

COMMUNITY LEGAL CENTRES TASMANIA

24 January 2025

The Secretary
Joint Sessional Committee on Gender and Equality
Parliament House
Hobart TAS 7000
attn: Fiona Murphy & Mary de Groot

via email: genderandequality@parliament.tas.gov.au

To the Secretary,

Re: Expungement of Historical Offences Amendment Bill 2024 Inquiry

Community Legal Centres Tasmania (CLC Tas) welcomes the opportunity to provide a response to the *Expungement of Historical Offences Amendment Bill 2024* Inquiry ('the Inquiry').¹ The Inquiry follows the passing of an amendment in the House of Assembly to appoint an independent assessor and provide compensation for persons who had criminal sanctions imposed on them based on their sexual orientation.

CLC Tas is the peak body representing the interests of nine community legal centres (CLCs) located throughout Tasmania. We are a member-based, independent, not-for-profit and incorporated organisation that advocates for law reform on a range of public interest matters aimed at improving access to justice, reducing discrimination and protecting and promoting human rights.

In 2017, Tasmania passed the *Expungement of Historical Offences Act 2017* (Tas) ('the Act'). The Act recognises that homosexuality and cross-dressing should never have been crimes and that those who were charged and had historical convictions for these offences should have the opportunity to have them expunged from their criminal record. During his Second Reading Speech, the Attorney-General Matthew Groom MP identified the Bill as an important step in addressing the legacy of old homophobic laws, acknowledging that "many Tasmanians have continued to suffer from distress and disadvantage resulting from the criminalisation of conduct that we now accept as lawful".²

In 2020, the *Independent Review of Expungement of Historical Offences Act 2017* ('the independent review') recognised the significant impact the State can have in acknowledging and attempting to rectify past wrongs noting that "compensation confirms the expressed wish of Parliament in enacting this legislation that it was intended to send a compelling message that the state is

¹ CLC Tas would like to acknowledge those persons and organisations who gave freely of their time in assisting with our submission.

² Tasmania, *Parliamentary Debates*, House of Assembly, 13 April 2017 at 54.

serious in its commitment to remedy, to the extent that it can, the discrimination against, and distress and harm experienced by, Tasmanians in this context”³

The independent review recommended that compensation be made available:

Recommendation 13

The Independent Reviewers recommend that a payment should be made available for those whose records are expunged under the Act. The Independent Reviewers recommend that the Government introduces a one-off ex-gratia payment of a fixed amount as acknowledgement and redress for applicants who have charges and convictions expunged under the Act. This payment should be available automatically on the finalisation of an application in which the Secretary has determined to expunge any charge or conviction. It should not involve a hearing and should be an amount determined by the Government to be appropriate.

In considering any such proposal for redress, the Independent Reviewers suggest that the Government consider a two-tiered payment structure; one payment for applicants who have conviction/s or charge/s actually recorded on their official criminal record which is or are expunged, and a second, smaller payment, to applicants who have a charge expunged which did not appear on their criminal record. This distinction recognises that, whilst all applicants whose records are expunged should be acknowledged, a person who has had a conviction or charge recorded on their criminal record is more likely to have encountered discrimination arising from this record than a person who was charged, but the charge did not proceed and consequently does not appear on their official criminal record.

Why Tasmania should pay redress

Although there is no expungement scheme in any Australian jurisdiction which provides for redress there are a number of compelling reasons why Tasmania should be the first. These reasons include that Tasmania was the last Australian State to decriminalise homosexuality and the only state to previously criminalise cross-dressing. This has left a legacy of stigma and discrimination that is more recent than other states. As the former Anti-Discrimination Commissioner Robin Banks has noted:⁴

The removal of criminal sanctions against homosexuality in 1997 was the culmination of a decade-long battle to remove one of the last bastions of discrimination and finally bring Tasmania into line with other Australian jurisdictions.

In the six years the Act has been in operation, no eligible applications have resulted in the expungement of any record. As a result, the payment of compensation to eligible applicants will not exhaust the state’s resources but would send a strong message that conviction-related stigma and discrimination against LGBTQIA+ persons is taken seriously.

We would also note that the provision of compensation or redress is consistent with human rights principles, including the *Yogyakarta Principles* (‘the Principles’) which set out the application of international human rights law in relation to sexual orientation and gender identity. Relevantly, the Principles refer to the need for legal procedures to ensure that victims of

³ Melanie Bartlett and Taya Ketalaar-Jones, *Independent Review of Expungement of Historical Offences Act 2017* (October 2020) at 57.

