

# COMMUNITY LEGAL CENTRES TASMANIA

8 March 2017

Office of Strategic Legislation and Policy  
Department of Justice  
GPO Box 825  
Hobart TAS 7001  
Attn: Brooke Craven

**via email:** [Brooke.Craven@justice.tas.gov.au](mailto:Brooke.Craven@justice.tas.gov.au)

Dear Brooke,

**Re: *Expungement of Historical Offences Bill 2017***

---

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide comment on the *Expungement of Historical Offences Bill 2017*.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

- ***outline of range of offences***

We welcome the amendments made to an earlier draft of the *Expungement of Historical Offences Bill 2017* and in particular the replacement of 'historical homosexual conviction' with the more broadly defined 'historical offence'. Whilst we support the inclusivity of the proposed 'public morality offence' in clause 3 we strongly recommend that the second reading speech, clause notes and fact sheet accompanying the Bill clearly articulate the range of offences that are applicable.<sup>1</sup>

- ***cross-dressing***

Whilst we support the inclusion of the associated charges of 'attempting to commit, or of inciting, instigating, aiding, or abetting the commission of a sexual offence or a public morality offence' we recommend that cross-dressing be included.<sup>2</sup> This could be achieved through the following amendment to clause 3:

---

<sup>1</sup> Offences that should be noted include indecency, loitering, public annoyance and public decency. A comprehensive list is in Appendix 3 of the Equal Opportunity Tasmania's *Treatment of historical records for consensual homosexual sexual activity and related conduct*.

<sup>2</sup> Recommendation 2(e) of Equal Opportunity Tasmania's *Treatment of historical records for consensual homosexual sexual activity and related conduct*.

***cross-dressing offence*** means –

- (a) an offence under section 8(1)(d) of the *Police Offences Act 1935* as in force before 12 April 2001; or
- (b) an offence of attempting to commit, or of inciting, aiding or abetting the commission of a cross-dressing offence.

- ***access to records***

Anecdotally, we are aware that many homosexual men left Tasmania as a result of the criminalisation of consensual sex and associated offences. As a result, mere access to records, as is currently provided in clause 9(2)(a) of the draft Bill may prove difficult for persons who may be living interstate or overseas. We can also envisage circumstances in which some applicants choose to engage a legal representative or other external assistance to review their records. We therefore recommend that clause 9(2)(a) of the draft Bill is amended so that all applicants are provided as a matter of course with a copy of their record rather than merely ‘access’.

- ***outline of reasons and reasonable timeframe***

Clause 13(3) of the draft Bill sets out that when the Secretary is intending to refuse an application they must inform the applicant in writing along with a copy of the relevant records and provide them with an opportunity to provide further information. The Secretary does not however need to provide reasons for the refusal. We are also concerned that 14 days to respond is too short, particularly where the applicant is informed of the refusal through the post and/or where they seek assistance in preparing a response. In the interests of providing applicants with procedural fairness as well as a reasonable length of time to respond we strongly recommend that the reasons for the Secretary’s refusal are outlined and that the timeframe be extended to 28 days. This could be achieved through the following amendment to clause 13(3):

(3) If the Secretary intends to refuse an application, the Secretary must –

(a) by notice in writing, inform the applicant of that intention **along with an outline of the reasons**; and

(b) provide the applicant with a copy of any relevant records relating to the application in the possession of the Secretary; and

(c) give the applicant **1428** days from ~~the date~~ **receipt** of that notice to submit further information to the Secretary regarding the application.

- ***expert advice***

Finally, we recommend that in the determination of applications, the Secretary be provided with the option of seeking specialist expertise and advice, particularly from the LGBTI community or persons with expertise in LGBTI issues. Support for this is found in Victoria where the Secretary ‘must have regard to any advice provided by any person to whom the Secretary has referred the application for

advice'<sup>3</sup> and in the United Kingdom where the Secretary 'may appoint persons to advise...'<sup>4</sup> In our opinion, the ability to seek external advice will increase public confidence in the decision-making process. A possible suggested amendment is the insertion of a clause 8(1A) in the draft Bill:

**8. Investigation of application**

(1) Subject to subsection (2), in considering an application, the Secretary may take all steps, and make all inquiries, that are reasonable and appropriate to consider the application properly.

(1A) The Secretary may appoint a person or persons with relevant expertise to advise on the application.

...

If you have any queries or we can be of any further assistance, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl  
Policy Officer

**Community Legal Centres Tasmania**

---

<sup>3</sup> Section 105D(1)(b) of the *Sentencing Act 1991* (Vic).

<sup>4</sup> Section 100(1) of the *Protection of Freedoms Act 2012* (UK).