



Thank you very much to members who contributed to our response to the **Scottish Government's Human Rights Bill** through our online and in person sessions in September.

We submitted our response based on the members' feedback, answering those questions most relevant to members, and you will see that this was done through the citizen space format, rather than our usual format for reporting.

This is because this bill was not one that the Scottish Government had specifically asked for VOX to respond to, but one where members did want to have their views heard on.

Find out more about the bill and consultation here:

<https://www.gov.scot/publications/human-rights-bill-scotland-guide-consultation/>

Response ID ANON-6XVX-YBTW-2

Submitted to A Human Rights Bill for Scotland: Consultation

Submitted on 2023-10-05 18:42:34

Part 1: Scotland's Human Rights journey

Part 4: Incorporating the Treaty Rights

1. What are your views on our proposal to allow for dignity to be considered by courts in interpreting the rights in the Bill?

Please give us your views:

VOX members were positive about the proposal to allow for human dignity to be considered by courts in interpreting the rights in the bill. While the bill explains that the principle of dignity will be as understood in international law, many members did ask exactly what would be meant by 'human dignity' and were aware that there could be different interpretations of what that is.

VOX members brought up specific and distressing cases, where they felt people's human rights had been breached and where it would be clear to them that dignity had not been considered in actions taken. One of those examples was of someone from an Island community having been sexually assaulted and having to travel to a different location in order for

assessments/evidence to be taken, meaning that they had to stay unwashed and in those clothes worn for 19 hours. Members felt that duties being on public bodies and organisations to consider people's rights and the upholding of dignity in the actions they take and the policies and procedures they create and follow, would hopefully change experiences for people in those situations. The proviso being that duties are taken seriously, are assessed and organisations are held accountable.

VOX members also brought up experiences of mental health ward in-patients who are detained under the mental health act and the complexity around their rights and the concept of dignity. An example of someone who has developed drug-induced parkinsons as a result of their depo medication, sparked discussion on whether that person's rights were being upheld, and that it could not be said that the healthcare system was 'doing no harm' in this case. It was felt that dignity had not been a consideration in this person's care and treatment. It was also acknowledged that the recommendations from the Mental Health Law Review would be important here.

VOX members also talked about the importance of listening to people with lived experience and coming to an understanding of what dignity means to people, coming from their experiences and point of view. Members emphasised the importance of listening to people and patients, in the context of health and mental health services and the significance of people having access to advocacy to ensure people have support to have their views are heard and put forward.

Some VOX members also felt that human rights regulators have more work to do to ensure people receive their human rights and hold people and organisations accountable when they are not. The right to and access to advocacy was emphasised in this context as well.

2. What are your views on our proposal to allow for dignity to be a key threshold for defining the content of minimum core obligation (MCOs)?

Please give us your views:

In accordance with the previous answer, VOX members were in agreement that dignity should be a key threshold of defining minimum core obligations. It was felt that it would be key to define what constitutes that minimum level of human dignity by involving and asking people who have experience of not being treated with dignity or being denied dignity. VOX members felt that many of them are in a position of being able to speak to what that is like, what lack of dignity looks like, and what considering people's dignity would look and feel like in practice. Members were also aware there would be other groups of people and individuals who it would be important to listen to as well before deciding on what the threshold should be in terms of dignity when assessing whether minimum core obligations have been met. They felt it would be important to take due time and process on defining the threshold so that duty-bearers and rights-holders have a common and clear understanding that will help to protect people and their dignity.

3. What are your views on the types of international law, materials and mechanisms to be included within the proposed interpretative provision?

If so, please identify these, explain why and how this could be achieved.:

4. What are your views on the proposed model of incorporation?

Please give us your views.:

VOX members thought that the proposed model of incorporation seemed like the most sensible option, keeping as much to the letter of the international treaties as possible in Scots Law within those devolved competence limits. VOX members expressed the view that the inclusion of the right to a healthy environment in the model was positive, and could understand why this model would make a clearer human rights framework. VOX members dearly want to see that the framework is implemented in a way that really does make a difference to the people of Scotland, and in particular to the most vulnerable people at risk of having their rights violated.

5. Are there any rights in the equality treaties which you think should be treated differently?

No

If so, please identify these, explain why and how this could be achieved:

Part 5: Recognising the Right to a Healthy Environment

6. Do you agree or disagree with our proposed basis for defining the environment?

Agree

7. If you disagree, please explain why:

8. What are your views on the proposed formulation of the substantive and procedural aspects of the right to a healthy environment?

