

Historical Homosexual Convictions Expungement Bill 2017

Contents

Part 1 — Preliminary

1.	Short title	2
2.	Commencement	2
3.	Terms used	2
4.	Act binds Crown	4

Part 2 — Applications and determinations

Division 1 — Making an application

5.	Application for convictions for historical homosexual offences to be expunged	5
6.	Contents of application	6
7.	Providing further information	8
8.	Withdrawal of application	8

Division 2 — Determination of applications

9.	Investigation of application	9
10.	Matters to be considered in determining application	9
11.	Determination of application	10

Division 3 — Determination that conviction is no longer expunged

12.	Determination that conviction is no longer expunged	12
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Part 3 — Consequences of convictions being expunged

13.	Annotation of official criminal records	14
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Contents

14.	Effect of expunging	14
15.	Disclosure of expunged records	15
16.	Improperly obtained information about expunged convictions	16
17.	Discrimination on grounds of expunged conviction	16

Part 4 — Miscellaneous

18.	Review by State Administrative Tribunal of CEO's decisions	18
19.	No entitlement to compensation	19
20.	Royal Prerogative of Mercy not affected	19
21.	Integrity of official criminal records	19
22.	Prior lawful acts not affected	19
23.	Confidentiality	20
24.	Giving notice	20
25.	Evidentiary provisions	21
26.	Protection from liability for wrongdoing	21
27.	Delegation	21
28.	Offence to give false or misleading information	22
29.	Regulations	23

**Part 5 — *Working with Children*
(*Criminal Record Checking*)
Act 2004 amended**

30.	Section 4 amended	24
31.	Section 8A inserted	24
8A.	Expunged convictions to be taken to be non-conviction charges for the purposes of this Act	24

Schedule 1 — Offences

Defined terms

Western Australia

LEGISLATIVE ASSEMBLY

Historical Homosexual Convictions Expungement Bill 2017

A Bill for

An Act to —

- **provide for a scheme to enable certain convictions for historical homosexual offences to be expunged; and**
- **make consequential amendments to the *Working with Children (Criminal Record Checking) Act 2004*,
and for related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Historical Homosexual Convictions Expungement Act 2017*.

2. Commencement

This Act comes into operation as follows —

- (a) Part 1 other than sections 3 and 4 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

3. Terms used

(1) In this Act —

applicant means —

- (a) a person who makes an application under section 5(1); or
- (b) a person who makes an application under section 5(2) in respect of another person;

application means an application under section 5;

Australian Crime Commission means the Australian Crime Commission (by whatever name described) established by the *Australian Crime Commission Act 2002* (Commonwealth);

CEO means the chief executive officer of the Department;

Commissioner of Police means the person holding or acting in the office of Commissioner of Police under the *Police Act 1892* section 5;

conviction —

- (a) means a finding of guilt by a court, or the acceptance of a plea of guilty by a court, whether on indictment or summarily, and whether or not a conviction is recorded; and

-
- 1 (b) regardless of the *Spent Convictions Act 1988* sections 13
2 and 25 to 27, includes a spent conviction as defined in
3 section 3 of that Act;
- 4 ***data controller***, in relation to official criminal records held
5 by —
- 6 (a) the Police Force, or by the agency (as defined in the
7 *Public Sector Management Act 1994* section 3(1))
8 principally assisting the Minister responsible for the
9 administration of the *Police Act 1892* in the
10 administration of that Act, means the Commissioner of
11 Police;
- 12 (b) the DPP means the DPP;
- 13 (c) the District Court means the Principal Registrar of the
14 District Court;
- 15 (d) the Magistrates Court means the Principal Registrar of
16 the Magistrates Court;
- 17 (e) the Supreme Court means the Principal Registrar of the
18 Supreme Court;
- 19 (f) the Children’s Court means a registrar of the Children’s
20 Court;
- 21 (g) a body prescribed for the purposes of this paragraph
22 means the person prescribed in relation to that body for
23 the purposes of this paragraph;
- 24 ***Department*** means the department of the Public Service
25 principally assisting the Minister in the administration of this
26 Act;
- 27 ***DPP*** means the Director of Public Prosecutions appointed under
28 the *Director of Public Prosecutions Act 1991*;
- 29 ***eligible person*** means a person who has been convicted of a
30 historical homosexual offence;
- 31 ***expunged conviction*** means a conviction expunged under
32 section 11(3), and has a meaning affected by subsection (2);

