



An Roinn Dlí agus Cirt  
Department of Justice

## **Report on the Public Consultation on the Disregard of Convictions for Certain Qualifying Offences related to Consensual Sexual Activity between Men**



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## Executive Summary

In 2018, the Government announced plans to bring forward proposals for a scheme to enable the disregard of criminal records for qualifying offences, where the sexual acts involved would now be lawful. In 2020, this commitment was included in the Programme for Government. In 2021, the Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men (hereafter 'Working Group') was established.

In May 2022, the Department of Justice published the [Progress Report of the Working Group](#), which contained a number of interim recommendations. One of the recommendations was that a targeted public consultation should be undertaken to provide an opportunity for affected persons and representative groups to engage on some of the key questions related to the development of the disregard scheme.

In line with this recommendation, the Department of Justice launched a Public Consultation, 04 November – 09 December 2022, consisting of seven questions based on key issues identified by the Working Group that would benefit from stakeholder input.

In order to maximise response rates, submissions were accepted through three avenues; online survey; email; and post.

A total of 151 submissions were received. Of these, three submissions were deemed vexatious and not accepted. All remaining submissions were accepted, representing 148 submissions from individuals, LGBTQI+ representative organisations, other non-governmental organisations, trade unions and political parties and representatives.

A brief summary of key responses to the consultation questions is below:

- 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.

Under question 1, an independent body, such as IHREC, which was the only independent body suggested by the survey, was selected by the largest number of respondents, 63 out of 130 (48%), as the appropriate first point of contact.

- 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*]

In total, 39 respondents replied to this question, representing a response rate of 26%. Of these 39 respondents, one indicated that no other provisions were utilised, while 8 indicated that they were unsure or not aware of any other provisions used in practice to police affection or sexual activity between men.

12 responses indicated that other provisions were used in practice, while the remainder related to matters separate from the question and will be considered under the analysis

of other questions. Few respondents provided specific reference to specific provisions, with the majority identifying areas of law, while stating that further research is required on the matter.

**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?**

In total, 121 respondents replied to this question, representing a response rate of 82%. Of these 62 (51%) respondents indicated that 'Yes' formal statements should be sought where there isn't any documentation or records available in respect of convictions, while 57 (47%) respondents indicated that 'No' they should not be sought. Of those who were in favour of formal statements being sought, the general sentiment was in support when the intent was to make the process as straightforward and accessible as possible.

While the negative responses highlighted that there could be delays or costs involved in such a process, there was particular concern that the process could be adversarial with applicants being required to prove their innocence as part of the process.

However, it is not envisioned by the Working Group that individuals will be obliged to provide personal testimony as part of any disregard process, especially as this may be re-traumatising for some. The proposal which this question pertains to would be to seek formal statements only when historical records are inadequate or unavailable in order to facilitate wider access to the scheme.

**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*)**

In total, 83 respondents replied to this question, representing a response rate of 56%. Of these submissions a number of respondents highlighted the importance of ensuring that the process is not onerous, non-adversarial, trauma informed and situated within a human rights framework.

Responses referred to the following categories; multi-faceted promotion; importance of non-digital approaches; international outreach; the role of LGBTQI+ civil society organisations; contact points and training; privacy and confidentiality; counselling and support.

**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?**

In total, 116 respondents replied to this question, representing a response rate of 78%. Of these the majority of respondents, 107 (94%), selected 'Yes' that the records of prosecutions that were not successful (i.e. no conviction) should also be considered by the Working Group.

Many respondents highlighted the harmful impact of being investigated or charged due to the prevailing social and cultural attitudes of the time. Some respondents highlighted that a disregard Scheme alone could not rectify the wider harm done under criminalisation, but that inclusion of other records, i.e. unsuccessful prosecutions, would contribute to the process.

The wider impact of being questioned, investigated, arrested, charged, prosecuted and or convicted in relation to criminalising provisions, was echoed by a number of respondents who wished for the wider impact of this to be considered by the Working Group.

**6. 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?**

In total, 37 respondents replied to this question, representing a response rate of 25%. Only five respondents provided further input in relation to human rights and equality considerations. Of these, the following human rights and equality principles, outlined in the contextualisation of the question, were broadly accepted:

- the right to equality and non-discrimination,
- the right to private life, privacy in respect of sexual orientation and sexual life and data protection,
- the right to an effective remedy, and
- the right to redress, transparency, fair procedures, accountability, accessibility and participation.

**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?**

In total, 58 respondents replied to this question, representing a response rate of 39%.

Input fell under the following categories; the need for a disregard scheme; a simplified process; proximity of age; appeals and revocation process; other jurisdictions; eligibility criteria; convictions within the defence forces; apology; letters of apology; a restorative justice approach; interview process and oral hearing; provision of a time limit; legal aid and support; inclusion of transgender applicants; the personal impact of criminalisation.

**Additional matters raised for possible consideration at Government**

The remit of the Working Group is limited to making recommendations in respect of a scheme to disregard convictions for qualifying offences relating to consensual sex acts between men. A number of issues were raised in relation to wider issues relevant to the rights of LGBTQI+ people in Ireland and their wider experiences of stigma and discrimination, both historically and currently. These include the wider impact of criminalisation; restorative justice; conversion therapy; hate crime legislation; LGBTQI+ health; legal gender recognition for transgender people; funding of the LGBTQI+ sector; further research on relevant issues; the impact of criminalisation on lesbian and bisexual women; compensation; wider apologies; historical policing practices; employment and workplace discrimination; memorialisation; LGBTQI+ awareness raising in the workplace and education and prosecutions for other offences.

## Next Steps

1. Consideration of public consultation submissions by the Working Group
2. Preparation of the Final Report of the Working Group for the Minister for Justice, containing an examination of key issues and final recommendations for a scheme to disregard relevant convictions.
3. Submission of final report to the Minister for Justice for consideration.

# 1. Introduction

The criminalisation of consensual sexual acts between men in Ireland came into effect prior to the foundation of the State and remained in place until its eventual decriminalisation in 1993. This criminalisation is now widely recognised as an affront to human dignity and a significant historic injustice. Over the last number of years a series of steps were initiated starting with a Private Members' Bill and culminating in a commitment in the [Programme for Government 2020](#) to develop a scheme to allow for the disregarding of historical convictions related to consensual sexual activity between men and the formation of a Working Group to progress the matter.<sup>1</sup> This process is outlined below.

## 1. 1 Private Members Bill and State Apology

The Private Members' [Convictions for Certain Sexual Offences \(Apology and Exoneration\) Bill 2016](#) was introduced in Seanad Éireann on 6 December 2016. The Bill was sponsored by the following Senators: Ged Nash, Ivana Bacik, Kevin Humphrey's and Aodhán Ó'Riordáin and sought to provide for an apology to and exoneration of, persons convicted of consensual same-sex sexual acts. However, there were a number of significant legal issues with the Bill. The Government agreed not to oppose the Bill at second stage on a policy basis, but noted the impediments to the Bill as drafted.

Following this, it was recommended that a non-legislative option, such as a motion of apology by the Oireachtas be considered, as well as a legislative option such as the establishment of a disregard scheme similar to those operated in England and Wales in order to meaningfully address relevant convictions.

Department of Justice officials subsequently engaged with then Senator Nash and he agreed to take forward an All-Party Motion providing for a public apology to persons convicted of consensual same-sex sexual acts. The [All-Party Motion](#) was passed by both Houses of the Oireachtas on 19 June 2018. The text of this motion is set out in Appendix 1.

In 2018, the Government announced plans to bring forward proposals for a scheme to enable the expungement (or disregard) of criminal records for qualifying offences, where

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<sup>1</sup> Government of Ireland (2020) Programme for Government, p. 77.

the sexual acts involved would now be lawful. In 2020, this commitment was included in the Programme for Government. In 2021, the Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity between Men (hereafter 'Working Group') was established consisting of representatives from the Department of Justice, An Garda Síochána, the Office of the Attorney General, the Irish Human Rights and Equality Commission (IHREC) and individuals from the LGBTQI+ community with expertise in this area to examine how this could be progressed.

In May 2022, the Department of Justice published the [Progress Report of the Working Group](#), which contained a number of interim recommendations.<sup>2</sup> One of the recommendations was that a targeted public consultation should be undertaken to provide an opportunity for affected persons and representative groups to engage on some of the key questions related to the development of the disregard scheme.

In line with this recommendation, the Department of Justice launched a Public Consultation on 4 November 2022.

It is expected that the work of the Working Group will conclude in 2023 with a final report and recommendations submitted to the Minister for Justice for the establishment of a Disregard Scheme.

## 2. Public Consultation Process

The Public Consultation was launched on 4 November 2022 and consisted of seven questions based on key issues identified by the Working Group that would benefit from stakeholder input. The Public Consultation accepted submissions for five weeks, closing on 9 December 2022.

The questions sought to gather input on the following:

- the most appropriate first point of contact for a scheme;
- whether any other legal provisions were used in practice to police affection and sexual activity between men;
- whether formal statements should be sought when documentation or records are unavailable;
- how participation in the scheme could be encouraged
- whether the scheme should be limited solely to convictions for consensual sexual activity between men or if other actions, such as prosecutions that did not lead to a conviction should be considered;

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<sup>2</sup> Department of Justice (2022a). *Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity Between Men in Ireland: A Progress Report*, available at: <https://www.gov.ie/en/publication/eca5d-working-group-to-examine-the-disregard-of-convictions-for-certain-qualifying-offences-related-to-consensual-sexual-activity-between-men-a-progress-report/>

- if there are any additional human rights and equality considerations that the Working Group should consider in the development of a disregard scheme and/or the administration of that scheme;
- any additional input in relation to the development of a disregard scheme.

## 2.1 Public Consultation Objectives

The objective of the Working Group is to make recommendations for the development of a disregard scheme for qualifying convictions related to consensual sexual activity between men. A number of key issues were identified by the Working Group as part of this process. A thorough overview of these issues is provided in the [Key Issues Paper of the Working Group](#).<sup>3</sup> Recommendations regarding a number of these key issues are under deliberation by the Working Group. However, a number of key issues required input from stakeholders with more direct knowledge of criminalisation and its impact. As a result, a public consultation was launched which targeted affected persons and representative groups who may be able to contribute based on lived experience of prosecutions and convictions, though input from the wider public was also welcomed. This input will inform the final deliberations of the Working Group in order to ensure robust policy decisions. Each submission will be reviewed by the Working Group as part of this process.

## 2.2 Promotion of the Public Consultation

The Public Consultation was widely promoted through both digital media and traditional media and networks.

The Department of Justice promoted the consultation through the following:

1. Advertisement in Print Media: the Irish Times, Irish Independent, Irish Examiner, Irish Daily Mirror.
2. Press Release: Contact mapping of representative organisations, media outlets and other stakeholders was undertaken by the Working Group in advance of the consultation launch, with the press release and consultation information shared with these representative organisations and appropriate local, national and international news outlets. This resulted in coverage across a range of print and broadcast media, including the Irish Times, the Journal, Gay Community News (GCN), Hotpress, Meath Chronicle and Irish Legal News, as well as significant broadcast coverage on a range of the main national and local radio stations including Morning Ireland and Newstalk Breakfast.
3. Social Media: Department of Justice social media channels (periodically boosted throughout the consultation period) and the social media of Ireland's Embassies abroad, via the Department of Foreign Affairs.
4. Public Participation Networks (which bring together Community and Voluntary, Environmental and Social Inclusion groups in each Local Authority area) via the Department of Rural and Community Development.

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<sup>3</sup> Department of Justice (2022b), *Working Group to Examine the Disregard of Convictions for Certain Qualifying Offences Related to Consensual Sexual Activity Between Men in Ireland: Key Issues Paper*, available at: <https://assets.gov.ie/236995/10b40ce1-d919-4d27-8560-8b5e5df8cff2.pdf>



The consultation was also widely shared and promoted by LGBTQI+ Representative Organisations and other interested stakeholders at a local, national and international level.

## 2.3 Public Participation Methods

The Consultation sought to maximise capacity for the public to engage in the public consultation. For this reason submissions were accepted through three avenues:

1. Online Survey: An online survey consisting of the consultation questions with associated text boxes for responses was developed. Submissions to this survey were automatically transmitted to the Department of Justice.
2. Email: A dedicated email address was established for the consultation at [disregard@justice.ie](mailto:disregard@justice.ie).
3. Post: Submissions were also accepted by post to **The Disregard Team, Strategic Policy and Planning, Criminal Justice, Department of Justice, 51 St. Stephen's Green, Dublin 2, D02 HK52, Ireland.**

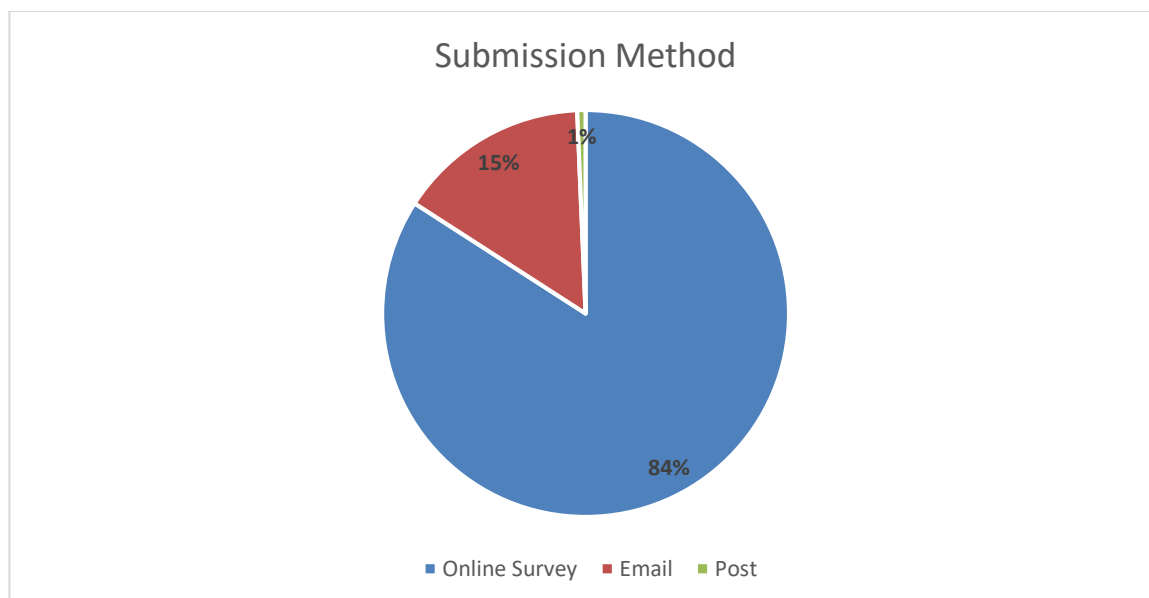
There was no word limit associated with questions in order to provide an opportunity for affected people to express themselves fully in their responses and respondents did not need to answer all consultation questions. Each question was optional, with the option to skip any questions that were not relevant to the submitter. Respondents did not need to provide a name or contact details to participate, in recognition of the sensitive nature of the consultation subject matter. To facilitate written submissions by email and post, templates for a fillable PDF and Word form of the questions were provided.