Please give us your views:

VOX members thought the inclusion of the right to a healthy environment was a positive and important step and there was broad agreement on the right including both substantive aspects and procedural aspects. It was felt that having those procedural aspects would help action be taken, make people aware, and emphasise the importance of genuinely having public participation in decision-making. There were strong views in support of protecting the environment in terms of clean air, biodiversity and a safe climate, and also experiences related where people felt their ability and 'eligibility' to be listened to and counted with regards to the protection of the environment had been curtailed with no accountability from local councils, for example. It was hoped by members that the right to a healthy environment, being equally held by all across Scotland could be implemented in a way that means people's concerns would need

to be listened to and bodies would need to account for what they are doing to maintain that healthy environment.

9. Do you agree or disagree with our proposed approach to the protection of healthy and sustainable food as part of the incorporation of the right to adequate food in International Covenant on Economic, Social and Cultural Rights (ICESCR), rather than inclusion as a substantive aspect of the right to a healthy environment?

Agree

Please provide your reasons why:

VOX members on the whole thought that the protection of healthy and sustainable food would be better fitted within the social right to an adequate standard of living as per the ICESCR. They agreed that this may help protect and fulfill that right.

10. Do you agree or disagree with our proposed approach to including safe and sufficient water as a substantive aspect of the right to a healthy environment?

Agree

Please give us your views:

All VOX members taking part expressed their agreement with this and that it made sense to make the distinction between safe and sufficient drinking water for human consumption and that essential for the health of the wider environment, so both are adequately protect.

11. Are there any other substantive or procedural elements you think should be understood as aspects of the right?

No

If yes, please specify what substantive or procedural elements and explain how this could be achieved :

Part 6: Incorporating Further Rights and Embedding Equality

12. Given that the Human Rights Act 1998 is protected from modification under the Scotland Act 1998, how do you think we can best signal that the Human Rights Act (and civil and political rights) form a core pillar of human rights law in Scotland?

Please give us your views:

13. How can we best embed participation in the framework of the Bill?

Please give us your views:

VOX members expressed their views that participation by members of the public and in particular by those who are most vulnerable and at risk of having their rights violated is

absolutely crucial. Members spoke about authentic participation, not just tokenistic engagement, and the need for work to be done so that government reaches those who are not normally heard from. Members were pleased to see that the question is being asked about how to embed participation in the human rights framework and that the review of the public sector equality duty (PSED) is looking at this too.

Members felt that for participation to be embedded in the framework, there needs to be a plan to ensure wide engagement and targeted involvement,

the inclusion of access to advocacy to help people to participate, and ways for people to contribute to holding organisations accountable when rights are not being upheld.

VOX members spoke about the importance of being able to "sit around the table with people making decisions - there needs to be an exchange between those who have mental illnesses and are having their rights violated with those who make decisions about services and rights we receive." (VOX member) They expressed the view that it is important for "those who composed the document – civil servants – to have a discussion with people it will impact on" (VOX member).

VOX members also talked about Co-production and co-design, expressing the feeling that these were "buzz words" at the moment but the crucial bit is whether it genuinely happens and works in practice. It was felt "there is a quota for numbers of lived experience people involved and if people can say that has been met, no matter how, or who else could have contributed then that's their participation or co-production job done." (VOX member)

VOX members talked about upskilling people, training and supporting them to take part, and giving people reward and recognition was vital for true co-production with people with lived experience. An example was raised where at an NHS board clinical governance meeting they wanted people with lived experience to attend but they did not make the meetings accessible in terms of language used and minutes.

"They specified that people with lived experience should only raise issues in the last ten minutes of the meeting which invariably meant that most clinical or professional people in the meeting had left early on purpose and missed hearing about those issues. There is a power dynamic and that has to be addressed." (VOX member)

14. What are your views on the proposed approach to including an equality provision to ensure everyone is able to access rights, in the Bill?

Please give us your views:

VOX members were supportive of the inclusion of an equality provision so that everyone can access their rights.

15. How do you think we should define the groups to be protected by the equality provision?

Please give us your views :

VOX members acknowledged there could be difficulties in terms of the limits of the equal opportunities reservation and the wider Equality Act framework. However there were members who could see the significance of older people and LGBTI being specifically listed rather than just being protected under the use of 'other status'.

16. Do you agree or disagree that the use of 'other status' in the equality provision would sufficiently protect the rights of LGBTI and older people?