s. 4

- 1 **historical homosexual offence** means any of the following
2 offences —
- 3 (a) an offence listed in Schedule 1;
- 4 (b) an offence prescribed for the purposes of this definition;
- 5 (c) an offence of attempting, conspiring with another
6 person, or inciting another person, to commit an offence
7 referred to in paragraph (a) or (b);
- 8 **official criminal record** means a record (including an electronic
9 record) containing information about the outcome of criminal
10 proceedings kept by —
- 11 (a) the Police Force of Western Australia or by the agency
12 (as defined in the *Public Sector Management Act 1994*
13 section 3(1)) principally assisting the Minister
14 responsible for the administration of the *Police Act 1892*
15 in the administration of that Act; or
- 16 (b) the DPP; or
- 17 (c) a court of this State; or
- 18 (d) a body prescribed for the purposes of paragraph (g) of
19 the definition of **data controller**;
- 20 **personal information** has the meaning given in the *Freedom of*
21 *Information Act 1992* in the Glossary clause 1;
- 22 **prescribed** means prescribed by the regulations.
- 23 (2) In this Act, a reference to an expunged conviction includes a
24 reference to the charge to which the conviction relates.
- 25 **4. Act binds Crown**
- 26 This Act binds the Crown in right of Western Australia and, so
27 far as the legislative power of the Parliament permits, the Crown
28 in all its other capacities.

Part 2 — Applications and determinations

Division 1 — Making an application

5. Application for convictions for historical homosexual offences to be expunged

- (1) A person who has been convicted of a historical homosexual offence may apply to the CEO for the conviction to be expunged.
- (2) An application may be made in respect of a person who has been convicted of a historical homosexual offence (the *eligible person*) by a person who has attained the age of 18 years and who is —
 - (a) if an enduring power of guardianship has effect under the *Guardianship and Administration Act 1990* Part 9A in relation to the eligible person — the enduring guardian of the eligible person under that Act; or
 - (b) if the eligible person is a represented person as defined in the *Guardianship and Administration Act 1990* section 3(1) — a guardian of the eligible person under that Act;
 - (c) if the eligible person has died —
 - (i) a person who was the spouse or de facto partner of the eligible person, immediately before the eligible person's death; or
 - (ii) a parent, child or sibling of the eligible person, whether the relationship is of the whole or half blood, established by, or traced through, marriage, a written law or a natural relationship; or
 - (iii) the executor of the will, or administrator of the estate, of the eligible person; or
 - (iv) a person who maintained a close personal relationship, within the meaning of that phrase in

Historical Homosexual Convictions Expungement Bill 2017

Part 2 Applications and determinations

Division 1 Making an application

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- 1 the *Guardianship and Administration Act 1990*
2 section 110ZD(5), with the eligible person
3 immediately before the eligible person's death;
4 or
5 (v) if another person was involved in the conduct
6 that constituted the offence — the other person.
- 7 (3) An application must —
8 (a) be in a form approved by the CEO; and
9 (b) contain the information required in section 6; and
10 (c) be lodged in the manner prescribed or, if this is not
11 prescribed, in a manner approved by the CEO.
- 12 (4) Despite subsection (1), if an application in respect of a
13 conviction has been refused by the CEO a further application in
14 respect of the same conviction is only to be considered by the
15 CEO if the CEO is satisfied on reasonable grounds that
16 necessary supporting information in the further application
17 became available only after the initial application was refused.
- 18 **6. Contents of application**
- 19 (1) An application must include the following information —
20 (a) the applicant's full name, residential address and
21 telephone number;
22 (b) the full name of the eligible person and any other names
23 by which the eligible person is or has been known;
24 (c) the date and place of birth of the eligible person;
25 (d) the residential address of the eligible person at the time
26 of the historical homosexual offence and of the
27 conviction for the offence;
28 (e) an address to which notices or other documents
29 addressed to the applicant may be sent, which may be a
30 residential or business address, a post office box or an
31 email address;

