

Jenny Rathbone MS

Chair, Equality and Social Justice Committee
Senedd Cymru
Cardiff Bay, Cardiff
CF99 1SN

Dear Jenny,

16 March 2025

Re: Strengthening and Advancing Equality and Human Rights

Many thanks for your letter dated 3 February 2025 requesting further comments on the progress of the Legislative Options Working Group on Human Rights (LOWG). I am responding in my capacity as Chair of LOWG and will therefore limit my response to the progress of LOWG's work on recommendations 1 and 25 of the Strengthening and Advancing Equality and Human Rights (SAEHR) report, as these are the focus of the group's remit.

I note that the letters from the Equality and Human Rights Commission and the Future Generations Commissioner do not substantively address LOWG's work, so I do not feel it appropriate to comment much on these. Similarly, the Law Society's response does not discuss the substance of LOWG's work, but as you have specifically asked me to reflect on it, I will offer some general observations below.

1. Progress on addressing the capacity issues identified during the oral evidence session on 16 September 2024

Using funding I secured from voluntary sector sources, I employed Melissa Wood from mid-October 2024 to the end of December 2025 to support LOWG in applying the methodology the group had developed. The right to education under CEDAW (Article 10) and CRDP (Article 24) was selected as an initial in-depth pilot.

As this work progressed, it became clear that the methodology required further refinement before it could be applied to the entirety of CEDAW and CRDP and, in due course, to the incorporation of other treaties into Welsh law. Since then, Melissa Wood, Professor Simon Hoffman, and I have been working to refine this approach. As this required more time, the Welsh Government made additional resources available for Melissa to continue supporting LOWG's work until the end of March 2025.

Work is now progressing to complete this pilot and finalise the methodology so it can be applied to the remainder of CEDAW and CRDP.

2. Views on timescales and the amount of progress that can reasonably be expected before the end of the Senedd term

LOWG is using Melissa's pilot of the methodology to develop a body of work and a timeline for producing recommendations by December 2025. I am in final discussions with the Welsh Government regarding resourcing LOWG to enable delivery against this timeline.

While this proposal is still subject to LOWG's approval and the Welsh Government's final decision on resourcing, if taken forward, it would aim for the following:

- (1) April–June 2025:** Analysis of the UNCRDP

(2) July–September 2025: Analysis of CEDAW

(3) September–December 2025: Drafting of the LOWG report

This work is intended to provide an evidentiary foundation for continuing these efforts beyond the Senedd elections, as well as informing discussions in the run-up to them.

LOWG members have consistently emphasised that progress has been constrained by the lack of dedicated resources. While it was understood that previous budgets did not allow for funding this work, it has only been since October 2024 that we have had the capacity to accelerate progress. LOWG members have voluntarily contributed significant time to this work, for which I am grateful. However, it is important to acknowledge that securing funding late in the Senedd term, and on an ad hoc, short-term basis, has made it difficult to plan effectively for work of this scale. The nature of the work is high-volume, novel, and complex, particularly given the need to account for constitutional considerations. Additionally, the group has been asked to explore both legislative and non-legislative options, further expanding the scope of the work.

On the Cabinet Secretary's statements regarding timescales

The Welsh Government's response to the SAEHR report identified the formation of LOWG as the next step in bringing forward detailed proposals for incorporation in Wales.

I believe it is for the Welsh Government to determine whether it wishes to wait for LOWG's recommendations before advancing this work further, or whether other preparatory steps should proceed in parallel. Similarly, decisions regarding the timing and frequency of updates to the Senedd are for the Government and Senedd to determine. Independently of this, I of course remain available to provide updates in writing or in person should the Committee find that helpful.

3. Response to the Committee's observation on factors impacting progress

I note the Committee's suggestion that slight differences have emerged in factors affecting progress. Below, I set out some key considerations:

Regressive human rights protections introduced by the previous UK Government had some impact on LOWG's work. They introduced uncertainty and placed additional demands on the capacity of LOWG members, myself included, as we were required to respond to these legislative developments. One significant example was the UK Bill of Rights Bill. While LOWG welcomed its withdrawal, this did not affect our core rationale: the need to strengthen human rights protections in Wales, including through incorporation. The SAEHR report's recommendations 1 and 25 were developed independently of any UK-level proposals, and LOWG members believe the case for incorporation is now stronger than ever, given the wider global and domestic political and socio-economic contexts

Additionally, LOWG has closely followed progress in Scotland, particularly efforts to incorporate the UN Convention on the Rights of the Child (UNCRC).

These developments further highlight the complexity of the work LOWG is undertaking given the intricacies of devolved and non-devolved competency in this area.

In particular the LOWG is aware of the Supreme Court decision on the (initial) UNCRC incorporation Bill in Scotland and will take the decision fully into account in its work. Our objective is to advise the Welsh Government on how best to strengthen and advance human rights in Wales, *within the devolution settlement*. By way of comment, the LOWG takes note of the fact that the Supreme Court determined the Bill beyond the competence of the Scottish Parliament on very narrow grounds relating to the drafting of specific sections within the Bill. We also note that, since the Supreme Court decision, the Scottish Parliament has enacted legislation to incorporate the UNCRC in Scottish law, drafted in a way that avoided the competence problem identified, and that this revised legislation was not challenged by the UK Government.

Importantly, the Supreme Court did not express any reservation over the possibility that a devolved nation might seek to legislate to incorporate human rights, and indeed noted that this is already the case in Wales

4. The Law Society's correspondence

The Law Society's response does not address the substantive remit of LOWG's work, namely, recommendations 1 and 25 of the SAEHR report on incorporating justiciable human rights. Furthermore, as their response states, the Law Society is an independent organisation responsible for setting its own work programme in Wales. It would therefore not be appropriate for me to comment directly on their position.

However, their response raises two important overarching points.

- (1) That there are significant capacity limitations for salient stakeholders to be involved in work on strengthening human rights in Wales.
- (2) That this lack of capacity cuts across many sectors and organisations – including the voluntary sector, academia and the legal profession. This is evident from LOWG's own experience, and is further illustrated by the other correspondence you have received from the EHRC and Future Generations Commissioner

These constraints are relevant at this stage of LOWG's work. Indeed, feedback from our consultation with stakeholders in Scotland emphasised the importance of involving the legal profession early in the process. However, there are also longer-term considerations. As Wales' human rights legal frameworks develop, these capacity constraints will need to be examined in greater detail as changes may have implications for the legal profession, public legal education, legal education in law schools, advocacy services, voluntary sector support services, public authorities, as well as broader access to justice considerations.

LOWG members remain committed to progressing this work and in the meantime I remain at the Committee's disposal should further updates or discussions be of assistance.

Please accept my apologies for the delay in getting back to you, this has been an especially busy period.

I appreciate the opportunity to engage with the Committee on these important issues and look forward to continued dialogue.

Yours sincerely,

Charles Whitmore, Chair of the Human Rights Legislative Options Working Group