law. It seeks to set up a scheme to remove the effects of lawful discrimination in the past – to right the balance.

I commend the Bill to the Committee.

I am prepared to give evidence if invited by the Committee.

Yours faithfully



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Liability limited by a scheme approved under Professional Standards legislation.