A [Guidance Note](#) for the consultation was also developed for respondents when completing their submission and to provide additional context for each of the questions. Interested stakeholders could also submit any queries about the consultation process to the dedicated email address [disregard@justice.ie](mailto:disregard@justice.ie)

## 2.4 Level of Participation

A total of 151 submissions were received to this public consultation. Of these, three submissions were deemed vexatious and not accepted, two of which sought solely to denigrate the affected population using inflammatory and insulting language and one which included no response to the questions asked, only symbols. All remaining submissions were accepted, representing 148 submissions from individuals, LGBTQI+ representative organisations, other non-governmental organisations, trade unions and political parties and representatives.

Of these 148 submissions, the majority, 127 (84%) were made through the online survey, while 23 (15%) submissions were made by email. Only one (>1%) submission was made by Post, which was a simultaneous submission also made by email.



Due to the number and length of submissions, each submission cannot be addressed individually. This consultation report summarises the key themes that emerged as part of this consultation. A number of issues were raised by respondents hence this report should be read in its entirety to fully understand the breadth and extent of the views and feedback provided.

## 3. Consultation Feedback

### 3.1 Question 1

**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  : \_\_\_\_\_

#### Context

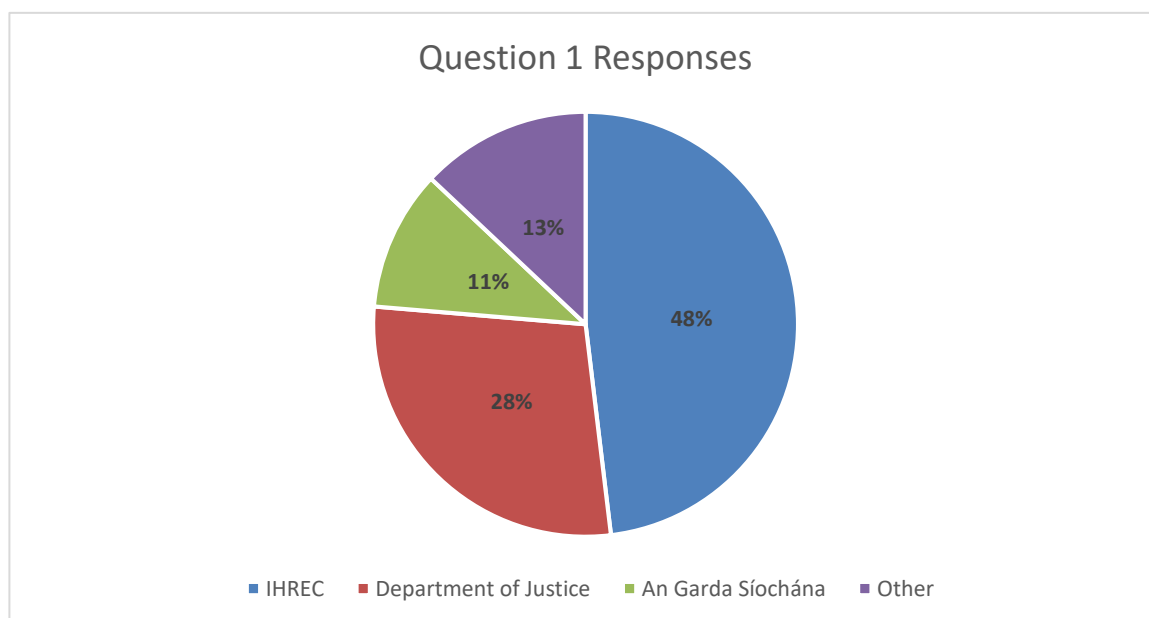
Prior to the establishment of the Working Group, the Department of Justice engaged with An Garda Síochána during late 2018 to mid-2019 with a view to examining possible approaches for a disregard scheme. It became evident that the identification of Garda records containing the necessary information to allow for a disregard through a general search would prove a significant challenge and that some of the paper records of criminal investigation and prosecutions may no longer exist.

In order to better identify relevant records and interrogate their quality and nature, An Garda Síochána trialled a confidential email system for individuals seeking the disregard of a conviction. The intention was that individuals would provide An Garda Síochána with details of their conviction so that the Gardaí could then use this information to identify the individual files and determine the quality of information contained therein. No emails, however, were received.

Following consultation with stakeholders, it emerged that the role of An Garda Síochána in the policing of affection and sexual activity between men during the period of criminalisation was likely a significant barrier to such engagement due to negative and traumatic associations held by affected men towards An Garda Síochána and the wider justice system in Ireland. When the Working Group was established it recognised the potential impact of this on the uptake of a disregard scheme. A key issue for consideration therefore was the identification of the most appropriate first point of contact for the scheme.

Under any final scheme, an order to disregard a conviction or convictions will be made by the Minister for Justice but it is possible that the initial application for a disregard could be made to an alternative body who would then liaise with the Department of Justice and An Garda Síochána. This question sought input from the public so as to inform the final recommendations of the Working Group as to the most appropriate 'first' point of contact for applicants to the scheme. The submissions under this question are analysed in summary below.

## Analysis



Of the 148 submissions, 130 responded to this question, representing an 88% response rate.<sup>4</sup> Of these, 63 respondents (48%) indicated that the Irish Human Rights and Equality Commission (IHREC), the only independent body identified in the options would be the most appropriate 'first' point of contact for applicants to a Disregard Scheme.. 37 respondents (28%) selected the Department of Justice and 14 respondents (11%) chose An Garda Síochána. A further 17 respondents (13%) selected 'Other'.

Additional information was provided by 17 respondents in relation to their selection. Three of these were in relation to the selection of IHREC and 14 were in relation to the selection of 'Other'.

### **The Irish Human Rights and Equality Commission (IHREC)**

The IHREC was selected by the largest number of respondents, 63 out of 130 (48%), as the appropriate first point of contact. Of the three submissions that provided further detail in their response, they noted that the remit of IHREC as a human rights body made it an appropriate actor to act as a first point of contact. A number of other submissions, which did not follow the seven question format, also indicated that IHREC or a similar independent body would be most appropriate.

*“The sensitive nature of applications to this scheme makes professionalism, empathy and understanding a priority for applications. For this reason, the Irish Human Rights and Equality Commission, as our national equality body, should be the first point of contact. However, given that they are a less familiar and convenient institution than An Garda Síochána, steps should be taken to ensure that they are as accessible as possible to applicants. This will mean ensuring that a wide variety of means of contact should be available, including an online portal, an email address, a phone number, and a postal address. At every point, the aim should be to minimise the administrative burden and technical challenge facing applicants. If necessary, a separate website should be established for applicants.” Ciarán Cuffe MEP, Green Party, Political Representative*

The number of responses in favour of IHREC as the first point of contact for applicants will be considered further by the Working Group in conjunction with the below analysis of submissions.

### **Wider Referral Options**

Several responses recommended wider referral options to a disregard scheme. These included one respondent who recommended that should IHREC be identified as the first point of contact that its remit permit third party referrals from LGBTIQI+ representative organisations. Another respondent proposed that healthcare providers of the HSE should be empowered to help vulnerable people in requesting a disregard.

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<sup>4</sup> All percentages are rounded to the nearest whole percentage.

Another respondent under the 'Other' category felt that the omission of a dedicated LGBTQI+ organisation as a reporting route was a shortcoming and that its inclusion may support take-up in any scheme. The same respondent recommended that LGBTQI+ organisations and groups be utilised as first points of contact, including the designation of reporting 'ambassadors' who may be valuable in facilitating applications to a scheme and who could be persons with experience of the reality of life under criminalisation. The respondent also recommended that another avenue for referral could be the utilisation of the Citizens Advice Service of the Citizen Information Board due to its accessibility and the wider distribution of the service at local level over other options throughout Ireland.<sup>5</sup>

An additional respondent suggested that the State consider appointing an independent expert board that could be the first point of contact for applicants.

### **Accessibility and Trauma Informed Approach**

Many respondents noted the need for any scheme to be easily accessible, non-adversarial and non-threatening, taking into account the trauma experienced by affected men and the effects on them and their wider family.

*“When deciding on the ‘first’ point of contact it is essential that the applicants do not have to deal with the agencies that were responsible for their prosecution in the first place. Many national and international examples of best practice in this area are available. Consideration must be given to the impact and trauma on people arrested, charged, prosecuted or convicted under the legislation. A trauma informed approach must be taken which recognises the impact the legislation had on their lives.” – LINC, LGBTQI+ Representative Organisation*

### **The Department of Justice and An Garda Síochána**

While 37 respondents (28%) selected the Department of Justice and 13 respondents (11%) selected An Garda Síochána as their preferred first point of contact, a general theme across a significant number of the responses providing additional information reiterated the importance of ensuring that affected persons do not have to deal directly with agencies that were responsible for their prosecution.

*“The Garda and Department of Justice were the Departments which penalised people in the first instance. It would be insensitive in the extreme to expect the victims to approach the Departments which first prosecuted them.” – Individual Submission*

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<sup>5</sup> The Citizens Information Board is the statutory body supporting the provision of free information, advice and advocacy on a broad range of public and social services. It provides the Citizens Information website, and supports the network of Citizens Information Centres and the Citizens Information Phone Service. See: Citizens Information, *About*, [https://www.citizensinformation.ie/en/about\\_citizens\\_information.html](https://www.citizensinformation.ie/en/about_citizens_information.html)

A couple of the respondents providing additional information felt that An Garda Síochána may have a role as a point of contact for affected persons. One respondent believed that some affected men may wish to make their application directly to An Garda Síochána as a form of catharsis or healing. Another recommended that Garda LGBT Officers linked into LGBTQI+ Community Resource Centres such as Other Place LGBT Resource Centre in Cork and Outhouse in Dublin could be a viable first point of contact. In general, the greater consensus among those providing additional input on this question was that neither the Department of Justice nor An Garda Síochána were appropriate first points of contact for applications to a Disregard Scheme.

*“If there is to be a genuine commitment to the fairness and impartiality of the process on whatever criteria is used for applications, those bodies whose involvement in the hurt and harm caused by the enforcement of these unjust laws means they must not be the first point of contact.” – Individual Submission*

The Working Group will consider this input further when making their final recommendation on this issue to the Minister for Justice.

### **Additional Input**

A number of responses contained input that more closely related to other questions and this input will be captured in the summary for those questions to aid clarity and coherence in this report. Some other input provided cannot be addressed by the Working Group as it relates to wider issues which lie beyond the remit of the Working Group, which is solely tasked with the making of recommendations for the development of a Disregard Scheme. This input has been captured in summary form in Section 3.8 of this report for reference.

## **3.2 Question 2**

**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]**

### **Context**

Across many jurisdictions, including Australia, Canada, England Wales, and New Zealand, it is accepted that certain laws, other than the primary criminalising laws in respect of sexual acts between men, were utilised to target and prosecute gay and bisexual men in a discriminatory manner even for nonsexual activity such as attempting to meet other men, kissing and other affectionate or flirtatious activity. For example, it is

recognised that laws pertaining to public morality including loitering, indecent acts, obscenity, public vagrancy, nudity and soliciting among others were applied in a discriminatory manner to gay and bisexual men in these jurisdictions.

The Working Group in trying to ascertain whether any laws other than Sections 61 of the Offences Against The Person Act 1861 and Section 11 of the Criminal Law Amendment Act 1885 may have been used 'in practice' in Ireland to target and prosecute men for being gay or bisexual has undertaken research into this matter but to date has been unable to locate evidence, beyond anecdotal reference, of other laws being applied in practice.<sup>6</sup> Additionally, many of these anecdotal references rely on the enforcement of similar laws in the United Kingdom and other jurisdictions rather than providing examples of such prosecutions in Ireland. As a result, the Working Group included this question in the public consultation with the aim of seeking input, particularly from persons with personal knowledge of such incidences, especially relating to prosecutions and convictions for engaging in intimacy with other gay or bisexual men.

## Analysis

In total, 39 respondents replied to this question, representing a response rate of 26%. Of these 39 respondents, one indicated that no other provisions were utilised, while 8 indicated that they were unsure or not aware of any other provisions used in practice to police affection or sexual activity between men.

*“Unsure, but I would imagine that, as a result of criminalisation of consensual same-sex acts that any type of public affection between same-sex partners would have been stigmatised by community and organisations” – Individual Submission*

One respondent was not in favour of the establishment of a disregard scheme. This respondent noted that they supported the legal prohibition of sex in public places and that there was no need to disregard historical convictions for same-sex acts unless the same occurred for opposite-sex acts. It should be noted in this regard that the provisions of Sections 62 of the Offences Against The Person Act 1861 and Section 11 of the Criminal Law Amendment Act 1885 did not apply to heterosexual sex acts and are now recognised as discriminatory provisions when applied to the policing of consensual sexual acts between men as they were specifically addressed to sexual activity between men regardless of whether these occurred in public or in private. The Working Group recognises that due to the legal, social and cultural attitudes which prevailed at the time, there was an absence of 'safe spaces' for men to meet each other. Consequently, many men had to resort to meeting in parks and other public spaces. The deliberations of the Working Group will be informed by this context in conjunction with legal advices on the

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<sup>6</sup> The Working Group has since identified Section 62 of the Offences Against the Person Act 1861 as another provision that was used to police and prosecute consensual sexual activity between men.

matter of what is practicable under law in making recommendations for a Disregard Scheme.

