



LGBT
IRELAND

For Inclusion
For Equality
For Everyone

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LGBT Ireland Submission on Criminal Justice (Hate Crime) Bill 2021

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1. Introduction

1.1 Who we are

LGBT Ireland is a national charitable organisation working to improve the visibility, inclusion and rights of LGBTI+ people living in Ireland. Through our national helpline, online, and face to face services we provide confidential support and information to thousands of LGBTI+ people and their family members each year. Informed by the issues and experiences raised through our frontline services, we also work extensively in the area of policy and legislative reform to ensure that LGBTI+ people’s voices are heard in the policy and practice developments that affect their lives. The submission below is informed by the issues and experiences of LGBTI+ people and their family members who contact us. As a network organisation with seven regional LGBTI+ member services, we also have a strong regional focus and the recommendations outlined below are deeply rooted in the knowledge and experience of our members working across the country.

Together with our member organisations, we have been campaigning for the review of the Prohibition of Incitement to Hatred Act 1989¹ and the introduction of hate crime legislation for several years. We regard the absence of such legislation as a significant gap in Irish law. We therefore welcome this Bill and the opportunity presented through the submission process to highlight the specific issues and requirements needed tackle hate speech and hate crime against the LGBTI+ community.

1.2 The LGBTI+ community: A target for hate crime and hate incidents

The National LGBT Helpline deals with approx. 2,000 contacts annually. Of these, 4% relate to ‘violence’. As an expert LGBTI+ Non-Government Organisation, we know from anecdotal evidence this is not reflective of the true scale of homophobic, biphobic, lesbophobic and transphobic violence that is occurring in Ireland, online and offline, on the streets and in neighbourhoods.

¹ Available at: <http://www.irishstatutebook.ie/eli/1989/act/19/enacted/en/print#sec6>.

Research in 2016ⁱ conducted by GLEN and BeLonG To with LGBTI+ persons in Ireland reported a high percentage of participants having experienced harassment and violence over their lifetime:

- 33.6% of respondents had been threatened with physical violence,
- 21.1% had been physically assaulted,
- 14.9% had been sexually assaulted and
- 6.3% had been attacked with a weapon because they were LGBTI+.

Gay men were most likely to report they had been physically assaulted, however transgender and intersex participants were most likely to report having been attacked with a weapon. Transgender and intersex participants were most likely to report having been sexually assaulted. Many LGBTI+ people struggle to openly express their identity:

- 53% of LGBTI+ couples said they felt unsafe showing affection for one another in public.
- 47.1% said they felt unsafe holding hands with their partner of the same sex in public.
- Gay men and transgender people were more likely to report feeling unsafe holding hands in comparison to lesbians and bisexual people (Higgins et al. 2016).

The 2019 Call It Hate surveyⁱⁱ by *Hate & Hostility Research Group*, University of Limerick, as part of the Call It Out campaign revealed findings upholding LGBTI+ people's levels of hate crime and incidence:

- **only 36%** of respondents believed that violence against the LGBTI+ community is 'a serious problem in Ireland'
- in reality, **1 in 5 or 21%** of those surveyed, have been punched, hit or **physically attacked** in public for being LGBTI+
- of 1,395 people who replied **1 in 3** have been **threatened** with physical violence

A normalisation of homophobia, biphobia, transphobia, even in the LGBTI+ community itself, almost as the price of being visible, the cost of visibility, is strongly reflected in the perceptions versus the reality of lived experiences above. LGBT Ireland believes this normalisation also underlies the low level of calls on the issue of violence to our helplines.

Having said that in 2020 the National LGBT Helpline recorded a fourfold increase in calls relating to violence.

1.3 Under-reporting of Hate Crimes:

1.3.1 Impact of the historical legacy of criminalisation remains

In March 2020, the LGBTI+ sector organisations both national and regional, engaged in its first Dialogue Day with An Garda Síochána (AGS) as part of AGS ongoing implementation and refinement of *An Garda Síochána Keeping People Safe* Garda National Diversity and Integration Strategy 2019-2021. Through the many discussions that day it was clear that the legacy of criminalisation looms large as a barrier, if and when a member of our community needs to think about engaging with AGS. Many opt not to engage due to a lack of trust and a fear of being treated disrespectfully. This is especially true of gay men of those age groups directly impacted by criminalisation. Butch-presenting lesbian women would also fear judgement and disrespectful treatment and would opt not to report. Members of the Trans community and others who present in gender non-conforming ways equally fear engagement with AGS for similar reasons.

