

Supporting Lesbian, Gay, Bisexual &
Trans Young People in Ireland



**BeLong To Youth Service Submission to the Department of Justice
and Equality on the Review of the Prohibition of Incitement to
Hatred Act 1989**

Overview of submission:

Introduction

Discussion, Research and Important Issues

Recommendations

Introduction

BeLonG To Youth Services is the national organisation supporting lesbian, gay, bisexual, transgender, and intersex (LGBTI+) young people in Ireland. Since 2003, we have worked with LGBTI+ young people, between 14 and 23 years, to create a world where they are equal, safe, and valued in the diversity of their identities and experiences. We also advocate and campaign on behalf of young LGBTI+ people and offer a specialised LGBTI+ youth service with a focus on mental and sexual health, alongside drug and alcohol support. We respond to the needs of LGBTI+ young people in Ireland and we help them thrive.

In the context of our youth work, our advocacy and our research we have witnessed since our inception a rise in hate both physical and verbal towards members of the LGBTI+ community, often with those who are the most vulnerable being the most privy to victimisation. Being a member of a marginalised group with a historically stigmatised identity often propels stereotypes, violence, isolation, discrimination and prejudice among other members of society who do not understand our lives. Historically LGBTI+ people have been criminalised¹ and denied access to equal rights afforded by their cisgender heterosexual counterparts in Irish society. This historical criminalised identity and a lack of access to citizen rights such as marriage, employment protect etc. has reinforced within Irish socio-cultural history and knowledge that being LGBTI+ is punishable and less worthy of protection than that of “normative” gender and sexuality. This is what drives political, social and cultural bias and prejudice, it is rooted within the lineage of discrimination faced by LGBTI+ through violence, slurs and exclusion.

In the last 50 years, LGBTI+ lives have shifted dramatically in experience. Once an LGBTI+ identity was mired with isolation, stigma and violence. However, in present day Ireland, many LGBTI+ people live visibly, are happy, successful and fulfilled in their lives. This has been made manifest through a combination of political and legislative developments and an overall move towards a more socially and culturally inclusive Ireland. With the Irish gay rights movement establishing itself in the 1970s, the tireless dedication of LGBTI+ activists resulted in the decriminalisation of homosexuality in 1993 which signalled a snowball effect for LGBTI+ rights and equality which would follow in the proceeding 20 years. During the last two decades the Irish LGBTI+ community has gained access to the same rights and protections as their heterosexual, cisgender counterparts in many ways such as the introduction of the Equal Status Act (2000), Employment Equality Acts (1998-2015), Civil Partnership Act (2010), Irish Human Rights and Equality Commission Act

¹ Offences Against the Persons Act, 1861

(2014) Marriage Equality Act (2015), Gender Recognition Act (2015) and the Children and Family Relationship (Amendment) Act (2018). However, the historical discrimination and vilification of LGBTI+ lives still remain within Irish society and is not a memento of the past. Many of the young people in our service are still privy to acts of violence, victimization and the LGBTI+ community as a whole are often targeted through hateful rhetoric which seeks to harm, isolate and degrade LGBTI+ people and their lived experience.

The law at present is insufficient in combating the physical violence experienced by the LGBTI+ community and equally ill-equipped to combat effectively instances of hate speech, bias-motivated speech, hostility and prejudice both within the physicality of Irish society and online. BeLonG To youth services calls for a number of recommendations of change to the existing Prohibition of Incitement to Hatred Act 1989 to account for the ways in which LGBTI+ people and other marginalised communities are victimised but inadequately protected by Irish law.

Discussion, Research and Important Issues

BeLonG To Youth services recently conducted our first School Climate Research with Columbia University² which sought to assess the lived experience of LGBTI+ young people with Irish post-primary schools. Many of the results highlighted the unsafe school climate in which LGBTI+ young people were consistently victimised within the school community as a direct result of their LGBTI+ identity or another marginalised aspect of their lived experience. Some of the key findings related to student safety and protect were:

- 73% of LGBTI+ students felt unsafe at school. 47% because of their sexual orientation and 27% because of their gender expression.
- 3 in 10 LGBTI+ students missed at least one day in the past month because they felt unsafe or uncomfortable.
- The majority of LGBTI+ students (86%) felt deliberately excluded by peers with 74% experiencing being the focus of rumours or lies.
- 77% of LGBTI+ students were verbally harassed (e.g. name calling or being threatened) based on their sexual orientation, gender, gender expression or ethnic origin.
- 38% of LGBTI+ students were physically harassed (e.g. being shoved or pushed), 25% because of their sexual orientation and 18% based on gender expression.
- 11% of LGBTI+ students were physically assaulted (e.g. punched, kicked or injured with a weapon) because of their sexual orientation, 8% because of their gender expression.
- 43% of LGBTI+ students were sexually harassed (e.g. unwanted touching or sexual remarks).
- 39% of LGBTI+ students experiencing cyberbullying via social media, telephone and email over the past year.