Of the remaining 29 respondents, 12 indicated that other provisions were used in practice, while the remainder related to matters separate from the question and will be considered under the analysis of other questions. Few respondents provided specific reference to specific provisions, with the majority identifying areas of law, while stating that further research is required on the matter.

One respondent recommended that the scheme should apply to the following offences identified under Section 1 of the [Convictions for Certain Sexual Offences \(Apology and Exoneration Bill\) 2016](#) and that the rationale for the inclusion and exclusion of offences and the standards to be met before a criminal conviction can be disregarded should be made clear.

These offences are:

- Act for the Punishment of the Vice of Buggery (Ireland) 1634,
- Section 18 of the Offences against the Person (Ireland) Act 1829,
- Section 61 of the Offences against the Person Act 1861,
- Section 11 of the Criminal Law Amendment Act 1885

The same respondent recommended that the list of offences to which the scheme applies be subject to review in light of collection of data and the emergence of new information from men accessing the scheme.

One respondent referenced provisions under the Vagrancy Act of 1824, for being a suspected person or reputed thief found loitering in public. While another referenced the Vagrancy Act of 1898, specifically provisions which aimed to prevent soliciting and which, they state, were used to criminalise gay men who were cottaging.<sup>7</sup>

Other respondents referenced the following areas of law without specificity:

Obscenity laws, public order laws, public indecency, vagrancy laws, loitering laws.

*“Yes, there were a number of ‘gender/sexuality neutral’ laws that were also used to selectively target gay and bisexual men, including the Vagrancy Act, various Public Order Legislation and local By-Laws. Therefore, it is crucial that the scheme is not limited to those who were persecuted under the gay specific legislation, for conduct that would be lawful today or where the men were subject to a selective and discriminatory enforcement of legislation on account of their sexuality.” – Individual Submission*

*“I am unaware of the specific laws I would need to cite, but any consideration towards ‘public indecency’ would need to be examined as to the arresting offense.” – Individual Submission*

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<sup>7</sup> Cottaging is an informal term referring to “homosexual activity between men in public toilets”, <https://www.collinsdictionary.com/dictionary/english/cottaging>



One respondent referred to laws about dressing according to one's perceived gender, however, a specific law restricting dress in this manner, while present in some other jurisdictions, was not in place in Ireland. It could be possible that other provisions were used to police such activity but this has not been noted in research to date.

Several responses recommended that no specific laws are referred to in the disregard legislation.

*“The diversity of legislation which was applied inappropriately to gay men is such that the most effective course of action may be to refrain fully from referring to specific laws in the disregard legislation.” – Ciarán Cuffe MEP, Green Party, Political Representative*

The Working Group will consider this input in their final recommendations deliberations while also being guided by what is practicable in law.

### **Further Research and Consultation**

Several respondents noted that further research and consultation with affected persons is required to identify any other provisions that may have been used. The Working Group has sought, through this consultation process, to consult with affected persons on this matter and the relevant submissions received are outlined below.

*“Research into recorded cases in these directions should be a much clearer route to discovering legal grounds for prosecutions and related activities and operations, than still living individuals subject to all of the latter, and their legal representatives if still living, can provide.” – Individual Submission*

*“Limiting the disregard scheme to these offences these two acts covered could potentially leave out many people who were persecuted under other laws. Wider consultation with people who have convictions and people who lived through this era of discriminatory policing is needed before limiting the scheme to specific acts.” – The Switchboard, LGBTQI+ Representative Organisation*

The absence of evidence and research on this issue is recognised by the Working Group and it has undertaken a review of a number of available records in the National Archives, National Library of Ireland and other publically available records. However, to date no supporting documentation relating to prosecutions or convictions under other provisions has been discovered.

### **3.3 Question 3**

**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*

[Free Text Box]

## Context

The Working Group is considering what action may be taken in the event that State-held records are not available or do not contain the required detail for the decision-maker to determine that a conviction may be disregarded. As the responsibility for retaining and maintaining such records lies with the State the onus cannot be placed upon the applicant to provide the necessary documentation to support an application for a disregard.

The availability of adequate records has been an issue in other jurisdictions. In England and Wales, 33 applications have been deemed ineligible as there were no Police or Court records found to disregard.<sup>8</sup> The Working Group is currently considering whether a sworn/affirmed statement, statutory declaration or affidavit will be accepted from an applicant if adequate documentation or records cannot be located in order to provide for a disregard. It should be noted that this proposal seeks to provide a potential avenue for applicants seeking a disregard when there are no records available. This may be necessary due to the nature of the primary criminalising provisions, which also criminalised acts that remain criminal offences such as sexual assault and child sexual abuse, and the need to ensure that any disregarded conviction satisfies the designated criteria. This approach may also facilitate wider accessibility while ensuring that the rights of victims are safeguarded. In the absence of such a provision allowing formal statements, it may not be possible to provide for a disregard when records are absent. Such a sworn/affirmed statement, statutory declaration or affidavit would likely require that the applicant declare that the conviction meets the eligibility criteria for a disregard. To date the Working Group has agreed that the following criteria utilised across the other jurisdictions are also relevant to Ireland:

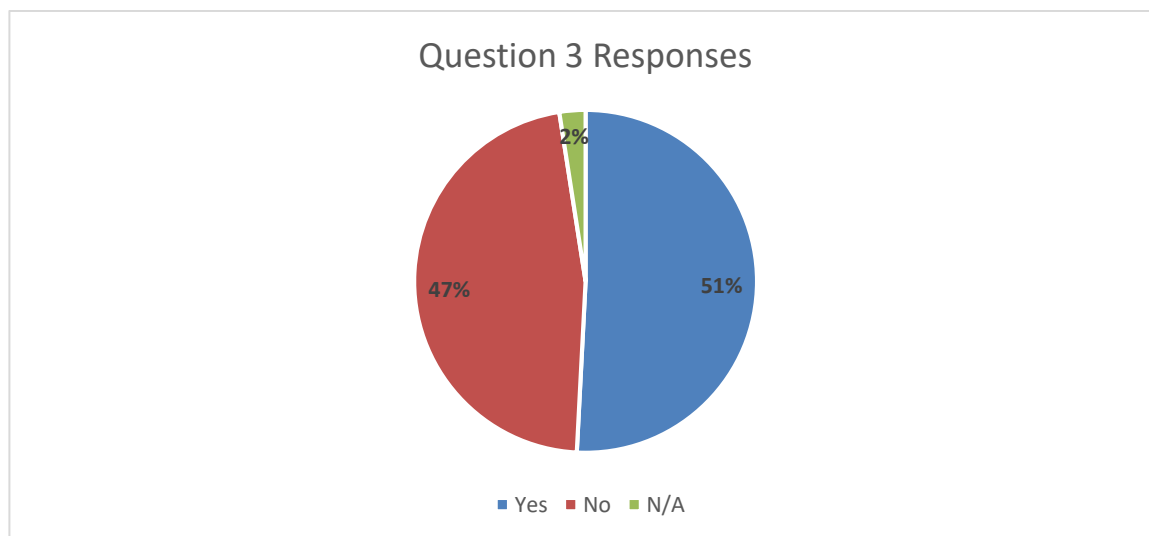
- That the act was consensual
- That the act did not involve a person under the current age of consent
- That no person engaged in the activity was in a position of authority in relation to another person engaged in that activity

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<sup>8</sup> UK Home Office, *Transparency Date: Statistics on the Disregard and Pardon for historical gay sexual convictions* (17 November 2022), available at, <https://www.gov.uk/government/publications/statistics-on-the-disregard-and-pardon-for-historical-gay-sexual-convictions/statistics-on-disregards-and-pardons-for-historical-gay-sexual-convictions>

The Working Group will consider if any other eligibility criteria should be applied if a formal statement is sought and will make recommendations on the eligibility criteria in their final report. The Working Group will also consider what identifying information will need to be submitted by an applicant to allow records be sought and located, as well as whether other documentary evidence, such as contemporaneous newspaper reports, can be submitted.

## Analysis



In total, 121 respondents replied to this question, representing a response rate of 82%. Of these 62 (51%) respondents indicated that 'Yes' formal statements should be sought where there isn't any documentation or records available in respect of convictions, while 57 (47%) respondents indicated that 'No' they should not be sought. A further 3 (2%) respondents did not provide a response to this aspect of the question but provided additional input in the provided text box. These responses have been categorised as 'non-applicable' or N/A in this summary.

In total 36 respondents provided additional input in relation to this question. Among those that indicated 'Yes', 20 respondents provided input with general approval of the proposed process to seek formal statements where there isn't any documentation or records available in respect of convictions.

*"That the absence or incompleteness of police files and records (in the historical pre 1993 period) not limit or exclude an applicant seeking to have his relevant criminal record disregarded. Alternative evidence in the absence of satisfactory State records should be considered in the form of sworn affidavits and equivalents." – UCC LGBT+ Staff Network, LGBTQI+ Representative Organisation*

Other respondents also noted the importance of the process being person-centred and ensuring that access to the scheme is facilitated:

*“If the State is unable to produce documentary evidence, then personal testimony from the victims of injustice should be accepted. Any persons giving such testimony must be adequately supported throughout the process to avoid further trauma or feelings of further victimisation and marginalisation.*

*The system and processes that evolve must be person centred and have ease of access and ease of administration and participation at their core. The continuing right to privacy to one’s own narrative and sexual identity remains paramount.*

*Many individuals who were subject to criminalisation may now be elderly or deceased. A mechanism for enabling and facilitating advocacy on behalf of these individuals must be found either by enabling families, descendants or LGBT NGO’s to represent those individuals.” – Gay Project, LGBTQI+ Representative Organisation*

One respondent noted that the process should not involve expense or other obstacles that may inhibit access to the scheme.

*“The means to accessing this needs to be as simple as possible and not involve expense or other possible obstacles that could be barriers to accessing the Disregard.” – Individual Submission*

Other respondents agreed with formal statements being sought if the aim was accessibility:

*“So long as the intent is to make the process as straightforward and easy to access as possible.” – Individual Submission*

*“The availability of adequate records is a key element for the success of the Scheme, however this has been identified as an issue in other jurisdictions. The fact that records might have been lost or destroyed, or do not carry the amount of detail requested, should not be an obstacle to accessing the scheme, as the harm experienced by impacted men is the same. We agree with the approach suggested by the Working Group in their Progress Report that any scheme should seek to minimise the burden placed on applicants and that applicants should be able to submit relevant written evidence or other supporting documentation for consideration with their application. The Working Group noted that any future scheme must recognise that there was an onus on the State to maintain, preserve and produce records and that this must be a consideration in any application where records are unavailable. To mitigate the potential lack of State-held records, further consideration should be given to accepting sworn formal statements.” – Irish Council for Civil Liberties, NGO Submission*

One respondent felt that the standard to be met for the disregard of any historical conviction should be high:

*“Yes. There should be a high standard in order to disregard any historical conviction.” – Individual Submission*

Among those 57 respondents that indicated 'No', 13 provided additional input. Of these several noted that the provision of documentation should rest with the State and that when such documentation is not available that the testimony of the person involved should be accepted.<sup>9</sup>

One respondent noted that when accepting such testimony that:

*"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." – LGBT Ireland, LGBTQI+ Representative Organisation*

Among those who indicated 'No' a general sentiment appears to be that such a process would be unnecessarily retraumatising and onerous:

*"Forcing those victimized by state violence to submit to the formal processes of that State is unnecessarily retraumatising." – Individual Submission*

And that testimony should be accepted in good faith:

*"Given the Working Group's commitment to taking a trauma informed approach, if the State is unable to verify or disprove claims made by an applicant based on available records, the applicant's testimony should be accepted" – Age Action, Non-Governmental Organisation*

One respondent highlighted that there could be delays or costs involved in such a process:

*"In addition to the delays in obtaining such affidavits, statements or declarations, what costs are being placed on the applicant? Many of the men affected by this scheme have had their lives ruined, they have lost jobs and career opportunities. Unless some serious legal obstacle prevents this from happening, the burden of proof should be on the State. It is not the fault of the applicant if the State fails to keep good records of prosecutions and convictions." – Individual Submission*

There also appeared to be a particular concern that the process would be adversarial with applicants being required to prove their innocence as part of the process.

*"If gay men and their families are to take part in this they need to know that their word will be taken as true, otherwise that element of trust is already being broken from the get go. This was a State mistake and the State must make amends for it; those affected should not have to feel that they must prove their innocence or the innocence of their families. It's unlikely that someone who wasn't affected by these laws would be applying for a pardon anyway." – Individual Submission*

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<sup>9</sup> The Working Group has recognised and recommended in their interim recommendations that any future scheme must recognise that there was an onus on the State to maintain, preserve and produce records. Department of Justice (2022), p. 14, available at: <https://assets.gov.ie/223116/77a13fe2-7ead-453c-8f44-e338caa046aa.pdf>

Several respondents highlighted the importance for a simplified scheme that avoided unnecessary bureaucracy.

*“The people seeking disregarding are victims. The process should be seamless, without bureaucracy or burdensome applications.”* – Individual Submission

Particularly as many of those affected may now be deceased.

