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Push for compensation to be available for men with expunged gay sex convictions



Felicity Caldwell

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Men charged with historic gay offences like indecency should receive compensation, advocacy and legal groups have argued.

Groups including the Human Rights Law Centre said a proposed scheme to wipe historical gay convictions from people's records should also allow for appropriate and fair compensation.



Alan Raabe was one of hundreds of gay men to have their Queensland criminal records expunged. Photo: Robert Shakespeare

"Clause 5(2) of the bill currently provides no entitlement to compensation," their joint submission to a Parliamentary committee reads.

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"We acknowledge that no other states or territories have currently provided for compensation to people who have been unjustly convicted under historical homosexual offences.

"However, international best practice is to provide for such a measure in order to repair damaged relationships and assist in restoring individuals to the position they were in prior to the conviction."

The group, also including the Community Legal Centres Queensland, LGBTI Legal Service and Queensland AIDS Council, said Germany had committed to annul 50,000 convictions for men charged with historic offences and provide compensation.



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"The level and nature of compensation for individuals should have regard to the value of any fines paid and the length of detention ... as well as the psychological and other impacts on victims," they said.

In May, [Premier Annastacia Palaszczuk apologised](#) to people who were charged with the historic offences and the government introduced a bill for an expungement scheme.

The scheme will allow people to apply for certain convictions and charges to be wiped from their criminal record if they occurred before January 19, 1991, when consensual adult male gay activity stopped being a criminal offence in Queensland.

Until then, people could be charged with offences ranging from indecency, to unnatural offences and sodomy.

But, despite no longer being a crime, many men were still forced to admit they had a criminal record when applying for a job or trying to travel overseas.

LGBTI Legal Service executive director Emile McPhee said consequences for people charged also ranged from fines to imprisonment.

Mr McPhee said he did not think there should be a blanket ban on people seeking compensation and it should be considered on a case-by-case basis.

He said there was unlikely to be a "flood gate" of people applying for expungement and some may choose not to come forward.

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"They may have passed away and their family is not interested in going through that, and it may be something that is still a really difficult thing for those people to open up about," he said.

"It might be something they'd prefer to keep in the past, as much as we'd love to assist them [in applying for expungement]."

It is estimated that over 95 years, 464 people were charged under the laws.

But the Department of Justice and Attorney-General estimated it would receive a maximum of 20 applications over the initial two years of the scheme, at a cost of \$5000 per application – \$100,000 over two years.

No other states or territories have provided for compensation to people who had historical gay offences expunged.

The department advised people would not be entitled to compensation just because their charge or conviction was expunged.

But if the person had some other legal cause of action that arose out of the same facts that gave rise to the expungement, the new laws would not extinguish that cause of action, the department said.

A spokeswoman for Attorney-General Yvette D'Ath said the bill did not allow entitlements to compensation as this was not considered within the Queensland Law Reform Commission's report into the matter.

"At the time these historic charges were laid, police at the time were considered to be enforcing the law of the day," the spokeswoman said.

"Compensation provides are also not part of Victoria's legislation and are not part of a similar bill before Tasmanian Parliament."

The spokeswoman said the government made history earlier this year when it formally apologised to members of the LGBTI community and acknowledged the harm that was inflicted on people when homosexuality was considered a criminal offence.

The Legal Affairs and Community Safety Committee, chaired by Duncan Pegg, recommended the bill be passed.

However, the committee was unable to agree that "public morality" offences be included because it was not recommended by the Queensland Law Reform Commission.

Non-government members also believed the scheme would be improved by including a process of consultation that involved any other party involved – who was not the applicant for an expungement – particularly when issues of consent were in question.

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