- 1 (f) in relation to the historical homosexual offence to which
2 the application relates —
- 3 (i) the name and location of the court by which the
4 eligible person was convicted of the historical
5 homosexual offence; and
- 6 (ii) the date of the conviction; and
- 7 (iii) the name of the historical homosexual offence;
8 and
- 9 (iv) details of the historical homosexual offence and
10 the conduct constituting the historical
11 homosexual offence;
- 12 (g) any prescribed information;
- 13 (h) any additional information or additional documents that
14 the CEO requires.
- 15 (2) An application made —
- 16 (a) under section 5(1) by an eligible person — must be
17 accompanied by a consent by which the applicant
18 authorises the disclosure to the CEO of any records
19 relating to the historical homosexual offence to which
20 the application relates created by a data controller,
21 whether held by that data controller or any other person
22 or entity; and
- 23 (b) under section 5(2) in respect of an eligible person — is
24 taken to include the consent of the eligible person
25 described in paragraph (a).
- 26 (3) An application may include, or be accompanied by, statements
27 by the applicant or written evidence given by any other person
28 (including a person involved in the conduct constituting the
29 offence) about the matters about which the CEO must be
30 satisfied under section 10(1).

1 **7. Providing further information**

- 2 (1) If an application does not contain the information required in
3 section 6 the CEO may give notice to the applicant requiring the
4 applicant to provide the information required to the CEO within
5 28 days, or such longer period as is specified by the CEO in the
6 notice.
- 7 (2) The applicant may submit to the CEO statements or evidence of
8 a kind referred to in section 6(3) at any time after making the
9 application and before it has been determined by the CEO.
- 10 (3) Nothing in subsection (1) prevents the CEO from considering an
11 application that does not include all the information required in
12 section 6 if the CEO chooses to do so, but the CEO may treat an
13 application as having been withdrawn if the applicant does not
14 comply with a requirement under subsection (1) to provide
15 information.
- 16 (4) An applicant is taken to have complied with a requirement
17 under subsection (1) to provide information if the applicant
18 satisfies the CEO that the applicant is unable to comply with the
19 requirement.

20 **8. Withdrawal of application**

- 21 (1) An applicant may withdraw their application at any time before
22 the CEO determines it.
- 23 (2) The CEO may treat an application as having been withdrawn if
24 the applicant does not comply with a requirement under
25 section 7(1) or a requirement for further information or
26 additional documents under section 9(3).
- 27 (3) Despite an application being withdrawn or treated as having
28 being withdrawn under this section, the CEO may reinstate the
29 application if satisfied that the applicant wants to proceed with
30 it and has provided any information required under section 7(1)
31 or further information or additional documents required under
32 section 9(3).

Division 2 — Determination of applications

9. Investigation of application

- (1) In considering an application, the CEO may take all steps and make all inquiries that are reasonable and appropriate to consider the application properly.
- (2) However, the CEO must not hold an oral hearing for the purpose of determining the application.
- (3) The CEO may give notice to an applicant requiring the applicant to provide additional information or additional documents that the CEO considers necessary to determine the application to the CEO within 28 days, or such longer period as is specified by the CEO in the notice.
- (4) The CEO may, by notice given to a person who may be able to provide information relevant to an application, require the person to answer specified questions or to provide other information or documents within the period, and in the manner, specified in the notice.
- (5) A person must not fail, without reasonable excuse, to comply with a notice under subsection (4).
- Penalty for this subsection: a fine of \$2 000.
- (6) If any information or document is obtained by the CEO under this Part, evidence of that information or document, or evidence of the obtaining of that information or document, may be used only for the administration of this Act.