*“Given the length of time that has passed, it is likely that some parties who were affected by this outdated law are no longer with us. Seeking a declaration may also be seen as having someone try to absolve themselves of wrongdoing or prove innocence where in this case they should not have to. The lack of documentation or records in respect of convictions is an issue for the Department / An Garda Síochána, not the victim.”* – Individual Submission

While of the three respondents categorised as ‘Non-Applicable’ (those that did not indicate ‘Yes’ or ‘No’) one noted that they did not fully understand the question and that if no documentation existed then this was an indication that there was no ‘wrong-doing’ and that it would strengthen the point that no crime was committed. In relation to this point, it should be noted that the Working Group was established in recognition of the fact that historical laws criminalising consensual affection and sexual activity were unjust and that the criminal records of affected men should be discarded in recognition of this historical wrong and as a form of exoneration for affected men. The absence of existing records is not an indication that a person was not prosecuted or convicted of what was categorised as a crime before decriminalisation. The absence of records is instead likely the result of inadequate paper records management over the years and the Working Group has sought input through this public consultation on how to address the issue of the absence of records if or when it arises in order to maximise accessibility and to ensure a tangible recognition, where possible, of exoneration for affected men even when the historical record is no longer intact.

In this vein one of the remaining respondents noted:

*“The questionnaire’s acknowledgement that LGBT+ individuals should not suffer due to the State’s own failings to keep adequate records is important. Any scheme must be legal certain but it must also be flexible and adopt a sensible approach when individuals can prove material facts through the use of documents, photographs and so on. The practical operation and implementation of the recent undocumented scheme should be examined in this regard.”* – Sinn Féin, Political Party

## **Risk of Re-traumatisation**

Across a number of responses, regardless of whether the respondent supported formal statements being sought, the issue of re-traumatisation was raised. The general consensus was that adequate care must be taken to ensure applicants are not re-traumatised when applying for a disregard.

*“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.*

*It is important that the Disregard Scheme is as accessible as possible and that the selected body undertakes a trauma-informed approach that is in line with international best practice.” – LGBT Ireland, LGBTQI+ Representative Organisation*

Several respondents felt that the process of seeking formal statements in aid of an application would be re-traumatising in itself.

*“All those with these convictions should have them disregarded without having to be put through trial by formal statements and re-traumatised by this experience.”  
– Individual Submission*

Many respondents noted that measures to support the emotional stress of men making a formal statement would need to be put in place to ensure that affected men come forward. Additional respondents referred to learning from other national processes, such as the Commission of Investigation into Mother and Baby Homes, in order to ensure adequate care is taken of persons engaging with the process to ensure that risk of re-traumatisation is mitigated as much as possible.

One respondent highlighted the importance of active listening.

*“Active listening - to what the people, those whose lives were blighted, destroyed, ruined, what they have to say. For many, just to have an actual official member of the State listen to them, will be in of itself helpful, if not healing.” – Individual Submission*

## **Personal Testimony**

Several respondents made reference to such formal statements as containing personal testimony that may provide support to an application:

*“The option of making a formal statement should be available but should not be required to participate in the disregard scheme. People should be given the opportunity to consent to make a statement if they feel this is appropriate and would form part of the restorative process for them. If someone does make a statement, then appropriate therapeutic supports should be made available to them to ensure that they are not re-traumatised by their treatment in the past.” – Irish Penal Reform Trust, Non-Governmental Organisation*

*“I think this should be opt-in for men who people seeking to have conviction disregarded. Documentation, and in its place, statements and affidavits would provide invaluable resources for understanding how the process of conviction was practiced on the ground.” – Individual Submission*

It is not envisioned by the Working Group that individuals will be obliged to provide personal testimony as part of any disregard process, especially as this may be re-traumatising for some. The proposal which this question pertains to would be to seek formal statements only when historical records are inadequate or unavailable.

This proposal does not however, prevent any individual from providing personal testimony if they wish to place their experience on the record as part of the process.<sup>10</sup> One other respondent noted that such formal statements could also serve as a record that the event occurred. This may be important for some individuals who wish for their experience to be acknowledged and recorded in the absence of historical records as well as for future historical research.

*“Yes. In the event that the State fails to keep or recover records of a conviction, it should be possible for an applicant to submit an affidavit testifying to their experiences. This affidavit could then serve as a record of the arrest/prosecution/conviction/mistreatment in question.” – Ciarán Cuff MEP, Green Party, Political Representative*

The Working Group has previously recommended that any scheme should seek to minimise the burden placed on applicants as much as is practical and will give due consideration to all input in this regard.

### **Additional Input**

A number of responses contained input that more closely related to other questions and this input will be captured in the summary for those questions. Other input provided cannot be addressed by the Working Group as it lies beyond the remit of the Group which is solely tasked with the making of recommendations for the development of a disregard scheme. This input has been captured in summary form in section 3.8 of this report for reference.

## **3.4 Question 4**

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<sup>10</sup> Please see the May 2022 Progress Report of the Working Group which included the interim recommendation that applicants should be able to submit relevant supporting documentation with the application and that this will be considered and that any future scheme must recognise that there was an onus on the State to maintain, preserve and produce records and that this must be a consideration in any application where records are unavailable. Department of Justice (2022a), available at: <https://assets.gov.ie/223116/77a13fe2-7ead-453c-8f44-e338caa046aa.pdf>



**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*)

[Free Text Box]

## **Context**

The Working Group sought practical input through the public consultation on how a disregard process could be made as user friendly and accessible as possible in order to encourage the greatest number of applications. The Working Group has acknowledged that any process should be designed to ensure that the dignity of applicants is respected and to minimise any potential discomfort or re-traumatisation of those affected in the application process.

Additionally, a lack of public awareness has been cited as a reason for low uptake of existing schemes in other jurisdictions. The means by which any process for disregarding is made available must be accessible and the means by which this is publicised should be considered, particularly if the scheme is open to persons abroad.

## **Analysis**

In total, 83 respondents replied to this question, representing a response rate of 56%. Of these submissions a number of respondents highlighted the importance of ensuring that the process is not onerous

*“A full public campaign, engagement of LGBTQI groups and champions, placing the individual at the centre of the process. Making the disregarding of any conviction on grounds of consensual relations between men, where each was over the age of consent, the default approach, and not requiring onerous steps or measures to achieve same.” – Individual Submission*

and that it is non-adversarial, trauma informed and situated within a human rights framework. The importance of applicants being treated with sensitivity and that their experiences as shared will be accepted in good faith was a consistent sentiment among responses.

*“It is important that applicants know they will be taken seriously.” – Ciarán Cuffe MEP, Green Party, Political Representative*

## **Multi-faceted Promotion**

Overall, a number of promotional approaches were recommended by respondents

including a multi-faceted media campaign involving advertisement in print media including LGBTQI+ targeted print media such as Gay Community News (GCN), and on television and radio at national and regional level. The promotion of the scheme through in person information days was also suggested as well as the use of localised promotion, for instance in rural and urban post offices, health and community centres, family resource centres and citizen's advice centres.

*“Give multiple avenues of contact (web, email, phone, letter etc). Have as simple an application form which requires as little information as possible to be given. Allow someone to appoint an agent to handle the application on behalf of an applicant.” – Individual Submission*

Respondents also recommended multiple avenues of contact including via a dedicated webpage, email address, phone number and postal address. Several respondents suggested that applicants be empowered to appoint an agent to operate on their behalf or that organisations can undertake the process on behalf of an affected person.

*“General promotion of the scheme with links to forms and organisations that can begin the process for affected people.” – Individual Submission*

*“The process must be widely advertised. Many of those affected will have emigrated and/or may not wish to engage with a State that was responsible for them being criminalised. Every effort must be made to engage with those affected through the work of our embassies and consulates.*

*Every town and village in Ireland needs to know that this process is taking place. This will have the added message that homophobia which is still being experienced by the LGBT+ community is not acceptable.*

*Confidentiality must be ensured.*

*LGBT+ organisations will need to be supported to play a key role in the dissemination of the campaign and reaching out to our own community members. LGBT+ people who have emigrated often keep abreast of the situation in Ireland through following social media and newsletters of the community organisations.” LINC, LGBTQI+ Representative Organisation*

Applicants recommended advertisement of the process online, via social media sites like Facebook and Instagram as well as gay dating apps like Grindr. The importance of a Plain English approach including an easy to read web page and other related material that presented information in a non-intimidating and straightforward manner was also recommended. The capacity to make applications online in a simple and straightforward manner and in a manner where you are informed of the next steps in the application process was also suggested by a number of respondents.

*“Wide publicisation in national newspapers as well as social media and GCN. An effort should be made to contact gay members of the diaspora who are outside of the country.” – Individual Submission*

One respondent recommended that advertisement include information about how the process works and how applications will be dealt with.

### **Importance of Non-digital Approaches**

While a multi-faceted outreach and application process was recommended by the majority of applicants, and a number of respondents recommended online approaches and advertisement, several respondents highlighted the importance of not adopting a 'digital only' or 'digital first' approach. This is especially significant due to the age profile of affected persons which will likely range from late-middle aged onwards.

*“National and regional organisations that support affected communities, like LGBT Ireland, should be supported to promote awareness of the scheme and to assist people with navigating it. Age Action also has a large membership base of older persons, which potentially includes affected persons, and could share information about the scheme. Given the age profile of affected persons, measures ought to be taken to ensure the process is accessible and age-friendly. Crucially, this means avoiding a digital only or digital first approach. Offline options for learning about and applying to the scheme should be maintained. These options need to be high quality and well sign posted, and must also be delivered through plain English given the literacy issues among older persons in Ireland. Research and advocacy by Age Action has repeatedly flagged the low internet usage among older persons, with age remaining the most reliable predictor of digital exclusion. Our work, particularly our direct engagement with older persons, has also demonstrated the significant negative consequences that can arise from services having poor or no offline avenues for access.” – Age Action, Non-Governmental Organisation*

*“A lot of affected people may not be digitally savvy.*

*While an online campaign should be issued, contact to gay rights organizations and radio advertisements would be a more efficient (in my opinion) and would reach more people.*

*Gay rights organizations and gay social organizations may have access to people still in the closet or have access to people who are not digitally savvy.*

*In addition, adverts in traditional media are more likely to reach people who were affected by this law.” – Individual Submission*

Respondents recommended a dedicated phone line for information about the scheme and advising that local radio and newspapers advertisements should run ads with phone numbers people can contact for more information rather than referring just to a website or email address.

Only one applicant supported a more limited media campaign as they felt that there would be limited interest in and uptake of a disregard scheme.

One respondent highlighted additional steps that could be taken to ensure the sensitive management of any testimony submitted or disclosures made by an applicant.

*“Media guidelines for empathetic reporting could be developed in conjunction with stakeholders to ensure the fair and accurate reporting of testimonies or disclosures.”<sup>11</sup>*

*Historical gay culture and sexual practices should be recognised and incorporated into the design of the scheme. Individuals who avail of any scheme must have confidence that their behaviour (of a time where gay and homosexual behaviour was often hidden, secret, illicit) will not be judged or interpreted through a modern lens.” – Gay Project, LGBTQI+ Representative Organisation*

## **International Reach**

A number of respondents highlighted the history of emigration by Irish people and specifically by LGBTQI+ people seeking more open and free societies during the time of criminalisation. These respondents highlighted the importance of advertising that could reach affected men and their families who may live abroad, with particular focus on the countries with large Irish diaspora communities such as the United Kingdom, United States, Canada, Australia and New Zealand. It was recommended that the Irish network of embassies and consulates be utilised as well as Irish LGBTQI+ community organisations abroad, and regional and international LGBTQI+ organisations, in the promotion of the scheme.

*“Any disregard scheme should be widely advertised nationally to general public and also target the LGBT+ community through relevant services and media. It would be important that Irish embassies abroad are involved in sharing information. Emigration was a way to escape the punitive Irish system at the time so it is important that every effort is made to connect with services for LGBT+ people living abroad who may be able to reach out to our LGBT+ diaspora. It is only if people are aware of the scheme that they can have a chance to access it.”*  
– Inishowen Pride, LGBTQI+ Representative Organisation

## **The Role of LGBTQI+ Civil Society Organisations**

A number of responses, particularly those from LGBTQI+ civil society organisations and supported by some individual submissions, highlighted that such organisations would be essential for outreach and would need to be adequately supported and resourced to undertake this promotion.

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<sup>11</sup> It should be noted that any future scheme will be administered in accordance with law including obligations under the General Data Protection Regulation.

*“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.” – LGBT Ireland, LGBTQI+ Representative Organisation*

*“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.” – Transgender Equality Network Ireland, LGBTQI+ Representative Organisation*

## **Contact Points and Training**

A couple of respondents recommended a dedicated confidential helpline, perhaps, as suggested by one respondent, in partnership with an LGBTQI+ organisation. Another respondent recommended a dedicated liaison team within the Department of Justice to handle queries.

*“Many LGBT people have become distrustful of state institutions due to negative experiences. The process of engagement should be led by LGBT organisations and to do so, these organisations need to be resourced and supported.” –Cork LGBT Archive, LGBTQI+ Representative Organisation*

A number of respondents noted the importance of ensuring that responsible staff are adequately trained and sensitised on LGBTQI+ issues and how to handle applications and assist applicants in a non-adversarial manner, including signposting to points of contact who can respond to queries and support applicants. Respondents also highlighted the importance of ensuring that any additional staffing and other resources are made available to ensure there is capacity to process applications in a timely manner.

*“A public information campaign should take place. This should include direct consultation with rights-holders and organisations that work directly with the LGBTI+ community to ensure that the content and tone of the campaign instils confidence in it. People who are directly engaging with applicants should receive*

*training in trauma-awareness.” – Irish Penal Reform Trust, Non-Governmental Organisation*

## **Privacy and Confidentiality**

The need for assurance of privacy and confidentiality was also highlighted, particularly as many affected men may be traumatised or have associated feelings of shame and mistrust.

*“As many of the men involved will be older now and may be afraid of publicity, they need to be reassured that their privacy will be respected. Just taking part will bring up a lot for many of these men. A good support system should be put in place so that they will know they will not just be left to themselves when they come forward and after the process is finished” – Positive Cork, Non-Governmental Organisation*

Additional responses noted that there should be no requirement to attend in person and that presence at a Garda Station should not be required. A number of respondents to this question believed it was important to ensure no involvement by An Garda Síochána.

