



Speech By  
**Hon. Yvette D'Ath**


**MEMBER FOR REDCLIFFE**

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## **CRIMINAL LAW (HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT) BILL**

### **Introduction**

 **Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (2.37 pm): I present 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. I table the bill and the explanatory notes. I nominate the Legal Affairs and Community Safety Committee to consider the bill.

*Tabled paper:* Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017 [\[710\]](#).

*Tabled paper:* Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017, explanatory notes [\[711\]](#).

I am pleased to introduce the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017. I acknowledge every one of those people in the gallery today—the individuals who have been personally impacted, their partners, their family and their friends. For all of the advocates and organisations who have advocated for so long for these laws and this scheme to be brought in, I thank you. For those who cannot be here, who are no longer with us but who lived with this shame for far too long and who unfortunately passed before they ever got to see this scheme brought in, today this is for you.

Consensual adult male homosexual activity was decriminalised in this state on 19 January 1991 with the commencement of the reforms contained in the Criminal Code and Another Act Amendment Act 1990. What that law reform did not address is the stigma, shame and embarrassment suffered by individuals whose criminal histories still contained records of charges or convictions incurred prior to decriminalisation.

I want to thank the Premier for her leadership on this issue and I associate myself with her words of apology today. We know that this is a deeply hurtful and deeply personal issue for many Queenslanders forced to live with the impact of discriminatory laws for far too long. We know that past convictions have meant there are various circumstances in which convictions or charges for criminal offences have been required to be disclosed.

Forcing the repeated disclosure of those convictions and charges to potential employers, public administrators and others has caused people inconvenience and embarrassment and, worst of all, has forced them to continually relive the trauma associated with their arrest, charge and conviction. This has inhibited people from pursuing employment opportunities, volunteering in their communities and fully participating in civic life right up until today. It hurt those individuals, affected their friends and family, and prevented their full involvement in, and contribution to, our community. In doing so, it not only impacted individuals; it lessened our community more broadly.

In developing this important law reform, I have been reflecting on those historic changes in 1991 that finally brought Queensland out of the dark ages. I would like to pay tribute to former premier Wayne Goss, as I did in this House after his all-too-soon passing. This bill and this issue provides us with a

window into the past and shows, yet again, that Queensland is a fundamentally different place to the Queensland that existed prior to 2 December 1989. Nor is this chamber the same as it was when homosexuality was decriminalised. Reading some of the *Hansard* from the 1990 debate is nothing short of revolting. The debate displayed signs of pure discrimination. It was full of hate. It was outright bigotry. It reflected the former regime that existed in this state and the pain inflicted on members of the LGBTI community.

As this parliament apologises this afternoon, we should never forget that this abuse, this discrimination and this hatred was within our lifetime, and it was done in our name. We have seen important law reform since that time, over many years, in many stages. That includes significant reforms passed in the current Palaszczuk government, some with bipartisan support. Despite these important legislative changes, the pain and anguish caused by that earlier discrimination has never been removed for those affected Queenslanders. I am very proud to be a Labor Attorney-General finishing the important work that the Goss government started, and I am determined to get it right.

This bill creates a scheme which will provide some of these individuals with an opportunity to legally decide not to disclose ever again certain types of convictions and charges. During the 2015 general state election, this government expressed in principle support for a scheme to allow for the expungement of convictions and charges for historical homosexual offences and committed to referring the issue to the Queensland Law Reform Commission for consideration and report. I thank the members of the QLRC for their significant body of work. I tabled the QLRC's final report entitled *Expunging criminal convictions for historical gay sex offences* in this Legislative Assembly on 29 November 2016.

This bill largely implements the recommendations of the QLRC report but also takes into account feedback provided by stakeholders during consultation on a draft bill. The bill allows a person who has been convicted of, or charged with, an 'eligible offence' to apply to the Director-General of the Department of Justice and Attorney-General, as the decision-maker, for the expungement of that conviction or charge from relevant public records. To be eligible for expungement under the proposed scheme, charges and convictions must relate to conduct that occurred before 19 January 1991 and that conduct must have involved homosexual activity.

The scheme proposed in the bill divides eligible offences into two main types. The first type of eligible offences are referred to as 'Criminal Code male homosexual offences'. These are repealed sections 208(1), 208(3) and 209 of the Criminal Code, which were concerned with anal intercourse, and section 211 of the Criminal Code, which was concerned with indecent acts. The second type of eligible offences are referred to as public morality offences. These are repealed sections 5(1)(b) and 7(e) of the repealed vagrants and other offences act 1931 and section 227 of the Criminal Code, which relate to offences such as soliciting for an immoral purpose or behaving in an indecent or offensive manner in a public place.

The QLRC did not recommend that the public morality offences should be included as eligible offences in this scheme because those offences are still on the statute books. However, the government felt strongly that public morality offences should be included in this scheme in order to appropriately reflect the discrimination against lesbian, gay, bisexual, transsexual and intersex persons in the policing practices of these kind of offences before 19 January 1991. In doing so, the bill reflects that, while the offences themselves might still be in the Criminal Code, the behaviour on which these charges were historically centred would not be considered grounds for such a charge by modern standards.

The bill provides that other offences can later be prescribed as eligible offences by way of regulation. This provides the scheme with appropriate flexibility should other appropriate eligible offences be identified with the passage of time. An eligible offence can only be prescribed by regulation to the extent that it happened before 19 January 1991 and it involved sexual activity of a homosexual nature. The decision-maker's criteria of assessment for expungement applications under the proposed scheme differs slightly depending on whether the relevant offence is a Criminal Code male homosexual offence or a public morality offence. The criteria for each type of offence takes into account the different nature of the two different types of offences.

