

# Annual scrutiny of the Future Generations Commissioner: An update

April 2022

## 1. Background

**1.** The Equality and Social Justice Committee (the Committee) is responsible for scrutinising the implementation of the *Well-being of Future Generations Act 2015* (the Act) in the Sixth Senedd. As part of this work, we held our first scrutiny session with the Future Generations Commissioner (the Commissioner) on 7 February 2022.

**2.** This session and the contents of this report draw on:

- the Commissioner's most recent annual report (covering the period to April 2021);
- the findings from the Fifth Senedd's Public Accounts Committee inquiry into barriers to implementation of the Act; and
- the Commissioner's more recent work including housing retrofit, basic income, inequality, and skills for a green recovery.

### Purpose of this report

**3.** This report sets out the key themes, conclusions and recommendations identified in our scrutiny of the Commissioner and related work, including that carried out by the Public Accounts Committee in the Fifth Senedd.

**4.** At the beginning of the Sixth Senedd the Committee set itself the strategic aim of "championing equality, social justice and the well-being of future generations across the Senedd



including other Senedd Committees.” In addition to making recommendations, this report aims to bring to the attention of the wider Senedd – particularly its committees – some of the issues that merit further consideration by Members in their scrutiny of the Welsh Government.

**5.** With the Act having been in place since 2015, the start of the Sixth Senedd offers a timely opportunity to reflect on its implementation to date and to consider improvements and smarter ways of working for the future.

## 2. The Future Generations Commissioner

**6.** Sophie Howe took up the post of Future Generations Commissioner in early 2016. Her seven-year tenure will end in February 2023.

### **The Commissioner’s annual report**

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**7.** The Commissioner published her latest annual report in August 2021.<sup>1</sup> It outlined work she undertook in a range of areas in 2020-21 including:

- publishing her Future Generations Report, which contained her assessment of progress and advice to public bodies covered by the Act;
- shaping the Welsh Government’s plan for recovery from the pandemic; and
- undertaking her first Section 20 review into procurement in nine public bodies.

### **The first Future Generations Report**

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**8.** The Act places a statutory requirement on the Commissioner to publish, a year before a Senedd election, a report containing the Commissioner’s assessment of the improvements public bodies should make in order to set and meet well-being objectives in accordance with the sustainable development principle.

**9.** The Commissioner published her first Future Generations Report on 5 May 2020.<sup>2</sup> The report found that although there had been a marked change in political commitment and leadership towards meeting the aspirations of the Act over the preceding year, more was now

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<sup>1</sup> Future Generations Commissioner for Wales, Annual report 2020-2021

<sup>2</sup> Future Generations Commissioner for Wales, Future Generations Report 2020

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needed to increase the pace of change. The Welsh Government responded to the Future Generations Report in October 2021.<sup>3</sup>

### **Scrutiny by the Fifth Senedd's Public Accounts Committee**

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**10.** In 2020, the Fifth Senedd's Public Accounts Committee (PAC) carried out an inquiry into barriers to implementing the Act, and exploring whether it had delivered the transformative change it heralded when it was introduced.

**11.** This work coincided with, and was shaped by, the first Future Generations Report and the Auditor General for Wales' first statutory report under the Act.<sup>4</sup>

**12.** Set against the context of the coronavirus pandemic, PAC's inquiry explored levels of understanding and awareness of the Act; the resources available to public bodies for implementation; the support and leadership provided by the Welsh Government and the Future Generations Commissioner; and what needs to be done to ensure the Act is implemented successfully in the future. PAC published its report in March 2021<sup>5</sup> and the Welsh Government responded in September 2021.<sup>6</sup>

## **3. Scrutiny by this Committee**

**13.** In advance of our scrutiny session the Commissioner provided a written submission which included an overview of her work since the publication of her annual report.<sup>7</sup> Following our scrutiny session, we wrote to her to request further information in relation to a number of areas covered during our discussion, and she responded on 1 March 2022.<sup>8,9</sup> We also wrote to the Minister for Social Justice to draw her attention to some of the immediate issues arising from our scrutiny<sup>10</sup> and the Minister responded on 7 March 2022.<sup>11</sup>

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<sup>3</sup> [Welsh Government response to the Future Generations report 2020](#), October 2021

<sup>4</sup> Auditor General for Wales, [So, what's different? Well-being of Future Generations report](#), May 2020

<sup>5</sup> Public Accounts Committee, [Delivering for Future Generations: The story so far](#), March 2021

