

**Sentencing Amendment (Historical Homosexual
Convictions Expungement) Act 2014**
No. 81 of 2014

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Victoria

Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014[†]

No. 81 of 2014

[Assented to 21 October 2014]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to amend the **Sentencing Act 1991** to establish a scheme under which convictions for certain offences related to conduct engaged in for the purposes of, or in connection with, sexual activity of a homosexual nature may be expunged on the basis that it is generally accepted that consensual sex of a

Sentencing Amendment (Historical Homosexual Convictions Expungement)
Act 2014
No. 81 of 2014

Part 1—Preliminary

s. 2

homosexual nature between adults should never
have been a crime.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day or days to be proclaimed.
 - (2) If a provision of this Act does not come into operation before 1 September 2015, it comes into operation on that day.
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PART 2—AMENDMENT OF SENTENCING ACT 1991

3 New Part 8 inserted

After Part 7 of the **Sentencing Act 1991** insert—

**"PART 8—HISTORICAL HOMOSEXUAL
CONVICTIONS**

105 Definitions

(1) In this Part—

agreement includes arrangement;

applicant means—

- (a) a person referred to in section 105B(1) who may make an application under that subsection; or
- (b) if a person referred to in section 105B(1) is unable to make an application under that subsection because of a disability within the meaning of the **Equal Opportunity Act 2010**, the person's litigation guardian or guardian with the meaning of the **Guardianship and Administration Act 1986**; or
- (c) a person referred to in section 105B(2) who may make an application under that subsection in respect of an entitled person who is deceased;

application means application under section 105B;

appropriate representative, of a person who was convicted of a historical homosexual offence and is deceased, means—

See:
Act No.
49/1991.
Reprint No. 16
as at
1 July 2014
and
amending
Act Nos
32/2013,
77/2013,
15/2014,
17/2014,
37/2014,
47/2014,
52/2014,
55/2014,
61/2014 and
63/2014.
LawToday:
www.
legislation.
vic.gov.au

- (a) if the person, immediately before death had a spouse or domestic partner—the spouse or domestic partner of the person; or
 - (b) if the person immediately before death did not have a spouse or domestic partner or if the spouse or domestic partner is not available—a son or daughter of the person of or over the age of 18 years; or
 - (c) if a spouse, domestic partner, son or daughter is not available—a parent of the person; or
 - (d) if a spouse, domestic partner, son, daughter or parent is not available—a sibling of the person of or over the age of 18 years;
 - (e) if a spouse, domestic partner, son, daughter, parent or sibling is not available—a person named in the will of the person as an executor; or
 - (f) if a spouse, domestic partner, son, daughter, parent, sibling or executor is not available—a person who, immediately before the death, was a personal representative of the person;
 - (g) if a spouse, domestic partner, son, daughter, parent, sibling, executor or personal representative is not available—a person determined to be the appropriate representative under subsection (3);
-

conviction includes a finding of guilt made by a court, whether or not a conviction is recorded;

Crim Trac means the Crim Trac Agency established under section 65 of the Public Service Act 1999 of the Commonwealth;

data controller, in relation to official records held by—

- (a) a court, means the Court Chief Executive Officer for the court appointed under section 30 of the **Court Services Victoria Act 2014**; or
- (b) VCAT, means the Court Chief Executive Officer for VCAT appointed under section 30 of the **Court Services Victoria Act 2014**; or
- (c) Victoria Police, means the Chief Commissioner of Police; or
- (d) the Office of Public Prosecutions, means the Solicitor for Public Prosecutions appointed under section 42 of the **Public Prosecutions Act 1994**;

domestic partner, of an entitled person who is deceased, means—

- (a) a person who was at the date of death of the entitled person in a registered domestic relationship with the entitled person; or
- (b) an adult person to whom the entitled person was not married but with whom the entitled person

was in a relationship as a couple where one or each of them provided personal or financial commitment and support of a domestic nature for the material benefit of the other, irrespective of their genders and whether or not they were living under the same roof, but does not include a person who provided domestic support and personal care to the entitled person—