One respondent, however, felt that application forms and instructions could be available in Garda Stations and that an individual should be able to attend a Garda Station or Community Garda in order to begin their application. One respondent also sought a process based on identifying relevant records using a ‘Subject Access Request’ based only on provision of name and date of birth with the appropriate files located using the PULSE system so that the individual can seek inclusion in the scheme either online or at a Garda Station. However, due to the nature of records (the records involved pre-date PULSE and are primarily paper based) these cannot be identified simply by name and date of birth and an individual application process is required.

*“The nature of these laws and culture promoted/created a lot of fear and shame for those identifying as LGBT+ and those who were prosecuted under these laws. It is understandable that many people hid their authentic sexual or gender identity in response to potential consequences of being openly LGBT+. It is understandable that individuals would have difficulty sharing their experiences and that this could cause further trauma. Individuals and community groups will have to be assured of confidentiality and that they will be met with sensitive respectful approach at all stages of the process if/when undertaken.” – Inishowen Pride, LGBTQI+ Representative Organisation*

Several respondents recommended the provision of anonymous routes in order to access information on the scheme.

*“An anonymous phone line, email and text messaging should be set up first for those who don’t feel comfortable at the outset of what they have suffered.” – Individual Submission*

## Counselling and Support

Some respondents spoke of the need to work alongside a counselling body or the provision of counselling and other similar supports to men making applications if needed.

*“There should be state-funded counselling service for people affected.” – Individual Submission*

These respondents also sought to acknowledge the complex and individual experiences these men may have and how that could affect their engagement with the process. In particular signposting for other supports, including for those who have experienced abuse, was recommended.

*“Development of the scheme must take cognisance of the fact that many individuals may have themselves been subject to same-sex abuse and that this could impact on the ability and willingness of individuals to come forward. Support for individuals who have been experienced abuse must be adequately resourced and signposted for individuals.*

*Other individuals who have received a criminal conviction may continue to experience fear about being labelled as an abuser. A no-fault scheme must be developed that allows for individual response styles and where there is no confrontational questioning challenge of personal testimonies.” – Gay Project, LGBTQI+ Representative Organisation*

A number of respondents also noted that it may be necessary to provide similar supports to applicants who are living abroad, as well as in Ireland.

*“It may be necessary to ensure that funding is available for those living abroad to cover the expenses of approved therapeutic support providers for those living abroad. Consideration needs to be given to funding therapeutic support services or LGBT+ services at home and abroad for those who were impacted by these laws who will never come forward to share their stories because doing so would cause them and/or their families too much pain. The State should recognise that these laws led people to have hidden lives and experiences and that now decisions to keep their lives private should be respected. This should not impact people’s ability to access the support they deserve and therefore, the State should consider substantial financial support dedicated to LGBT+ support services at home as well as services abroad targeted to reach Irish LGBT+ individuals living abroad.” – Inishowen Pride, LGBTQI+ Representative Organisation*

## 3.5 Question 5

**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?**

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

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

Yes  No

## Context

The Working Group is seeking to ascertain if any other actions were employed by the prosecuting authorities that it should consider within its remit. This question consisted of two components. The first component sought to gather input from the public on whether they thought the scheme should be limited to convictions for consensual sexual activity between men or whether other actions were employed in policing sexual activity or affection between men that the Working Group should consider. This question relates specifically to actions relating to the enforcement of criminalising laws rather than wider issues of stigma and discrimination which lie beyond the remit of the Working Group. The second part of the question seeks to ascertain specifically if records of prosecutions which were not successful should be considered by the Working Group.

## Analysis





In total, 116 respondents replied to this question, representing a response rate of 78%. Of these the majority of respondents, 107 (94%), selected 'Yes' that the records of prosecutions that were not successful (i.e. no conviction) should also be considered by the Working Group.

*“People who were prosecuted but not convicted should have the ability to have the record of their arrest, charging, and prosecution disregarded as it may still cause them issues (e.g. Garda Vetting)” – Individual Submission*

Of the 3 respondents who selected no option (N/A), each provided further comment. One believed that all convictions should be considered but did not expand beyond convictions, one believed that the scheme should be limited to convictions for consensual sexual activity between men, while the remaining respondent believed that the scheme should be open to anyone who believes the law was used unfairly against them.

A total of 44 responses were provided in relation to the first component of the question *“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?”*

Three of these related to N/A as outlined above while the remaining 41 related to those who responded 'Yes'.

Of these the majority favoured consideration by the Working Group of wider policing activities including investigation, arrest, charge, prosecution, conviction and use of Probation Orders.<sup>12</sup>

*“My view is that people arrested but not charged or convicted should also be included in this scheme. An arrest record, even without a charge or conviction has a detrimental effect on someone’s career prospects.” – Individual Submission*

*“It may be the case that there are instances in which an arrest, charge, or prosecution did not culminate in a case being taken to court or a conviction being rendered, and may instead have resulted in the implementation of the Probation Act. These instances should be taken into account when assessing the applicability of the disregard scheme.” – Labour LGBT and Labour Youth, Political Party*

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<sup>12</sup> This applies to Probation Orders in the District Court, where a Probation Order is not a recorded conviction. It puts an offender under the supervision of a Probation Officer for a period of up to three years. Probation Orders made in the Circuit and Higher Courts under the Probation of Offenders Act 1907 are recorded convictions. See: The Probation Service, *Sentencing*, available at:

<http://probation.ie/en/PB/Pages/WP16000087#:~:text=A%20Probation%20Order%20is%20not%20a%20recorded%20conviction.&text=Length%20of%20supervision%3A%20A%20Probation,Act%201907%20are%20recorded%20convictions.>

Many respondents highlighted the impact of being investigated or charged due to the prevailing social and cultural attitudes of the time.

*“Being charged was enough of a social stigma and enough of a threat that the mere hint one might be engaged in this sort of activity was used to police the bodies and minds of these people. Convictions are persuasive but not the whole picture.” – Individual Submission*

Some respondents highlighted that a disregard scheme alone could not rectify the wider harm done under criminalisation, but that inclusion of other records, i.e. unsuccessful prosecutions, would contribute to the process.

*“It is necessary for the Irish State to make older LGBT people feel safe, welcome, and appreciated. Part of this is acknowledging and attempting to rectify the significant harm done historically. The Redress Scheme alone cannot accomplish this, but it can be a meaningful element of the process, and as such should be as ambitious and as broad in its remit as is practicable. Even if a man was not convicted for his engagement in a same sex relationship, the experience of being arrested, investigated, or brought to trial would be deeply disturbing and traumatizing, and contribute to a feeling of being unwelcome in Ireland. As such, records of unsuccessful prosecutions should also be considered by the Working Group.” – Age Action, Non-Governmental Organisation*

The wider impact of being questioned, investigated, arrested, charged, prosecuted and or convicted in relation to criminalising provisions, was echoed by a number of respondents who wished for the wider impact of this to be considered by the Working Group.

*“The working group should consider the implications of investigations and detentions targeting the gay community, as prosecutions were not the result of every instance of such actions. At the same time these actions did form part of an overall policy of harassment and targeting of the LGBT+ community.” – Sinn Fein, Political Party*

While some respondents provided insight into wider actions utilised by law enforcement under criminalisation.

*“Yes it could expand to both because for example in Flickers the Gardaí would come in and shine torches at people kissing to police the area, making them feel like criminals.” – Individual Submission*

One respondent queried whether cautions were in use and if so recommended the inclusion of records relating to cautions in any scheme.<sup>13</sup> The same respondent noted that the process of having your details taken was a fearful experience.

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<sup>13</sup> The current Adult Caution Scheme (whereby a decision to administer a caution rather than institute a prosecution is taken at local Superintendent level), was introduced in 2006. Therefore, this scheme would not be relevant to the consideration of disregards in connection with pre-1993

*“I don't know if the Garda used Cautions at the time but, most certainly the taking of names and those of associates was a frightening and coercive tactic. It was also a 'Sword of Damocles' for the man who was treated thus.” – Individual Submission*

Another respondent indicated that men may have been committed to mental health facilities.

*“Many men were subject to involuntary committal to mental health institutions because of societal concern and unease over their sexual identities, sexual behaviours and sexual preferences. In many cases these involuntary committals were long-term and arose from a direct diversion from the criminal justice system as the behaviour and ideation was seen as a mental health deficiency or disease. Consideration should be given to an extension of the scheme to include these individuals.” – Gay Project, LGBTQI+ Representative Organisation*

It should be noted that records related to mental health facilities lie beyond the purview of the Department of Justice and as patient records they are confidential.<sup>14</sup> The Working Group may only make recommendations related to the disregard of records in so far as they concern the enforcement of criminalising laws in this regard (e.g. records of An Garda Síochána, court records, prison records etc.).

The Working Group will consider the input provided in response to this question in their deliberations and will include a recommendation on this matter in their final report.

### **Additional Input**

A number of responses contained input that more closely related to other questions and this input will be captured in the summary provided for those questions. Other input provided cannot be addressed by the Working Group as it lies beyond the remit of the Group which is solely tasked with the making of recommendations for the development of a disregard scheme. In particular, a number of respondents highlighted issues of harassment of gay and bisexual men by the State and An Garda Síochána in the enforcement of criminalising laws and sought further investigation of this, including into the impact and harassment experience by the wider LGBTQI+ community. The broader task of addressing issues of discrimination against the LGBTQI+ community in the criminal justice system and within wider society as a whole lies beyond the remit and capacity of the Working Group. However, this input has been captured in summary form in Section 3.8 of this report for reference.

## **3.6 Question 6**

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offences. Additional engagement by the Working Group with An Garda Síochána has also indicated that informal cautions prior to this date are unlikely to be a matter of record.

<sup>14</sup> Access to medical records is governed by the Freedom of Information Act 2014 and the Data Protection Act 2018. Individuals have the right to access their own medical records.

**6. 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?<sup>15</sup>**

## Context

The Working Group is mindful of the harm experienced by affected men, their families, loved ones and the wider LGBTQ+ community as a result of prosecutions for consensual sexual activity between adults. The Working Group has tried in its work to develop recommendations for a scheme to take a trauma informed approach and to minimise the potential for any re-traumatisation or re-victimisation in its application. Any Disregard Scheme must, in the view of the Working Group, be underpinned by the following human rights and equality principles:

- the right to equality and non-discrimination,
- the right to private life, privacy in respect of sexual orientation and sexual life and data protection,
- the right to an effective remedy, and
- the right to redress<sup>16</sup>, transparency, fair procedures, accountability, accessibility and participation.

There may however be other human rights or equality considerations to which the Working Group ought also to have regard and this question sought input from the public on this matter. The Working Group may only consider what human rights and equality considerations that relate to the work of the Working Group.

## Analysis

In total, 37 respondents replied to this question, representing a response rate of 25%. However, the majority of these responses related to other questions within the consultation or issues beyond the subject matter of the consultation. Those responses that relate to other questions have been reflected under the summary of the most relevant question instead.

Four respondents indicated that there were no additional human rights and equality considerations that they would like the Working Group to consider.

Only five respondents provided further input in relation to human rights and equality considerations. Of these, the human rights and equality principles listed above were broadly accepted.

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<sup>16</sup> The development of a disregard scheme is a form of redress itself.

“Nothing can take away from the time, energy and lives that have been destroyed.  
All of which you are proposing sounds ideal, if genuinely and correctly implemented.”  
– Individual Submission

One respondent reiterated the right to equality and non-discrimination and the right to a private life, privacy in respect of sexual orientation and sexual life and data protection through reference to the UN Universal Declaration of Human Rights (UDHR), as well as the right to freedom from interference in the enjoyment of all other rights articulated in the Declaration. The respondent made specific reference to the following articles in the UDHR.<sup>17</sup>

Article 1: All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood

Article 12: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.

Article 30: Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.

The same respondent recommended that the administration of the scheme include direct participation by independent LGBTQI+ organisations to participate, witness and monitor the delivery of the scheme. The respondent noted that without this the scheme and its implementation may lack credibility with the LGBTQI+ community and potential applicants may be reluctant to engage with the scheme.

One respondent highlighted that it was a human rights-based approach that found Irish law in breach of the European Convention on Human Rights in the 1988 case of *Norris v. Ireland* which paved the way for decriminalisation.<sup>18</sup>

Three respondents made similar submissions recommending that any legislation should be based on human rights and equality principles as set out by the:

- Principles and Guidelines on the Rights to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of

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<sup>17</sup> The UN Universal Declaration of Human Rights is not legally binding upon States but contains the articulation of fundamental human rights which apply to all persons and which have been adopted in whole or in part by States. Ireland has adopted specific human rights through the ratification of relevant international treaties such as the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights and regional treaties such as the European Convention on Human Rights as well as *Bunreacht na hÉireann* and national laws.

<sup>18</sup> *Norris v. Ireland*, Application no. 10581/83, Council of Europe: European Court of Human Rights, 26 October 1988.

International Humanitarian Law. United Nations General Assembly Resolution (UNGA) 60/147 (2005)<sup>19</sup>

- Reports of the Special Rapporteur on the Promotion of Truth, Justice, Reparation
- Reports by international human rights and equality bodies to Ireland on issues of redress for human rights violations
- Reports by Non-Governmental Organisations such as Justice for the Magdalenes Research
- Reports of IHREC on other human rights violations such as the ‘Advisory Paper to the Interdepartmental Group on the Government’s Planned Development of a ‘Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes’<sup>20</sup>
- And learning from research on redress and memorialisation and from redress programmes such as those in response to the Magdalene Laundries
- The Constitution of Ireland

One respondent, the LGBT Restorative Justice Campaign, outlined several additional principles from these sources which may be considered further by the Working Group. These include:

From UNGA Resolution 60/147 above:

- Article 7: Victim’ Right to Remedies
- Article 8: Access to Justice
- Article 9: Reparation for harm suffered
- Article 5: Victims of gross violations of international human rights law and serious violations of international humanitarian law – specifically the adoption of a wide definition of ‘victims’

In reference to further principles as outlined in the abovementioned advisory paper of IHREC into the Mother and Baby Homes, the same respondent reiterated aspects of the right to an effective remedy, and the right to redress, transparency, fair procedures, accountability, accessibility and participation including access to records held by agencies of the State and that applicants may receive copies of reports and recommendations on an application.