10. Matters to be considered in determining application

- (1) The CEO must not approve an application unless satisfied —
- (a) that the offence is a historical homosexual offence; and
- (b) that, on the balance of probabilities, both of the following tests are satisfied in relation to the eligible person —
- (i) the eligible person would not have been charged with the historical homosexual offence but for

- 1 the fact that the eligible person was suspected of
2 having engaged in the conduct constituting the
3 offence for the purposes of, or in connection
4 with, sexual activity of a homosexual nature;
- 5 (ii) the conduct constituting the historical
6 homosexual offence, if engaged in by the eligible
7 person at the time of the making of the
8 application, would not constitute an offence
9 under the law of this State.
- 10 (2) In considering whether the test set out in subsection (1)(b)(ii) is
11 satisfied, the CEO must have regard to —
- 12 (a) whether any person involved in the conduct constituting
13 the historical homosexual offence, including the eligible
14 person, consented to the conduct; and
- 15 (b) the ages, or respective ages, of any such persons at the
16 time of that conduct.
- 17 (3) If the consent of a person is an issue in considering an
18 application, the CEO may only be satisfied on written evidence
19 on that issue —
- 20 (a) from the available official criminal records; or
- 21 (b) from a person, other than the eligible person, who was
22 involved in the conduct constituting the historical
23 homosexual offence; or
- 24 (c) if no person referred to in paragraph (b) can be found
25 after reasonable enquiries are made by the applicant,
26 from a person (other than the applicant) with knowledge
27 of the circumstances in which that conduct occurred.
- 28 (4) In considering an application the CEO may have regard to any
29 matter the CEO reasonably considers relevant in the
30 circumstances.
- 31 **11. Determination of application**
- 32 (1) The CEO must determine an application as soon as practicable
33 after it is received.

- 1 (2) The CEO is to determine an application by —
- 2 (a) approving the application; or
- 3 (b) refusing the application.
- 4 (3) If the application is approved, the conviction for the historical
- 5 homosexual offence is expunged.
- 6 (4) The CEO must not refuse an application unless the CEO has —
- 7 (a) given notice to the applicant and, if the applicant is not
- 8 the eligible person and it is practicable to do so, to the
- 9 eligible person stating that —
- 10 (i) the CEO proposes to refuse the application; and
- 11 (ii) further written information or documents that
- 12 show cause why the application should not be
- 13 refused may be submitted to the CEO within
- 14 14 days after the day on which the notice is
- 15 given;
- 16 and
- 17 (b) provided to the person, or persons, to whom the notice is
- 18 given, at the time that the notice is given, copies of all
- 19 official criminal records in the possession of the CEO
- 20 relating to the conviction for the historical homosexual
- 21 offence; and
- 22 (c) taken into account any further written information or
- 23 documents submitted by that person, or persons, within
- 24 the period specified in the notice.
- 25 (5) The CEO must ensure that personal information (other than
- 26 personal information about the eligible person) is withheld from
- 27 official criminal records provided under subsection (4)(b).
- 28 (6) The CEO must, as soon as possible after a determination under
- 29 this section is made, give the applicant and, if the applicant is
- 30 not the eligible person and it is practicable to do so, the eligible
- 31 person, written notice of the determination and, if the
- 32 application is refused, that notice is to —
- 33 (a) set out the reasons for the refusal; and

- 1 (b) give information about the right to have the
2 determination reviewed.