- (i) for fee or reward; or
- (ii) on behalf of another person or an organisation (including a government or government agency, a body corporate or a charitable or benevolent organisation);

entitled person means—

- (a) a person referred to in section 105B(1); or
- (b) a person who was convicted of a historical homosexual offence and is deceased;

expunged conviction means a conviction that has become an expunged conviction by force of section 105I;

historical homosexual offence means—

- (a) a sexual offence or a public morality offence; or
 - (b) an offence of attempting to commit a sexual offence or a public morality offence; or
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- (c) an offence of being involved (within the meaning given by section 323(1)(a) or (b) of the **Crimes Act 1958**) in the commission of a sexual offence or a public morality offence; or
- (d) an offence of inciting or conspiring to commit a sexual offence or a public morality offence;

legal proceeding has the same meaning as in the **Evidence (Miscellaneous Proceedings) Act 1958**;

official records means records containing information about convictions held by any court, VCAT, Victoria Police or the Office of Public Prosecutions;

public morality offence means an offence, other than a sexual offence, as in force at any time—

- (a) the essence of which is the maintenance of public decency or morality; and
- (b) by which homosexual behaviour could be punished;

Example

Behaving in an indecent or offensive manner contrary to section 17(1)(d) of the **Summary Offences Act 1966**.

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

relevant authorisation, in relation to an Act, means a licence, permit, approval, consent, accreditation, exemption or other authorisation under that Act;

secondary record means an official record that is a copy, duplicate or reproduction of, or extract from, another existing official record, irrespective of whether those records are held by the same entity or by different entities;

sexual offence means an offence as in force at any time by which any form of homosexual conduct, whether consensual or non-consensual or penetrative or non-penetrative, could be punished, whether or not heterosexual conduct could also be punished by the offence;

Example

Buggery contrary to section 68(2) of the **Crimes Act 1958** (as in force immediately before the commencement of the **Crimes (Sexual Offences) Act 1980**) or indecent assault on a male person contrary to section 65(3) of the **Crimes Act 1928**.

Victoria Police has the same meaning as in the **Victoria Police Act 2013**.

- (2) For the purposes of the definition of ***domestic partner*** in subsection (1)—
- (a) ***registered domestic relationship*** has the same meaning as in the **Relationships Act 2008**; and
 - (b) in determining whether persons who were not in a registered domestic relationship were domestic partners of each other, all the circumstances of their relationship are to be taken into
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account, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case; and

- (c) a person was not a domestic partner of another person only because they were co-tenants.
- (3) For the purposes of paragraph (g) of the definition of *appropriate representative*, a person is the appropriate representative if the Secretary determines that the person should be taken to be the appropriate representative of the deceased person because of the closeness of the person's relationship with the deceased person immediately before his or her death.
- (4) In this Part, a reference to an expunged conviction includes a reference to—
- (a) the charge to which the expunged conviction relates; and
 - (b) any investigation or legal process associated with that charge or the conviction.

105A Part to bind the Crown

- (1) This Part binds the Crown, not only in right of the State of Victoria, but also, so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) Nothing in this section affects any other provision of this Act.

105B Application to Secretary for convictions for historical homosexual offences to be expunged

- (1) A person who has been convicted of a historical homosexual offence is entitled to apply to the Secretary for the conviction to be expunged.
- (2) In addition, an appropriate representative of a person who was convicted of a historical homosexual offence and is deceased may apply to the Secretary for the person's conviction to be expunged.
- (3) An application must—
 - (a) be in the form approved by the Secretary; and
 - (b) be—
 - (i) signed by the applicant; or
 - (ii) if the applicant is an entitled person who is not deceased but is not able to sign the application because of a disability within the meaning of the **Equal Opportunity Act 2010**, accompanied by a statement from a registered medical practitioner certifying—
 - (A) that the person suffers from such a disability; and
 - (B) that the person is not able to sign the application because of that disability; and
 - (c) include any identifying information of a kind approved by the Secretary.

