



# Information about discrimination on the basis of an expunged homosexual conviction

## Background

Until 1981, some people in Victoria could be convicted of certain sexual and public morality offences to punish homosexual behaviour. Although laws for homosexual offences were repealed by March 1981, the criminal convictions arising from such offences have remained on the criminal records of people for more than 30 years.

A scheme has been established to allow people convicted of historical homosexual offences, which are not considered criminal offences under today's law, to apply to have their convictions expunged (removed from record). An expunged conviction overturns the finding of guilt made by the court, whether or not the conviction was recorded.

## New attribute to Equal Opportunity Act 2010

On 1 September 2015, an attribute was added to section 6 of the *Equal Opportunity Act 2010* to prohibit discrimination on the basis of an expunged homosexual conviction. It is added as section 6(pa) of the Equal Opportunity Act.

The changes come with amendments to the *Sentencing Act 1991* by the *Sentencing Amendment (Historical Homosexual Convictions Expungement) Act 2014*, which was passed by Parliament in October 2014 and came into operation on 1 September 2015. The amendments establish a scheme under which certain convictions may be expunged.

## Discrimination on the basis of an expunged homosexual conviction

From 1 September 2015, it is unlawful to discriminate against a person who has successfully applied to have their historic homosexual conviction expunged.

## Examples of discrimination

**Direct discrimination** happens when someone is treated unfavourably because of a personal characteristic protected by the law. Treatment may be unfavourable if a person is singled out, or treated differently, because of a particular characteristic.

**Example 1:** Frank applies for a position with a construction company but doesn't get the job. When he calls the company's human resources manager to ask why he wasn't chosen, she tells Frank: "We heard that your criminal record has been altered which you failed to tell us about. We don't employ people with criminal records."

**Example 2:** Frank applied for a gun licence last year but was unsuccessful because of an old criminal record. After having the conviction expunged, he applied again. He was refused a licence on the basis that it had been detected that he didn't disclose the conviction which he had previously disclosed.

## Purpose of expunging historic homosexual convictions

The purpose of expunging historical homosexual records is to remove the stigma of a criminal record and the practical impediments created by a criminal record in relation to travel, employment, volunteering, appointments, licences and permissions.

### What is an expunged homosexual conviction?

The legal definition of an expunged homosexual conviction is a conviction for a historical homosexual offence that has become expunged following a determination of the Secretary of the Department of Justice and Regulation or on review by the Victorian Civil and Administrative Tribunal (VCAT).

### What are historical homosexual offences?

A historical homosexual offence is defined in the Sentencing Act to mean a sexual offence or a public morality offence, as well as attempting to commit such offence, being involved in the commission of such an offence, and inciting or conspiring to commit such an offence.

### What is the effect of an expunged conviction?

*A person cannot be compelled to reveal an expunged conviction.*

A person with an expunged conviction can legally claim that they have not been convicted of the expunged historical offence, as if the offence had never been committed. People will be protected from having to reveal an expunged conviction, including under oath.

*The official record will be annotated that the conviction is expunged.*

Where convictions are expunged, the official records of courts, Victoria Police, the Office of Public Prosecution and VCAT will be annotated with a statement that the record relates to an expunged conviction. People with access to official records must not directly or indirectly disclose an expunged conviction or charge, unless the person who has the expunged conviction gives written consent or where the disclosure is authorised by law.

*Copies and extracts of records will be removed, incapable of being found or de-identified.*

Secondary records of convictions which have been expunged – such as copies of records, duplicates, reproductions or extracts – will be removed from entry, made incapable of being found or de-identified.

Expunged records will not be released as part of a Victoria Police criminal history check.

*An expunged conviction will not be taken into account in any reference to a person's character or fitness.*

*A person cannot be denied an appointment, post or privilege.*

An expunged conviction, or the non-disclosure of a conviction, is not a proper ground for refusing a person any appointment, post, status or privilege, or revoking any appointment, status or privilege, or dismissing a person from any post.

### Who may apply for a historical homosexual offence to be expunged?

Any person who has been convicted of a historical homosexual offence may apply to the Expungement Scheme to have the conviction expunged. If a convicted person is deceased, an appropriate representative of that person may make the application.

## Process for determining an application to expunge a criminal record

Applications to expunge a historic homosexual conviction are processed by the Expungement Scheme of the Secretary of the Department of Justice and Regulation. A careful process is undertaken to ensure that the crimes relate to consensual adult behaviour and not conduct that would still be a crime today. An unfavourable decision of the Department of Justice and Regulation may be reviewed by VCAT.

More information about the Expungement Scheme can be found at:

### Expungement Scheme

GPO Box 4356, Melbourne Vic, 3001

Tel: Secretariat (03) 8684 0818

Email: [expscheme@justice.vic.gov.au](mailto:expscheme@justice.vic.gov.au)

Website:

[justice.vic.gov.au/expungementscheme](http://justice.vic.gov.au/expungementscheme)