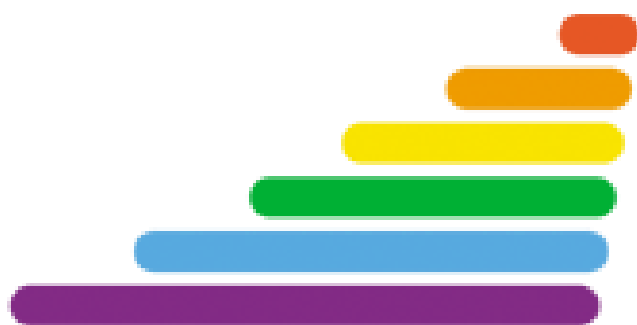




NATIONAL LGBT FEDERATION

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 National LGBT Federation (NXF)

The National LGBT Federation (NXF) was founded in 1979 and is one of the oldest NGO's in the State involved in LGBT+ advocacy. We campaign for equality for LGBT+ in Ireland and abroad, publish the free monthly GCN (Gay Community News) and organise the GALAS – LGBT Awards. Our first Chair was veteran human rights campaigner and Senator David Norris, whose successful case at the ECHR in October 1988 ultimately led to the repeal of the homophobic legislation that criminalised gay and bisexual men until 1993. Another well-known campaigner Ailbhe Smyth, who served as head of the Coalition to Repeal the 8th Amendment, served more recently as Chair.

Through our advocacy and educational initiatives, we are firmly committed to creating an Ireland that truly embraces equality for LGBT+ in all spheres of society. This includes dealing with the legacy of criminalisation and securing justice for those who were harmed and victimised by the state sanctioned homophobia that was in effect in Ireland until 1993.

The much welcome State Apology delivered in 2018 recognised that it was the State, not the gay and bisexual men who were directly and indirectly persecuted, that was in the wrong. We regard the Disregard Scheme as the next crucial step in the process of seeking to 'right' what was a grave historical wrong and serious human rights violation.

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 LGBT+. It should take an expansive approach.

Laws to be Included

We know from court records and academic research that numerous laws were used to prosecute and victimise gay and bi men, not just the 1861 and 1885 Acts. It is crucial therefore that the Scheme is not limited to the legislation that specifically criminalised male sex-sex activity – legal tools against the likes of ‘loitering’ and ‘soliciting’ and other Public Order offences, local By-Laws and the Vagrancy Act must also be included as they too were used to target gay and bi men. (This list is not exhaustive).

Wider consultation and more research are needed to pinpoint the exact laws, which should also seek to understand how the law used to harass trans people and lesbian/bi women – including in the Family Courts.

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.

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 so-called 'conversion practices', LGBT+ inclusive education, robust hate crime prevention, and improved sexual and mental health services for LGBT+ people.

Concluding Observations

The National LGBT Federation would like to make a number of concluding recommendations for the Working Group to consider, namely:

*In look at similar schemes enacted in other jurisdictions, we would highlight in particular the approach taken in Germany, which included a financial compensation component. We believe this should be recommended in the Irish context too, in the form of compensating victims and/or through funding for LGBT+ groups.

Conversely, we are critical of the short-comings of the scheme introduced in 2012 for England/Wales/NI, both due to the extremely limited number of 'offences' covered and also the onerous process it required applicants to partake in.

*We believe An Garda Siochana, in the form of a public statement from the Commissioner, should issue a stand-alone apology for its role in enforcing/upholding the state sanctioned homophobia, including in how it conducted investigations into the killings of gay men (e.g. Charles Self) and the treatment of its own gay/bi members (Dismissal of Garda in 1982). It should be noted that AGS Commissioner Harris issued an apology to a former Garda member in 2018 who was dismissed for becoming pregnant out-of-wedlock.

*The Minister for Justice should also write to every applicant or those on their behalf, apologising for criminalisation and everything it entailed and recognising that it was a grave violation of basic human rights and dignity.

*The Working Group should clearly frame the Disregard Scheme as part of a wider process by the Irish State of recognising and atoning for enforcing a form of 'morality' on women and LGBT+ citizens in particular that sought to punish anyone who did not adhere to strict Roman Catholic beliefs and behaviour deemed appropriate. In effect, a form of theocracy upheld by church and state. The Magdalene Laundry experience is particularly instructive in that regard.

*A memorial should be established in the centre of Dublin dedicated to LGBT+ victims of criminalisation, along the lines of what already exists in cities like Berlin and Amsterdam.

*A body like the IHREC rather than the Department of Justice or An Garda Síochána should be used to oversee the operation of the Disregard Scheme.

Website: nxf.ie | Email: info@nxf.ie | CRN: 20034580