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- (4) The approved form must provide for the supplying of the following information—
- (a) the full name of the entitled person and any other names by which the entitled person is or has been known; and
 - (b) the residential address and telephone number of the applicant; and
 - (c) the date and place of birth of the entitled person; and
 - (d) the gender of the entitled person; and
 - (e) an address to which notices or other documents addressed to the applicant may be sent, which may be a residential or business address, a post office box or an email address; and
 - (f) the residential address of the entitled person at the time of the offence and of the conviction; and
 - (g) in relation to the historical homosexual offence to which the application relates, so far as known to the applicant—
 - (i) the name and location of the court by which the entitled person was convicted; and
 - (ii) the date of the conviction; and
 - (iii) the name of the offence; and
 - (iv) details of the offence and the offending conduct.
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- (5) The approved form must include provision for the applicant to—
- (a) authorise the conduct of a police record check on the entitled person in relation to the conviction to which the application relates; and
 - (b) consent to the disclosure to the Secretary of any official records relating to that conviction created by a court, VCAT, Victoria Police or the Office of Public Prosecutions, whether held by that entity or by any other entity.
- (6) An application may include, or be accompanied by, statements by the applicant or written evidence given by any other person (including a person involved in the conduct constituting the offence) about the matters about which the Secretary must be satisfied under section 105G(1).
- (7) The Secretary, for the convenience of applicants, must publish on an internet site maintained by the Secretary—
- (a) a blank application in the form approved by the Secretary; and
 - (b) a list of the kinds of identifying information that are approved by the Secretary as acceptable for the purpose of establishing the identity of an applicant.

105C Submission of further information etc.

- (1) If the Secretary receives an application that does not include all the information required by section 105B, the Secretary may require the applicant to provide that information in the manner required by the Secretary within 28 days or any longer period that the Secretary determines.
- (2) The applicant may submit to the Secretary statements or evidence of a kind referred to in section 105B(6) at any time after making the application and before it has been determined by the Secretary.
- (3) Nothing in subsection (1) prevents the Secretary considering an application that does not include all the information required by section 105B if the Secretary chooses to do so.

105D Consideration of application

- (1) In considering an application, the Secretary—
 - (a) must, in particular, consider—
 - (i) any available record of the investigation of the offence, and of any proceedings relating to it, that the Secretary considers to be relevant; and
 - (ii) any statements or written evidence of a kind referred to in section 105B(6) included in, or accompanying, the application or subsequently submitted by the applicant; and

- (b) must have regard to any advice provided by any person to whom the Secretary has referred the application for advice; and

Note

See section 105F.

- (c) may make enquiries to, or request information on the application from, any person or body that the Secretary thinks fit, including any court and the Director of Public Prosecutions; and
 - (d) may require the applicant to provide any further information that the Secretary thinks fit in the manner required by the Secretary within 28 days or any longer period that the Secretary determines; and
 - (e) must not hold an oral hearing for the purpose of determining the application.
- (2) Subsection (3) applies to a record of the investigation of an offence or of any proceedings relating to an offence which the Secretary has obtained because of a consent given by an applicant under section 105B(5)(b) or an enquiry or request made by the Secretary under subsection (1)(c) in relation to an application.
 - (3) The Secretary, as soon as reasonably practical after obtaining the record—
 - (a) must give the applicant access to it, except so far as it contains information relating to the personal affairs of any person other than the applicant; and
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- (b) must give written notice to the applicant that the Secretary will not proceed to determine the application until at least 28 days, or any longer period that the Secretary determines and specifies in the notice, have passed from the day on which the applicant is given access to the record.

Note

The period provided for under paragraph (b) allows the applicant to determine whether to withdraw the application under section 105H or submit, under section 105C(2), statements or evidence of a kind referred to in section 105B(6).

- (4) In subsection (3)—

information relating to the personal affairs of any person means information—

- (a) that identifies a person or discloses their address or location; or
(b) from which a person's identity, address or location can reasonably be determined.