Given these barriers for victims of crime to report, once again LGBT Ireland and other sectoral organisations believe statistics on levels of hate crime against our community does not represent the true large scale of the problem.

1.4 Additional barriers to reporting facing LGBTI+ people with intersecting identities

1.4.1 Invisibility and vulnerability of older LGBTI+ people

Older people are LGBTI+ too and often live very invisible lives with diminished support networks compared to their heterosexual peers. There is limited Irish research on this group with *Visible Lives* (2011)ⁱⁱⁱ still being the go-to text for an insight into the issues and needs of older LGBTI+ people. Some worrying findings around isolation and loneliness, more recently corroborated by Stonewall UK research (2015)^{iv}, include:

- “*diminished support networks in comparison to heterosexual peers*”

- *More likely to be single:* 40% (UK) / 43% (IRL) of gay and bisexual men are single, compared to 15% (UK) / 15% (IRL) for heterosexual men
- *More likely to live alone:* 41% (UK) / 46% (IRL) of LGB people live alone compared to 28% (UK) / 29% (IRL) of heterosexual people.
- *Less likely to have children:* just over 25% of gay and bisexual men and 50% of lesbian and bisexual women have children, compared to almost 90% of heterosexual men and women.

Living hidden lives isolated from regular contact with trusted friends leaves older LGBTI+ people vulnerable to crime. Older gay men are particularly vulnerable, many LGBTI+ organisations have dealt with cases of older gay men being blackmailed, however because many remain closeted and also because they grew up in the shadow of homosexuality being criminalised, it is often very difficult for them to feel safe in making a report to AGS and beginning the journey of trying to engage with and access justice.

1.4.2 LGBTI+ Travellers

LGBT Ireland sits on the *National Action Group for LGBT Travellers & Roma*. This group was formed in 2016 with the goal of advancing greater awareness and understanding of LGBTI +Travellers and Roma and their inclusion in their support organisations and communities. LGBTI+ Travellers experience hate crime and hate speech based on having more than one minority identity. There is little research available on LGBTI+ Travellers, but what little does exist^v demonstrates the common barriers in engaging with AGS are:

- Fear of racism; anti-Traveller feelings
- Legacy of mistrust between Travelling community and AGS

It should be noted that LGBT Ireland, as part of the National Action Group for LGBT Travellers & Roma, has this year secured funding to carry out peer research (Sept. 2021-Sept. 2022) into this very invisible cohort of the LGBTI+ Community and so will learn more about experiences, challenges and support needs in the coming year.

1.4.3 LGBTI+ asylum seekers

Since July 2018, LGBT Ireland has facilitated a monthly peer support group for LGBTI+ asylum seekers living in Direct Provision across the country. The group meets monthly in Dublin with LGBT Ireland providing transport fares and safe venues using grants from Community Foundation Ireland under their “Mental Health & Well-being” programme and a Community Integration Fund grant from Dept. of Justice & Equality through the Office for the Promotion of Migrant Integration. The geographical spread of group members currently includes counties Cavan, Louth, Meath, Westmeath, Galway, Limerick, Wicklow and Dublin.

LGBTI+ asylum seekers and migrants likewise experience hate crime and hate speech and often report being targeted because of their intersectional identities.

For example, we recently received a call to our helpline from a young gay African man who was verbally and physically assaulted in a shop, with the perpetrator using both racist and homophobic slurs before assaulting the young man.

For LGBTI+ asylum seekers and migrants who experience hate crime or hate speech, barriers to reporting these incidents commonly cited in discussions are:

- fears of racism
- fear of questions about immigration status even when it’s not relevant to the reason they have gone to AGS
- language issues
- legacy of police violence and criminalisation of homosexuality in countries of origin and subsequent fear of the police force in Ireland

2 General points

2.1 Multi-faceted policy response

Given the evidence presented above of the under-reporting of hate crimes and hate speech by the LGBTI+ community, we call on Government to ensure that this legislation is one part of a multi-faceted and comprehensive response to the two distinct but interconnected issues of hate crime and hate speech. Robust policy commitments must be made and should include a national action plan against hate speech and hate crime in particular in online spaces, awareness campaigns, education and training for public sector actors, including the Gardai and the DPP.

Policy responses should be designed as an instrument to tackle all forms of hate speech, including those which do not reach the threshold of criminality. We also underline the importance of ensuring that it is open to prosecutors to pursue an intersectional approach where individuals are targeted because of more than one protected characteristic. Policies should recognise that where people are deprived of or are subject to restrictions on their liberty in places such as psychiatric wards or congregated settings, this can put certain groups at particular risk.

