



**LGBT**  
IRELAND

For Inclusion  
For Equality  
For Everyone

Submission to the Public Consultation to Inform the  
Final Recommendations of the Working Group to  
Examine the Disregard of Convictions for Certain  
Qualifying Offences Related to Consensual Sexual  
Activity Between Men

December 2022

## **About LGBT Ireland**

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 the LGBTI+ community 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.

## **Background**

In 2018, on the 25th anniversary of the decriminalisation of homosexuality, the Taoiseach issued an apology to the LGBTQI+ community on behalf of the State. Subsequently, a process was commenced to right the wrongs done by the laws of the past. This submission is in response to a public consultation launched by the Department of Justice into a proposed Disregard Scheme to disregard historic convictions for consensual same-sex sex before decriminalisation.

## **Scope of the Disregard Scheme**

The Disregard Scheme should be open to anyone who believes that the law was used to unfairly police, arrest, charge or convict them because they were LGBTQI+.

## **Laws to be Included**

At present, there is limited research into which laws were used by the State to target LGBTQI+ people. There are some anecdotal accounts of LGBTQI+ people being targeted using public order laws, vagrancy laws, loitering laws, and by-laws, as well as via other police operations.

However, wider consultation and more research are needed to pinpoint the exact laws. In particular, specific research is needed to understand how the law used to harass trans people and lesbian/bi women – including in the Family Courts. Therefore, the Disregard Scheme should not, at this point, be limited to *Offences Against the Person Act 1861* or the *Criminal Law Amendment Act 1885*, as suggested.

## **Encouraging Participation**

There are a number of ways in which participation in the Scheme can be encouraged. First, it must be acknowledged that many people will be hard to reach. It is important, therefore, that the Scheme is promoted widely and is open and accessible and ensures confidentiality.

A large number of LGBTQI+ people left Ireland to find safer places to live. Efforts should be made to promote the disregard process abroad, particularly in the UK, US, Canada, New Zealand and Australia. Irish embassies and consulates must promote the Scheme widely. In addition, the Irish LGBTQI+ community groups abroad should be funded to promote the Scheme. At home, LGBTQI+ community groups across the island should be supported and funded to promote the Scheme within specific communities and geographic areas.

## **Implementation of the Scheme**

It is important that the disregard scheme is as accessible as possible and that the body selected to operate the Scheme undertakes a trauma-informed approach that is in line with international best practice.

The onus to provide documents and records rests with the State. If these are not available, then the person's testimony should be accepted. Care must be taken not to re-traumatise people during the disregard process.

The Working Group has set out an extensive list of human rights and equality principles. As a next step, it should set out how these principles will be put into practice. For example, all staff working on the Scheme should receive training on trauma and human rights. In addition, advice

should be sought from the Disregard Schemes in other countries on how best to ensure these principles are followed in practice.

### **Full Restorative Justice**

For the Disregard Scheme to be effective, it must be placed in a broader context and must consider and address the full impact criminalisation has had on LGBTQI+ people, communities, and wider society.

Many LGBTQI+ community organisations across the country are underfunded and struggle to support the people and communities who were hurt by anti-LGBT laws, policies, and practices. Additional State funding should be provided to create and sustain support services for older LGBTQI+ people.

If a thoroughly restorative justice approach is to be adopted, it must also address a wider set of issues. These include, but are not limited to, access to timely trans healthcare, banning conversion practices, robust hate crime prevention, and improved sexual and mental health services for LGBTQI+ people.