<sup>6</sup> [Welsh Government response to the report of the Public Accounts Committee \(5th Senedd\) Delivering for Future Generations – the story so far](#), September 2021

<sup>7</sup> [Future Generations Commissioner, written evidence, 19 January 2022](#)

<sup>8</sup> [Letter to the Future Generations Commissioner, 14 February 2022](#)

<sup>9</sup> [Letter from the Future Generations Commissioner, 1 March 2022](#)

<sup>10</sup> [Letter to the Minister for Social Justice, 15 February 2022](#)

<sup>11</sup> [Letter from the Minister for Social Justice, 7 March 2022](#)

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## Review of public bodies subject to the Act

**14.** In its report *Delivering for Future Generations: The story so far*, PAC recommended that the Welsh Government carry out a review of the public bodies that are subject to the Act.<sup>12</sup> The report stated that the review should:

- *take into account the impact on the implementation of the Act at a national level that including/omitting any particular public body would have;*
- *acknowledge that the inclusion of any additional public bodies will result in additional reporting, monitoring and auditing requirements that will inevitably have financial/resourcing implications;*
- *clearly set out the expectations of public bodies that are not formally subject to the Act in relation to sustainable development, and how those expectations will be monitored and enforced; and*
- *clearly set out the criteria against which inclusion/exclusion decisions were made and the process or timeframes by which future reviews will be initiated."*

**15.** In accepting this recommendation and the need for a review, the Welsh Government confirmed that the *"four tests applied in determining which public bodies were subject to the [...] Act when it was being developed will form the basis of this work."*<sup>13</sup> The Government also confirmed that the review would be concluded by summer 2022.

**16.** We asked the Commissioner about the review during our evidence session. Her official told us:

*"We have heard from Welsh Government some of the bodies in scope [of the review]. Some of these were named by the Auditor General's 2020 report, and some of them, we understand, are bodies that have come into being since 2015. At last count, there are possibly 74 additional public bodies within scope of this review, which would have a massive impact on us as a team, of course, and our ability to respond to requests for support and to monitor and assess these additional bodies."<sup>14</sup>*

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<sup>12</sup> Public Accounts Committee, *Delivering for Future Generations: The story so far*, March 2021

<sup>13</sup> Welsh Government response to the report of the Public Accounts Committee (5th Senedd) *Delivering for Future Generations – the story so far*, page 3

<sup>14</sup> Equality and Social Justice Committee, 7 February 2022, RoP paragraph 44

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**17.** In our letter to the Minister of 15 February 2022, we asked for further information in relation to the review, including the number of bodies being considered. The Minister responded:

*"Based on our initial assessment, many of the public bodies identified in this list will not satisfy the established criteria, and we estimate that there will be fewer than ten additional public bodies subject to the Act following the review."<sup>15</sup>*

## **The Commissioner's budget**

**18.** In her evidence to the Committee prior to our evidence session, the Commissioner confirmed that she had sought additional resources from the Welsh Government:

*"This year, as we move towards need based budgeting, I have asked Welsh Government for increased resources to help me offer more support to public bodies and those who can help achieve the well-being goals as set out in the Act and to implement PAC's recommendations.*

*If this increase is not agreed, my baseline funding will mean that I will have to reject even more requests for advice and assistance and cut back almost entirely the advice I give on policy as I focus my limited resources to my core duties to promote the sustainable development principle in general and monitor and assess the extent to which well-being objectives are being met."<sup>16</sup>*

**19.** During our session, the Commissioner went into more detail on her budget position, and the challenge that her level of resourcing poses to the work that she does:

*"...I'm the lowest funded commissioner of all of the four commissioners. I don't begrudge him a single penny, but I get less than half the money that the Welsh Language Commissioner gets, and less than half the resource of the Welsh Books Council, for example. The Public Services Ombudsman gets £6.4 million, and my budget is £1.5 million.*

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<sup>15</sup> Letter from the Minister for Social Justice, 7 March 2022

<sup>16</sup> Evidence from the Future Generations Commissioner, January 2022

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*I think the reality is that I've had to make some tough decisions, and with my limited resources, I've had to work out where do I use that limited resource to get to the thing that's going to have the biggest impact."*<sup>17</sup>

**20.** The Commissioner wrote to the Minister in relation to her budget position in January 2022, setting out the main issues facing her in terms of capacity to support implementation of the Act.<sup>18</sup> In the letter, she noted that without additional funding, she would have to "*cease the provision of advice and support to public bodies including Welsh Government which will have a hugely damaging impact on implementing the WFG Act*".

