

The Act contains some exceptions and defences. However, the conduct or material concerned, whether it involves words, written material, images or sounds, must be

threatening, abusive or insulting; and

intended or likely to stir up hatred against a group of persons (not an individual) on account

of their race, colour, nationality, religion, ethnic or national origins, membership of the travelling community or sexual orientation.

Important issues

Four preliminary issues for discussion have been identified:

- 1) the list of protected characteristics covered by the Act and whether these should be changed
- 2) the use of the term 'hatred' in the Act and whether this should be changed
- 3) whether the wording of the 1989 Act is adequate to deal with online communications
- 4) the need to prove the intent or likelihood of stirring up hatred and whether this should be Changed

Issue 1: Protected characteristics covered by the 1989 Act

The Act deals with incitement on the grounds of race, colour, nationality, religion, ethnic or national origins, membership of the travelling community and sexual orientation. The Department is examining whether this list should be amended. The list of identity characteristics should take account of current social issues, but also their social or historical context. Historic or emerging fissures or divisions in society can be helpful in identifying groups that may be the target of hate speech. Care is needed not to include characteristics which are in any way unclear, or which are not easily identifiable – in prosecuting offences under this Act it will be necessary to prove to a court of law that the accused person knew or perceived that the victim was a member of or associated with a protected group.

Question

1. Are there other groups in society with shared identity characteristics, for example disability, gender identity, or others, who are vulnerable to having hatred stirred up against them and should be included in the list of protected characteristics?

AMACH! LGBT believe that the grounds for discrimination should reflect a more diverse community than it currently does. Persons with disabilities, trans, NB & intersex persons, international protection applicants, those living in direct provision are often the most marginalised groups of individuals in our community and also the most likely to experience some form of hate crime or hate speech incident. Over the past number of years, we as an organization have seen a definite increase in the amount of our service users reporting incidents of hate occurring to them, with a perception that nothing will be done to protect them. Any updates to the legislation would have to reflect the diverse and intersectional communities that we have in Ireland today. International protection applicants and migrants are a particularly vulnerable group within society today, with many stereotypes and far right ideologies creating widespread cultures of hate across Ireland under the pretense of "free speech", with a particular concern noted by AMACH! Of LGBT+ international protection applicants who face immense amount of discrimination in the institutional system we have placed them into. Persons with disabilities are also an at risk group for hatred again fueled by stereotypes and ignorance. Of particular interest to

AMACH! Is the protections afforded to trans, NB and intersex individuals across this country, where their identities are debated for legitimacy and their ability to self identify is questioned at a state level. This has, like with so many other groups, created a culture of hate and ignorance for these communities, with attacks on the lives and struggles of these groups openly accepted by mainstream media. There are glaring gaps in the protected grounds that we have outlined here that need to be addressed.

Issue 2: Use of the term “hatred” in the Act

Under the 1989 Act, in order to be an offence, the words or material must be intended or likely to stir up “hatred” against one of the protected list of groups. This is a high threshold. It is important to remember that the Act is designed to deal with hateful behaviour that is sufficiently severe to reach the threshold for criminal prosecution. The term “hatred” is not defined and has its ordinary meaning. Given that prosecutions under the Act have been relatively rare, the Department is considering whether the requirement to stir up hatred should be replaced by another term (hostility or prejudice, for example).

Question

2. Do you think the term “hatred” is the correct term to use in the Act? If not what should it be replaced with? Would there be implications for freedom of expression?

We at AMACH! do not think that “hatred” is the only word that should be used in this legislation, but that it is important to note that some of these acts are coming from a place of hate (but not all). We believe that the legislation should be more broad in its approach to what is perceived to be “hate speech” including acts/speech that leads to prejudice, hostility, intolerance, discrimination or has an impact on the quality of lives of those affected. “Hatred” unless defined is a high bar that is rarely ever met, resulting in very little prosecutions and a distrust/lack of confidence from minority communities in those that are supposed to protect us. We have a sense from the community that this legislation is not seen as something that is beneficial to our community or is something that is very much surface level/tokenistic and is used to say “we do have some protections in place” while avoiding true accountability. We believe that aside from whether the word “hatred” is the right word to use, the most important question to ask is, is this legislation usable? Is it something that can be used to protect minority groups? And if not, why isn’t it? This has been the frustration in our community over the last number of years, that despite the increase in incidents of hate speech and intolerance we have not had a workable model of legislation to feel empowered to report these incidents or any confidence in the system that if we did, it would make a difference. We believe this is the most important point to address with this legislation. Freedom of expression should be celebrated and encouraged at all levels of society but not at the cost of someone else’s wellbeing, safety or right to expression. Intolerance, ignorance and hate cannot be excused under the right to expression, this point is often misinterpreted to mean that everyone has the right to say what they want about whoever they want, however, this is not entirely true. You are allowed to hold whatever opinions you want, but that doesn’t mean everyone must agree with you, and as much as you have a right to exist, so does everyone else. Freedom of speech and expression does not mean freedom from consequences.