105E Response to enquiries or requests for information

- (1) A person or body to whom an enquiry or request for information is made by the Secretary under section 105D(1)(c) must respond to the enquiry or request as promptly as possible.
- (2) Without limiting subsection (1), if a request under section 105D(1)(c) is for a data controller to provide to the Secretary a copy of an official record held by the data

controller, the data controller must comply with that request as promptly as possible.

- (3) A person or body, in responding to an enquiry or request, is not bound by any duty of confidentiality imposed on the person or body by or under any Act (including the **Judicial Proceedings Reports Act 1958**) or agreement, despite anything to the contrary in that Act or agreement.

105F Appointment of advisors

- (1) The Secretary may appoint one or more persons who are legal practitioners of at least 5 years standing to provide advice on any particular application or on such applications generally.
- (2) A person appointed under subsection (1) is entitled to be paid the fees and allowances (if any) that are fixed from time to time by the Secretary for that person.

105G Mandatory tests

- (1) The Secretary must refuse an application unless satisfied—
- (a) that the offence is a historical homosexual offence; and
 - (b) that, on the balance of probabilities, both of the following tests are satisfied in relation to the entitled person—
 - (i) the entitled person would not have been charged with the historical homosexual offence but for the fact that the entitled person was suspected of having engaged in the conduct constituting the offence for the purposes of, or in

connection with, sexual activity of
a homosexual nature;

(ii) that conduct, if engaged in by the
entitled person at the time of the
making of the application, would
not constitute an offence under the
law of Victoria.

- (2) In considering whether the test set out in
subsection (1)(b)(ii) is satisfied, the
Secretary must (where relevant) have regard
to—
- (a) whether any person involved in the
conduct constituting the offence
(including the entitled person)
consented to the conduct; and
 - (b) the ages, or respective ages, of any such
persons at the time of that conduct.
- (3) Subsection (4) applies if—
- (a) consent of a person is a relevant issue
in determining whether the test set out
in subsection (1)(b)(ii) is satisfied; and
 - (b) the Secretary is not satisfied, from the
available official records, that consent
had been given.
- (4) The Secretary may only be satisfied on the
issue of consent by written evidence
touching on that issue—
- (a) from a person (other than the entitled
person) who was involved in the
conduct constituting the offence; or
 - (b) if no such person can be found after
reasonable enquiries are made by the
applicant, from a person (other than the
applicant) with knowledge of the
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circumstances in which that conduct occurred.

105H Withdrawal of application

- (1) An applicant may withdraw their application at any time before the Secretary determines it.
- (2) The Secretary may treat an application as having been withdrawn if the applicant does not, within the applicable period, provide any information required under section 105C(1) or further information required under section 105D(1)(d).
- (3) Despite an application being withdrawn or treated as being withdrawn under this section, the Secretary may reinstate the application if satisfied that the applicant wants to proceed with it and has provided any information required under section 105C(1) or further information required under section 105D(1)(d).

105I Determination of application

- (1) The Secretary must determine an application as promptly as possible consistent with this Act and its proper determination.
- (2) The Secretary must give written notice of the determination to the applicant and each relevant data controller within 14 days after making it.
- (3) If an application is approved, the historical homosexual conviction is expunged by force of this section at the end of the prescribed period after the making of the determination.

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- (4) If the determination is a refusal of the application, the written notice must—
- (a) state the reasons for the determination; and
 - (b) inform the applicant that they may apply to VCAT to have the determination reviewed; and
 - (c) explain how an application may be made to VCAT.
- (5) If the determination is an approval of the application, the written notice must—
- (a) state the reasons for the determination; and
 - (b) advise that any relevant data controller may apply to VCAT to have the determination reviewed; and
 - (c) explain how an application may be made to VCAT.