**21.** In our letter of 15 February we asked the Minister for an update on her consideration of the Commissioner's budget. She told us:

*"As you are aware, given the significant pressures on Welsh Government budgets in 2022-23, I was only able to allocate a flat-lined revenue budget for Commissioners within my portfolio. I understand this will cause financial pressures for those Commissioners over the year ahead, but we are eager to jointly explore alternative options to alleviate these pressures."*<sup>19</sup>

**22.** The Minister confirmed that a temporary increase had been agreed to the level of financial reserves the Commissioner is able to carry over into 2022-23. She noted that this would "*provide greater short-term certainty while enabling joint discussions on longer-term funding to continue.*"

**23.** While different roles and responsibilities make comparison difficult, the following table sets out the Commissioners' core responsibilities and budgets for illustrative purposes:

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<sup>17</sup> Equality and Social Justice Committee, 7 February 2022, RoP, paragraph 36

<sup>18</sup> [Letter from the Future Generations Commissioner to the Minister for Social Justice](#), 18 January 2022

<sup>19</sup> Letter from the Minister for Social Justice, 7 March 2022

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Commissioner	Core responsibilities and functions	Budget
Future Generations Commissioner	To promote the Sustainable Development principle, in particular to act as a guardian of the ability of future generations to meet their needs and encourage public bodies to take greater account of the long term impact of the things they do; and monitor and assess the extent to which well-being objectives set by public bodies are being met.	£1.509m
Children's Commissioner	To safeguard and support the rights of children and young people; and review the decisions of public bodies, including the Welsh Government.	£1.580m
Older People's Commissioner	To promote awareness of the rights and interests of older people; challenge discrimination against older people; encourage best practice in the treatment of older people; and review the law affecting the interests of older people.	£1.589m
Welsh Language Commissioner	To promote and facilitate the use of the Welsh language.  Attention must also be given to the official status of the Welsh language in Wales; the duties to use the Welsh language set by the Standards, and the rights arising from the enforcement of those duties; the principle that the Welsh language should not be treated less favourably than the English language in Wales; and the principle that people in Wales should be able to live their lives through the medium of Welsh if they wish to do so.	£3.327m revenue  £0.05m capital
Public Services Ombudsman	To consider complaints by members of the public about maladministration or failure by public bodies in the provision of services; and that local authority members or employees may have breached a relevant code of conduct.	£5.287m (cash)  [£5.337m (net resource requirement)]

## Our view

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The Commissioner's unique role is internationally admired and recognised as a world first. It is vital therefore that we in Wales capitalise upon this international renown and use the role and office to its maximum potential.

We are pleased that the Welsh Government is taking forward the PAC recommendation to review the number of bodies that are subject to the Act and note that the Minister's estimate as to the number of additional public bodies which will be subject to the Act will be fewer than ten. More broadly however, we would reiterate our concerns about the potential impact on the Commissioner's capacity and the importance of ensuring that the resources allocated to the Commissioner are commensurate to the work that her office is expected to undertake. We note that the Welsh Government has confirmed a flat-lined revenue budget for the Commissioner, but that a temporary increase in the level of financial reserves the Commissioner can carry over into 2022-23 has been agreed. This temporary fix should be superseded by more sustainable long-term funding arrangements at the earliest opportunity and the Senedd should be given ample opportunity to scrutinise them.

Further, we note the Commissioner's comments that there is a discrepancy in funding between Wales' Commissioners. While we acknowledge that each Commissioner has different roles and responsibilities and that resourcing needs will vary accordingly, clarification on the justification behind different resource allocations is lacking and warrants further scrutiny. We believe that the onus is on the Welsh Government to better justify how each Commissioner is resourced. To enable greater transparency around arrangements and to ensure that lessons are learned ahead of the appointment of a new Commissioner, we believe that a Committee of the Senedd should consider a review of how Wales' Commissioners are resourced with a view to assessing current roles and responsibilities and identifying future needs, in order to achieve maximum efficiency. We believe that the Public Accounts and Public Administration Committee would be best placed to carry out this work. The number of, and roles of the Welsh Commissioners have developed in a piecemeal fashion over the course of devolution. Such a review therefore could consider whether there is scope for better alignment of the Commissioners to achieve economies of scale by the sharing of some backroom functions and staff, particularly in light of the calls to create additional Commissioners.

