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8th March, 2017

Dear Ms Craven,

Re: the consultation draft of the *Expungement of Historical Offences Bill 2017*

TasCOSS welcomes the opportunity to comment on the draft *Expungement of Historical Offences Bill 2017*. The Bill recognises that homosexual sex between consenting adults or the choice to cross-dress should never have been a crime, and it seeks to address the undeserved humiliation of people affected by the former legislation.

It is our belief that the intention of the Tasmanian Government to address these historical injustices is an important statement in support of human rights. The International Declaration of Human Rights, the foundation of international human rights law, makes special provision for the protection of people's private lives and their right to live in dignity with the respect of their community.

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, not to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 12, Universal Declaration of Human Rights

However, while we support the intention of the Government and the overall direction of the Bill, we do have some concerns with its current framing.

Part 2 – Applications

The application process does not define *spouse* although it does say that it includes the person 'who is in a significant relationship, within the meaning of the *Relationships Act 2003*', with the person with regard to whom the application is being made. It is not clear whether this means that the relationship has to be registered for it to meet this definition, and we would seek to have it confirmed that this is not the case.

TasCOSS is also concerned that this list is restricted to family members and legal representatives. This excludes a wide range of people who have caring and loving relationships with people affected by these historical injustices. We are also concerned that the Bill also proposes a hierarchy of applicants who may apply to have an historical offence expunged. This hierarchy appears to be based on a set of assumptions about consistency, capacity and willingness to address an issue among family members. For example under the current framing of the Bill, if the wife of a deceased man once charged with offences is unwilling to discuss or deal with the issue, his children would be unable to apply to have their father's record expunged as the wishes of the wife have primacy.

TasCOSS supports the recommendation of the Anti-Discrimination Commissioner that the Bill enable 'a spouse, domestic partner, child, parent, sibling, personal representative or other appropriate representative to seek the posthumous expunction of relevant historical criminal records'.¹

The application process outlined in the Bill also appears to suppose that people will only be dealing with one charge. The legislation should be rewritten to ensure that where someone has been charged with multiple offences they can be dealt with in one application.

The offences covered

The draft Bill allows for charges and convictions to be expunged where they are cross-dressing offences (defined as an offence under section 8(1)(d) of the *Police Offences Act 1935* (pre 2001) and homosexual offences. In the Final Report on her investigation into the treatment of historic records for consensual homosexual activity and related conduct, the Anti-Discrimination Commissioner discusses the range of charges and convictions which might have resulted from the activity of police in investigating these crimes: these offences might include resisting arrest or assaulting police or perjury. The report points out that these charges would not have existed had these individuals not come to the attention of the police because they were homosexual or transgender. It is important that this legislation include the capacity to expunge these charges and convictions.

An independent advisory panel

The legislation leaves decision making in regard to the expungement of charges and convictions with the Secretary. In other jurisdictions it is recognised that where cases are complex or the evidence is unclear, the cases are examined by an independent advisory panel.²

We would recommend that such a panel be formed in Tasmania to advise the Secretary in such cases. This would be consistent with best practice public administration theory and practice, which recognises the need to place the citizen at the heart of policy considerations, and to involve citizens, particularly the citizen with lived experience of the issue under concern, as active agents in policy making.

¹Anti-Discrimination Commissioner 2015, *Treatment of historic records for consensual homosexual activity and related conduct*, Hobart, p14 http://equalopportunity.tas.gov.au/_data/assets/pdf_file/0006/330792/2015-04_FINAL_REPORT-Treatment_of_historic_records_for_consensual_homosexual_activity.pdf

² Equal Opportunity Tasmania 2014, *Treatment of convictions for consensual homosexual activity between adult males* (the Discussion Paper), p32

Working with vulnerable people checks

Although it may lie outside the scope of the consultation it is important to note that people may be fearful of having past offences exposed, and may be reluctant to apply to have offences expunged. A range of strategies should be adopted to let the community know about the opportunity the Bill will represent and the confidentiality provisions in it. Among these should be a notice on Working with Vulnerable People and Tasmania Police Checks.

Thank you for the opportunity to comment on this consultation draft.

Yours sincerely,



Kym Goodes
CEO