

Explanatory Notes

FOR

Amendments To Be Moved During Consideration In Detail By The Honourable Yvette D'Ath MP

Title of the Bill

The short title of the Bill is the Criminal Law (Historical Homosexual Convictions Expungement) Bill 2017 (the Bill).

Objectives of the Amendments

The proposed amendments to the Bill to be moved during consideration in detail will amend the criteria that the chief executive must be satisfied of before deciding to expunge a Criminal Code male homosexual offence or a public morality offence. The amended criteria will allow the chief executive to decide to expunge convictions or charges relating to behaviour that would not constitute an offence under Queensland's current laws but for the fact the conduct occurred in a public place.

Achievement of the Objectives

The objectives are achieved by amending clauses 18 and 19 of the Bill to provide that if the chief executive is satisfied on the balance of probabilities that:

- all of the relevant criteria in clauses 18(2)(a) and 19(2)(a) have been met; and
- the act or omission constituting the offence would not constitute an offence against the law of Queensland at the date the application was made but for the fact the act or omission took place in a public place;

the chief executive may decide to expunge the conviction or charge if the chief executive is satisfied on the balance of probabilities that the relevant conduct in the public place could not have been observed by a person, other than a person engaging in the act or omission, without taking abnormal or unusual action.

Alternative Ways of Achieving Policy Objectives

Amendments to the Bill are required to achieve the policy objectives.

Estimated Cost for Government Implementation

There are no additional costs anticipated to be associated with the amendments to be moved during consideration in detail.

Consistency with Fundamental Legislative Principles

The amendments are consistent with fundamental legislative principles.

Consultation

LGBTI stakeholders were consulted regarding the amendments.

NOTES ON PROVISIONS

Amendment 1 amends clause 18 (Criteria for Criminal Code male homosexual offence) by replacing the current subclause (2)(b) and inserting a new subclause (2A).

New subclause (2)(b) provides that the chief executive may decide to expunge a conviction or a charge if, in addition to being satisfied of the criteria set out in subsection 2(a) of the Bill, the chief executive is satisfied that the act or omission constituting the offence:

- would not constitute an offence under the law of Queensland if it were done by the eligible person at the time the application was made: *or*
- meets the criteria in new subclause (2A).

New subclause (2A) provides that if the act or omission constituting the offence was:

- done or allegedly done in a public place; and
- it would not constitute an offence under the law of Queensland if it were done, at the time the application was made, other than in a public place; and
- a person, other than a person engaging in the act or omission, would not have been able to observe the act or omission without taking abnormal or unusual action.

An example of abnormal or unusual action is provided, that is, looking under the door of a cubicle in a public toilet.

Amendment 2 makes a consequential amendment to clause 18 (Criteria for Criminal Code male homosexual offence) to provide that the chief executive, when considering the criteria in subsection (2) and new subsection (2A) must have regard to the material in clause 18(3)(a) and (b).

Amendment 3 amends clause 19 (Criteria for public morality offence) by replacing the current subclause (2)(b) and inserting a new subclause (2A).

New subclause (2)(b) provides that the chief executive may decide to expunge a conviction or a charge if, in addition to being satisfied of the criteria set out in subsection 2(a) of the Bill, the chief executive is satisfied that the act or omission constituting the offence:

- would not constitute an offence under the law of Queensland if it were done by the eligible person at the time the application was made: *or*
- meets the criteria in new subclause (2A).

New subclause (2A) provides that if the act or omission constituting the offence was:

- done or allegedly done in a public place; and
- it would not constitute an offence under the law of Queensland if it were done, at the time the application was made, other than in a public place; and
- a person, other than a person engaging in the act or omission, would not have been able to observe the act or omission without taking abnormal or unusual action.

An example of abnormal or unusual action is provided, that is, looking under the door of a cubicle in a public toilet.

Amendment 4 makes a consequential amendment to clause 19 (Criteria for public morality offence) to provide that the chief executive, when considering the criteria in subsection (2) and new subsection (2A) must have regard to the material in clause 19(3)(a) and (b).

Amendment 5 inserts a new definition of ‘public place’ into Schedule 1(Dictionary) of the Bill to provide that for the purposes of the Bill a public place is a place to which the public are permitted to have access, whether on payment of a charge for admission or not.