

HISTORICAL HOMOSEXUAL CONVICTIONS — APOLOGY AND EXPUNGEMENT

Statement by Premier

MR M. MCGOWAN (Rockingham — Premier) [12.02 pm] — by leave: Today is about doing what we can to right the wrongs of the past. The Attorney General will shortly read in my government’s Historical Homosexual Convictions Expungement Bill 2017. This bill establishes a standalone legislative framework that allows an eligible person to apply for expungement of certain historical homosexual convictions. It is long overdue, as is this apology.

On behalf of the government of Western Australia, I am sorry for the hurt, for the prejudice, and for the active discrimination that ruined lives. For decades in Western Australia, unjust laws against homosexual acts were used to shame homosexual men, to deny their human rights, and to deny their humanity. We are doing all we can to now right this wrong. It was a wrong that has been so deeply felt by its victims that it prevented many of them from actively lobbying for this reform. Such was the shame these laws caused that, even decades later, many remain silent. I feel a sense of deep sadness that many victims of these unjust laws are not alive today to hear this apology. I hope their families and friends can take some solace from this moment.

It is hard to believe that in our lifetime homosexuality was deemed a crime. Homosexuality was not effectively decriminalised until 1990. It was not until 2002 that homosexual people in Western Australia achieved equalisation of consent ages and permission to adopt, and were allowed access to assisted reproductive technology. The 2002 act finally removed discrimination against gay and lesbian people from all Western Australian laws and amended the Equal Opportunity Act so that it became unlawful to discriminate against someone on the basis of their sexual orientation. I know I have been in this place a long time, but even I cannot believe that it is not just in my lifetime, but in my parliamentary career that this happened. I was here in 2002 for the passing of the Acts Amendment (Lesbian and Gay Law Reform) Bill 2001 under then Attorney General Jim McGinty and Premier Geoff Gallop. It has now been 27 years since homosexual acts were decriminalised in Western Australia.

I know for those convicted under these old, unjust laws it has been a long wait to clear their names. For those who have since died, these convictions remain an unjust epitaph to otherwise good lives, and this, too, must be remedied. Before homosexuality was decriminalised, men could be sentenced to years in prison, hard labour and whipping for having consensual sex with another man. It is difficult to know how many men were arrested and charged due to their sexuality, as the crimes they could be charged with fell under a range of different categories. Few records demonstrate how many men were convicted for homosexuality before 1990, but it is estimated that hundreds of men were arrested and charged with various homosexual acts. These acts should never have been considered criminal offences and the men impacted should never have had criminal records against their names.

Hundreds of Western Australians have unfairly borne the stigma of having criminal records for consensual acts that are no longer considered a crime. The expunging of these convictions is not just symbolic; many people are still living with the real consequences of these convictions today. These men have lost jobs, friends, family, their freedom and their dignity. They have been prevented from travelling, gaining certain employment and volunteering. These laws turned law-abiding citizens into criminals due only to their sexual orientation.

Gay Western Australian men were targeted and charged under these laws that were borne out of bigotry and fear. These laws diminished our society because they diminished our people. These laws diminished our police who were obliged to uphold them. They diminished gay men by rendering their love illegal and making their sexuality a source of shame. These laws diminished us all by encouraging a culture of prejudice. Headlines at the time read, “Unnatural Vice”, “Sins of the Sodomites”, and “Perth Imperilled by the Presence of the Pest”. These laws were state-sanctioned discrimination. The uncomfortable truth is that they were also the foundation upon which much current homophobia was built.

What my government and I can do today is wipe some slates clean. Our Historical Homosexual Convictions Expungement Bill 2017, upon coming law, will allow a person who has been convicted of an historical offence related to consensual homosexual activity that is not an offence today to have their conviction expunged—effectively erased—from their criminal record. Surviving family members or a legal representative will also be able to apply for expungement on behalf of deceased men. Western Australians should not have to carry the stigma of a criminal record for consensual acts that are no longer considered a crime.

I sincerely hope today’s apology and these expungement provisions allow our lesbian, gay, bisexual, transgender, intersex community to heal from an era of blatant discrimination and mistreatment from a time when the Parliament and its justice system tried to shame people out of their sexuality. Our LGBTI community has nothing to be ashamed of. The men affected were innocent—innocent of anything we would consider a crime today, and their records should reflect their innocence. Our LGBTI community should never suffer injustice or indignity simply because of who they are. To all in our LGBTI community today, I want you to know that you are good people; you are valued, and we are proud of you.