3 **Division 3 — Determination that conviction is no**
4 **longer expunged**

5 **12. Determination that conviction is no longer expunged**

- 6 (1) If the CEO is satisfied that a conviction became an expunged
7 conviction by reason of an application that included false or
8 misleading information, or documents that are false or
9 misleading, the CEO may determine that the conviction is no
10 longer an expunged conviction.
- 11 (2) The CEO must not make a determination that a conviction is no
12 longer an expunged conviction unless the CEO has —
- 13 (a) given notice to the applicant and, if the applicant is not
14 the eligible person and it is practicable to do so, to the
15 eligible person stating that —
- 16 (i) the CEO proposes to make a determination that
17 the conviction is no longer an expunged
18 conviction; and
- 19 (ii) further written information or documents that
20 show cause why the determination should not be
21 made may be submitted to the CEO within
22 14 days after the day on which the notice is
23 given;
- 24 and
- 25 (b) provided to the person, or persons, to whom the notice is
26 given, at the time that the notice is given, copies of any
27 documents or information (including official criminal
28 records) in the possession of the CEO relating to the
29 proposed determination; and
- 30 (c) taken into account any further written information or
31 documents submitted by that person, or persons, within
32 the period specified in the notice.

- 1 (3) The CEO must ensure that personal information (other than
2 personal information about the eligible person) is withheld from
3 any documents and information provided under
4 subsection (2)(b).
- 5 (4) A conviction ceases to be an expunged conviction on and from
6 the date of a determination under this section.
- 7 (5) The CEO must, as soon as possible after a determination under
8 this section is made, give the applicant and, if the applicant is
9 not the eligible person and it is practicable to do so, the eligible
10 person, written notice of the determination that —
11 (a) sets out the reasons for the determination; and
12 (b) gives information about the right to have the
13 determination reviewed.
- 14 (6) The CEO must, within 28 days after making a determination
15 under this section, notify any relevant data controller in writing
16 that the conviction is no longer an expunged conviction.
- 17 (7) On receipt of a notification under subsection (6), the relevant
18 data controller must, within 28 days, annotate any entry
19 contained in any official criminal records under the
20 management or control of the data controller that was annotated
21 under section 13(2) with a statement to the effect that the entry
22 relates to a conviction that was an expunged conviction but is no
23 longer an expunged conviction.

1 **Part 3 — Consequences of convictions being expunged**

2 **13. Annotation of official criminal records**

- 3 (1) On approving an application under section 11(2)(a), the CEO
4 must, within 28 days, notify any relevant data controller in
5 writing of that determination.
- 6 (2) On receipt of a notification under subsection (1), the relevant
7 data controller must, within 28 days, annotate any entry relating
8 to the expunged conviction contained in any official criminal
9 records under the management or control of the data controller
10 with a statement to the effect that the entry relates to an
11 expunged conviction.
- 12 (3) A data controller must notify the CEO in writing, as soon as is
13 reasonably practicable —
- 14 (a) that subsection (2) has been complied with in relation to
15 official criminal records under the management or
16 control of the data controller; or
- 17 (b) that subsection (2) has not been complied with due to a
18 failure to locate any official criminal records under the
19 management or control of the data controller relating to
20 the expunged conviction.
- 21 (4) As soon as is reasonably practicable after the CEO is satisfied
22 that all necessary action has been taken in relation to entries in
23 official criminal records, the CEO must give written notice of
24 that fact to the applicant and, if the applicant is not the eligible
25 person and it is practicable to do so, to the eligible person.

26 **14. Effect of expunging**

- 27 If an eligible person's conviction is expunged under
28 section 11(3) —
- 29 (a) the person is not required to disclose the expunged
30 conviction to any other person, including when giving
31 evidence under oath in legal proceedings; and

- 1 (b) the expunged conviction is taken not to form part of the
2 person's official criminal record; and
- 3 (c) a question about the person's criminal history, including
4 a question in legal proceedings required to be answered
5 under oath, is taken not to refer to the expunged
6 conviction; and
- 7 (d) in applying a provision of any legislation, agreement or
8 arrangement to the person —
- 9 (i) a reference to a conviction, however expressed,
10 is taken not to refer to the expunged conviction;
11 and
- 12 (ii) a reference, however expressed, to the person's
13 character is not to be taken to allow or require
14 anyone to take account of the expunged
15 conviction;
- 16 and
- 17 (e) the expunged conviction, or the non-disclosure of the
18 expunged conviction, is not a proper ground for —
- 19 (i) refusing the person any appointment, office,
20 status or privilege; or
- 21 (ii) revoking any appointment, status or privilege
22 held by the person or dismissing the person from
23 any office.

