

# **Criminal Law (Historical Homosexual Convictions Expungement) Regulation 2018**

Explanatory notes for SL 2018 No. 70

Made under the

*Criminal Law (Historical Homosexual Convictions Expungement) Act 2017*

## **General Outline**

Criminal Law (Historical Homosexual Convictions Expungement) Regulation 2018

### **Authorising law**

Sections 12, 28 and 45 of the *Criminal Law (Historical Homosexual Convictions Expungement) Act 2017* (the Expungement Act).

### **Policy objectives and the reasons for them**

The objective of the Expungement Act is to establish an administrative scheme for the expungement, upon application, of convictions or charges for particular historical offences involving homosexual activity (eligible offences).

Section 12 of the Expungement Act details the minimum requirements for an application to expunge a conviction or charge for an eligible offence. Section 12(2) provides that the application must be accompanied by 'evidence of identity' for the applicant and any other document prescribed by regulation. The term 'evidence of identity' is defined to mean the evidence of identity prescribed by regulation.

Section 28 requires a criminal record holder to annotate the public record by making any necessary changes and include a prescribed statement that will reflect the expungement of the conviction or the charge.

The purpose of the *Criminal Law (Historical Homosexual Convictions Expungement) Regulation 2018* (the Regulation) is to prescribe the evidence of identity and other documentary requirements under section 12 of the Expungement Act. The Regulation will also prescribe a statement to show the conviction or charge is an expunged conviction or charge for the purposes of section 28 of the Expungement Act.

## **Achievement of policy objectives**

The Regulation achieves its policy objective by prescribing:

- the ‘evidence of identity’ that must accompany all applications to expunge a conviction or charge for an eligible offence under the Expungement Act;
- other documentary requirements that must accompany an application to expunge a conviction or charge for an eligible offence under the Expungement Act and the circumstances in which the documents must be attached;
- the statement which will be utilised by ‘criminal record holders’ (as defined in schedule 1 the Expungement Act) to annotate a public record to demonstrate a conviction or charge has been expunged.

## **Consistency with policy objectives of authorising law**

The Regulation is consistent with the objectives of the Expungement Act.

## **Inconsistency with policy objectives of other legislation**

The Regulation is consistent with the policy objectives of other legislation.

## **Benefits and costs of implementation**

Making the Regulation ensures the establishment and operation of the administrative scheme established under the Expungement Act. There are no new costs associated with the making of the Regulation.

## **Consistency with fundamental legislative principles**

There are no breaches of fundamental legislative principles.

## **Consultation**

The following key stakeholders were consulted regarding the *evidence of identity* and other documentary requirements that are prescribed in the Regulation:

- Human Rights Law Centre;
- LGBTI Legal Service Inc.;
- Caxton Legal Centre Inc.;
- Queensland AIDS Council;
- Community Legal Centres Queensland;
- Queensland Law Society;
- Civil Liberties Australia Inc.; and
- Brisbane LGBTIQ Action Group.

These stakeholder views were taken into account during the drafting of the Regulation. A number of amendments were made to the requirements prescribed in the Regulation

during drafting with the Office of Queensland Parliamentary Counsel to further simplify the application process under the Expungement Act.

The Department of Justice and Attorney-General has self-assessed the regulatory proposal to be excluded from further analysis under exclusion category (j) of the *Queensland Government Guide to Better Regulation* as it is a regulatory proposal relating to police powers, general criminal laws, the administration of courts and tribunals and corrective services.