Often school communities will be described as a microcosm of society as a whole and this is evident within the findings of this report. Irish society has established itself in the context of many world-first strategies³, legislative developments⁴ and referenda reform⁵ but national research and the experiences of the LGBTI+ community would demonstrate that the socio-cultural acceptance of LGBTI+ identity is not in tandem with legislative change and political progression.

² <http://belongto.org/wp-content/uploads/2019/11/Key-Findings-School-Climate-Survey-2019-1-1.pdf>

³ <https://assets.gov.ie/24459/9355b474de34447cb9a55261542a39cf.pdf>

⁴ <http://www.irishstatutebook.ie/eli/2015/act/25/enacted/en/html>

⁵ <https://www.irishtimes.com/news/politics/ireland-becomes-first-country-to-approve-same-sex-marriage-by-popular-vote-1.2223646>

In July 2018 a report by the Irish Council for Civil Liberties⁶ highlighted that Ireland has among the highest rates of hate crime against people of African background and transgender people in the EU. The report said that during the criminal justice process, from being reported as a crime to the Gardaí to the offender being sentenced by the judge, the hate element of the crime is often lost from the case. The report also highlighted that the lack of laws against hate crime meant that there were no policies in place for crimes motivated by prejudice in Ireland.

Hate crime and hate speech often entangled together seek to target an individual based on personal characteristics that they cannot or should not be forced to hide. Within Crime Surveys for England (2011/2012 and Wales (2012/2013) victims of hate crime and hate speech were found to be twice as likely to report fear, sleep disturbances, anxiety or panic attacks, feelings of vulnerability or loss of confidence. Equally, members of a targeted identity group report many of the effects felt by the direct member and alter their behaviour in response to the crime (Perry and Alvi, 2012). This has extenuating effects on the targeted community who begin self-policing and coveting their identities in order to avoid being victimised; suddenly out and proud members of the community are fearful to be recognised as LGBTI+ for fear of attack or stigmatisation through hate speech or violence. With a rise in hate crime and hate speech, instances of prejudice highlight “a manifestation of divisions within society, it is argued that hate crime/hate speech further exacerbates tensions, threatening the social fabric” (Iganski, 2001). Without sufficient legislation to combat and effectively handle instances of hate crime and hate speech the prejudice and hatred produced by such messaging from individuals or groups operating at large normalises and encourages hatred and violent behaviour towards marginalised communities. It is clear that the law is insufficient in tackling these issues for a number of reasons.

Issue 1: Protected characteristics covered by the 1989 Act

Significantly the act has a limited list of protected characteristics and does not account for the diversity present within Irish society. Many aspects of personhood can be subjected to hate speech based on cultural and social bias or potential ignorance. However, the effect of hate speech on an already marginalised and vulnerable community can be devastating. There are extremely vulnerable groups in society who are left unprotected by the Act. BeLonG To Youth Services recommends that the act be updated to capture the diversity within Irish society and acknowledge the existing vulnerability of these communities or their potential vulnerability

⁶ <https://www.iccl.ie/news/ireland-high-hate-crime-no-laws-to-address/>

in being subjected to hate speech. We believe that the following should become part of the protected characteristics within the act:

- Anti-body status
- Gender expression
- Gender identity
- Sex characteristics
- Class
- Ability/disability both physical and intellectual

Equally BeLonG To Youth Services recognises it is important in considering changes to the 1989 Act to bear in mind the fundamental right, enshrined in our Constitution and in the European Convention on Human Rights, to freedom of expression. Though fundamental, this right is not absolute and can be limited or restricted by law for compelling reasons, including protecting other fundamental human rights. Any limitation on freedom of expression must be provided for in law and must respect the essence of the right to freedom of expression. We must ensure that the limitations we, as a society, choose to place on freedom of expression by prohibiting incitement to hatred are needed in order to protect the rights and freedoms of others, and are effective in doing so. Within this context, any limitations or restrictions placed upon the individual or group through changes to the law must do so only as an instrument to protect the rights of those subjected to victimisation on the basis of hate speech. An individual's right to expression cannot circumvent another's right to safety and a life free from violence and harm.