24 **15. Disclosure of expunged records**

- 25 (1) A person with access to official criminal records must not
26 directly or indirectly, without lawful authority, disclose any
27 information about another person's expunged conviction held in
28 those records without the consent of that other person.
29 Penalty for this subsection: a fine of \$10 000.
- 30 (2) Subsection (1) does not apply to —
- 31 (a) an archive or library, or an authorised officer of an
32 archive or library, that makes available to a member of

s. 16

- 1 the public, or to another archive or library, under the
2 normal procedures of the archive or library, material that
3 is normally available for public use and that contains
4 information about an expunged conviction; or
- 5 (b) the CEO, or any person acting under the direction of the
6 CEO, in informing a data controller that holds
7 information about convictions that a particular
8 conviction is an expunged conviction; or
- 9 (c) the Commissioner of Police, or any person acting under
10 the direction of the Commissioner of Police, disclosing
11 to the Australian Crime Commission, for incorporation
12 into the police information sharing system known as the
13 National Police Reference System, the fact that a
14 specified conviction has become an expunged
15 conviction.
- 16 (3) This section has effect despite —
- 17 (a) the *Health Practitioner Regulation National Law*
18 (*Western Australia*) sections 77(4), 79(3) and 135(3); or
- 19 (b) any Act that provides that information relating to spent
20 convictions may be disclosed.

21 **16. Improperly obtained information about expunged**
22 **convictions**

23 A person must not fraudulently or dishonestly obtain, or attempt
24 to obtain, information about another person's expunged
25 conviction from an official criminal record.

26 Penalty: a fine of \$10 000.

27 **17. Discrimination on grounds of expunged conviction**

- 28 (1) The *Spent Convictions Act 1988* Part 3 Division 3 applies to and
29 in respect of expunged convictions in the same manner as it
30 applies to and in respect of spent convictions and, for that
31 purpose, a reference in that Division to a spent conviction is to
32 be taken to be a reference to an expunged conviction.

- 1 (2) Without limiting the application of the provisions of the *Spent*
2 *Convictions Act 1988* under subsection (1), for the purposes of
3 those provisions —
- 4 (a) in relation to discrimination on the ground of an
5 expunged conviction or the charge to which it relates —
- 6 (i) the Minister has the powers conferred by the
7 *Equal Opportunity Act 1984* sections 81
8 and 107(1) on the Minister to whom the
9 administration of that Act is committed; and
- 10 (ii) the Commissioner under that Act has the
11 functions set out in sections 80(a), (b)(i), (c), (e)
12 and (h), 81 and 95 of that Act;
- 13 and
- 14 (b) the *Equal Opportunity Act 1984* sections 155, 159, 160,
15 161, 162 and 163 apply as if they were set out in this
16 Act.

Part 4 — Miscellaneous

18. Review by State Administrative Tribunal of CEO's decisions

(1) In this section —

affected person, in relation to a reviewable decision, means —

- (a) the person who made the application to which the decision relates; or
- (b) the eligible person — if the person referred to in paragraph (a) is not the eligible person;

reviewable decision means a determination of the CEO —

- (a) under section 11(2)(b) to refuse an application; or
- (b) under section 12(1) that a conviction is no longer an expunged conviction.

(2) An affected person may apply to the State Administrative Tribunal for a review of a reviewable decision.

(3) The application must be made within 28 days after the day on which the CEO gives notice of the relevant determination in accordance with section 11(6) or 12(5), as is relevant.

(4) Despite the *State Administrative Tribunal Act 2004* section 61, a review of a reviewable decision is to be held in private and the Tribunal may order that no person is to be in the room or place without the Tribunal's permission.