Proper implementation measures to ensure this legislation is effective must be in place. This includes ensuring there is a proper firewall for individual reporting to Gardai, for example deportation measures could be put on hold during an investigation; government must educate the population about the new law and a widespread public awareness campaign should be taken when the Bill becomes law.

These measures should be developed in strong collaboration with civil society organisations, affected communities and other stakeholders.

2.2 Consultation on hate crime

LGBT Ireland welcomed and assisted with the government consultation in 2019 on hate speech and the resulting report published in September 2019. However, we would like to highlight the fact that this consultation did not specifically address hate crime and the hate speech consultation documents contained an explicit commitment to carry out a specific separate consultation on hate crime, which never happened². Hate crime and hate speech are two distinct problems and the legal and policy response should reflect this difference. In light of this and the ongoing legislative process, we call on government to carry out further consultations with affected groups and other stakeholders on the experience of hate crime in Ireland. We believe this is vital to ensure the law responds to needs on the ground, including when deciding on the list of aggravated offences and the list of protected characteristics.

² Review of the Prohibition to Incitement to Hatred Act 1989 Public Consultation, October 2019. Available at: http://www.justice.ie/en/JELR/A_Review_of_the_Prohibition_of_Incitement_to_Hatred_Act_1989.pdf/Files/A_Review_of_the_Prohibition_of_Incitement_to_Hatred_Act_1989.pdf.

3 General Scheme Criminal Justice (Hate Crime) Bill 2021

3.1 Head 2 Interpretation

3.1.1 Definition of “hatred”

“hatred” means detestation, significant ill will or hostility, of a magnitude likely to lead to harm or unlawful discrimination against a person or group of people due to their association with a protected characteristic

LGBT Ireland considers that the definition of hatred in this legislation should meet international standards, including as outlined by the Council of Europe Committee against Racism³ and Intolerance and by the UN Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression⁴.

3.1.2 “Protected characteristics”

“protected characteristic” means race; colour; nationality; religion, ethnic or national origin; sexual orientation; gender; or disability

“ethnicity” includes membership of the Traveller community

“religion” includes the absence of religious belief

“gender” includes gender expression or identity

“disability” has the same meaning it has in the Equal Status Act 2000

As noted above, LGBT Ireland welcomes the inclusion of gender expression or identity in the definition of gender in the list of protected characteristics. Given the Irish research presented above demonstrates that Intersex people experienced more severe forms of violence and threats, we call for the inclusion of sex characteristics as a protected characteristic under the legislation. This would be in line with the Council of Europe’s recommendation that the framework for tackling hate crimes and “hate speech” expressly covers violence against

³ ECRI, ECRI General Policy Recommendation No. 15 on Combating Hate Speech, adopted on 8

December 2015. Available at: <https://rm.coe.int/ecri-general-policy-recommendation-no-15-on-combating-hate-speech/16808b5b01>.

⁴ A/67/357. Available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/N12/501/25/PDF/N1250125.pdf?OpenElement>.

intersex people. ILGA Europe defines LGBTI-phobic hate crime and hate speech as “violence and speech and/or aggression towards LGBTI people due to their actual or perceived sexual orientation, **gender identity and/or sex characteristics**.”⁵

Within the An Garda Síochana Diversity & Integration Strategy 2019-2021, they have explicitly stated that ‘gender’ includes gender identity, transgender, intersex, gender expression and gender exploration.⁶

3.2 Part 1 – Incitement to Hatred

3.2.1 Head 3

(3) Subject to paragraph (5), a person is guilty of an offence who - publishes or otherwise disseminates, broadcasts or displays to the public, or a section of the public, images, recordings or any other representations of a communication the subject of paragraph (1) above.

LGBT Ireland is unconvinced that the wording of s.3 makes the knowing facilitation of the dissemination of incitement to hatred, as defined by law, by a corporate body a criminal offence. For example, if an individual disseminates material constituting incitement to hatred, at what point is the company held liable for dissemination? If it is the intention of the legislature to create a criminal offence of dissemination by a corporation, consideration should be given to clearer and more precise wording. We note that this legislation must be consistent with other national and European legislation seeking to regulate online content.