**Recommendation 1.** We recommend that the Public Accounts and Public Administration Committee carry out a review of the resourcing arrangements of Wales' Commissioners. This review could include consideration of whether any economies of scale can be achieved by the sharing of some backroom functions and staff.



**Recommendation 2.** The Welsh Government should carry out an evaluation looking at the scope of the Commissioner’s work and responsibilities with a view to setting out a plan to support any future expansion. This evaluation should be undertaken in time for the appointment of a new Future Generations Commissioner in 2023.

## The complex landscape

**24.** The Future Generations Report recommended that the Welsh Government should stop *“complicating an already complex landscape.”* The report added that any proposals for new governance arrangements should: *“answer the question of how it is assisting integrated policy making and service delivery and should set out clear guidelines at the outset on how that body should interact with others to achieve local and national well-being objectives.”*<sup>20</sup>

**25.** PAC acknowledged the complexity of the landscape in its report, concluding that the *“complex and bureaucratic landscape of partnership bodies and plethora of legislative and reporting requirements has made it more difficult for public bodies to adopt this Act and has, at times, actively disincentivised it.”*<sup>21</sup>

**26.** The Commissioner reiterated her concerns and noted, in particular, the recent creation of Corporate Joint Committees (CJCs) in our evidence session:

*“The other issue that we’re particularly concerned about is the continuation of adding complexity to an already complex landscape. I know this is something that this committee has considered in the past—the fact that often—and we still think that this is the case—public services boards are being bypassed in terms of prioritisation, in terms of funding packages, in terms of support and so on, and new layers of governance are being created. So, the newest layer of governance now, of course, is the Corporate Joint Committees. It’s still not clear how all of that interaction between CJCs, PSBs, RPBs and so on will all happen.”*<sup>22</sup>

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<sup>20</sup> [Future Generations Report, Chapter 2, page 28](#)

<sup>21</sup> Public Accounts Committee, Delivering for Future Generations: The story so far, March 2021, Conclusion 11

<sup>22</sup> Equality and Social Justice Committee, 7 February 2022, RoP, paragraph 22

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## Our view

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Concerns regarding the complexity of the landscape are likely to be exacerbated by the extra layer that has been added with the creation of the CJsCs. It is a matter of concern that the Commissioner is unclear around how all the different bodies will interact within the context and the framework set out by the Act. The Welsh Government needs to do more to provide leadership and clarity on these matters and take steps to articulate a better shared understanding of how activities hang together.

**Conclusion 1.** The Welsh Government should provide greater leadership and clarity around how different bodies interact within the context and framework of the Act.

### The “implementation gap” and the need for culture change

**27.** During our evidence session the Commissioner expressed concern at the gap between policy and delivery. This “implementation gap” which she described as *“a tendency to push out legislation, policies, guidance and direction from Government with little understanding of how it will be delivered or adequately resourced in practice.”*<sup>23</sup> She acknowledged that progress had been made in terms of policy, but noted concern with the detailed implementation of the Act:

*“...we are seeing better integration at a strategic policy level and better application of the Future Generations Act at a strategic policy level than we have ever seen before. So, that's hugely encouraging, and I think that the First Minister can be commended for that. When it gets down into the system, however, it is the detailed implementation, and it's that detailed implementation that people out there, the various local authorities and various regional structures, and so on, have to deal with, that is not just necessarily joined up.”*<sup>24</sup>

**28.** The Commissioner provided us with several examples of this “implementation gap” in practice, including:

*“The Welsh Transport Appraisal Guidance (WelTAG) was updated in 2017, with input from my team to help officials provide guidance that was more in line with the Act. Still, there has been a lack of resources and training for its*

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<sup>23</sup> Letter from the Future Generations Commissioner, 1 March 2022

<sup>24</sup> Equality and Social Justice Committee, 7 February 2022, RoP paragraph 87

*proper implementation and no analysis of capacity in the current system to enable these changes to happen."*

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*A current Welsh Government consultation, titled 'Planning legislation and policy for second homes and short-term holiday lets', provides no link to the Well-being of Future Generations Act, the Welsh Government's well-being objectives, how such a policy would apply the sustainable development principle and, therefore, how local actors are meant to use such a policy to improve well-being and equality for the people they serve."<sup>25</sup>*