One respondent, Age Action, placed a particular emphasis on ensuring understanding of how the abovementioned rights manifest for older persons:

*“Given the age profile of the affected persons, the Working Group should inform themselves of how these rights manifest for older persons and can best be guaranteed. Older persons are a diverse group of people in diverse circumstances, and in many cases their needs will be no different to that of other*

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<sup>19</sup> While UN General Assembly Resolutions are not legal binding upon Member States they serve as recommendations and guiding principles for Member States.

<sup>20</sup> Irish Human Rights and Equality Committee (2021) *Advisory Paper to the Interdepartmental Group on the Government’s Planned Development of a ‘Restorative Recognition Scheme for former residents of Mother and Baby Homes and County Homes’*, available at <https://www.ihrec.ie/documents/advisory-paper-to-the-interdepartmental-group-on-the-governments-planned-development-of-a-restorative-recognition-scheme-for-former-residents-of-mother-and-baby-homes-and-county-home/>

*adult age groups. However, some issues disproportionately affect older persons, including digital exclusion. All of these rights need to be guaranteed in a way that does not rely on the rights holder using the internet. This means, for example, that their access to fair procedures must be adequately provided for offline. Older persons also endure high levels of transport inadequacy and have a higher rate of disability than the general population, as well as literacy issues. All of these factors must be taken account of by the Working Group in determining how to make the scheme accessible. It may be the case that older members of the LGBT community have experienced more intense penalization for their gender and/or sexuality and accordingly are more wary about participating in processes that would identify them as members of the community. As such the fact of the confidentiality and non-discriminatory nature of the scheme should be strongly communicated, and ensuring accessibility and participation should involve taking a proactive approach to assuring potential applicants that the process will be respectful and affirming of their sexuality. This includes putting in safeguards and providing training to ensure all persons involved in administering the scheme are respectful of applicants. Related to this but also more generally, fair procedures should include a complaints mechanism if persons feel they have been treated unfairly in their application to the scheme.” – Age Action, Non-Governmental Organisation*

Another respondent recommended that the principles of restorative justice should underpin any scheme.

*“The principles of restorative justice should apply to ensure that people who were wrongfully convicted for engaging in consensual sexual activity between men are involved in the process and feel that their voices are heard and that the State takes responsibility for this.” – Irish Penal Reform Trust, Non-Governmental Organisation*

One respondent indicated that the Working Group should set out how the above principles would be put into practice.

*“The list of human rights and equality principles is extensive. As a next step, the Working Group 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.” – LGBT Ireland, LGBTQI+ Representative Organisation*

It must be noted that the Working Group can recommend that any scheme is underpinned by such principles but the responsibility for how these are put into practice will ultimately rest with the State. Any legislative drafting will also be informed by State obligations under the Constitution, National Law, and binding international and regional human rights treaties ratified by the State.

### **3.7 Question 7**

**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)**

## **Context**

This question sought to capture any additional comments or general feedback in relation to the development of a disregard scheme. Some of the input provided related to matters outside of the remit of the Working Group, this has been summarised in Section 3.8 for reference.

## **Analysis**

In total, 58 respondents replied to this question, representing a response rate of 39%.

A number of responses primarily sought to welcome the development of a scheme or to provide insight into the realities of criminalisation. Some responses were formulaic including the same or highly similar text from multiple individuals and organisations. A number of responses included input on matters for which recommendations have already been made by the Working Group in their May 2022 [Progress Report](#) or those that are currently under consideration by the Working Group as outlined in their [Key Issues Paper](#).<sup>21</sup> An attempt has been made to summarise this input below.

## **The Need for a Disregard Scheme**

A number of respondents did not understand the need for a disregard scheme, instead recommending an automatic process by which the State would actively pursue such convictions in records rather than placing an onus on the persons to identify themselves. Such a sentiment was echoed in responses to several of the other consultation questions.

*“There should be no point of contact, or applicants, because the state should be actively pursuing all of the victims rather than placing the onus on them to identify themselves.” – Individual Submission*

The Working Group has previously noted in their Key Issues Paper that an automatic approach to a disregard is not possible due to the complex nature of the criminalising provisions and the practical difficulties in identifying relevant records. Part of the complexity is that historic laws criminalising consensual sex between men didn't

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<sup>21</sup> Department of Justice (2022a); Department of Justice (2022b).



distinguish between consensual acts between adults and those that were non-consensual or involving minors. For this reason, the Government cannot disregard all convictions under these laws because it would also clear the record of those convicted under these provisions for sexual assault and child sexual abuse. The process of disregarding convictions under the old laws therefore has to involve a consideration of each individual case, on application by the individual concerned, to determine the circumstances of a conviction and to ensure that the act was consensual and did not involve a minor before it can be disregarded. Additionally, relevant records relating to these convictions are paper based and are not catalogued by the conviction type and thus cannot be identified without the provision of identifying details that would allow the records to be located, examined and where appropriate disregarded. It is crucial for the integrity of convictions for genuinely criminal acts, and for the victims of those crimes.

### **Simplified Process**

Across a majority of responses, the need for the process to be as simple as possible in order to reduce the potential impact of the process on applicants as well as the accessibility of the process was highlighted.

### **Proximity of Age**

Four participants provided input relevant to the deliberations of the Working Group on the potential inclusion of an 'Age of Proximity' defence.

It is possible that some of the people convicted of qualifying offences could themselves have been quite young, and who under current law would not have been prosecuted due to being close in age to the other person e.g. an individual who was 17 years of age at the time, and who engaged in consensual sexual activity with a person who was 16 years old. Under current law, such incidences are provided for under Section 17 of the Criminal Law (Sexual Offences) Act 2017 (Ireland).<sup>22</sup>

One respondent noted that:

*“The age of consent was set at 17 in 1993. Anyone who was convicted of having sex with someone under the age of 17 must not have their conviction quashed - unless both parties were under 17 at the time.” – Individual Submission*

Another respondent noted that:

*“A lack of Romeo and Juliet style clauses that would be seen in Court today may have seen people get convicted for sexual activity with a minor in cases that would not see charges today.” – Individual Submission*

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<sup>22</sup> Criminal Law (Sexual Offences) Act 2017 (Ireland), s. 17 (3) (8).

## Appeals and Revocation Process

Several respondents recommended the provision of a process to appeal a decision to refuse an application or to have it reviewed, as well as a process to revoke a decision to disregard should it be provided in error (e.g. it emerges that it related to a non-consensual act).

*“That an appeals process is provided. Similarly, that a safeguard mechanism is in-built to the scheme that allows for reversals of disregard actioned in error”. – UCC LGBT+ Staff Network, LGBTQI+ Representative Organisation*

The Working Group is considering the matter of appeals and revocation and will include a recommendation in its final report.

## Other Jurisdictions

Several respondents noted the importance of looking at other countries which have already introduced such schemes when developing an Irish scheme, as well as learning from National Commissions of Inquiry into Clerical and other forms of abuse in Ireland.

*“That Ireland researches other jurisdictions’ experiences of having introduced such schemes for the purpose of using this knowledge to inform a best practice approach here in Ireland and to avoid documented weaknesses exposed in other countries’ schemes.” – UCC LGBT+ Staff Network, LGBTQI+ Representative Organisation*

A thorough review of existing schemes in other jurisdictions was undertaken at the outset of the Working Group and has informed the deliberations of the Working Group and the development of a Key Issues Paper that can be found on the website of the Department of Justice.<sup>23</sup> Schemes were identified and surveyed in Australia, Canada, England and Wales, Germany, Scotland, Spain and New Zealand. These schemes are regularly reviewed by the Working Group Secretariat for any new developments.

A number of respondents also referred to similar research commissioned by the organisation Gay Project into the operation of schemes in other jurisdictions which was later shared with the Working Group and which is available on their website.<sup>24</sup>

## Eligibility Criteria

The final eligibility criteria to be satisfied for a disregard is currently under consideration

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<sup>23</sup> Department of Justice (2022b).

<sup>24</sup> This research can be found here: Gay Project Ireland (2022) *Disregard Campaign and Expungement*, available at: <https://gayproject.ie/special-projects/expungement/>

by the Working Group. Interim recommendations made by the Working Group in the Progress Report recommended the following criteria:

- The act was consensual
- The act did not involve a person under the current age of consent;
- No person engaged in the activity was in a position of authority in relation to another person engaged in that activity

One respondent noted that this could be expanded to include a test applied in Australia, that the actions involved would not constitute an offence if they were not of the same-sex.

While another respondent challenged the inclusion of the following recommended eligibility criteria by the Working Group in their Progress Report, that:

- No person engaged in the activity was in a position of authority in relation to the other person engaged in the activity" in the interim recommendations of the Working Group.<sup>25</sup>

The respondent noted that:

*"On p 10 of the progress report, it is stated that the criteria the group proposes to use are that the sexual relations were consenting, above the age of consent and:*

*If the purpose of the exercise is to "disregard" convictions that would no longer be an offence today, then it is not clear how the above-quoted text fits with that purpose.*

*Unless I am much mistaken, sexual relations between adult persons are today not criminalised where one of the participants was in a supposed "position of authority" in respect of another. It is an offence for an adult in a position of authority to have sexual relations with a person who has reached the general age of consent but who is still a minor, pursuant to s. 18 of the Criminal Law (Sexual Offences) Act 2017. This does not apply where both persons are adults. Taking into account whether a person was in a "position of authority" at the time the relevant laws were in force would presumably also require an understanding of the social relations at the relevant time because authority and how it is exercised have changed markedly down the years, decades and centuries. In my view, the proposed "position of authority" criterion should not be included in any "disregard" scheme." – Individual Submission*

The inclusion of this provision under the criteria relates to those who are above the current age of consent, which is set at 17 years of age, yet below the age of adulthood, which is 18 years of age in Ireland. This criteria is in conformity with current law which seeks to safeguard young people from the practices of grooming and sexual abuse. As noted in the response it is an offence under s.18 of the Criminal Law (Sexual Offences) Act 2017 for a person in authority to engage in a sexual act with a child who has

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<sup>25</sup> Department of Justice (2022a), p.10.

attained the age of 17 years but is under the age of 18 years. A specific definition of a person of authority is provided under s.15 of the same Act.<sup>26</sup>

## Treatment in the Defence Forces

Three respondents raised the issue of the treatment of gay and bisexual men in the Defence Forces. There is limited information on this matter in the public sphere in Ireland so the Working Group is currently undertaking research on this issue and engaging with the Department of Defence on this matter.

## Apology

The State issued an apology to those affected by the criminalisation of same-sex activity in 2018. This apology, provided by the Taoiseach, encompasses an apology on behalf of all aspects of the State that were used to enforce this criminalisation. A number of respondents welcomed this apology, the text of which is included for reference in Appendix 1 of this report.

*“The State apology, issued in 2018, was an important part of redress, and was a very welcome development.” – Irish Congress of Trade Unions*

A number of other participants however, appeared to be unaware of this State apology as they recommended an apology from the State on behalf of affected men.

*“Consideration of public apology to those convicted of consensual sexual acts.” – Individual Submission*

*“It is not sufficient to disregard convictions. All people who suffered under the former law need to be apologised to by the state.” – Individual Submission*

The issue of wider apologies and compensation also arose as a part of a number of these submissions, this has been referenced under section 3.8.

## Letters of Apology

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<sup>26</sup> A “‘person in authority’, in relation to a child against whom an offence is alleged to have been committed, means— (a) a parent, grandparent, uncle or aunt whether of the whole blood, of the half blood or by affinity of the child, (b) a current or former guardian or foster parent of the child, (c) a current or former step-parent of the child, (d) a current or former partner of a parent of the child who lives or has lived in an enduring family relationship with the parent, (e) any person who is for the time being, or has been, in *loco parentis* to the child, or (f) any other person who is or has been responsible for the education, supervision, training, care or welfare of the child;” Criminal Law (Sexual Offences) Act 17, s.15.

In considering the development of any scheme, the Working Group considered what additional actions may be taken to further recognise the harm caused by the historical criminalisation of consensual sexual activity between men. Two respondents referred to the consideration by the Working Group of letters of apology.

*“We strongly recommend that letters of apology are issues to successful applicants. Apologies are part of a holistic approach to providing reparation for miscarriages of justice” – Irish Council of Civil Liberties, Non-Governmental Organisation*

*“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.” – LGBT Restorative Justice Campaign, LGBTQI+ Representative Organisation*

### **Restorative Justice Approach**

A number of applicants utilised the language of restorative justice and recommended a restorative justice approach that takes stock of and addresses the wider impact that criminalisation, stigma and discrimination had on the LGBTQI+ community in Ireland.

*“Give consideration to questions of redress in a general sense and the principles of restorative justice as part of the process” – Labour LGBT and Labour Youth, Political Party*

Respondents also highlighted the wider ongoing legal and policy issues that are relevant to LGBTQI+ people in Ireland today and the importance of addressing these as part of such a restorative justice approach.

*“It is important to stress that this exercise, although aimed at addressing historic injustices, has a direct relevance to the lives of LGBTQ+ people in Ireland today. The State cannot make full amends for historic failures – for many it is too late, but a thorough restorative justice approach would address the urgent issues of hate crimes, trans legislation, protections from conversion therapy – and service provision in areas such as health, mental health, trans health, sexual health and well-being, anti-bullying policies.” – Individual Submission*

### **Interview Process and Oral Hearing**

A small number of respondents suggested an interview process as part of an application for a disregard. Others saw the process as an opportunity to gather oral histories of the reality of criminalisation. This was not envisioned by the Working Group as it may be overly onerous and re-traumatising for affected individuals. However, one respondent recommended that applicants be able to request an oral hearing, especially if their

application was refused. These recommendations will be considered by the Working Group as part of its deliberations.