3.3 Part 2 – Hate Crime

3.3.1 Amendment of the Non-Fatal Offences Against the Person Act 1997

It is widely recognised that the impact of hate crime can be greater than that of crimes committed without a bias motive, especially in relation to the effects on targeted individuals and their communities⁷. LGBT Ireland welcomes the creation of new aggravated forms of

⁵ ILGA Europe on Hate Crime & Hate Speech, <https://ilga-europe.org/what-we-do/our-advocacy-work/hate-crime-hate-speech>

⁶ An Garda Síochana Diversity & Integration Strategy 2019-2021, <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-national-diversity-integration-unit/diversity-and-integration-strategy-2019-2021-english-v1-1.pdf>

⁷ On the impact of hate crime, see OSCE/ODIHR, Understanding the Needs of Hate Crime Victims, September 2020, p. 11-15. Available at: <https://www.osce.org/files/f/documents/0/5/463011.pdf>.

existing offences, as these recognise the additional harm caused by the “hate” element of the crime. As highlighted by OSCE, part of the importance of hate crime legislation is the symbolic value – for victims and society at large - of labeling the offence, and explicitly condemning the bias motive. In addition, with aggravated offences patterns relating to the commission of such crimes have greater visibility and data on hate crime is easier to collect, which can then better inform the legal and policy responses required to combat such crimes⁸.

The Criminal Justice (Hate Crime) Bill introduces twelve new aggravated offences, amending the Non-Fatal Offences Against the Person Act 1997⁹, the Criminal Damage Act 1991¹⁰ and the Criminal Justice (Public Order) Act 1994¹¹. These are:

- Assault aggravated by prejudice
- Assault causing harm, aggravated by prejudice
- Causing serious harm, aggravated by prejudice
- Threats to kill or cause serious harm, aggravated by prejudice
- Coercion aggravated by prejudice
- Harassment aggravated by prejudice
- Endangerment aggravated by prejudice
- Damaging property, aggravated by prejudice
- Threatening, abusive or insulting behaviour in a public place, aggravated by prejudice
- Distribution or display in a public place of material which is threatening, abusive, insulting or obscene, aggravated by prejudice
- Entering building, etc. with intent to commit an offence, aggravated by prejudice
- Assault with intent to cause bodily harm or commit an indictable offence, aggravated by prejudice.

⁸ OSCE – Hate Crime Laws: A Practical Guide, p. 35. Available at: <https://www.osce.org/files/f/documents/3/e/36426.pdf>.

⁹ Available at: <http://www.irishstatutebook.ie/eli/1997/act/26/enacted/en/html>.

¹⁰ Available at: <http://www.irishstatutebook.ie/eli/1991/act/31/enacted/en/html>.

¹¹ Available at: <http://www.irishstatutebook.ie/eli/1994/act/2/enacted/en/html>.

LGBT Ireland considers that the rationale on what offences to create as aggravated offences were chosen should be included. A number of crimes such as sexual crimes have been excluded. We call on government to clarify the criteria used to include or exclude offences in the list of aggravated offences. We consider a proper consultation on what type of hate crime is experienced in Ireland would have assisted with a more transparent process of determination.

LGBT Ireland also considers that the list of aggravated offences should have some identifiable link to the range of protected characteristics identified under Head 2 (Interpretation). The list of aggravated offences should include the offences which are most commonly committed against the protected individuals, groups and communities identified with the protected characteristics. We note that the type of crime committed against different groups and communities can vary significantly.

ⁱ Higgins, Agnes, Doyle, L, Downes, C; Murphy, R; Sharek, D; DeVries, J; Begley, T; McCann, E; Sheerin, F & Smyth, S (2016). *The LGBTIreland report: National study of the mental health and wellbeing of lesbian, gay, bisexual, transgender & intersex people in Ireland*. Dublin: www.belongto.org

ⁱⁱ Ireland and our LGBT Community (2019) Haynes, A. and Schweppe, J.

ⁱⁱⁱ Higgins, A., Sharek, D., McCann, E., Sheerin, F., Glacken, M. Breen, M. & McCarron, M. (2011). *Visible lives: identifying the experiences and needs of older LGBT people in Ireland*. http://lgbt.ie/wp-content/uploads/2018/06/attachment_233_Visible_Lives_-_Key_Findings_Nov_2011.pdf

^{iv} Stonewall UK. (2011). *Lesbian, Gay & Bisexual People & Later Life* https://www.stonewall.org.uk/sites/default/files/LGB_people_in_Later_Life_2011.pdf

^v *LGBT Traveller Health Report ERTHN* Area*” Dempsey, C. (2012)