

CRIMINAL RECORDS AMENDMENT (HISTORICAL HOMOSEXUAL OFFENCES) BILL 2014**Bill introduced on motion by Mr Bruce Notley-Smith, read a first time and printed.****Second Reading****Mr BRUCE NOTLEY-SMITH** (Coogee) [10.08 a.m.]: I move:

That this bill be now read a second time

Until 1984 the Crimes Act 1900 contained a number of so-called "unnatural" offences prohibiting male homosexual activity. These offences applied to both consensual and non-consensual conduct. Some people engaging in homosexual activity were convicted of other offences such as indecent or offensive behaviour offences. In 1984 the Crimes (Amendment) Act 1984 decriminalised consensual male homosexual activity for people over the age of 18 years.

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Further legislative reform occurred in 2003, when the Crimes Amendment (Sexual Offences) Act lowered the age of consent for male homosexual activity from 18 to 16 years. These amendments to the criminal law demonstrated a well-founded desire on the part of this Parliament to reflect the expectations of the wider community. No longer were homosexual acts between consenting adults seen as requiring the intervention of the criminal law. No longer did the community see homosexual men, or more broadly, members of the gay, lesbian, bisexual, transgender and intersex [GLBTI] community as lesser members of the Australian community.

While consensual homosexual activity between people over the age of consent is no longer a criminal offence, men who were previously convicted of these offences still deal with the stigma of a criminal conviction for a sex offence. Such a conviction can constrain employment opportunities, volunteering options and overseas travel options. The existence of convictions for these historical offences perpetuates the discrimination suffered by these men, despite the discriminatory laws having been repealed. This bill amends the Criminal Records Act 1991 to permit a person convicted of specified offences to apply for the conviction to be extinguished.

Applications will be able to be made for convictions for offences such as procuring an indecent act with a male and buggery. Applications will also be able to be made for convictions for indecent or offensive behaviour offences for sexual activity with another person of the same sex. Applications will be made to the secretary to the Department of Attorney General and Justice. A conviction will be extinguished if the secretary is satisfied that the other person consented to the sexual activity and was at least the current age of consent. This is 16 years, unless there was a special care relationship where the offender was, for example, the step-parent, schoolteacher or health professional of the other person, in which case the age is 18 years.

Where an application has been made, the secretary will then obtain records about the conviction from public agencies such as the NSW Police Force and the courts, and will make a decision based on the application and the records. If the secretary intends to reject the application on the basis of this information, he or she will give the applicant the opportunity to submit further information. In the event that the decision of the secretary has been unfavourable, an applicant will be able to seek

administrative review of a decision by the New South Wales Civil and Administrative Tribunal. If an application is successful, the conviction will be extinguished and the consequences will be similar to a quashed conviction or a pardon. The person will no longer be required to disclose the conviction, and a public authority will not be able to disclose it.

The Criminal Records Act 1991 already provides for convictions for a relatively minor offence to become spent, and so not be disclosable, if the person completes a period of crime-free behaviour. However, the exceptions that apply to spent convictions in the Criminal Records Act 1991 will not apply. This means, for example, that extinguished convictions will not be disclosable for applications for appointment as a judge, police officer or teacher, or for court proceedings. The new process allowing applications to be made for these convictions to be extinguished will be in addition to the existing spent convictions scheme.

While it was generally men engaging in homosexual activity who were prosecuted for these offences, it is possible that women engaging in homosexual activity were also prosecuted for indecent or offensive behaviour offences. The bill will also allow women and transgender people to apply for convictions to be extinguished. The bill contains a note that it is an offence under the Crimes Act to knowingly provide false or misleading information in an application to a public authority. The bill also provides for the secretary to the Department of Attorney General and Justice to determine that a conviction is no longer extinguished if the application contained false or misleading information.

I acknowledge in the gallery Dr Justin Koonin of the New South Wales Gay and Lesbian Rights Lobby, who has been of great assistance in the drafting of this bill. I will provide a little more detail at this point on the bill. This amends the Criminal Records Act 1991. New section 19B will enable a person who has been convicted of an eligible homosexual offence to apply to the secretary to the Department of Attorney General and Justice for the conviction to become extinguished. If the convicted person has died, an application may be made on behalf of the person by that person's legal personal representative or a spouse, de facto partner, parent or child of the convicted person, or a person who was in a close personal relationship with the convicted person immediately before the convicted person's death.

New section 19C provides that a conviction for an eligible homosexual offence becomes an extinguished conviction when the secretary decides that he or she is satisfied that the other person involved in the sexual activity constituting the offence consented to the sexual activity and was above the age of 16 years, or if the other person was under the special care of the convicted person within the meaning of section 73 (3) of the Crimes Act 1900; that is, 18 years of age.

Applications will be made to the secretary to the Department of Attorney General and Justice and decisions will be reviewable by the New South Wales Civil and Administrative Tribunal. The consequences of a conviction becoming an extinguished conviction are set out in new section 19F. If a conviction of a person is extinguished that person is not required to disclose to any other person for any purpose information concerning the extinguished conviction, and a question concerning the person's criminal history is taken not to refer to any convictions of the person which are extinguished convictions.

The effect of extinguishment goes further. New section 19G provides that it is an offence for a person who has access to records of convictions kept by or on behalf of a public authority without lawful authority to disclose to any other person any information concerning an extinguished conviction. The offence carries a maximum penalty of 50 penalty units or imprisonment for six months, or both. Additionally, new section 19H makes it an offence for a person fraudulently or dishonestly to obtain or attempt to obtain information concerning an extinguished conviction from records of convictions kept by or on behalf of a public authority. The offence carries a maximum penalty of 50 penalty units or imprisonment for six months or both.

A number of other jurisdictions have already acted to allow convictions for historical homosexual offences to be extinguished. The United Kingdom passed the Protection of Freedoms Act 2012 allowing people convicted of an historical offence involving consensual homosexual activity with another person aged at least 16 years to apply to the Home Secretary for the conviction or caution to be disregarded. Subsequently, the South Australian Parliament passed the Spent Convictions (Decriminalised Offences) Act 2013 to allow historical convictions for offences constituted by homosexual acts that are no longer criminal offences to be spent. Applications in that scheme are made to a magistrate and the scheme commenced on 22 December 2013.

In 2014 the Human Rights Law Centre released a report entitled "Righting Historical Wrongs", calling for a legislative scheme to expunge convictions for historical consensual gay sex offences in Victoria. The Victorian Government introduced a bill into Parliament this week to enable the expungement of historical convictions for consensual homosexual acts. This introduces an administrative scheme, similar to the one in the United Kingdom. This will be less costly for both the applicant and the State than requiring an application to be made to a court.

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Equally importantly, it will also be less stressful for applicants, especially given their previous court experience for the relevant offence. Another advantage of the administrative scheme is that it will allow the secretary to set up administrative processes with the NSW Police Force and the courts for obtaining records going back many decades. Ms Ann Brown of the Human Rights Law Centre has observed:

Legislating to abolish the left-over convictions will start to heal the harm that these discriminatory laws have caused. Sex between consenting adults should never have been criminalised.

No-one should have to continue to suffer the disadvantage of having a criminal conviction for sexual activity with another consenting adult. This bill allows these convictions to be extinguished and delivers a socially just and responsible outcome. I commend the bill to the House.

Debate adjourned on motion by Mr Paul Lynch and set down as an order of the day for a future day.