

Submission on Draft Historical Homosexual Convictions Bill 2016

In good news for the LGBTI community, the Tasmanian government announced that it will pass a Bill to expunge historical convictions for consensual homosexual activity. The Draft *Historical Homosexual Convictions Bill 2016* will make a welcome addition to similar laws passed in a number of other states, particularly Victoria and New South Wales.

Homosexual activity was unlawful in Tasmania until 1997, making it the last state to repeal this odious law, with many men still carrying convictions from this time.

It is 22 years since the *Toonen* case, in which the United Nations Human Rights Committee found Tasmania's laws against consensual homosexual behaviour to be a breach of international human rights law.

While we welcome the Bill, the Castan Centre made a submission to the Tasmanian Department of Justice in July recommending some changes to ensure the legislation realises its full potential in providing justice. In our submission we made four recommendations:

1. that the application for the offence to be

expunged be made to a Historic Criminal Records Panel instead of the Secretary of the DOJ, or his or her delegate. Having an independent panel would ensure that the process is impartial and an applicant's privacy is protected to the highest degree possible. The Tasmanian Anti-Discrimination Commissioner made a similar recommendation.

2. that the definition of "historical homosexual offence" is too narrow. The list of offences included in the Bill does not include the offence that made it illegal for men to wear female attire between sunset and sunrise. This law was used to harass and intimidate the transgender community and is a good example of the broader culture of stigmatisation towards homosexual relationships and people of the LGBTI community.
3. that the information required to be included in an application to have a conviction expunged is too unwieldy, and the onus of obtaining some information should not rest with the applicant. The Bill proposes that the person applying for

the conviction must provide supporting documents that they may not be able to obtain without expending a considerable amount of money and time. The State should bear the responsibility of finding information, if the applicant does not have it, or can't readily access it.

4. that the investigation process outlined in the Bill is unnecessarily onerous and infringes on the privacy of individuals. In some cases, people may not want to, or be able to, give evidence. Instead of making it a *requirement* to give evidence, we recommend that a person should only be *requested* to do so, thus giving them the option to decline if they feel they cannot.

It is encouraging that the Tasmanian Parliament is acting to provide some justice for those wrongly convicted many years ago. We hope that it adopts our recommendations, so that the final Bill is a genuine effort to right historic wrongs.

The Centre makes many human rights submissions to federal and state parliamentary inquiries each year. You can access a full list here.

Victoria's Charter will get its makeover

Victoria's Attorney General, Martin Pakula MP, used his address at this year's Castan Centre conference to launch the government's response to the 2015 Review of the *Charter of Human Rights and Responsibilities Act*, announcing that the government had accepted 45 of the Review's 52 recommendations.

The Review, conducted by Michael Brett Young, looked at how the Charter could be strengthened to create a better human rights culture and to be more "effective, accessible and practical".

In conducting the Review, Mr Brett Young held over 60 meetings across the state, received 109 written submissions and led a number of community forums. This helped to create a picture of how the Charter works in practice and how it is supported by the public.

The Charter, passed in 2006, protects a number of basic human rights and obliges public authorities such as the police and government departments to respect and promote them. It also gives the courts limited powers to interpret legislation compatibly with human rights and requires governments to take human rights into account when drafting laws.

One main issue brought to light by the Review was the lack of a human rights culture in Victorian institutions. Mr Brett Young noted, "it is not enough to achieve human rights protection: Victoria also needs a culture that makes human rights real in people's everyday interaction with government". This was also a major focus of Mr Pakula's conference address.

Mr Pakula announced \$1.25 million for training and education for the public sector, stating that this funding would ensure that the Charter is fully understood by public agencies.

Mr Pakula made a point of noting the government's support for recommendation 50 of the Review that suggests "Section 17 of the Charter include a new provision that every person born in Victoria has the right to a name and to be registered as soon as practicable after birth". The Castan Centre has been particularly vocal in calling on the government to support this recommendation and we are very happy with Mr Pakula's statement of support.

Birth registration is a particularly important issue for Indigenous Australians, who experience a higher rate of non-registered

births than non-Indigenous Australians. This is one issue among many that affect the Victorian Indigenous community, a fact acknowledged by Mr Pakula when he spoke of the special importance of self-determination of our First Peoples. The government also supported recommendation 49 of the Review, which calls on the government to work with "Victorian Aboriginal communities to promote, protect and respect self-determination".

Unfortunately there were some recommendations that were not supported. These included recommendation 23: giving the Victorian Equal Opportunity and Human Rights Commission the authority and resources to offer dispute resolution under the Charter, as well as recommendation 10 that suggested that the Commission engage with the private sector as part of bettering the human rights culture of Victoria. Also under further consideration is the establishment of a clearer path for human rights complaints to be heard by the courts.

Mr Pakula stated that legislation would be forthcoming to amend the Charter, and the Centre expects that the legislation will be forthcoming in the new year.