



Extinguishment of Historical Homosexual Offences

What is extinguishment?

Extinguishment is when a conviction on a criminal record is deleted – as though it never existed.

Why should I apply?

The Department of Justice is committed to making the application process as straightforward as possible for you. All you need to do is fill out the one-page application form! You have nothing to lose in making an application and the confidential process means that it's strictly between you and the Department of Justice.

It is important to understand that there is a difference between a *spent* conviction and an *extinguished* conviction. There are some circumstances in which you will need to disclose a spent conviction, even if it happened a very long time ago. An *extinguished* conviction is removed from your criminal record as if it never happened. If you need any help verifying whether an offence is spent or extinguished, please contact the ICLC on 02 9332 1966.

Even if it has not impacted you recently, your criminal record may affect your ability to apply for things in the future, such as overseas travel, work-related licences, or volunteering checks. Since the application process is so easy, you may as well do it now.

What is the cost of making an application?

The application process is free.

Will my application be confidential?

Yes. The Department of Justice will ensure that all information throughout the application process is

kept highly confidential. However, the Department of Justice may contact you from time to time about your application. If you prefer, the ICLC can assist you with your application and communicate with the Department of Justice on your behalf.

What offences are eligible to be extinguished?

If you were convicted of any of the following offences prior to 1984, you may apply to have the offence extinguished:

- (a) Buggery, or Attempted buggery
- (b) Indecent assault on a male
- (c) Act of indecency with another male person
- (d) Homosexual intercourse with a male over the relevant age
- (e) Attempt, or assault with intent, to have homosexual intercourse with a male over the relevant age
- (f) Acts of gross indecency with a male person under 18 (or procures) where the other person was over the relevant age (s 78Q Crimes Act 1900) – but only if the other person was over the relevant age
- (g) Indecent behaviour or behaving in an indecent or offensive manner if the offence involved:
 - (i) Sexual activity with a person of the same sex; or
 - (ii) Procuring another person of the same sex to engage in sexual activity
- (h) Exposure or an indecent act committed by an adult, indecent exposure, or wilful and obscene exposure if the offence involved:

- (i) The offender engaged in a form of sexual activity with a person of the same sex, and
 - (ii) The offence was not witnessed by anyone except the other person engaged in the sexual activity or a police officer, and
 - (iii) It was the offender's first conviction for the offence.
- (i) An offence of attempting, or of conspiracy or incitement to commit, any of the above offences.

If you are not sure what the offence was, you can still apply. The Department of Justice will check your criminal record and determine whether you can proceed with your application. An offence from 30 years ago could have been misdescribed or incorrectly noted on a criminal record. If this is the case, you can still apply and the Department of Justice will investigate for you.

How do I apply?

You must post the application form to the Department of Justice. The following information is required to apply:

- (a) Your current name and address;
- (b) Your date of birth and supporting proof of identity, e.g., passport, drivers' licence;
- (c) Your name and address at the time of conviction; and
- (d) The date and court where your conviction was heard.

Only the application form and a copy of your identification is required. The application can be found here: www.justice.nsw.gov.au/Pages/legal-info-services/Historical-homosexual-offences.aspx

Can I apply on behalf of someone who has died?

Yes, you can apply if you are the executor, parent, spouse, or child of a deceased person.

What happens after I have applied?

The Department of Justice will make enquiries into all necessary records kept by the government, police, courts, and any other relevant body. From this information, the Department of Justice may be able to make a decision.

If the Department of Justice needs more information, they may contact you (or your lawyer). You may need to provide more information in writing. If you need help with providing information to the Department of Justice, please contact the ICLC for assistance.

How will the Secretary decide whether my application is successful?

Your application will be successful if the Department of Justice is satisfied that:

- (a) The offence was an extinguishable offence;
- (b) The other person consented (agreed to engage in the activity); and
- (c) The other person was over the age of 16 (or 18 in some cases).

How will I know the outcome of my application?

The Department of Justice will contact you (or your lawyer).

What can I do if my application is unsuccessful?

You may be able to apply to the NSW Civil and Administrative Tribunal (NCAT) for administrative review of the Department of Justice's decision. If you require legal assistance drafting your NCAT appeal application, please contact the ICLC.

Another thing to keep in mind is that the law can change. Keep in contact with the ICLC in case your offence becomes extinguishable in the future.

What can I do if my application is successful?

If your application is successful, the conviction will become extinguished and deleted from your criminal record. You will never have to disclose it again.

Can the decision be overturned?

Yes. It is an offence to knowingly provide false or misleading information or documents in an application to a public authority. If the Department of Justice decides that an application included false or misleading information or documents, the conviction may no longer be extinguished.

From the date of that decision onwards, the offence will remain on your criminal record.

Getting help

If you need assistance with this application process, please contact the Inner City Legal Centre (ICLC) on 02 9332 1966.

If you are considering applying for the extinguishment of an offence and would like to have a confidential discussion with someone about it, please contact:

- Bernhard Ripperger at the Department of Justice on 02 8346 1212;
- The Human Rights Law Centre on 03 8636 4450; or
- The ICLC on 02 9332 1966.

The NSW Gay and Lesbian Rights may also be able to help:

- Contact them via convenors@girl.org.au

If any of the material in this brochure has upset you and you would like to speak with someone about it, please contact ACON on 9206 2000 and ask to speak to a counsellor.

Disclaimer: This information is current to 25 August 2021 and reflects the law in New South Wales. It is general information and is no substitute for legal advice tailored to your particular circumstances. For assistance, contact the ICLC on 9332 1966.