

31 May 2017

Our ref: (NDC-BDS/CrLC)

Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane QLD 4001

By email: lacsc@parliament.qld.gov.au

Dear Research Director

Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017

Thank you for the opportunity to provide comments on the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017.

The Queensland Law Society (QLS) is the peak professional body for the State's legal practitioners. We lead a profession of 11,000 members throughout Queensland. QLS is comprised of several specialist committees who provide policy advice to the QLS Council on law reform and areas of concern to the profession.

This response has been compiled with the assistance of the Criminal Law Committee who have considerable expertise in this area.

The Society strongly supports the policy intent of the Bill. We applaud the government for addressing the inequity created by historical unjust legislation and fully support the notion of these convictions being permanently expunged.

Our comments on the specific clauses of the Bill are as follows.

Clause 5

We are concerned with the potential operation of clause 5 of the Bill. In our view, the operation of the clause could effectively preclude an applicant from making a claim for compensation in circumstances where they otherwise might be entitled (and when evidence of expungement could otherwise be taken into account by a court or a tribunal in making an order for compensation).

Clause 11

While the Society is supportive of the policy intent of the Bill, we are concerned about the effect that the application process to have a conviction or charge expunged will have on applicants. In our view, the application process has the potential to be distressing, inconvenient and costly for applicants.

In our view, the most appropriate course of action is to automatically declare that any record of conviction for certain repealed offences or categories of offence, shall not be disclosed, regarded or admissible or otherwise able to be disseminated or used in any way. While we understand that not all historical convictions would be eligible for expungement, we consider that there is a class of offences that would qualify for immediate expungement. For example, where the conduct is purely consensual, involving persons over 16 years of age and there is no element of violence.

We acknowledge the Queensland Law Reform Commission's Report on Expunging criminal convictions for historical gay sex offences concluded that the expungement of criminal convictions cannot be achieved by an automatic scheme.¹ However, if there is any scope for an automatic regime to be implemented, this should be pursued.

Support and assistance

The Society believes free and confidential support and legal assistance should be made available to people who wish to apply for expungement of a charge or conviction. Expungement schemes in other jurisdictions, including Victoria and New South Wales, have been complemented by the provision of community information, support and legal assistance.

In our view, similar support and assistance should be provided in Queensland to assist in making the application for expungement less difficult and onerous. Further, to be effective, information about the expungement process would need to be easily accessible and promoted in the community. We note the QLRC recommendation in this regard.²

Other matters

We also suggest that these records be permanently removed from the QPrime system and other official records.

The Society would be pleased to provide further comment or be consulted further in the review process. If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Natalie De Campo on 07 3842 5889 or n.decampo@qls.com.au or Acting Advocacy Manager, Binari De Saram on 07 3842 5895 or b.desaram@qls.com.au.

Yours faithfully



**Christine Smyth
President**

¹ Queensland Law Reform Commission, Expunging criminal convictions for historical gay sex offences: Report, August 2016, page ii and 21-23.

² Queensland Law Reform Commission, Recommendation 7.3.