### **Time Limit**

Several respondents recommended that a time limit is placed on the process for a disregard, an indicative time limit of three months was suggested. The same time limit was proposed in relation to any appeals process.

### **Legal Aid and Support**

Several respondents highlighted the class dynamics that impacted upon affected men during criminalisation. These respondents stated that it was mostly working class or unemployed men who were prosecuted or convicted.<sup>27</sup> The respondents noted that such convictions may have been a factor in forced emigration and isolation from family and community support structures as well as employment and education opportunities. They noted that a number of these men may continue to live in poverty and isolation abroad.

The respondents recommended that access to free legal aid and assistance with research and engagement with the disregard process is facilitated for potential applicants.

### **Inclusion of Transgender Applicants**

Several respondents highlighted the need for this scheme to be accessible to transgender people.

*“Please remember that trans people may have impacted in this too. Trans women and nonbinary people with convictions deserve to access this process without having to be misgendered. Work with TENI to make this a trans inclusive process”* – Individual Submission

Prior to the Gender Recognition Act 2015 there was no legal gender recognition for transgender men or women in Ireland and there remains no legal gender recognition for non-binary people in Ireland. It is possible that transgender women and non-binary people are among those with relevant criminal records as a result of former criminalising laws due to such convictions being recorded in accordance with their birth sex rather than their gender. It was recommended that any process for a disregard be sensitive and inclusive of transgender applicants.

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<sup>27</sup> These respondents made reference to the academic research of Dr. Averill Earls which is available at [www.averillearls.com](http://www.averillearls.com).

*“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 hear 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 cannot be forgotten.” – Transgender Equality Network Ireland, LGBTQI+ Representative Organisation*

## **Personal Impact of Criminalisation**

While the majority of input related primarily to the other questions posed or wider issues of concern for LGBTQI+ populations, a number of respondents provided valuable insight into the reality of life under criminalisation for both gay and bisexual men and the wider LGBTQI+ community.

*“The State cannot grant happiness or life or a home to the LGBT+ people, now dead, who were prosecuted or convicted or condemned to loneliness, despair, suicide or exile before 1993. But, in consultation with the LGBT community, the State can remember them in the symbolically resonant year of 2023. It can honour and memorialise them, and above all ensure that LGBT+ people now and in the future are protected, included, and cherished in Irish society. It can insist that we are treated with common decency from our earliest years to old age” – Individual Submission*

Respondents spoke of the impact criminalisation had on their mental health.

*“I was 27 years old in 1993 when decriminalisation took place.*

*I was never prosecuted or convicted under the Law but the homophobia it reflected and encouraged had a devastating effect on me. I came very close to suicide on three occasions before 1993: when I was 16, 17, and 21. There were other factors at work too, but homophobia intersected with them and was at the heart of the suffering that brought me to that dark place.” – Individual Submission*

And the effect on emotional well-being and expression:

*“It’s callous and specious to say that the Law “only” targeted consensual sexual activity among adult men, and it wasn’t illegal to be an LGBT+ person. I often heard this distinction made by straight people when I was young. The price of being tolerated was to have no consensual intimate relationship with another LGBT+ adult, to deny your own identity, to pretend to be someone you weren’t, to live a lie.” – Individual Submission*

*“Many gay men entered into marriage in order to avoid or hide from their sexuality with adverse consequences for themselves and their partners.*

*The silent pain and emotional suffering caused is unquantified and can only be imagined.” – Individual Submission*

Including the different experiences faced by those in rural Ireland.

*“For gay and lesbian people in rural Ireland the situation was especially difficult.” – Individual Submission*

*“I grew up as a gay person in Donegal, Ireland. I feel that these laws impacted views in my community in a negative way.” – Individual Submission*

And the role of criminalisation in driving emigration among LGBTQI+ people.

*“LGBT people being or feeling forced to emigrate. My brother was one such person.” – Individual Submission*

And insight into harmful practices as a result of these historical attitudes to same-sex attraction.

*“Many men were subject to involuntary committal to mental health institutions because of societal concern and unease over their sexual identities, sexual behaviours and sexual preferences. In many cases these involuntary committals were long-term and arose from a direct diversion from the criminal justice system as the behaviour and ideation was seen as a mental health deficiency or disease. Consideration should be given to an extension of the scheme to include these individuals.” – Gay Project, LGBTQI+ Representative Organisation*

*“ The criminal status of gay men also inhibited complaints to An Garda Síochána and I have personal knowledge of cases where assaults and attempted blackmail went unreported for fear of prosecution or intimidation.” – Individual Submission*

*“For the apology and disregard process to be taken seriously we need to see serious endeavours to root out and address the persistence of stigmatising and discriminatory attitudes that continue to exist in state agencies, including the gardaí, the legislature and the courts. We can see examples of this in recent history in the cases of Charles Self, John Roche, and Declan Flynn (all murdered in 1982). In the Charles Self case widespread allegations relating to garda harassment in the investigation were made. Over 1,500 gay men were questioned and finger-printed. Questions were allegedly asked of the men about their sexual practices and preferences. In the John Roach case a defence of ‘gay panic’ was allowed. That is, the perpetrator was allowed a reduction in the charge and subsequent sentence on the basis that he thought the victim was approaching him sexually. In the Declan Flynn case all five assailants were given suspended sentences with the Judge stating that ‘this could never be regarded as murder’. These cases highlight the degree to which the LGBTQI+ community were scapegoated and stigmatised by the agencies of the state. There is a legacy of mistrust of the institutions as a result and it would be important that this be addressed.” – Gay Health Network, LGBTQI+ Representative Organisation*



A couple of respondents in particular noted the harmful impact criminalisation had on those who had suffered sexual abuse, both as children or as adults, and the barriers in access to justice and healing that this presented for them.

*“I couldn’t tell anyone I was gay. I could barely tell myself. I had internalised the self-contempt that external forces had created. The Law was the most powerful of these forces.*

*And it never occurred to me as a young man that I could safely tell the State authorities that I was the victim of sexual abuse. I had been silenced and shamed by the abuser. But I was also a criminal in the eyes of the Law because I was gay. That was all I knew. I thought: what would happen to me if I reported the abuse and people discovered I was gay?” – Individual Submission*

### **Additional Input**

One respondent to the consultation was not in favour of the development of a Disregard Scheme across their responses through the online form.

*“I think that this could be a vast and expensive exercise to achieve very little. The Working Group report...shows that not a single man got in touch looking for an expungement. I note the Working Group report made no effort to quantify statistically how many of these convictions exist and how many convicted men might even remain alive. This is a major lacuna... Apart from the symbolic value I cannot see any practical impact these convictions are having on their lives today. Finally any scheme should be time limited, require a high standard of proof by the applicant, and not involve financial redress. Overall I think there is a big risk of a lot of effort to achieve very little here” – Individual Submission*

In general the majority of other respondents were supportive of the development of a disregard process with many noting the enduring harm of criminalisation on themselves and the wider LGBTQI+ community, as well as the impact such records had and continue to have for those with criminal records for consensual affection and sexual activity with other men.

*“Glad to see this being looked at. The prosecution of these men often included public and social alienation, job loss, depression and suicide. It’s a heartbreaking part of our history in which a minority was being made to feel wrong, criminal and perverted, while the law was encouraging the continuous exclusion of queer people. While legally this may have targeted men, it had a wider impact on the community, including victims of sexual abuse and the related angst to speak out. Thank you for shedding light on this issue and letting me express my feelings around it.” – Individual Submission*

## **3.8 Other Issues Raised for Possible Consideration at**

## Government Level

The remit of the Working Group is limited to making recommendations in respect of a scheme to disregard convictions for qualifying offences relating to consensual sex acts between men. A number of issues were raised in relation to wider issues relevant to the rights of LGBTQI+ people in Ireland and their wider experiences of stigma and discrimination, both historically and currently. These issues are summarised for reference.

### Wider Impact

A number of respondents believed that a disregard scheme must consider and address the wider impact of criminalisation. The Working Group acknowledges that criminalisation had a wider impact beyond the policing of affection and sexual activity between men.

*“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.” – National LGBT Federation (NFX), LGBTQI+ Representative Organisation*

*“While not directly related to policing, research has clearly and consistently shown that men who engaged in sexual behaviours with men or who did not adhere to imposed heteronormativity were subject to active discrimination and exclusion from housing, employment, and access to services. Denial or exclusion from State services and supports might also be considered in the context of the development and administration of this scheme. The scheme should be open to anyone who feels that they were victimised or unfairly treated, or subjected to abuse of power or process. In cases where there was no conviction or prosecution there may still be a case for an individual apology from the State. The scheme needs to be as broad in its scope as possible, and include an apology on behalf of the nation for those who were not convicted of crimes but were harassed by An Garda Síochána or other agents of the State.” – Gay Project, LGBTQI+ Representative Organisation*

### Restorative Justice

A number of respondents to the survey recommended that any disregard scheme is underpinned by a restorative justice approach. This approach includes an overall government approach that tackles other key areas of concern for LGBTQI+ Communities in Ireland in a holistic manner. This includes addressing the impact of criminalisation on the wider LGBTQI+ community.

*“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.” – Gay Health Network, LGBTQI+ Representative Organisation*

*“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 polices. LGBT+ organisations are underfunded and are struggling to support people and communities who continue to be impacted by the effects of the legislation.” – Transgender Equality Network Ireland, LGBTQI+ Representative Organisation*

## **Conversion Therapy**

This is an area of work under the responsibility of the Department of Children Disability, Equality and Integration.

## **Hate Crime Legislation**

The *Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022* was initiated on 1 November 2022 and is now at Second Stage in Seanad Éireann. It is anticipated that this Bill will be enacted in 2023.

## **LGBTQI+ Health**

A large number of respondents highlighted the mental and sexual health of LGBTQI+ persons as a key concern.

In relation to mental health, respondents highlighted the impact criminalisation had on the mental health of affected men and the wider LGBTQI+ community and the continuation of this legacy of stigma and discrimination in the present.

Respondents noted the importance of improved mental health service provision to members of the LGBTQI+ community and highlighted that an unknown number of men likely died by suicide due to the impact of criminalisation.

*“The high rate of suicide among the LGBTQ+ community is unlikely to be a modern phenomenon and is likely that many young men who took their own lives during the period of criminalisation of homosexuality were influenced by the legal position in which they found themselves.” – Individual Submission*

Several respondents also highlighted the need to bolster sexual health services to LGBTQI+ communities.

*“In Gay Health Network we are all too aware of the consequences of persistent under-resourcing of the Sexual Health services for LGBTQI+ People. As a consequence we have seen the persistent rise in the numbers of new HIV positive cases in Ireland alongside a significant rise in sexually transmissible infection rates. These patterns can only be curbed with the use of adequate*

*funding and resources.” – Gay Health Network, LGBTQI+ Representative Organisation*

These respondents noted the harmful impact that criminalisation of sex between men had on the provision of an adequate response to HIV prevention. And the need to ensure that sexual health services are adequately resourced.

*“Denial of funding to Gay Health Action for their HIV/AIDS work” – LGBTQI+ Restorative Justice Campaign, LGBTQI+ Restorative Justice Campaign*

*“Historical convictions continue to stigmatise LGBTQI+ people and particularly gay, bi and trans men and other men who have sex with men (gbtMSM). It does so on the basis of the direct effect on the individuals convicted, their families, and the wider LGBTQI+ community. We share the aim to remove all components of stigma and discrimination faced by our communities with our colleagues in other LGBTQI+ agencies. We are acutely aware of the role of homophobia in negatively affecting the health choices for gay men. Some of us on the Board of Gay Health Network were founder members of Gay Health Action – the first organisation in Ireland to address HIV. At the time our efforts at education of the community about the risks and development of advice to reduce the spread of HIV were hampered by the then illegal status of gay male sexual activities; social and religious prohibitions and stigma. Criminalising same-sex affection and desire was a gross human rights abuse and had destructive consequences on those directly impacted and on the wider LGBTQI+ community. The criminal legislation contributed very significantly to a culture of homophobia that was endemic in government and public institutions and services. Such homophobia persists in some form to this day.” – Gay Health Network, LGBTQI+ Representative Organisation*

A number of respondents also highlighted inadequate provision of transgender healthcare in Ireland. This is an ongoing area of work under the remit of the Department of Health and the HSE.

## **Legal Gender Recognition**

Several respondents raised the lack of recognition for non-binary people in Ireland as an issue. The Gender Recognition Act 2015 allows all individuals over the age of 18 to self-declare their own gender identity as either male or female. Young people aged 16-17 can also be legally recognised but additional steps are required including the consent of a parent or guardian, supporting documentation from a Medical Practitioner and a psychiatrist or endocrinologist, and a Court Order from the Circuit Family Court exempting the person from the requirement to be at least 18 years of age in order to apply for a Gender Recognition Certificate. There is currently no process in place for the recognition of people with a non-binary gender.

## **Funding of LGBTQI+ Sector**

A large number of respondents highlighted the issue of funding to the LGBTQI+ Sector, both in general and in responding to the impact of criminalisation.

*“The LGBTQ+ sector is grossly underfunded and struggles to support people and communities who continue to be impacted by the hurts and harms done over decades by the legislation. For any disregard scheme to be effective, it has to be considered as part of an overall response that understands how criminalisation affected LGBTQ+ people and communities and how that can now be addressed.”*  
– Irish Congress of Trade Unions

The respondents recommended that LGBTQI+ support services be adequately resourced to respond to the needs of affected persons and the wider LGBTQI+ population:

*“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.”* – LGBT Ireland, LGBTQI+ Representative Organisation

## **Further Research**

A number of respondents sought resourcing of LGBTQI+ groups, academics and historians so that they may undertake research into the impact of criminalisation on LGBTQI+ people and communities as a whole.

