



Acting Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000

June 5, 2017

Dear Legal Affairs and Community Safety Committee

### Submission regarding Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017

This letter is in response to the stakeholder letter of 19 May 2017 calling for submissions on the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017. The focus of my submission, will be on the Clauses below.

#### 1. Background

The opportunity to address this aspect of systemic discrimination against gay men (and the wider LGBTIQ+ community) is to be welcomed. It acts as a signal to all citizens that they have the right to be treated with equality and dignity. It is particularly important, as this discrimination was state sanctioned. It is therefore fundamental when addressing this injustice that it is remedied in an appropriate manner.

I write as an academic, having held positions in law and criminology, and in the capacity as a researcher engaging with members of the LGBTIQ+ community who have been impacted by these convictions for consensual sexual activity. While such crimes may no longer be charged and convictions made, the impact of these historical charges and convictions lingers, and remains of concern to the LGBTIQ+ community. The State of Queensland has been provided with an opportunity to correct these wrongs. I wrote in response to the Queensland Law Reform Commission to urge the provision of recommendations of a high standard, in order that the world look to Queensland as an example of best practice, and not as an example where a State was sluggish to act, and restrained in its attempt to do right. I applaud the Attorney-General and Minister for Justice on tabling a Bill that, in places, goes further than the recommendations of the QLRC, in seeking to redress the wrongs felt by the LGBTIQ+ community.

#### 2. Response to specific clauses

**Clause 5(2):** While I had not envisaged a right to compensation as part of the expungement process, it is worth noting that there may be circumstances where compensation is appropriate. The blanket prohibition on compensation in Clause 5(2) appears to be a recognition that in some cases, more than simple expungement may be required to redress historical wrongs committed by the state. The incorporation of this clause therefore appears to be an example where the State is showing deliberate restraint in its attempt to do right. I note the Attorney-General suggested the scheme is intended to provide a measure of restorative justice to as many people as possible who suffered unfairly (Hansard 11 May 2017: 1168). Clause 5(2) is an attempt to contain the level of restoration to citizens who we now recognise has having suffered at the hands of the State. Consideration should therefore be given to the removal of Clause 5(2).

**Clause 7:** It should be considered whether clarity could be provided from redrafting this clause. As I understand it, concern is not with the date of the conviction or charge for the 'homosexual activity/incident', but with the date of the incident/offence. There may exist circumstances where a charge may be laid or conviction occur after 19 January 1991, where the date of the incident was prior to 19 January 1991. While the 'homosexual activity/incidents' occurring before 19 January 1991 remain recognised as unlawful acts (hence requiring expungement), it is possible for persons to be in a

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group individuals convicted or charged after 19 January 1991, for homosexual acts/incidents occurring before 19 January 1991. The clause would have improved clarity and consistency if it were in line with 8(2) noting that the offence must have happened/occurred before 19 January 1991 to be an eligible offence.

Suggested amendment to Clause 7: "An **eligible person** is a person who was convicted of, or charged with, an eligible offence **occurring** before 19 January 1991."

Clauses 8, 10, 19: The inclusion of public morality offences is to be welcomed. In my submission to the QLRC I wrote that 'abuse of power can occur through the use of other statutes, including public morality and public order offences and acts of over-policing. An ability to respond to this second type of discrimination should also be included within any scheme.' The Attorney-General has tabled a Bill that seeks to respond to these discriminatory policing practices. The addition of these provisions is crucial to responding to abuses of power targeting LGBTIQ+ citizens.

Clauses 8, 20: The adoption of a flexible approach to determining eligible offences is also to be welcomed. The failure to adopt a flexible approach to expungement is likely to continue to exacerbate discrimination against those who will have convictions for consensual homosexual offences. As attitudes change towards sexual orientation and sexual activity, the ability to continue to provide for the remedying of discrimination and injustice through Regulation maintains the Bill's relevance and useability.

Clauses 18, 19, 20: The decision-maker's criteria for expungement is appropriately tailored to the offence in question and takes into account the different types of offences. This appears to be well drafted and should be welcomed.

### 3. Conclusion

Having carefully considered the proposed Bill, I recommend the following:

- a. Consideration should be given to the removal of Clause 5(2).
- b. Consideration should be given to redrafting of Clause 7.

I am willing to expand on the above comments and to assist the Parliamentary Committee further, should it so wish.

Yours sincerely,

A handwritten signature in cursive script that reads "James Roffee".

**Dr. James A Roffee**  
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