

**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**

The Working Group has identified a number of key issues that would benefit from a targeted public consultation. The responses received in relation to this consultation will inform the Working Group's final deliberations and help shape their final recommendations to the Minister for Justice for the development of a scheme to disregard qualifying offences related to consensual sexual activity between men.

Your participation is greatly appreciated and is essential to ensuring robust policy recommendations by the Working Group.

There are seven questions contained in this consultation. You do not need to answer all consultation questions. Each question is optional and you can skip any questions that may not be relevant to you and the submission will still be accepted.

The deadline for completion of the survey is 5pm on Friday 9 December 2022.

Any further information or queries about this consultation process can be submitted to the following contact address: disregard@justice.ie

Each submission will be dealt with as sensitively as possible with recognition of the fact that this process may be difficult for affected persons, their families, friends and the wider LGBTQI community.

Please note that all submissions received will be subject to the provisions of the Freedom of Information Act 2014 and may also be published as part of any final reporting. Any personal data submitted as part of the consultation process will be treated in accordance with the requirements of the GDPR and the Data Protection Acts 1998 - 2018. The Working Group reserves the right not to accept submissions, this may occur if your submission does not relate to the remit of the Working Group.

Thank you for taking part in this public consultation process.

Consultation Questions

Personal Information

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Members of the trans community were directly impacted by criminalisation of same-sex activity in Ireland. The criminalization created a climate of fear amongst trans people too, specifically on trans femme communities over decades delaying coming outs, resulting in lack of support from public authorities, emigration, invisibility and bullying not tackled in schools. At TENI we here stories from members of our community how it has affected their lives, what coping mechanisms were used and how it's legacy is still an issue and it can not be forgotten.

TENI welcomes this process as key part of restorative justice for people prosecuted directly by the legislation and those indirectly impacted. Criminalising same-sex affection and desire was a gross human rights abuse and had destructive consequences on those directly impacted and on the wider LGBT+ community, including trans women and the wider trans community.

The criminal legislation contributed very significantly to a culture of homophobia, lesbophobia, biphobia and transphobia that was endemic in government and public institutions and services. It enabled widespread discrimination and prejudice against LGBT+ people and the legacy continues to this day.

State apology, issued in 2018, was an important part of redress, and was also welcomed by TENI.

The principles of human rights and equality should underpin the disregard scheme and other actions that would provide redress for the hurt and harms caused by the legislation. Further work is needed to address the legacy of decades of criminalisation and a restorative justice approach is needed to research, document and address the consequences.

Question 1

What body would be the most appropriate 'first' point of contact for applicants to a disregard scheme?

- Department of Justice ☐
- An Garda Síochána ☐
- Irish Human Rights and Equality Commission (IHREC) ☒
- Other:

Suggestion

Regardless of the scheme more important is to take account of the trauma which people suffered who were arrested, charged, prosecuted or convicted under the legislation and the effects on them and their wider families. It must be easily accessible and not re-traumatise people, including not having them deal with organisations that were responsible for their prosecutions. There are good examples that recognise what a trauma-informed approach should be, and the knowledge and experience nationally and internationally should be used.

Question 2

Other than the provisions which explicitly criminalised consensual sexual activity between men are there any other provisions which were utilised to police consensual same-sex activity between men in Ireland prior to decriminalisation in 1993, and gave rise to convictions? (Note: Section 61 of the Offences Against The Person Act 1861 & Section 11 of the Criminal Law Amendment Act 1885 were the primary criminalising laws that were repealed by the Criminal Law (Sexual Offences) Act 1993.)

A variety of laws were used to harass transgender people, sometimes particular provisions were used for ease of taking a case. These would have included by-laws, public order offences and laws that gave powers which were used to specifically target trans people and others.

Specific research is necessary to understand the experiences of trans people and of lesbian or bisexual women, and how laws and policies or procedures were used against them, including in family courts.

Including only on the 1861 and 1885 laws could limit the scope of possible Disregards. It would be more effective and just to allow for the possibility of other laws being covered by the Disregard process.

Question 3

Should formal statements (which could include affidavits, sworn/affirmed statements or statutory declarations) be sought where there isn't any documentation or records available in respect of convictions?

Yes ☐ No ☒

Please provide any additional information in response to this question here:

Providing the documentation should rest with the State. If that is not available, then the testimony of the person involved should be accepted.

The process of taking such statements must have a care for people who may be re-traumatised by the disregard process. The underlying principles will still apply, for example that a disregard applies only for consensual same-sex activity, as outlined in the Consultation document.

Question 4

How can participation in the scheme be encouraged? (How can the process be made user friendly and accessible while ensuring that the dignity of applicants is respected and

minimising any potential discomfort or re-traumatisation of those affected in the application process)

The process has to be open and encouraging and assure confidentiality. It will need to be widely advertised and LGBT+ including trans community organisations should be resourced, supported and encouraged to reach out and promote within their specific communities and geographical areas. It will be difficult to reach many of the people to whom a disregard could apply. Many have emigrated and others might have tried to put their convictions behind them and may not be willing to engage with any formal process.

Question 5

Should the application of the scheme be limited to convictions for consensual sexual activity between men or were there other actions employed in policing sexual activity or affection between men that should be considered by the Working Group?

Should records of prosecutions which were not successful (i.e. no conviction) also be considered by the Working Group? Yes ☒ No ☐

Please provide any additional information in response to this question here:

The disregard scheme should be open for anyone to apply who believes that the law, or policing actions, were used to unfairly police or question, arrest or charge them. If any such actions were not specifically covered by laws or did not lead directly to prosecution and conviction, but were otherwise found to have been unfair, discriminatory or an abuse of power or process, an apology or other remedy could be considered as part of a disregard process.

The information how and under what laws or policies transgender people were targeted is very limited.

There are anecdotal accounts of other forms of specific targeting, such as public order, loitering and vagrancy laws and by-laws.

How extensively these were used to target trans people is not documented.

It may also be that other forms of targeting were used in a discriminatory way – e.g. special police operations etc.

Question 6

The Working Group is conscious of the harm experienced by affected men, their families, loved ones and the wider LGBTQ+ community and take a trauma informed and non-adversarial approach in their work that seeks to minimise the potential for any re-traumatisation. The work of the Working Group is underpinned by the following human rights and equality principles: the right to equality and non-discrimination, the right to privacy, the right to an effective remedy, the right to redress¹, transparency, fair procedures and accountability, accessibility and participation.

¹ The development of a disregard scheme is a form of redress itself

Are there any additional human rights and equality considerations that you would like the Working Group to consider in respect of the development of a disregard scheme and/or the administration of that scheme?²

The experiences of the disregard schemes in other countries – Germany, UK nations, Australia, Spain, Germany, New Zealand should inform how the proposed Irish scheme will be as effective and far reaching as possible.

Question 7

Are there any other issues that fall under the remit of the Working Group in developing a disregard scheme that you would like them to consider? *(More general feedback on the proposed scheme is welcomed)*

An approach that would inform Government on urgently needed legislation – gender recognition, hate crimes, protections from conversion therapy – and service provision in areas such as gender-affirming health, health, mental health, sexual health and well-being, anti-bullying policies.
LGBT+ organisations are underfunded and are struggling to support people and communities who continue to be impacted by the effects of the legislation.

² The remit of the Working Group is limited to the provisions in its Terms of Reference, which is to make recommendations related to the development of a scheme to disregard qualifying offences relating to consensual acts between adult males