| Expungement of historical homosexual offence records act 2018 |
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Fact Sheet

# What is expungement?

Homosexual activity between consenting adults stopped being a criminal offence in the Northern Territory on 1 January 1984. Additionally, the age of consent for male homosexual activity was lowered from 18 to 16 in 2004. In recognition that homosexual activity should never have been a crime, you can now apply to have certain offences expunged – ie removed – from your criminal record without cost.

When someone’s record is expunged, the person will be treated as though the conviction or charge had never happened. This means:

* the person cannot be required to disclose the charge or conviction, even when giving evidence under oath
* the charge and conviction will no longer form part of the person’s criminal history
* the person cannot be refused any appointment, office, employment or grant of any licence, permit or registration on the basis of an expunged charge or conviction, or their failure to disclose it
* it is an offence for any other person without authority to disclose or seek to obtain information about a person’s expunged charge or conviction.

The offences that may be expunged are:

* historical sexual and public morality offences that are not criminal today, such as consensual sexual activity of a homosexual nature and loitering or soliciting at gay beats
* offences under sections 71 and 72 of the Criminal Law Consolidation Act 1876 (SA), namely buggery and attempted buggery, prior to 1 January 1984
* an offence under section 127 (sexual intercourse or gross indecency between males in public) or section 128 (sexual intercourse or gross indecency by a male with a male under 18 in private) of the Criminal Code prior to 17 March 2004.

The attempt to commit such offences and inciting or conspiring the commission of an offence are also included in the scheme.

A person may apply for expungement of any applicable conviction, charge and/or findings of guilt. Accordingly, you can apply even if you were not convicted of the offence.

# Why do we need the expungement scheme?

Like other jurisdictions in Australia, the Northern Territory formerly criminalised homosexual activity by offences such as buggery, and gross indecency between adult males in public and with children in private. Homosexual activity between consenting adults was decriminalised in the Northern Territory on 1 January 1984. The age of consent for male homosexual activity was lowered from 18 to 16 in 2004, in line with the age of consent for females and for heterosexual sexual activity.

Similar reform occurred in the other Australian jurisdictions from 1972.

Although these are no longer crimes, people charged under these former laws still face difficulties because of their criminal record. This can include when applying for a job or a volunteer position.

All Australian jurisdictions have since introduced legislation for expungement schemes. The schemes in New South Wales, Victoria, Queensland, the ACT, Tasmania and South Australia are operative. Accordingly, the Northern Territory Parliament has passed legislation to establish a similar scheme. The Chief Minister has apologised for the pain and distress caused to individuals and their families by this criminalization. It is now possible for relevant historical charges and convictions to be expunged so they will no longer appear on a police criminal history check.

# What about interstate convictions?

This scheme only applies to charges or convictions that were recorded in the Northern Territory. If the offence occurred in another state or territory, you cannot apply under this scheme. Given most states and territory have introduced similar expungement legislation, you will need to contact the other state or territory to find out more about their expungement scheme.

# How is the scheme in the NT different from the schemes in other jurisdictions?

The NT expungement scheme is established as a result of a stand-alone legislation. Unlike the schemes in SA, Victoria, NSW or the ACT, the expungement scheme in the NT does not operate as an extension of the existing Spent Convictions scheme because we recognize historical homosexual offences should be treated differently as offences which should never been subject to criminal sanctions, as opposed to just old offences.

With very few exceptions, the NT expungement scheme have incorporated the recommendations of the Queensland Law Reform Commission 2016 Report ‘Expunging criminal convictions for historical gay sex offences’.

As part of the NT expungement scheme, there is a requirement to annotate records which is found in the equivalent expungement schemes in WA, Tasmania, Victoria and Queensland. This will give a more comprehensive effect to the expungement of historical homosexual criminal records in the NT by requiring relevant government record holders to correct the records which have been the subject to expungement.

# Who can apply?

* The person who has been charged or convicted of an expungable offence
* Or, if that person is deceased, by:
* the executor or administrator of that person’s estate
* that person’s surviving spouse/de facto partner
* that person’s parent, child, sibling or a person who was in a close personal relationship with the deceased before their death or
* a person who was involved in the conduct resulting in the charge or conviction.
* Or, where that person has an impaired decision-making capacity, by:
* their guardian or the Public Guardian
* an attorney appointed under an enduring power of attorney
* a decision-maker appointed under the Advance Personal Planning Act
* a spouse, de facto partner, parent, child or sibling, or a person who is in a close personal relationship with the person or
* a person who was involved in the conduct resulting in the charge or conviction.

# How do I apply?

In order to help us identify and locate your official record, we require information about the charge or conviction you are applying to have expunged. You will need to provide:

* full name, date of birth and contact details
* a description of the offence that the person was charged with or convicted of
* the name and location of the court where the person was convicted
* the date and place of the charge or conviction
* any relevant transcript or sentencing remarks you may have.

Please ensure that the consent section is filled out and provided, otherwise we will not be able to process your application.

We understand that some of these events may have occurred a long time ago. Please complete the application as best you can. We welcome any other information you may have that would assist your application.

**Applications can be emailed to:**

agd.expungement@nt.gov.au

**or posted to:**

Department of the Attorney-General and Justice
Level 7, Old Admiralty Towers, 68 The Esplanade, Darwin

OR

GPO Box 1722, Darwin NT 0801

For more information about the scheme, visit https://nt.gov.au/law/crime/apply-to-remove-a-past-homosexual-offence or contact us on 08 89357657

# What are the application fees?

There is no fee to lodge an application under the scheme.

# Will my information be kept private?

Your application is confidential and can only be accessed by the CEO of the Department of the Attorney General and Justice, the government staff who assess your application and the agencies searching for your records – all of whom are bound by strict confidentiality obligations. It is an offence under the Act to disclose any information about an application without authorisation once the records are expunged.

You will not have to give oral evidence or go to court. Applications are assessed only on the information gathered by the CEO.

# How will my application be decided?

The CEO will decide whether your application is successful or not. This requires the CEO to make enquiries with the police, the courts and other government agencies to make sure that the conduct would not be an offence today.

Once the CEO has made their decision, we will notify you in writing and provide reasons for the outcome.

If you are unhappy with the decision, you can apply to have it reviewed by the Northern Territory Civil and Administrative Tribunal.

# What happens if an application for expungement is successful?

If a charge or conviction is expunged, a note will be added to all official police and court records to show that the charge or conviction is expunged and that it is an offence to disclose the expunged information.

Any information about an expunged charge or conviction is taken not to form part of the person’s official criminal history, and is not required to be disclosed. It will not show up on a Police History Check.

A person with an expunged charge or conviction may legally claim not to have been convicted or charged, and is not required to disclose any information about the expunged charge or conviction for any purpose, including when giving evidence under oath in legal proceedings. They cannot be refused any appointment, office, employed or the grant of a license or registration on the grounds of any information about an expunged charge or conviction.

# Support services

We understand that recalling past events may be distressing. A number of support services are available, including:

* QLife - counselling services
phone: 1800 184 527 – 3pm to midnight 7 days
* Lifeline - crisis support

phone: 13 11 14 – 24 hours 7 days

You do not need legal representation for expungement. However, the following organisations can assist you with making an application:

* Northern Territory Legal Aid Commission

phone: 1800 019 343

* North Australian Aboriginal Justice Agency

phone: 1800 898 251

* Darwin Community Legal Service

phone: 08 8982 1111

* Northern Territory Anti-Discrimination Commission

phone: 08 8999 1444

* Human Rights Law Centre:

phone: 03 86364458

web: expungement@hrlc.org.au

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