(5) For the purposes of the *State Administrative Tribunal Act 2004*, in respect of a review of a reviewable decision, each of the following is a protected matter —

- (a) any evidence given before the Tribunal;
- (b) the contents of any documents produced to the Tribunal;
- (c) any information that might enable a person who has appeared before the Tribunal to be identified.

19. No entitlement to compensation

A person who has an expunged conviction is not entitled to compensation of any kind, on account of that conviction becoming an expunged conviction, in respect of the fact that the person —

- (a) was charged with, or prosecuted for, the historical homosexual offence; or
- (b) was convicted of, or sentenced for, the historical homosexual offence; or
- (c) served a sentence for the historical homosexual offence; or
- (d) was required to pay a fine or other money (including costs or any amount by way of restitution or compensation) on account of being convicted of, or sentenced for, the historical homosexual offence; or
- (e) incurred any loss, or suffered any consequence, as a result of any circumstance referred to in paragraphs (a) to (d); or
- (f) has an expunged conviction.

20. Royal Prerogative of Mercy not affected

This Act does not affect the Royal Prerogative of Mercy.

21. Integrity of official criminal records

Subject to sections 12(7) and 13(2), nothing in this Act is to be taken as authorising or requiring any person to destroy, cull or edit any documents containing official criminal records.

22. Prior lawful acts not affected

Nothing in this Act is to be taken as affecting anything lawfully done before a conviction is expunged.

s. 23

1 **23. Confidentiality**

2 (1) A person must not, directly or indirectly, record, disclose or
3 make use of any information obtained by reason of a function
4 that the person has, or at any time had, in the administration of
5 this Act except —

- 6 (a) for the purpose of, or in connection with, performing a
7 function under this Act; or
8 (b) as required or allowed by this Act or under another
9 written law; or
10 (c) for the purposes of proceedings before a court or other
11 person or body acting judicially; or
12 (d) under an order of a court or other person or body acting
13 judicially; or
14 (e) with the written consent of the person to whom the
15 information relates; or
16 (f) in other circumstances prescribed for this subsection.

17 Penalty for this subsection: a fine of \$10 000.

18 (2) Subsection (1) does not apply to the recording, disclosure or use
19 of statistical or other information that could not reasonably be
20 expected to lead to the identification of any person to whom it
21 relates.

22 **24. Giving notice**

23 If by or under this Act notice is required or permitted to be
24 given by the CEO to an applicant or eligible person, the notice
25 may be given to the applicant or person —

- 26 (a) by delivering it personally to the applicant or person, as
27 is relevant; or
28 (b) by sending it to the applicant at the address given in the
29 application for that purpose.

1 **25. Evidentiary provisions**

2 (1) This section applies to a document purporting to be given by the
3 CEO or a delegate of the CEO certifying as to whether an
4 application in respect of a specified conviction for a historical
5 homosexual offence was approved or refused.

6 (2) The document is admissible in evidence in any proceedings and,
7 in the absence of evidence to the contrary, is proof of the
8 matters stated in the document.

9 (3) The document must be presumed in any proceedings, in the
10 absence of evidence to the contrary, to have been given by the
11 CEO or a person who was, at that time, a delegate of the CEO,
12 as the case requires.

13 **26. Protection from liability for wrongdoing**

14 (1) An action in tort does not lie against a person for anything that
15 the person has done in good faith —

16 (a) in the performance or purported performance of a
17 function under this Act; or

18 (b) in assisting another person in the performance or
19 purported performance of a function under this Act.

20 (2) The protection given by subsection (1) applies even though the
21 thing done as described in that provision may have been capable
22 of being done whether or not this Act had been enacted.

23 (3) Despite subsection (1), the State is not relieved of any liability
24 that it might have for an act done by a person against whom this
25 section provides that an action does not lie.

26 (4) In this section, a reference to the doing of anything includes a
27 reference to an omission to do anything.

28 **27. Delegation**

29 (1) The CEO may delegate any function of the CEO under another
30 provision of this Act to a person who is a senior executive

s. 28

1 officer (as that term is defined in the *Public Sector Management*
2 *Act 1994* section 3(1)) employed in the Department.

