

# Extinguishment of Historical Homosexual Offences: fact sheet

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This fact sheet provides information on how individuals may apply to have historical homosexual offences extinguished where the conduct was consensual and the other party was over the current age of consent.

## What offences can be extinguished?

Applications can be made for convictions for specified former offences:

- Buggery (s79 *Crimes Act 1900*)
- Attempted buggery (s80 *Crimes Act 1900*)
- Indecent assault on a male (s81 *Crimes Act 1900*)
- Act of indecency with another male person (or procuring) (s81A *Crimes Act 1900*)
- Soliciting or inciting offences under ss79, 81 or 81A of the *Crimes Act 1900* (s81B *Crimes Act 1900*)
- Homosexual intercourse with a male between 10 and 18 (s78K *Crimes Act 1900*) – but only if the other person was over the relevant age
- Attempt, or assault with intent, to have homosexual intercourse with male between 10 and 18 (s78L *Crimes Act 1900*) - but only if the other person was over the relevant age
- Acts of gross indecency with a male person under 18 (or procures) (s78Q *Crimes Act 1900*)- but only if the other person was over the relevant age
- Indecent behaviour (s12 *Police Offences Act 1901*) or behaving in an indecent or offensive manner (s7 *Summary Offences Act 1970*) if the offence involved
  - Sexual activity with another person of the same sex, or
  - Procuring another person of the same sex to engage in sexual activity
- Exposure or an indecent act committed by an adult (s43(b) *Crimes Act 1900*), indecent exposure (s11 *Summary Offences Act 1970*; s78 *Police Offences Act 1901*) or wilful and obscene exposure (s6 *Offences in Public Places Act 1979*; s12 *Summary Offences Act 1970*; s4(2)(d) *Vagrancy Act 1902*) if
  - the offender engaged in a form of sexual activity with a person of the same sex, and
  - the offence was not witnessed by anyone except the persons engaged in the sexual activity or a police officer, and
  - it was the offender's first conviction for the offence.
- An offence of attempting, or of conspiracy or incitement to commit, any of the above offences

- Offensive behaviour (s8A(a) *Vagrancy Act 1902*; s133A *Government Railways Act 1912*)
- Serious alarm and affront (s5 *Offences in Public Places Act 1979*)

## When can convictions be extinguished?

When the other person involved consented and was aged 16 or over at the time of the offence (or 18 or over if the person convicted was a teacher, step-parent or guardian of the other person or in another position of authority/care in relation to the other person).

### Consideration

The Secretary must be satisfied that the conviction was for an eligible offence, the act was consensual and the other person was of the relevant age.

An applicant can seek a review of the Secretary's decision by applying to the NSW Civil and Administrative Tribunal.

## How can you apply to have them extinguished?

Applications should be made in writing to the Department of Communities and Justice. The application form is located online: [Application to extinguish a historical homosexual offence form](#)

Applications can be sent via email to [AdvisingsandCommunityProtectionLegal@dcj.nsw.gov.au](mailto:AdvisingsandCommunityProtectionLegal@dcj.nsw.gov.au) or posted to the following address:

Attention:

Advisings and Community Protection

Legal Branch

Department of Communities and Justice

Locked Bag 5000

Parramatta NSW 2124

## What other information do I need to provide?

After an application is received, the Secretary will obtain records about the conviction from the police and the courts. In most cases, this information will be enough for the application to be determined. If more information is needed, the Department of Communities and Justice will contact the applicant and ask for any additional information or documents. In some cases, the applicant may be required to provide a Statutory Declaration in relation to the events that led to the conviction.

## What about those people who have passed away? Can their families apply for their convictions to be extinguished?

If someone with an historical homosexual conviction has passed away, their family can apply for that conviction to be extinguished. An application can be made by their spouse, de facto partner, parent, child, a person in a close personal relationship with them before they died, or their legal personal representative.

## What happens if the conviction is extinguished?

Once a conviction is extinguished, people will not be required to disclose the conviction when they are applying for a job, travelling overseas or for any other purpose.

### **For more information**

For more information applicants can contact the Director, Community Protection, Department of Communities and Justice or visit our [website](#).

*DISCLAIMER: This fact sheet contains general information only, is not legal advice, and does not take into account individual circumstances. You should seek independent legal advice about your own particular circumstances. Neither the Attorney General nor the Department of Communities and Justice can provide legal advice.*