*“There needs to be resourcing of LGBTQ+ groups, historians and others, to uncover and research the breadth of the experience of LGBTQ+ people and communities impacted by criminalisation, including of those people who emigrated and now live abroad. I accept that this may be complex but it is important as part of telling the full story”* – Individual Submission

Including research and consultation into identifying whether any other laws were utilised as well as to identify how such laws impacted upon lesbian and bisexual women and transgender people.

*“While I fully agree that those who were criminalised unjustly under these laws should be exonerated and their convictions disregarded to do only this ignores the suffering of those who felt the burden of those laws, albeit in a more removed way. For example women who were/are lesbian, gay, bi, trans were invisible in such a context. There should be a wide consultation with those impacted in order to develop a wider and deeper understanding of the experiences of LGBT people in days gone by. This would help create a better understanding of how and which laws were used to victimise and harass LGBT people, e.g. by-laws, public order offences and laws that gave powers which were used to specifically target gay and bisexual men, trans people and others.”* – Individual Submission

*“A wide array of laws were employed for the purpose of harassing members of the LGBT+ community. These included by-laws, breaches of public order, and other rulings that were particularly targeted towards homosexual and bisexual men, transgender people, and other minority groups.*

*It is fundamental that the pattern of how and which laws were used to persecute and oppress LGBT+ individuals is fully comprehended; this can only be accomplished through increased engagement with those who have been directly affected, as well as the development of a more profound understanding and analysis of their experiences under criminalization. Moreover, particular attention must be devoted to the research of how laws and policies were leveraged against trans people and lesbian or bisexual women, particularly within the context of family courts.” – Labour LGBT and Labour Youth, Political Party*

And on the treatment of young men and juveniles under these laws.

*“There is further need to research the experiences of people who were convicted under the legislation - were men and juveniles referred to the Probation Service and what were their experiences there? Were young men sent to industrial schools or other juvenile institutions under the laws?” – LGBT Restorative Justice Campaign, LGBTQI+ Representative Organisation*

### **Impact on Lesbian and Bisexual Women**

A number of respondents highlighted the experiences of lesbian and bisexual women in the family Courts and how criminalising provisions had an impact on such proceedings.

*“Further research is also needed into which acts were used to penalise and harass trans people and lesbian and bisexual women, many of whom were victimised by the family court system.” – The Switchboard, LGBTQI+ Representative Organisation*

Particularly in how sexuality may have influenced decisions regarding custody.

*“While the legislation only criminalised sex between men, the impact of this criminalisation was felt by all the LGBT community. It created an atmosphere of fear and discrimination. The absence of protection for LGBT workers meant people were fired from jobs or had to hide their identity. Lesbian women lost custody of their children solely because they were lesbian. Fertility services refused to provide services to lesbians or single women.” – Cork LGBT Archive, LGBTQI+ Representative Organisation*

*“To gain a greater understanding of the laws that were used against LGBT+ people, consultation and research must be undertaken with those who were impacted. We believe that the scope of the process would be limited if only the 1861 and 1885 laws are considered. Many other laws including bylaws and public order offences that were used to harass LGBT people. While Trans people, lesbians and bisexual women were not directly affected by the 1861 or*

*1885 laws other laws were used against them. In particular, the family courts often discriminated against lesbian mothers in relation to custody of their children. This is an area that needs further specific research.” – LINC, LGBTQI+ Representative Organisation*

Other respondents highlighted discrimination in other areas such as the provision of fertility services.

## **Compensation**

A number of respondents recommended financial redress schemes be introduced including the possibility of compensation to affected men and a capital endowment for the benefit of the LGBTQI+ community.

*“Apologies from the State and financial compensation are required.” – Individual Submission*

*“With respect to redress, the state should make a capital endowment to the community foundation to be held in trust for the benefit of the LGBTQ+ community in perpetuity. That the capital sum is to be invested by the community foundation and grants to further LGBTQ+ equality be made from the income made from the investment annually.” – Individual Submission*

The issue of compensation lies beyond the remit of the Working Group.

## **Wider Apologies**

Several respondents recommended individual apologies from components of the State, specifically, from An Garda Síochána, the Attorney General’s Office, Directorate of Public Prosecutions, Courts Service and the Defence Forces. Several other respondents recommended an apology from the Catholic Church.

The Working Group acknowledges the apology already issued by the State. The Group does not have a remit to consider apologies from individual arms of the State.

## **Historical Policing Practices**

A number of respondents indicated the need to address the legacy of historical policing practices as part of a restorative justice approach. Respondents drew attention to the culture of bias that existed in law enforcement historically towards gay and bisexual men, including the use of agent provocateur or entrapment tactics to secure prosecutions.

*“Entrapment, was used to some extent by the police. In certain cruising areas such as public toilets, police would pose as Gay men, in order to entice Gay men into committing a crime, in order to prosecute them” – Positive Cork, Non-Governmental Organisation*

*“Attention should be paid to convictions that were a result of entrapment tactics used by Gardaí.” – Individual Submission*

## **Employment and Workplace Discrimination**

A number of respondents raised the issue of discrimination in employment and in the workplace.

*“We are conscious of the wider Impact of criminalisation on the LGBT+ community over the decades including fears around coming out in workplaces, lack of support from public authorities, emigration, invisibility and bullying not tackled in workplace settings. And that the legacy of criminalisation is still a key issue that LGBT+ people still face.*

*We welcome the 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. The criminal legislation contributed very significantly to a culture of homophobia, lesbophobia, biphobia and transphobia that was endemic in government, public institutions and services and workplaces. It enabled widespread discrimination and prejudice against LGBT+ people (including leading to loss of employment) and the legacy continues to this day.” – Irish Congress of Trade Unions*

Respondents noted that many LGBTQI+ people faced disciplinary procedures, including dismissal, during the period of criminalisation and that this may have influenced the decision by many to emigrate at the time.

*“It is likely that many in the employment of the State, including civil and public servants, were subject to disciplinary procedures, up to and including dismissal, that related to their same-sex desire, attitudes or behaviours. It is unclear what legislation or regulations may have applied in these contexts over the decades. These issues should also be addressed in the context of the disregard legislation and restorative justice measures.*

*We also agree with the contention that there was a class dimension to the cases brought to prosecution under legislation, according to Dr. Averill Earls (see [www.averillearls.com](http://www.averillearls.com)).” – Irish Congress of Trade Unions*

## **Memorialisation**



Several respondents recommended a process for 'memorialisation'. In particular, physical memorialisation (e.g. a monument) and historical research were noted.

*“Memorialisation measures – including a State funded historical study of criminalisation in Ireland – should be put in place.” – Irish Council for Civil Liberties, Non-Governmental Organisation*

Respondents noted that similar memorialisation has been undertaken in remembrance of those who were incarcerated in Magdalene Laundries and other institutions as well as for the HIV and AIDS National Monument that is intended to be installed in the People's Park in the Phoenix Park in 2023. The purpose of the HIV and AIDS National Monument is to remember those who have died and mark their lives and contribution to society, while also showing solidarity with those living with and affected by HIV today.

*“Recently the Government announced that a National Centre for Research and Remembrance will be established in the former Magdalene Laundry on Sean McDermott Street to honour those incarcerated in Mother and Baby Homes, industrial schools and reformatories, Magdalene Laundries and related institutions.*

*There is a need for a resourcing of similar process of study, research, document collection, exhibitions and publications that provide for a wider and more detailed study of the impacts of criminalisation on LGBT+ people and communities. This should be commissioned as part of the process of Disregard and Redress.*

*An HIV/Aids Monument is being developed for a site in the Phoenix Park.” – LGBT Restorative Justice Campaign, LGBTQI+ Representative Organisation*

*“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.” – National LGBT Federation (NXF), LGBTQI+ Representative Organisation*

The role criminalisation played in instigating emigration among LGBTQI+ persons and the importance of acknowledging this as part of any remembrance/memorialisation as well as outreach process was also noted.

*“That as part of the healing process, and parallel to the operation of the disregard scheme, the State would also... memorialise appropriately those persecuted by the State's discriminatory laws, including appropriately acknowledging the resulting exodus from Ireland of generations of LGBT+ seeking sanctuary and safety in more welcoming jurisdictions.” – UCC LGBT+ Staff Network, LGBTQI+ Representative Organisation*

## **LGBTQI+ Awareness Raising in the Work and Education**

Several respondents highlighted the need for awareness raising and sensitisation of LGBTQI+ matters in workplaces and in education.

*“Education providing authentic training to individuals within organisations to challenge their prejudice beliefs and how to conduct themselves in a professional manner.” – Individual Submission*

*“integrate LGBT+ content in the curricula at all levels of the education system including support for safe expression of LGBT+ identities in schools and colleges to safeguard current and future generations of LGBT+ people from the social persecution and reduced opportunities older generations of LGBT+ experienced as a direct result of the State's laws and the Churches' teachings.” – UCC LGBT+ Staff Network, LGBTQI+ Representative Organisation*

## Prosecutions for Other Offences

One respondent was in favour of the disregard of all unsuccessful convictions provided that the prosecution was not alongside other offences that remain in place. The respondent made specific reference to offences related to prostitution.

*“Records of unsuccessful convictions should be expunged provided the prosecution was not alongside other offences that remain in place, such as prostitution.”- Individual Submission*

While two other respondents sought specifically to also cover convictions for prostitution.

*“Offences on sale and purchase of sex” – Individual Submission*

The Working Group is tasked with making recommendations for a scheme for the disregard of convictions for qualifying offences related to affection and sexual activity between men.

## 4. Next Steps

This summary report was completed following the public consultation process and based on the submissions received. The next steps are:

1. Consideration of public consultation submissions by the Working Group
2. Preparation of the Final Report of the Working Group for the Minister for Justice, containing an examination of key issues and final recommendations for a scheme to disregard relevant convictions.
3. Submission of final report to the Minister for Justice for consideration.

## 5. Appendices

### Appendix 1: Apology for Persons Convicted of Consensual Same-Sex Sexual Acts: Motion

That Dáil/Seanad Éireann

- acknowledges that the laws repealed in the Criminal Law (Sexual Offences) Act 1993 that criminalised consensual sexual activity between men:
- were improperly discriminatory, contrary to human dignity and an infringement of personal privacy and autonomy;
- caused multiple harms to those directly and indirectly affected, namely men who engaged in consensual same-sex activities and their families and friends; and
- had a significant chilling effect on progress towards equality for the Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI) community, acknowledging in particular the legacy of HIV/AIDS within the context of criminalisation;
- further acknowledges the hurt and the harm caused to those who were deterred by those laws from being open and honest about their identity with their family and in society and that this prevented citizens from engaging in civil and political life and deprived society of their full contribution;
- offers a sincere apology to individuals convicted of same-sex sexual activity which is now legal;
- welcomes the positive progressive measures introduced by successive Governments over the last thirty years and in particular in the 25 years since decriminalisation was introduced by the Criminal Law (Sexual Offences) Act 1993, including inter alia
  - the Prohibition of Incitement to Hatred Act 1989,
  - the Equal Status Acts 2000-2016,
  - the Employment (Equality) Acts 1998-2016,
  - the Civil Partnerships & Certain Rights and Obligations of Cohabitants Act 2010,
  - the Marriage Equality Referendum and the Marriage Act 2015,
  - the Children and Family Relationships Act 2015,
  - the Gender Recognition Act 2015;

And further welcomes the Government's commitment to introduce an LGBTI+ Youth Strategy, followed by an LGBTI Strategy; and

- Reaffirms its commitment to ensuring that:
- the law fully recognises and protects sexual and gender minorities on an open and inclusive basis;
- Ireland is a country where lesbian, gay, bisexual, transsexual and intersex individuals are free to fully express their identities without fear of discrimination;
- all citizens can live in freedom and equality, and participate fully in the social, economic and cultural life of the nation, regardless of sexual orientation or gender identity; and
- our foreign policy promotes and protects human rights globally, including the rights of lesbian, gay, bisexual, transgender and intersex individuals, who continue to suffer disproportionate levels of violence and face systemic discrimination in many countries.

## Appendix 2: Organisations Referenced in Submissions

### **LGBTQI+ Representative Groups**

BeLong To

Cork LGBT Archive

Dublin LGBTQ+ Pride

Gay Health Network

Gay Project

Inishowen Pride

LGBT Ireland

LGBT Restorative Justice Campaign

LINC

National LGBT Federation (NXF)

The Switchboard

Transgender Equality Network Ireland

UCC LGBT+ Staff Network

### **Non-Governmental Organisation**

Age Action Ireland

Changemakers

Irish Council for Civil Liberties

Irish Men's Sheds Association

Irish Penal Reform Trust / NIACRO

Positive Cork

Seeding the County/Cumann na Daoine

### **Trade Union**

Irish Congress of Trade Unions

**Political Party**

Ciaran Cuffe, MEP, Green Party

Ged Nash TD on behalf of the Labour Party

Labour LGBT and Labour Youth

Sinn Féin

## Appendix 3: Membership of the Working Group

<b>LGBTI Community Representatives</b>
<ul style="list-style-type: none"><li>• Bernard Condon, Senior Counsel, Chairperson HIV Ireland</li><li>• Kieran Rose, Equality and Human Rights Activist, former Commissioner on IHREC and Co-founder, Former Chairperson and Board Member of GLEN</li><li>• Fergus Ryan, Associate Professor in Law, Maynooth University</li></ul>
<b>The Irish Human Rights and Equality Commission</b>
<ul style="list-style-type: none"><li>• Colm O'Dwyer, Senior Counsel, IHREC Commissioner</li></ul>
<b>Office of the Attorney General</b>
<ul style="list-style-type: none"><li>• Nicola Lowe, Advisory Counsel</li></ul>
<b>An Garda Síochána</b>
<ul style="list-style-type: none"><li>• Ian Lackey, Detective Superintendent, Garda National Protective Services Bureau</li></ul>
<b>Secretariat, Department of Justice</b>
<ul style="list-style-type: none"><li>• Gerry O'Brien, Principal Officer (Chair)</li><li>• Jensen Byrne, Administrative Officer</li><li>• Kayleigh Newcomb, Executive Officer</li></ul>