⁴ Anti-Discrimination Commissioner Tasmania, *Treatment of historic criminal records for consensual homosexual sexual activity and related conduct* (April 2015) at 2.

human rights violations on the basis of sexual orientation or gender identity have access to redress:⁵

Principle 28 – The right to effective remedies and redress

Every victim of a human rights violation, including of a violation based on sexual orientation or gender identity, has the right to effective, adequate and appropriate remedies. Measures taken for the purpose of providing reparation to, or securing adequate advancement of, persons of diverse sexual orientations and gender identities are integral to the right to effective remedies and redress.

States shall:

A. Establish the necessary legal procedures, including through the revision of legislation and policies, to ensure that victims of human rights violations on the basis of sexual orientation or gender identity have access to full redress through restitution, compensation, rehabilitation, satisfaction, guarantee of non-repetition, and/or any other means as appropriate;

B. Ensure that remedies are enforced and implemented in a timely manner;

C. Ensure that effective institutions and standards for the provision of remedies and redress are established, and that all personnel are trained in issues of human rights violations based on sexual orientation and gender identity;

D. Ensure that all persons have access to all necessary information about the processes for seeking remedies and redress;

E. Ensure that financial aid is provided to those who are unable to afford the cost of securing redress, and that any other obstacles to securing such redress, financial or otherwise, are removed;

F. Ensure training and awareness-raising programmes, including measures aimed at teachers and students at all levels of public education, at professional bodies, and at potential violators of human rights, to promote respect for and adherence to international human rights standards in accordance with these Principles, as well as to counter discriminatory attitudes based on sexual orientation or gender identity

Tailoring redress to the individual circumstances of the victim

In their response to the *Royal Commission into Institutional Responses to Child Sexual Abuse*, the Tasmanian Government reflected on what made a successful redress scheme, noting that the experiences of those seeking redress “varies greatly, dependent on individual circumstances. Redress schemes should therefore respond to the needs and experiences of individuals...”⁶

We strongly agree that redress should be tailored to the individual circumstances of the victim, taking into account factors including suicide ideation, loss of employment, stigmatisation and

⁵ The International Commission of Jurists and the International Service for Human Rights, *Yogyakarta Principles on the application of international human rights law in relation to sexual orientation and gender identity* (2006). As found at http://yogyakartaprinciples.org/wp-content/uploads/2016/08/principles_en.pdf (accessed 24 January 2025).

⁶ Tasmanian Government, Submission to the *Royal Commission into Institutional Responses to Child Sexual Abuse – Issues paper 6 – Redress Schemes* (Submission No. 47). As found at <https://www.childabuseroyalcommission.gov.au/issues-papers> (accessed 24 January 2025).

ostracization. Our preferred model would be a single redress scheme with a maximum amount stipulated. In the *Abuse in State Care Review*, which was open to victims from 2003-2013, the State Government made clear that redress of up to \$60,000 would be paid.⁷ Similarly, we believe the best model is one in which the Gender and Equality Committee recommends a maximum amount that will be paid. In our opinion, the maximum redress paid to an applicant should be \$100,000.

However, in the event that the Gender and Equality Committee prefers the independent review's two-tiered redress scheme, we recommend that a range be adopted such as \$15,000-\$25,000 for applicants who have a charge expunged which did not appear on their criminal record and \$25,000-\$100,000 for applicants who have conviction/s or charge/s actually recorded on their official criminal record which is or are expunged.

Recommendation: That a redress scheme is implemented that provides for a maximum amount payable but is flexible enough to take into account the individual circumstances of the victim.

Independent Assessor

Tasmania appointed an independent assessor as part of its *Abuse in State Care Review*.⁸ More recently, in providing advice to the *Royal Commission into Institutional Responses to Child Sexual Abuse* the Tasmania Government acknowledged that the independence of the decision-maker was crucial due to the victim's lack of trust in the perpetrator and their capacity to assess the level of harm caused by the wrong:⁹

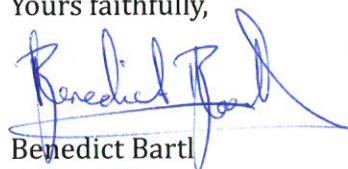
*In establishing redress schemes, it is important to recognise the lack of trust claimants may have for the institution against which they are making claims. While institutions may establish internal redress schemes, and indeed there are some advantages to this in terms of accessing client information and providing supported file access, **there is merit in establishing an independent decision-maker, particularly with regard to any payment to be made to claimants [emphasis added].***

We strongly agree that an independent decision-maker should be appointed to determine the redress paid. Independent decision-making leads to confidence in the decision reached and may encourage more applications.

Recommendation: That an independent assessor be appointed to assess the redress paid to victims.

If you have any queries, please do not hesitate to contact us.

Yours faithfully,



Benedict Bartl
Policy Officer

Community Legal Centres Tasmania

⁷ Tasmania, *Parliamentary Debates*, House of Assembly, 28 August 2003 at 19.

⁸ *Ibid.*

⁹ *Ibid.*