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Mr Duncan Pegg MP
Chair
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

(by email to: lacsc@parliament.qld.gov.au)

4 June 2017

Dear Mr Pegg

Re: Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017

Thank you for your letter of 19 May 2017 inviting submissions to inform your inquiry and report into the above Bill.

Civil Liberties Australia (CLA) welcomes the initiative of the Queensland Government to introduce legislation to create a process for people to have historic criminal convictions relating to consensual homosexual activities expunged from their official record. While criminal sanctions against homosexuality were removed in Queensland in 1991, the implications for those who already had a criminal record arising from their sexual orientation have persisted. The criminal record continues to be a stain on their name and can still affect employment, volunteering, travel and other areas of their lives in significant ways.

Based on our experiences with similar schemes in other jurisdictions, **CLA is concerned about aspects of the draft Bill including:**

- the scope of the historic offences covered;
- the decision-making processes; and
- the effectiveness of annotation as the proposed method of expungement.

We note, however, that concerns similar to ours were raised during the Queensland Law Reform Commission's consultations. We also raised these concerns (and we assume others did too) during Minister D'Ath's consultations on the draft version of this Bill. We have therefore decided not to repeat those issues here. Instead, we focus only on the issues below.

1. The application

For the expungement scheme to work successfully, the process needs to be as straightforward as possible. We strongly recommend that the required contents of the application (as set out in section 12 of the Bill) be simplified. In particular, we believe that the decision-maker should be able to ascertain many of the details and if there is any uncertainty about the identity of the applicant or about the details of the case, this can easily be resolved by follow-up contact.

To be effective, the scheme should not be complicated. It should not require extensive research by the applicant. It should not involve unnecessary costs to the applicant to gain access to official documents. It should, as far as possible, not require legal advice in order to submit a compliant application. It should not unnecessarily create the scope for minor and unintentional errors in the recollection of details that could delay or derail applications.

2. Public places

As per section 18(2)(b), the decision-maker may only decide to expunge a conviction or charge if “the act or omission constituting the offence, if done by the eligible person at the time the application was made, would not constitute an offence under the law of Queensland.”

This requirement would likely mean that any conviction or charge relating to sexual activity in a public place would not be eligible for expungement. This may seem reasonable and fair given that sexual activity in a public place is an offence whether the activity is homosexual or heterosexual.

However, it ignores the real lived-circumstances facing same-sex attracted people during that period in Queensland’s history. For these people, the social stigma (and the criminal law) meant that they were forced to lead a secret life and conceal their behaviour from family, friends and the wider community. Private places, such as homes and hotels, were simply not safe options for them. This would particularly be the case for people in rural areas and small towns where anonymity could be next to impossible. And the options available to young people, the poor and the homeless would have been even more limited.

For this reason, excluding homosexual activity in public places from the scope of the expungement scheme is likely to undermine significantly the effectiveness of the scheme, particularly for people who already face disadvantages. We therefore recommend that the Bill include a flexible formulation whereby the decision-maker is able to grant expungement where the activity constituting the offence occurred in a public place if it occurred at a time or in circumstances where it would be unlikely to affect other members of the community.

3. Review of the scheme

CLA recommends that the Bill include provision for an independent review of the operation of the scheme, for example, three (3) years after its entry into force. Expungement schemes for historical crimes relating to homosexuality are new in

Australia, and indeed around the world. An independent review could usefully examine and report back to the Queensland Parliament as to whether the scheme is achieving the objectives as set out in the Minister's speech when introducing the Bill. It could consider any impediments or disincentives to people coming forward to apply for expungement. It could look at the proportion of applications that are rejected and the reasons for those rejections. It could examine the operation of similar schemes in other jurisdictions and lessons learned there. Based on these considerations, it would make recommendations for any procedural or legislative amendments that could improve the effectiveness of the scheme.

Thank you for your consideration of these comments.

Yours sincerely

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