Issue 2: Use of the term "hatred" in the Act

Under the Act, in order to be an offense, the words or material must be intended or likely to stir up hatred against one or more of the protected list of characterizations. The use of the term "hatred" presents a high threshold in which an individual or group must meet in order to be charged⁷. "Hatred" is not defined within the context of the act and is presented through its ordinary culturally understood definition which is insufficient in assessing the nature of attitudes, actions and speech of an individual. The United Nation uses the wording "incitement to discrimination, hostility and violence"⁸. The International Covenant on Civil and Political Rights (ICCPR) guarantees equality and non-discrimination in the enjoyment of rights. The ICCPR does place an obligation on State Parties to prohibit hate speech. Article 20(2) provides that: "Any advocacy of national, racial or religious hatred that constitutes

⁷ https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2397731

⁸ <https://www.un.org/en/genocideprevention/documents/UN%20Strategy%20and%20Plan%20of%20Action%20on%20Hate%20Speech%2018%20June%20SYNOPSIS.pdf>

an incitement to discrimination, hostility or violence shall be prohibited by law.”⁹ The complexity and nuance to the nature of the word “hatred” presents a clear obstacle to persecution within the act as it evades a clear definition. BeLonG To recognises both the significance of the word in mapping to international context and law and the socio-cultural understanding which is implicit within phrases such as hate speech and hate crime. We as an organization support considerations to expanding the definition of “hatred” within the act to encompass discrimination, hostility, violence and prejudice.

Issue 3: Application of the Act to online speech

The context of the 1989 act presented a very different Ireland in which marginalised groups were existing, many of whom kept their identities coveted if possible, to avoid instances of discrimination, hostility and hatred. Societies technological advancements present an opportunity for members of marginalised communities to connect and remove themselves from atmospheres of isolation. However, there is also a clear inability within the act to discern how capable the legislation is in effectively responding to instances of hate speech or potential online hate crime.

Galop, an LGBTI+ anti-violence charity produced a report on the scale and nature of online hate crime and hate speech against LGBTI+ people in the UK. They reported that 84% of respondents experienced more than one occurrence of online abuse, and 59% of respondents experienced six or more occurrences of online abuse. They reported that verbal abuse, insults, threats, intimidation, harassment, outing and doxing (the Internet-based practice of researching and broadcasting private or identifying information about an individual or organization) are common components of anti-LGBTI+ online hate crime. Furthermore, they found that trans, non-binary and intersex people were subjected to more frequent online hate speech, which was generally more severe, more threatening, and had greater impact and consequences.¹⁰

Recording of hate speech by civil society has revealed that there is much overlap between white supremacist, Islamophobic, particularly anti-refugee and anti-LGBTI+ content in Ireland and abroad¹¹. While there are a small number of ‘producers’ of such content, there are many more reproducing that content across all social media platforms.¹² Social media pages of news outlets play an important role in channelling racially-loaded

⁹<https://www.ohchr.org/Documents/Issues/Expression/ICCPR/Vienna/CRP7Callamard.pdf>

¹⁰ <http://www.galop.org.uk/wp-content/uploads/2017/08/Online-hate-report.pdf>

¹¹ L. Michael, iReport.ie Reports of Racism in Ireland: July-December 2018 (ENAR Ireland, 2019).

¹² <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-SpeechOnline.pdf>

toxic contents through the comment threads on their posts. The way mainstream media frame and present news also has an impact on the comments posted. Expressions of racism online are punctuated with misogynist, homophobic, and transphobic attacks directly targeting women and members of the LGBTI+ community.¹³

There is no clear responsibility for hateful social media content amongst public authorities. The Press Ombudsman only deals with complaints about newspapers, magazines and some online news services, but not social media. There is little incentive for news outlets to moderate their social media pages for hateful content. The Broadcasting Authority of Ireland deals only with broadcast media, but has made producers responsible for audience expressions of hatred which are broadcast.¹⁴ An Garda Síochána are not currently equipped with the necessary resources to undertake investigations into online harassment, and have very limited capacity to deal with the wider issue of online hate speech¹⁵. There have been calls from a wide range of digital and legal experts for the State to take a larger role in monitoring and addressing online hate speech.¹⁶ A range of approaches to understanding, tracking and reporting hate speech have been undertaken by civil society and human rights institutions to tackle this problem. Reports of hate content to social media platforms, even by 'trusted parties', are largely deemed to not to breach community guidelines.¹⁷ Further, approaches which rely on individual reports are restricted by the burden on targeted minorities to report, the low level of bystander reporting and the harassment of those who attempt to 'call out' racism online.¹⁸

The effects of online hate speech has also been captured in international literature. Hawdon, Oksanen and Räsänen (2014) surveyed 1000 people between 15 and 30 years old and found that more than 50% respondents were exposed to hate speech or hate material. It was found within the research that the younger the respondent, the more likely they were to have been exposed to online hate. Keen and Georgescu (2014) found that online hate often escalated to individuals perpetrating violent physical crimes and online discourse was often used as a rationale for the

¹³ <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-SpeechOnline.pdf>

¹⁴ <https://www.irishtimes.com/news/ireland/irish-news/complaint-over-racist-comments-on-4fm-upheld-1.1565652>

¹⁵ <https://www.rte.ie/news/politics/2019/1016/1083823-cyber-crime-oireachtas/>

¹⁶ <https://www.iccl.ie/wp-content/uploads/2019/10/ICCL-Online-Harassment-Submission.pdf>

¹⁷ <https://www.businesspost.ie/insight/online-hate-speech-where-will-the-line-be-drawn-0a79af5f>

¹⁸ <https://www.ihrec.ie/app/uploads/2018/11/HateTrack-Tracking-and-Monitoring-Racist-Hate-Speech-Online.pdf>

violence. Both Chan, Ghose and Seamans (2014) and Chakraborti and Garland (2009) found that online groups, forums and websites were used to recruit individuals into violent, bias and prejudicial motivated groups and utilised the uncensored nature of online spaces to raise funds and become more visible and accessible to those with existing biases towards marginalised communities.

Online spaces and the potential policing of them presents a number of issues in relation to the following precarity only particular to online hate speech:

- Share/Retweet, an individual is not the original poster but none the less engages and spreads the content
- Like/Favourite/Thumbs Up, an individual's once again is not the original poster but validates the content
- Facebook/Twitter Algorithms and unanticipated dissemination
- Editorial Responsibility of Group Administrators
- Closed groups

These are issues that present themselves within the discourse, lived experience and literature relating to online hate speech and cannot go unnamed and unaccounted for throughout the process of the review to the act.

Issue 4: Proving intent or likelihood

A critical element of all of the offences in the 1989 Act is the requirement to prove that the action was intended or likely to stir up hatred. In some cases, prosecutions may not succeed as this intent or likelihood cannot be proven, regardless of the actual effect of the action. In considering the current ineffectiveness of the act this necessity to prove intent or likelihood must be reconsidered as it is clearly an obstacle to persecution. The difficulty in accounting for intent has allowed for cases, including cases of online hate speech, to be dismissed on the basis that there was reasonable doubt as to whether there had been intent to incite hatred.¹⁹

In order to mitigate this clear barrier to persecution the nature of intent to incite hatred must be taken on a balance of probability and should fall in line with the An Garda Síochana's Diversity & Integration Strategy 2019-2021, which defines a hate incident as an incident "which

¹⁹ <https://www.iccl.ie/wp-content/uploads/2018/04/Life-Cycle-of-a-Hate-Crime-Comparative-Report-FINAL.pdf>

is **perceived by any person** to, in whole or in part, be motivated by hostility or prejudice".²⁰

²⁰ <https://www.garda.ie/en/crime-prevention/community-engagement/community-engagement-offices/garda-national-diversity-integration-unit/diversity-and-integration-strategy-2019-2021-english-v1-1.pdf>

Recommendations

- The department must develop new legislation to effectively deal with hate crime however in the interim, BeLonG To youth services recommends that hate motive becomes an aggravating factor in which judges *must* take into account at sentencing for any criminal offence.
- BeLonG To Youth Services recommends that the list of protect characteristics be extended to include the following:
 - Anti-body status
 - Gender expression
 - Gender identity
 - Sex characteristics
 - Class
 - Ability/disability both physical and intellectual
- BeLonG To youth Services supports considerations to expanding the definition of “hatred” within the act to encompass discrimination, hostility, violence and prejudice and other terms which would more greatly protect the potential vulnerability of marginalised communities.
- BeLonG To Youth Services recommends that the act be expanded to include online hate speech and look to international law to inform the progression of the legislation.
- BeLonG To Youth services recommends that online community guidelines across all social media platforms operating within the country to be standardised and in line with the reform to the act. The guidelines should be prescribed by the minister for justice and equality through a ministerial order following a specific consultation on online hate speech informed by lived experience, international research and law.
- BeLonG To Youth Services recommends that in order to mitigate the barrier to persecution the nature of intent to incite hatred must be taken on a balance of probability and should fall in line with the An Garda Síochána’s Diversity & Integration Strategy 2019-2021, which defines a hate incident as an incident “which is **perceived by any person** to, in whole or in part, be motivated by hostility or prejudice”.
- BeLonG To Youth Services recommends established programs of restorative justice in the forms of community service or education programs or an instance of reconciliation prescribed by the victim in order to mitigate the likelihood of reoffence.
- In instances where ignorance or a clear lack of awareness regarding the likelihood to incite hatred is evident BeLonG To Youth Services recommends sentencing be replaced entirely with community

service or a form of community/perpetrator reconciliation through organized and structured restorative justice.