Disagree

17. If you disagree, please provide comments to support your answer.:

Some VOX members feel that older people are routinely excluded and discriminated against and are particularly vulnerable in having their rights upheld and in not being in a position to report that their rights are being violated. It was felt that naming older people as a specific group needing protections could help with this. The need for advocacy access and support was raised again.

18. Do you think the Bill Framework needs to do anything additionally for LGBTI or older people?

No

Please give us your views:

Part 7: The Duties

19. What is your view on who the duties in the Bill should apply to?

Please give us your views:

VOX members agree that duties should apply to bodies carrying out devolved public functions and definitely private bodies who carry out functions of a public nature.

20. What is your view on the proposed initial procedural duty intended to embed rights in decision making?

Please give us your views:

VOX members are keen for duty-bearers to start taking responsibility for the adherence to people's rights as soon as possible. It was recognised by members that some time would be needed for bodies to put in place what is needed to uphold people's rights but members agreed that duty-bearers should start building the rights into their decision-making processes

and the delivery of services as soon as possible after the Bill becomes an Act and therefore they should start to prepare for this in advance.

21. What is your view on the proposed duty to comply?

Please give us your views:

VOX members support the proposed duty to comply and want to see accountability.

22. Do you think certain public authorities should be required to report on what actions they are planning to take, and what actions they have taken, to meet the duties set out in the Bill?

Please give us your views:

Yes. VOX members were very keen that public authorities should be required to report on actions planned and taken to meet the duties of the bill. It was felt this was absolutely crucial so that public authorities are held accountable and that action needs to be taken against public authorities who fail to do so sufficiently and a way for people to complain when they are not complying in cases.

VOX members brought up experiences of rights not being upheld, services not being given and the struggle to be able to challenge and question on what a public authority is doing or not doing. Members again emphasised how vital it was to have access to well-trained advocates to support and help people have their voice heard and how the removal of the advocacy safeguarding body had made things even more difficult for people. Some members feel they have exhausted every avenue available to them in holding public authorities accountable and that they are not even able to get the advocacy support they need.

VOX members also brought up the importance of bringing planning into services and ensuring there are the people and resources available to do that this needs to be factored in for public authorities so they can embed and comply with duties.

Members also spoke about the importance of the reporting mechanisms and providing statistics, information on what authorities are planning and that they are publicly published and available so people can see the actions taken.

23. How could the proposed duty to report best align with existing reporting obligations on public authorities?

Please give us your views:

VOX members support the Bill requiring duty-bearers to progressively realise the economic, social, and cultural rights and the right to a healthy environment, beyond just the minimum threshold that must be met, and with the maximum available resources. After initial concern, members were also reassured that this is not a way to allow duty-bearers to avoid their duties but a way to continuously improve the realisation of rights.

24. What are your views on the need to demonstrate compliance with economic, social and cultural rights, as well as the right to a healthy environment, via minimum core obligations (MCOs) and progressive realisation?

Please give us your views:

Many VOX members were sceptical about demonstration of compliance actually happening in a transparent and honest way. Due to experiences of rights not being upheld or lack of accountability, and acknowledgement from authorities when complaints have been made or rights violated, many VOX members do not trust that there will be compliance or that there will be accessible mechanisms for accountability where there is a lack of compliance. " I don't think that will happen – asking people in power to answer for what they're doing. How will the government and authorities, duty-bearers demonstrate compliance?" (VOX member)

Members felt there should be public opportunities for people to engage and for authorities to show what they have done to comply and be open to questions on it. Members felt duty-bearers should report back on whether they are actually meeting their obligations, including how they have engaged with the public/people they impact upon and what their feedback has been, followed by how they have used this to change or improve. Members thought it was an important point that there should be acknowledgement that "we have rights and have a right to question them on their policies and procedures." (VOX member)

25. What are your views on the right to a healthy environment falling under the same duties as economic, social and cultural rights?

Please give us your views:

VOX members thought it was logical that the right to a healthy environment should fall under the same duties as economic, social and cultural rights.

26. What is your view on the proposed duty to publish a Human Rights Scheme?

Please give us your views:

VOX members thought this was a good idea and agreed it was important for Scottish Ministers to report on their actions and have some accountability. Members also reiterated the importance of participation from people with lived experience in the human rights scheme.

Members also wanted it noted that while this is a procedure and is comprehensive they felt the important part is whether or not it is properly implemented, whether in reality action is taken.

Part 8: Ensuring Access to Justice for Rights-Holders

27. What are your views on the most effective ways of supporting advocacy and/or advice services to help rights-holders realise their rights under the Bill?