105J Effect of expungement of conviction

On and after a conviction of a person becoming an expunged conviction—

- (a) a question about the person's criminal history (including one put in a legal proceeding and required to be answered under oath) is to be taken not to refer to the expunged conviction, but to refer only to any conviction that the person has that is not expunged; and
- (b) the person is not required to disclose to any other person for any purpose (including when giving evidence under oath in a legal proceeding) information concerning the expunged conviction; and

- (c) in the application to the person of an Act, subordinate instrument or agreement—
 - (i) a reference to a conviction, however expressed, is to be taken not to refer to the expunged conviction; and
 - (ii) a reference to the person's character or fitness, however expressed, is not to be taken as allowing or requiring account to be taken of the expunged conviction; and
 - (d) the expunged conviction, or the non-disclosure of the expunged conviction, is not a proper ground for—
 - (i) refusing the person any appointment, post, status or privilege; or
 - (ii) revoking any appointment, status or privilege held by the person, or dismissing the person from any post; and
 - (e) the fact that a refusal, revocation or dismissal of a kind referred to in paragraph (d) occurred, solely on account of that conviction, before the conviction became an expunged conviction is not a proper ground for such a refusal, revocation or dismissal occurring after the expungement; and
 - (f) the person may re-apply, without waiting out any minimum period between applications for the relevant authorisation provided for by or under an Act, for a relevant authorisation
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under an Act an application for which was refused, solely on account of that conviction, before it became an expunged conviction.

Note

Oath is defined by section 38 of the **Interpretation of Legislation Act 1984** as including an affirmation.

105K Obligations in relation to official records

- (1) The Secretary, within the prescribed period after a conviction becomes an expunged conviction, must notify any relevant data controller in writing of that fact.
- (2) A data controller must take the action set out in subsection (3) in relation to any entry relating to the conviction contained in any official records under their management or control as soon as reasonably practical after receiving a notice under subsection (1) and, in any event, not later than the prescribed period after receiving it.
- (3) The action is—
 - (a) except for records covered by paragraph (b), annotate the entry with a statement to the effect that it relates to an expunged conviction; or
 - (b) for records that are secondary records held in an electronic format by Victoria Police or the Office of Public Prosecutions, take any necessary steps to do one or more of the following—
 - (i) remove the entry;
 - (ii) make the entry incapable of being found;

- (iii) de-identify the information contained in the entry and destroy any link between it and information that would identify the person to whom it referred.
 - (4) As soon as reasonably practical after taking action in relation to an entry, the data controller must give notice of the action taken to the Secretary.
 - (5) As soon as reasonably practical after the Secretary is satisfied that all necessary action has been taken in relation to entries in official records, the Secretary must give written notice of that fact to the person who has the expunged conviction.
 - (6) A person who has access to any official records must not, directly or indirectly, disclose or communicate to any person the fact of a conviction, or of a charge related to a conviction, that the person knows, or ought reasonably to have known, is an expunged conviction.
Penalty: Level 8 fine (120 penalty units maximum).
 - (7) Subsection (6) does not apply if—
 - (a) the person who has the expunged conviction gives written consent to the disclosure or communication; or
 - (b) the disclosure or communication is otherwise authorised by law.
 - (8) Subsection (6) does not prevent the Chief Commissioner of Police disclosing to Crim Trac, for incorporation into the police information sharing system known as the National Police Reference System, the fact
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that a specified conviction has become an expunged conviction.

105L Jurisdiction of VCAT

- (1) An eligible person may apply to VCAT for review of the decision of the Secretary on the determination of an application.
- (2) For the purposes of this section an *eligible person* is—
 - (a) for a decision to refuse an application, the applicant; and
 - (b) for a decision to approve an application, a data controller who has any official records relating to the conviction under their management or control.
- (3) An application for review under subsection (1) must be made within 28 days after the day on which the applicant or the data controller (as the case requires) is given notice of the decision of the Secretary.
- (4) The applicant is entitled to be given notice of an application for review made under subsection (1) by a data controller.

Note

See section 72 of the **Victorian Civil and Administrative Tribunal Act 1998**.

105M Restriction on right to re-apply

- (1) A person whose application in respect of a historical homosexual conviction has been refused by the Secretary is only entitled to have a further application in respect of that conviction considered by the Secretary in the circumstances set out in subsection (2).

- (2) The circumstances are that the Secretary is satisfied that necessary supporting information contained in the further application became available only after the earlier application was determined.

105N Delegation

- (1) Subject to subsection (2), the Secretary, by instrument, may delegate any power conferred on the Secretary by or under this Part, other than this power of delegation, to any person or class of person employed under Part 3 of the **Public Administration Act 2004**.
- (2) A delegation of the power of the Secretary under section 105I to determine an application may only be delegated to a person or class of person employed as an executive under Part 3 of the **Public Administration Act 2004**.

105O Confidentiality

- (1) A person must not, directly or indirectly, make a record of, or disclose or communicate to any person, any information relating to an application acquired by the person in performing a function or exercising a power under this Part.

Penalty: Level 8 fine (120 penalty units maximum).

- (2) Subsection (1) does not apply if—
- (a) it is necessary to make the record, or disclose or communicate the information, for the purposes of, or in connection with, the performance of a function or the exercise of a power under this Part; or

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- (b) the person to whom the information relates gives written consent to the making of the record or to the disclosure or communication.
 - (3) Subsection (1) also does not apply to the disclosure or communication of information—
 - (a) to a court or tribunal in the course of a legal proceeding; or
 - (b) under an order of a court or tribunal; or
 - (c) to a legal practitioner for the purpose of obtaining legal advice or representation; or
 - (d) as required or authorised by or under this Part or any other Act.

105P Giving of notices

If by or under this Part a notice is required or permitted to be given by the Secretary to an applicant, the notice may be given to the applicant—

- (a) by delivering it personally to the applicant; or
- (b) by sending it to the applicant at the address given in the application for that purpose.

105Q Evidentiary provisions

- (1) This section applies to a document purporting to be given by the Secretary or a delegate of the Secretary certifying as to whether an application in respect of a specified historical homosexual conviction was approved or refused.

- (2) The document is admissible in evidence in any proceedings and, in the absence of evidence to the contrary, is proof of the matters stated in the document.
- (3) The document must be presumed in any proceedings, in the absence of evidence to the contrary, to have been given by the Secretary or a person who was, at that time, a delegate of the Secretary, as the case requires.

105R Immunity

- (1) The Secretary, a delegate of the Secretary or an employee within the meaning of the **Public Administration Act 2004** is not personally liable for anything done or omitted to be done in good faith—
 - (a) in the carrying out of a function or the exercise of a power under this Part; or
 - (b) in the reasonable belief that the act or omission was in the carrying out of a function or the exercise of a power under this Part.
- (2) Any liability resulting from an act or omission that, but for subsection (1), would attach to the Secretary, a delegate of the Secretary or an employee within the meaning of the **Public Administration Act 2004** attaches instead to the State.

105S No entitlement to compensation

- (1) A person who has an expunged conviction is not entitled to compensation of any kind, on account of that conviction becoming an expunged conviction, in respect of the fact that the person—

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- (a) was charged with, or prosecuted for, the offence; or
 - (b) was convicted of, or sentenced for, the offence; or
 - (c) served a sentence for the offence; or
 - (d) was required to pay a fine or other money (including costs or any amount by way of restitution or compensation) on account of being convicted of, or sentenced for, the offence; or
 - (e) incurred any loss, or suffered any consequence (including, but not limited to, being sentenced as a serious offender in accordance with Part 2A), as a result of any circumstance referred to in paragraph (a), (b) or (c); or
 - (f) has an expunged conviction.
- (2) Nothing in subsection (1) prevents a person being entitled to compensation in respect of anything that occurred while the person was serving a sentence.

Example

The person is injured while serving a sentence in prison.

_____".

4 New section 157 inserted

At the end of Part 12 of the **Sentencing Act 1991** insert—

"157 Transitional provision—Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014

This Act, as amended by section 3 of the **Sentencing Amendment (Historical Homosexual Convictions Expungement)**

Sentencing Amendment (Historical Homosexual Convictions Expungement)
Act 2014
No. 81 of 2014

s. 4

Part 2—Amendment of Sentencing Act 1991

Act 2014, applies to convictions for historical homosexual offences (within the meaning of Part 8) irrespective of when the offences were committed or the convictions were recorded or findings of guilt were made."