In deciding an application for a Criminal Code male homosexual offence, the decision-maker must be satisfied on the balance of probabilities that the other person involved in the conduct relevant to the offence consented to the conduct, was 18 years old or older when the conduct occurred, and that the conduct would not constitute an offence under the laws of Queensland at the date the application is made. The QLRC recommended that the criteria for expunging Criminal Code male homosexual offences should have regard to the age of consent at the date of the commencement of the legislation. The age of consent for anal intercourse from 19 January 1991 was 18 years.

The commencement of the Health and Other Legislation Amendment Act 2016 on 23 September 2016 standardised the age of consent so that, for all forms of sexual intercourse, the age of consent is 16 years. In a departure from the QLRC recommendation, the criteria for the expungement of a Criminal Code male homosexual offence in the bill has regard to the age of consent at the date of decriminalisation on 19 January 1991—that is, 18 years. This retains the expungement scheme's nexus with the decriminalisation of consensual adult homosexual activity and confirms that the scheme is only applicable to historical charges and convictions. It also ensures that there is no discrimination between people charged or convicted with offences between 1991 and 2016 or people charged before the age of consent for sexual activity other than anal intercourse was changed in Queensland in 1976 from 17 years to 16 years.

The criteria for the expungement of a Criminal Code male homosexual offence contains another departure from the recommendations of the QLRC in that it does not require the decision-maker to be satisfied that an offence was not committed or alleged to have been committed in a place to which the public are permitted access. Instead, the bill simply provides that the decision-maker must be satisfied that the act or omission constituting the offence, if done at the time of the application, would not constitute an offence under the laws of Queensland. In deciding an application for a public morality offence, the decision-maker must be satisfied on the balance of probabilities that the conduct relevant to the offence involved homosexual activity and that the conduct would not constitute an offence under the laws of Queensland at the date the application is made.

The bill provides that an application is required to be in an approved form and must contain some basic information about the applicant and the charge or conviction that is the subject of the application. The decision-maker under the proposed scheme can request further information from an applicant and require an applicant to verify information by way of statutory declaration. The scheme proposed under the bill is purely administrative and expressly excludes the possibility of oral hearings. If an applicant is successful in having their charge or conviction expunged under the proposed scheme, the bill provides that the person can lawfully choose not to disclose the charge or conviction.

For those individuals it means they can lawfully, whether under oath or otherwise, say that they were not convicted of, or charged with, that offence. The bill provides that relevant public records will be annotated to record the fact that the charge or conviction has been expunged. To guard against reckless or malicious disclosure of expunged charges or convictions, the bill creates two new criminal offences relating to: disclosing information about expunged charges or convictions; or dishonestly obtaining such information. The bill expressly provides that there is no entitlement to compensation of any kind for a person who has a charge or conviction expunged under the scheme. The scheme proposed in the bill ensures fairness to applicants by providing that if an application for expungement is refused, there is a right to review that decision in the Queensland Civil and Administrative Tribunal.

The bill contains safeguards for the integrity of our criminal justice system by providing that an expunged charge or conviction can be revived if in the future the decision-maker is satisfied that the expungement was granted on the basis of false or misleading information. The bill also creates a further new criminal offence of providing false and misleading information to the decision-maker.

The expungement scheme proposed in this bill should properly be seen as extraordinary. It cannot be the case that every time the law changes a scheme for the expungement of charges or convictions will follow. The scheme in this bill is closely aligned to the specific reforms initiated in this Legislative Assembly in the Criminal Code and Another Act Amendment Act 1990. It was the commencement of that legislation in 1991 that marked a cultural shift in attitudes in this state.

As the Premier outlined in her apology today, the discriminatory nature of the archaic laws that existed in this state prior to 1991 institutionalised ignorance and legitimised prejudice towards people for merely expressing their sexuality. That prejudice and ignorance permeated our institutions and our communities. The scheme in this bill could not possibly address every different circumstance in which a person may have had an unjust or unreasonable encounter with the criminal justice system because of their sexual preferences prior to 19 January 1991. What this bill is intended to do is to continue the spirit and intention of the law reform begun in the 1990 amendment act by recognising that private, consensual adult sexual activity should never have been the concern of this Legislative Assembly or the criminal law.

The scheme in this bill provides a balanced framework that attempts to provide a measure of restorative justice to as many people as possible who suffered unfairly whilst still safeguarding integrity, equality and certainty in our criminal justice system. I wish to take this opportunity to once again thank all of those individuals and organisations that have advocated for so long for this scheme, some of whom are here today. I also want to acknowledge the tremendous effort of the staff at the Department of Justice and Attorney-General for their hard work in developing this framework and this bill, as well as

the stakeholders who worked with the government to deliver on this important reform. I am very proud to be a member of the Palaszczuk government and I am extremely proud to commend this bill to the House.

### **First Reading**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (2.52 pm): I move—

That the bill be now read a first time.

Question put—That the bill be now read a first time.

Motion agreed to.

Bill read a first time.

### **Referral to the Legal Affairs and Community Safety Committee**

**Mr DEPUTY SPEAKER** (Mr Crawford): Order! In accordance with standing order 131, the bill is now referred to the Legal Affairs and Community Safety Committee.

### **Portfolio Committee, Reporting Date**

**Hon. YM D'ATH** (Redcliffe—ALP) (Attorney-General and Minister for Justice and Minister for Training and Skills) (2.53 pm, by leave, without notice): I move—

That under the provisions of standing order 136 the Legal Affairs and Community Safety Committee report to the House on the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017 by 14 July 2017.

Question put—That the motion be agreed to.

Motion agreed to.