

HISTORICAL HOMOSEXUAL CONVICTIONS EXPUNGEMENT BILL 2017

Receipt and First Reading

Bill received from the Assembly; and, on motion by **Hon Sue Ellery (Leader of the House)**, read a first time.

Second Reading

HON SUE ELLERY (South Metropolitan — Leader of the House) [10.41 pm]: I move —

That the bill be now read a second time.

This bill fulfils the commitment of the McGowan Labor government to introduce a scheme for the expungement of historical homosexual convictions in respect of consensual sexual activity of a homosexual nature that should never have been considered an offence in the first place. I am very proud to introduce the Historical Homosexual Convictions Expungement Bill 2017 into the Legislative Council on behalf of the McGowan Labor government and I express my sincere apologies and regret to the lesbian, gay, bisexual, transgender, intersex, queer community in Western Australia who have suffered from ongoing discrimination as a result of these unjust convictions. The stigma of carrying a conviction for a sexual offence on one's criminal record cannot be overstated, and continues to impact a person and their loved ones for years after the fact.

The bill introduces a scheme by which an eligible person—meaning a person with a conviction for a historical homosexual offence, as that term is defined in the bill—can make an application to the director general of the Department of Justice to have that conviction expunged. The practical effects of expunging a conviction are that the person will no longer need to disclose it, including when giving evidence under oath, nor is the conviction taken to form part of the person's criminal history. Additionally, a reference to a conviction, however it is expressed, is taken not to refer to the expunged conviction, nor is that conviction to be taken into account in a reference to the person's character. An expunged conviction is not a proper ground for refusing or revoking a person's status, appointment, office or privilege.

I will now outline how the scheme will work in practice. An eligible person or, when they have died or are otherwise unable to make application, their relatives, partner or appointed guardian can make application to the director general of the Department of Justice that their conviction be expunged. They will be required to supply as much supporting information as possible with their application, such as their name, address and date of birth, the name and location of the court where they were convicted, the date and name of the conviction, and details of the conduct involved. Of course, given the passage of time since the offences were repealed, many people may not recall the finer details of their convictions. The director general, therefore, has the ability to require information from the courts, Western Australia Police Force and the Director of Public Prosecutions to assist in identifying the person's official criminal records and the circumstances giving rise to the conviction. People and agencies who receive a notice to produce information are required to comply.

Applications must pass a mandatory test to ensure that the conduct would not be considered an offence today. Most importantly, the decision-maker must pay particular attention to matters of consent, ensuring that the conduct was consensual between the parties, and taking into consideration the ages or respective ages of the people involved. This test must be satisfied on the civil standard of the balance of probabilities. The list of eligible offences contained in schedule 1 to the bill is relatively short, in that those offences are immediately identifiable as relating solely to homosexual activity. I recognise that there are other provisions under which people were unjustly discriminated against and convicted that are not included in the schedule. To accommodate this, the bill includes a head of power to prescribe additional historical offences in regulations as and when necessary. When an application is approved, the conviction is expunged and agencies holding official criminal records of the expunged conviction must annotate the records relating to that conviction to indicate that they relate to an expunged conviction. Severe penalties apply for unlawful disclosure, improperly obtaining and using information relating to expunged convictions, and breaches of confidentiality.

The bill affords procedural fairness to applicants in that all decisions are reviewable to the State Administrative Tribunal. When it is found that a conviction was expunged on the basis of false or misleading information, the bill provides an avenue for the revival of that conviction. When an application is likely to be refused, the decision-maker must notify the applicant in advance and give them the opportunity to submit further information to show cause why their application should not be denied.

The bill provides that discrimination from employment on the grounds of an expunged conviction is unlawful and empowers the Equal Opportunity Commission to investigate allegations of discrimination. The bill also makes a consequential amendment to the Working with Children (Criminal Record Checking) Act 2004 to provide that, for the purposes of that act, an expunged conviction is deemed to be a "non-conviction charge", bringing expunged convictions in line with the manner in which the WWC act deals with all charges that do not result in convictions.

To the LGBTIQ community, the McGowan Labor government and I are sorry for the discrimination, hurt and trauma you have suffered due to unjust convictions. I hope that the introduction of this scheme demonstrates the McGowan Labor government's commitment to principles of equality and fairness for all Western Australians.

Pursuant to standing order 126(1), I advise that this bill is not a uniform legislation bill. It does not ratify or give effect to an intergovernmental or multilateral agreement to which the government of the state is a party; nor does this bill, by reason of its subject matter, introduce a uniform scheme or uniform laws throughout the commonwealth.

I commend the bill to the house and I table the explanatory memorandum.

[See paper 1119.]

Debate adjourned, pursuant to standing orders.