PART 3—AMENDMENT OF OTHER ACTS

**Division 1—Amendment of Victorian Civil and
Administrative Tribunal Act 1998**

5 New Part 18 inserted in Schedule 1

After Part 17 of Schedule 1 to the **Victorian Civil
and Administrative Tribunal Act 1998** insert—

"PART 18—SENTENCING ACT 1991

78 Application of Part

The Part applies in respect of a proceeding
under Part 8 of the **Sentencing Act 1991**.

79 Constitution of Tribunal

The Tribunal is to be constituted by the
President or a Vice President.

80 Confidentiality of proceeding

- (1) Unless the Tribunal orders otherwise, a
person must not publish or broadcast, or
cause to be published or broadcast, any
report of a proceeding that identifies, or
could reasonably lead to the identification
of—
- (a) a party to the proceeding; or
 - (b) any other person who has given
evidence in the proceeding as to—
 - (i) whether any person involved in
the conduct constituting the
offence (including the applicant)
that is the subject of the
proceeding consented to the
conduct; or

See:
Act No.
53/1998.
Reprint No. 9
as at
1 January
2014
and
amending
Act Nos
11/2010,
67/2013,
1/2014,
17/2014,
23/2014,
37/2014,
42/2014,
57/2014,
60/2014,
62/2014 and
66/2014.
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legislation.
vic.gov.au](http://www.legislation.vic.gov.au)

- (ii) the ages, or respective ages, of any such persons at the time of that conduct.

Penalty: 20 penalty units.

- (2) The Tribunal may make an order under subclause (1) only if it considers that it would be in the public interest to do so.
- (3) An order of the Tribunal under subclause (1) must specify that pictures are not to be taken of any party to the proceeding or other person covered by subclause (1)(b).

81 Effect of original decision pending review

- (1) This clause applies, despite anything to the contrary in section 50, if a data controller (within the meaning of Part 8 of the **Sentencing Act 1991**) commences a proceeding.
- (2) The operation of the decision that is the subject of the proceeding is stayed pending the determination by the Tribunal of the proceeding and the expiration of the appeal period.
- (3) For the purposes of subclause (2) the appeal period expires—
- (a) at the end of the period during which an application for leave to appeal from the order of the Tribunal determining the proceeding may be made under Part 5 if an application is not made within that period; or
- (b) if an application for leave to appeal is made, when that application is determined if leave is not granted; or
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- (c) if leave is granted, at the end of the period during which the appeal may be instituted under Part 5 if an appeal is not instituted within that period; or
- (d) if an appeal is instituted, when the appeal is determined.

82 Tribunal file not open for inspection

Despite anything to the contrary in section 146, the file kept by the principal registrar under that section in a proceeding is not open for inspection or copying by any person."

Division 2—Amendment of Equal Opportunity Act 2010

6 Definitions

In section 4(1) of the **Equal Opportunity Act 2010** insert the following definition—

"expunged homosexual conviction means an *expunged conviction* within the meaning of Part 8 of the **Sentencing Act 1991**;"

7 Attributes

After section 6(p) of the **Equal Opportunity Act 2010** insert—

"(pa) an expunged homosexual conviction;"

PART 4—REPEAL OF AMENDING ACT

8 Repeal of amending Act

This Act is **repealed** on 1 September 2016.

Note

The repeal of this Act does not affect the continuing operation of the amendments made by it (see section 15(1) of the **Interpretation of Legislation Act 1984**).

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 17 September 2014

Legislative Council: 15 October 2014

The long title for the Bill for this Act was "A Bill for an Act to amend the **Sentencing Act 1991** to establish a scheme under which convictions for certain offences related to conduct engaged in for the purposes of, or in connection with, sexual activity of a homosexual nature may be expunged, to make consequential amendments to the **Victorian Civil and Administrative Tribunal Act 1998** and the **Equal Opportunity Act 2010** and for other purposes."