3 (2) The delegation must be in writing signed by the CEO.

4 (3) A person to whom a function is delegated under this section
5 cannot delegate that function.

6 (4) A person exercising or performing a function that has been
7 delegated to the person under this section is to be taken to do so
8 in accordance with the terms of the delegation unless the
9 contrary is shown.

10 (5) This section does not limit the ability of the CEO to perform a
11 function through an officer or agent.

12 **28. Offence to give false or misleading information**

13 (1) A person must not do anything set out in subsection (2) —

14 (a) in, or in connection with, an application made or a
15 notice or other document given under this Act; or

16 (b) in compliance, or purported compliance, with a
17 requirement or request under this Act; or

18 (c) for any other purpose under this Act.

19 Penalty for this subsection: a fine of \$10 000.

20 (2) The things to which subsection (1) applies are as follows —

21 (a) making a statement knowing it to be false or misleading
22 in a material particular;

23 (b) omitting from a statement made anything without which
24 the statement is, to the person's knowledge, misleading
25 in a material particular;

26 (c) giving information that —

27 (i) the person knows is false or misleading in a
28 material particular; or

- 1 (ii) omits anything without which the information, to
2 the person's knowledge, is misleading in a
3 material particular.

4 **29. Regulations**

5 (1) The Governor may make regulations prescribing matters —

6 (a) required or permitted to be prescribed by this Act; or

7 (b) necessary or convenient to be prescribed for giving
8 effect to this Act.

9 (2) Without limiting subsection (1), the regulations may provide
10 that a provision of this Act does not apply in relation to any, or a
11 combination, of the following —

12 (a) a specified conviction, finding or order, or a charge
13 relating to the conviction, finding or order;

14 (b) a specified person or class of persons;

15 (c) specified circumstances.

s. 30

1 **Part 5 — *Working with Children (Criminal Record***
2 ***Checking) Act 2004* amended**

3 **30. Section 4 amended**

4 In section 4 in the definition of *non-conviction charge* delete
5 “conviction;” and insert:

6
7 conviction, and has a meaning affected by section 8A;
8

9 **31. Section 8A inserted**

10 After section 8 insert:

11

12 **8A. Expunged convictions to be taken to be**
13 **non-conviction charges for the purposes of this Act**

14 (1) For the purposes of this Act, a reference to a
15 non-conviction charge includes a reference to an
16 expunged conviction, as that term is defined in the
17 *Historical Homosexual Convictions Expungement*
18 *Act 2017* section 3(1).

19 (2) Subsection (1) applies despite anything in the
20 *Historical Homosexual Convictions Expungement*
21 *Act 2017*.
22

Schedule 1 — Offences

[s. 3(1)]

An offence against <i>The Criminal Code</i> section 181(1) or (3) as in force before 23 March 1990.

An offence against <i>The Criminal Code</i> section 184 as in force before 21 September 2002.

An offence against <i>The Criminal Code</i> section 186(1)(a) as in force during the period beginning 23 March 1990 and ending 21 September 2002.

An offence against <i>The Criminal Code</i> section 187(2) as in force during the period beginning 23 March 1990 and ending 1 August 1992.
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An offence against <i>The Criminal Code</i> section 189(2) as in force during the period beginning 23 March 1990 and ending 1 August 1992.
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An offence against <i>The Criminal Code</i> section 322A as in force during the period beginning 1 August 1992 and ending 21 September 2002.
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Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
affected person.....	18(1)
applicant.....	3(1)
application.....	3(1)
Australian Crime Commission.....	3(1)
CEO	3(1)
Commissioner of Police.....	3(1)
conviction	3(1)
data controller	3(1)
Department	3(1)
DPP	3(1)
eligible person.....	3(1), 5(2)
expunged conviction	3(1)
historical homosexual offence	3(1)
official criminal record	3(1)
personal information	3(1)
prescribed.....	3(1)
reviewable decision.....	18(1)