Please give us your views on advocacy:

As expressed throughout this response, VOX members place a great importance on advocacy. Members have felt that though there is supposed to be a right to advocacy, in practice that has not been the case and there are not the resources invested to allow well trained advocates to be available when people need them, and not only when they are in the most dire need, when someone is detained under the mental health act for example. Members again expressed their dismay that the advocacy safeguarding agency no longer exists and their feelings of being let down with nowhere to turn, and wanting an acknowledgement and apology about this situation.

Members talked about why advocacy is important, explaining that politicians and professionals tend to have more of a listening ear towards advocates/others than they may do to a general member of the public or a person with lived experience. Members expressed the need for advocates to be available to help everyone's voice be heard in whatever situation they find themselves, and especially for those who are vulnerable to having their rights violated. They expressed their desire for funding for the advocacy services so there are enough with qualified staff who are trained in human rights and how to enable them/enforce them. Members also talked about the differences depending on where people live and the need for nationwide access to quality advocacy. The importance of access to collective advocacy was also discussed.

"The job of advocate is not just something you 'have' but something you 'do'. When you get to the start of the queue after 2/3 years and they say can't help it is not okay. It is re-traumatising."
(VOX member)

Members expressed the desire to see more awareness about access to advocacy and a more equitable system where people can access advocacy services. Recommendations on advocacy set out in the Mental Health Law Review were endorsed and those of the Scottish Independent Advocacy Alliance.

Please give us your views on legal aid:

Members felt it is important that legal aid is available and enables everyone to have access to a suitably qualified and experienced professional to ensure justice.

28. What are your views on our proposals in relation to front-line complaints handling mechanisms of public bodies?

Please give us your views:

VOX members are in broad agreement about improvement of complaint-handling and the proposals regarding the SPSO. Members expressed their deep mistrust of complaints processes, having had repeated bad experiences engaging in complaints processes where they felt there was a power imbalance and a lack of accountability.

"The majority of complaints against public bodies are not upheld anyway – I have three copies of the patients charter – 2012, then another 2019 and from a different organisation one dated 2022 – it elaborates on the rights of patients but it's whether or not a complaint will be upheld

and whether someone will actually be believed. I've been told 'you're not the full shilling'. It feels like it's 'Go ahead and make complaint but we won't listen anyway'." (VOX member)

Members felt that the proposals outlined are clear and unambiguous but that the important bit is where it goes once someone reaches the point of submitting the complaint. It was felt complaint processes and procedures need to be transparent. Members also thought it was important, as per the proposals, to have that ability to redress and say when a body is not compliant.

Members also brought up their experiences of complaints in the health service.

"There is the 'unacceptable actions policy' where if they think complaints are unfounded and excessive they can refuse to comply with the complaint but it's a ludicrous policy and then the ICO often uphold the complaint and tell the NHS to accept and investigate the complaint." (VOX member)

"We want to make sure that complaints are followed up fairly and vulnerable people are not put off." (VOX member)

29. What are your views in relation to our proposed changes to the Scottish Public Services Ombudsman's remit?

Please give us your views:

VOX members agreed with the proposals in relation to changes to the SPSO's remit, and having the ability to redress and have action taken when a body is not compliant. However, they did feel that there needs to be an agreed definition of 'best practice' and that the ombudsman has to think about what those who complain need and want so that people's rights and dignity can be upheld.

Some members also expressed their admiration for the Ombudsman, having had good experiences with them and saying in general that the Ombudsman and other statutory bodies including the ICO have been very helpful in relation to dealing with complaints but that of course evidence needs to be submitted to them, which is why some people need to have advocates to help them make their case.

"They recognise the issues and they stand up to people breaking the rules or not upholding your rights with a no nonsense approach." (VOX member)

" You just can't get the changes as incapacitated person and need advocacy." (VOX member)

30. What are your views on our proposals in relation to scrutiny bodies?

Please give us your views:

31. What are your views on additional powers for the Scottish Human Rights Commission?

Please give us your views:

Many VOX members thought this sounded like a good proposal to bring in these powers for the Commission, but a member did have reservations because of experiences where they felt the Human Rights Commission had not been supportive of their complaint about being denied access to advocacy.

32. What are your views on potentially mirroring these powers for the Children and Young People's Commissioner Scotland where needed?

Please give us your views:

33. What are your views on our proposed approach to 'standing' under the Human Rights Bill?

Please give us your views:

34. What should the approach be to assessing 'reasonableness' under the Human Rights Bill?

Please give us your views:

35. Do you agree or disagree that existing judicial remedies are sufficient in delivering effective remedy for rights-holders?