Issue 3: Application of the Act to online speech

The wording of the 1989 Act is broad enough to cover incitement via modern technologies and online behaviour. The definitions of “broadcast”, “publish”, “recording” and “distribute”

in the Act are wide enough to cover online broadcasting, publication and social media discourse. However, the Department is considering whether a more explicit wording mentioning these forms of communication might result in more successful prosecutions under the legislation. The 1989 Act refers to distributing written material to the public or a section of the public. The Department is considering whether this is sufficient to capture modern day communications where posts on social media sites can be general posts or theoretically limited to followers or 'friends' and could therefore be argued not to be public.

Question

3. Bearing in mind that the Act is designed only to deal with hate speech which is sufficiently serious to be dealt with as a criminal matter (rather than by other measures), do you think the wording of the Act should be changed to make prosecutions under for incitement to hatred online more effective? What, in your view, should those changes be?

We at AMACH! Have noted that online abuse and hatred has exponentially increased over the last number of years with the explosion of social media and access to the internet. This breeds a whole new host of issues with many members of the LGBT+ community, primarily people of colour, trans women, NB persons and members of the traveling community being particularly vulnerable to this. Most of the persons in these groups who interact with our services have described moderate to severe harassment online including death threats, leaking of personal information and the spread of misinformation about them. In nearly all of these cases there has been very little support or guidance in what can be done, and in the cases where advice was sought, it often ended up being a case that nothing could be done other than noting it on the Garda pulse system. This leaves minority groups particularly exposed, with many members feeling isolated, afraid, fearful for their lives and afraid of retaliation. Our laws must evolve alongside technological advancements. If not in this particular legislation, online harassment absolutely needs to be tackled by the state to ensure that individuals feel protected and cherished by the country they are in. In essence, yes we believe that the wording of the Act should be changed to make prosecutions under incitement to hatred online more effective. This could be achieved by including a section dedicated to online harassment and abuse, detailing what wouldn't be tolerated by persons online. This also feeds into the above question, as the spirit of the legislation would need to be defined in this context too to ensure that this was an effective piece of legislation. The incidents laid out above would be important to consider when deciding what this section of the legislation should prohibit.

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. The Department is considering whether the need to prove intent or likelihood within the Act should be changed, for example to include circumstances where the person was reckless as to whether their action would stir up hatred.

Questions

4. In your view, does the requirement that an offence must be intended or likely to stir up hatred make the legislation less effective?

Yes, we believe it does make the legislation less effective as this can be very subjective to each person. Many cases that go forward to prosecution fail on this element, as there are

no defined criteria about how you would go about proving the intent. As stated above, this is irrespective of the effect of the action, which is often the most traumatic aspect of these actions on the individual. We believe that if a piece of legislation is not usable or workable to the most “generic” of cases it tends to become tokenistic and breeds distrust from minority communities. For example, if someone steals your phone, that is theft and is prosecuted as such, however you would probably see vastly less prosecutions if you had to prove they intended on stealing from you in the first instance.

5. If so, what changes would you suggest to this element of the 1989 Act (without broadening the scope of the Act beyond incitement)?

We believe that this all comes back to your definition of the act in the first case, if we cannot say what “hate” speech or “hostility” etc is, then we don’t really know what we are prosecuting or what we need to prosecute. The onus here is put on the “victims” to prove that the “perpetrator” intended hate upon them, with the burden again falling to the minority community. There are a number of things we believe would make this better;

1st – training for members of the Gardai and department of justice in this piece of legislation and in the different minority communities in Ireland today. Often when minority groups go to report these incidents, they are met with a lack of understanding, empathy and compassion from staff they are dealing with. This leads to less reports, ineffective legislation and distrust.

2nd – reevaluate the parameters under which this legislation acts, whether it is feasible to say the burden of proving intent lies with the “victim” or whether there are set criteria that add up show intent.

3rd – There needs to be a distinction between online posts, printed posts and verbal assaults, and the criteria needs to be unique to all of these sections.