Attempting to right past wrongs is an important thing for a Parliament to do. It has been done for Aboriginal children removed from their parents. It has been done for child migrants sent to Western Australia from Britain, Malta and elsewhere. It was done in 2010 for all those women whose children were taken from them for adoption. It was done in the 1970s for all those men charged and convicted under the National Service Act. It is an act of decency to acknowledge a past wrong, and in this case, by expunging past convictions, we are taking positive action to address the injustice. Today, in this place that has caused you pain in the past, I hope we can now forge a future of healing and hope. On behalf of the government of Western Australia, I am sorry for the unjust laws passed here, and the real and deep pain they caused. I hope all members in both houses see the fundamental justice of the bill we will introduce and support its swift passage.

[Applause.]

Statement by Premier — Response

DR M.D. NAHAN (Riverton — Leader of the Opposition) [12.11 pm]: On behalf of the opposition, I rise to support the apology the Premier has offered to those people who have criminal convictions for a consensual relationship they were involved in, which, although deemed illegal in the past, is not illegal today.

In two weeks, the Australian Bureau of Statistics will announce the outcome of a very significant question put to the Australian people: should the law be changed to allow same-sex couples to marry? Those who support the right of same-sex couples to marry believe this change is long overdue. Yet, as overdue as the same-sex marriage reform is, it is significant progress from the debate that was had in this house less than three decades ago. It was only in 1990 that the Criminal Code was amended to remove as crimes certain consensual conduct that unfairly discriminated against those in homosexual relationships. They are not criminal acts today and, for many, would never have been imagined to have been criminal acts. However, there was a time when such consensual conduct was unlawful and left decent, worthy and otherwise law-abiding members of our community open to discrimination, alienation, entrapment, blackmail, prosecution and a criminal record. Although by reason of changing attitudes the prospect of police action and prosecution became increasingly infrequent and finally stopped well before the law was changed, criminal records nevertheless still exist today for people who would not now be charged. The fact they have a criminal record is not just a wrong of the past; it resulted in dreadful disruption to those people who had criminal convictions recorded against them, ranging from embarrassment to serious psychological and emotional distress, as well as discrimination and reduced opportunities in life.

Our society has changed over the years for the better. We are a more compassionate and caring society. We are more inclusive and understanding. It is regrettable that our predecessors passed laws many years ago that saw criminal convictions recorded against homosexuals involved in consensual relationships. Our Parliament did the right thing 30 years ago to decriminalise such conduct, although one can still see from the preamble to the relevant act of Parliament some prevailing social attitudes that we have since advanced beyond. The legacy of those attitudes, and the criminal records, remained for those who had crimes recorded against them. As the Premier indicated, the government will be introducing legislation to expunge those crimes. I know that legislation was being worked on prior to the March state election, based on the experience of other jurisdictions, with a view to crafting a best practice model for addressing the issue. Of course, we will, as part of our responsibility, consider any bill on its merits to ensure that it does what it is meant to achieve, but I can indicate that the Liberal Party supports this initiative to correct past injustices. This Parliament, and Parliaments around the nation, have apologised for past decisions of previous governments that may have seemed appropriate at the time but by today's standards are simply wrong. The recording of criminal convictions for sexual conduct between adults exercising informed consent in private, and particularly in consensual relationships, may have been deemed appropriate decades ago, but today we know that it is not, and should never have been, a crime. Parliaments have the opportunity to correct the wrongs of past decisions and our Parliament has the opportunity to do that. A previous Parliament took the first and tentative step to address this matter in the 1990s. This Parliament can now go on to complete the job.

Mr Speaker, on behalf of the opposition, to those who today have criminal records simply for being in a loving and consensual relationship, we say sorry.

Statement by Premier — Response

MR R.S. LOVE (Moore) [12.15 pm]: In the absence of the Leader of the National Party, I rise to speak on behalf of the National Party to offer our endorsement and support for the Premier's apology offered today. As the Premier has said, it has been 27 years since homosexuality was decriminalised in Western Australia. Given that that occurred 27 years ago, it is difficult to believe that the historic convictions have not been expunged at this point. The apology then to those whom in the eyes of the law still hold these criminal records is long overdue. To have the cloud of conviction hanging over your head for a law that was removed from the Western Australian statutes so long ago is a wrong that needs to be righted. As soon as the state decided to remove that criminal offence, it should have been part of the course to have those convictions expunged; therefore, this apology is long overdue.

As the Premier said, in 2002 the Parliament eventually removed discrimination from Western Australian statutes. The National Party supports the Premier's apology today and hopes the minds of those affected by these

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convictions and their families are put at ease by the words of the Premier and the support of the Legislative Assembly. We will support the sentiments of the bill to be introduced by the Attorney General today.