Not Answered

36. If you do not agree that existing judicial remedies are sufficient in delivering effective remedy for rightsholders, what additional remedies would help to do this?:

37. What are your views on the most appropriate remedy in the event a court finds legislation is incompatible with the rights in the Bill?

Please let us know your views. :

Part 9: Implementing the New Scottish Human Rights Act

38. What are your views on our proposals for bringing the legislation into force?

Please give us your views:

39. What are your views on our proposals to establish minimum core obligations (MCOs) through a participatory process?

Please give us your views:

VOX members, as made clear earlier in the response, think participation is vital and believe it is right to establish the minimum core obligations and how human dignity is part of that, through a participatory process.

Members again do not want this to be tokenistic but genuine engagement, involvement and influence in the decision-making process, where different people and views have been sought out and people are supported to make contributions.

"Yes, we want it to be truly participatory and accessible for people who are most vulnerable – they should participate more as they are most affected when rights are not upheld. People participating should be listened to and their views and experiences taken on board to make the final decisions." (VOX member)

Members also discussed that if the aim is to have members of the public contributing more and engaging with consultations and implementation, it would be good if more understandable language was used in the questions; not long questions with acronyms. Making it more layman friendly.

40. What are your views on our proposals for a Human Rights Scheme?

Please give us your views:

VOX members support the publication of a human rights scheme and the accountability and transparency that should come with that. Members also think the point about the extent to which public participation should continue to inform the implementation of the bill is important. As expressed previously, members believe lived experience participation is vital in the process and to ensure the implementation of the bill is carried out in a way that serves rights-holders best, and takes the public along with the human rights bill implementation.

41. What are your views on enhancing the assessment and scrutiny of legislation introduced to the Scottish Parliament in relation to the rights in the Human Rights Bill?

Please give us your views:

42. How can the Scottish Government and partners effectively build capacity across the public sector to ensure the rights in the Bill are delivered?

Please give us your views:

In discussion of this question, VOX members answered resoundingly with: "Resources."

" You can't build capacity without resources and stability of funding." (VOX member)

"Engagement with the public – participation in person and online with government ministers."

"Quality training in human rights for those who will be duty-bearers, and those in advocacy and awareness-raising, and training in how to enact those rights effectively. This all needs investment and planning." (VOX member)

43. How can the Scottish Government and partners provide effective information and raise awareness of the rights for rights-holders?

Please give us your views:

VOX members saw the importance of awareness-raising about people's rights so people can make sure they have access to them.

Members talked about training and advertising in libraries, doctor surgeries, hospitals including mental health wards, council offices, online, local councillors and wards they administer and the importance of still having paper copies of things and easy-read documents and accessible formats. Members talked about the duty-bearers themselves raising awareness of rights and third sector organisations including collective and independent advocacy organisations and support groups. Members also mentions adverts on billboards, newspapers, TV, social media, posters, radio and the use of videos.

44. What are your views on monitoring and reporting?

Please give us your views:

Members thought that monitoring and reporting are very important in making sure the bill is implemented in a way that is best for rights-holders.

VOX members expressed the need for giving the public understandable feedback that people can be involved in and ask questions on. Members are eager to have reporting that is transparent and clear and in understandable language that updates people effectively on progress made and any challenges or needs.

About you

What is your name?

Name:

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What is your email address?

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Are you responding as an individual or an organisation?

Organisation

What is your organisation?

Organisation:

VOX Scotland (Voices of Experience)

Please tell us which of the following categories best describe you (select all that apply):

Rights holder, Other

If other, please specify:

Mental Health Collective Advocacy Membership Organisation -Rights Holders

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

Publish response with name

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

Yes

I confirm that I have read the privacy policy and consent to the data I provide being used as set out in the policy.

I consent

Evaluation

Please help us improve our consultations by answering the questions below. (Responses to the evaluation will not be published.)

Matrix 1 - How satisfied were you with this consultation?:

Slightly satisfied

Please enter comments here.:

VOX members engaged in this consultation and we used as many supporting techniques and definitions as we could to make it easier and there were good aspects in terms of the explanations for each section. But there was feedback from members on the questions being too long and difficult to understand and too many acronyms and the feeling that it would not promote engagement with those who should be represented the most in the process.

Matrix 1 - How would you rate your satisfaction with using this platform (Citizen Space) to respond to this consultation?: Slightly satisfied

Please enter comments here.: