

LEGISLATIVE ASSEMBLY

SENTENCING AMENDMENT (HISTORICAL HOMOSEXUAL CONVICTIONS
EXPUNGEMENT) BILL 2014

(Amendments and New Clauses to be moved by Mr Foley in substitution for Amendments
and New Clauses previously circulated)

1. Clause 1, page 2, line 2, after "expunged" insert "on the basis that it is generally accepted that consensual sex of a homosexual nature between adults should never have been a crime".

2. Clause 3, after line 8 insert—

"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;"

3. Clause 3, after line 10 insert—

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

- (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);".

4. Clause 3, page 4, after line 5 insert—

"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;".

5. Clause 3, page 6, after line 4 insert—

"(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 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."

6. Clause 3, page 6, line 5, omit "(2)" and insert "(4)".
7. Clause 3, page 6, after line 25 insert—

"(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."
8. Clause 3, page 6, line 26, omit "(2)" and insert "(3)".
9. Clause 3, page 6, line 31, after "applicant" insert " is an entitled person who is not deceased but".
10. Clause 3, page 7, line 12, omit "(3)" and insert "(4)".
11. Clause 3, page 7, line 14, omit "applicant" and insert "entitled person".
12. Clause 3, page 7, line 15, omit "applicant" and insert "entitled person".
13. Clause 3, page 7, line 20, omit "applicant" and insert "entitled person".
14. Clause 3, page 7, line 21, omit "applicant" and insert "entitled person".
15. Clause 3, page 7, line 27, omit "applicant" and insert "entitled person".
16. Clause 3, page 8, line 2, omit "applicant" and insert "entitled person".
17. Clause 3, page 8, line 8, omit "(4)" and insert "(5)".
18. Clause 3, page 8, line 11, omit "applicant" and insert "entitled person".
19. Clause 3, page 8, line 21, omit "(5)" and insert "(6)".
20. Clause 3, page 8, line 28, omit "(6)" and insert "(7)".
21. Clause 3, page 9, line 13, omit "105B(5)" and insert "105B(6)".
22. Clause 3, page 9, line 32, omit "105B(5)" and insert "105B(6)".
23. Clause 3, page 10, line 25, omit "105B(4)(b)" and insert "105B(5)(b)".
24. Clause 3, page 11, line 13, omit "105B(5)" and insert "105B(6)".
25. Clause 3, page 12, line 25, omit "applicant" and insert "entitled person".
26. Clause 3, page 12, line 26, omit "applicant" and insert "entitled person".
27. Clause 3, page 12, line 29, omit "applicant" and insert "entitled person".
28. Clause 3, page 13, line 2, omit "applicant at the time of making" and insert "entitled person at the time of the making of".

29. Clause 3, page 13, line 12, omit "applicant" and insert "entitled person".
30. Clause 3, page 13, line 26, omit "applicant" and insert "entitled person".
31. Part heading preceding clause 5, omit "**VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL ACT 1998**" and insert "**OTHER ACTS**".
32. Page 25, after line 2 insert the following heading—

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

33. Page 27, after line 12 insert the following heading—

"Division 2—Amendment of Equal Opportunity Act 2010".

NEW CLAUSES

34. Insert the following new clauses to follow clause 5 and heading proposed by amendment 33—

'AA 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**;"

BB Attributes

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

"(pa) an expunged homosexual conviction;"

AMENDMENT OF LONG TITLE

35. Long title, after "**1998**" insert "and the **Equal Opportunity Act 2010**".