**29.** The Commissioner also pointed specifically to comments made by the then Welsh Government Permanent Secretary during a PAC evidence session in the Fifth Senedd.<sup>26</sup> The then Permanent Secretary was asked if there had been any occasions since the Act became law in 2015 where she had had to challenge a Minister regarding an inconsistency between the policy or approach that the Minister wanted to take and the Act. The Permanent Secretary responded:

*"I can't think of an example where that would happen. And, for me, that shows that the system works, because the policy development process should not result in a situation where there is, if you like, a clash between civil servants and Ministers at all. It should be a process of developing policy and airing concerns early enough in the process to be able to address them."<sup>27</sup>*

**30.** In evidence to PAC, the Auditor General also highlighted an incongruence in decision making with the Act :

*"...repeatedly, examples where we're seeing decisions taken by the Welsh Government that are not entirely congruent with the spirit of the Act. So, some examples of very good practice, but it's a large organisation with a vast array of policy responsibilities within it, and genuinely to get the whole of that machine operating in a way that is internally joined up enough to make a reality of the Act, I think, is a huge challenge."<sup>28</sup>*

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<sup>25</sup> Letter from the Future Generations Commissioner, 1 March 2022

<sup>26</sup> Equality and Social Justice Committee, 7 February 2022, RoP paragraph 87

<sup>27</sup> Public Accounts Committee, 1 February 2021, RoP paragraph 195

<sup>28</sup> Public Accounts Committee, 14 December 2020, RoP paragraph 85

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**31.** We asked the Minister if she agreed with the assessment made by the former Permanent Secretary. She said:

*"With regards to the Commissioner's concerns about the role of the Act within Government, Welsh Ministers receive advice from civil servants to inform the decisions we take, the policies we develop, and the laws we propose. All advice to Ministers takes account of relevant legislative and policy matters, including the Well-being of Future Generations Act."*<sup>29</sup>

**32.** We asked the Minister to outline what systems the Welsh Government has in place to ensure that its business and conduct is compliant with the Act. The Minister responded:

*"Welsh Ministers are steadfast in our commitment to act in accordance with the Act. Publishing our well-being objectives as part of the Programme for Government demonstrates the central role of the Act in how we will deliver a stronger, greener and fairer Wales. The objectives have been set in accordance with the sustainable development principle and formalise our contribution to Wales' seven well-being goals. Progress towards these objectives and the associated steps are kept under review through our Annual Report."*<sup>30</sup>

## Section 20

**33.** Section 20 of the Act gives the Commissioner the power to conduct a review into the extent to which a public body is safeguarding the ability of future generations to meet their needs. Any such review may take into account the steps the body has taken or proposes to take to meet its well-being objectives and the extent to which the body is meeting those objectives. A Section 20 review is the strongest use of the Commissioner's powers under the Act.

**34.** The Commissioner referred to her use of Section 20 powers to carry out a review into procurement, the report for which was published in February 2021.<sup>31</sup> She noted *"public bodies were not adequately applying the Future Generations Act to their procurement decisions"*<sup>32</sup>

**35.** The report made recommendations to the Welsh Government, one of which called on the Welsh Government to establish a Procurement Centre of Excellence for improving coordination,

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<sup>29</sup> Letter from the Minister for Social Justice, 7 March 2022

<sup>30</sup> Letter from the Minister for Social Justice, 7 March 2022

<sup>31</sup> Future Generations Commissioner, [Procuring Well-being in Wales](#), February 2021

<sup>32</sup> Equality and Social Justice Committee, 7 February 2022, RoP, paragraph 60

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collaboration and providing practical support to public bodies in the exercise of their procurement functions, specifically in relation to the Act. However, the Commissioner told the Committee that “...the Welsh Government has not taken that recommendation forward as such yet.”<sup>33</sup>

**36.** The Commissioner has now launched a Section 20 review into how the machinery of Welsh Government is carrying out sustainable development and safeguarding the ability of future generations to meet their needs, the findings of which she is aiming to publish in November 2022.<sup>34</sup>

## Our view

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### Implementation gap

The “implementation gap” has been a recurring theme throughout scrutiny of the Act and the Commissioner, and by multiple actors including Senedd Committees and the Auditor General for Wales. The situation has improved somewhat since the early years of the Act with the Commissioner, for example, noting the marked change in political commitment and leadership. Furthermore, as part of our recent scrutiny of the Draft Budget the Committee was pleased to see examples provided of how spending decisions align with the well-being goals and five ways of working. It remains the case however that a complex landscape coupled with patchy and inconsistent application by public bodies and decision-makers across the length and breadth of Wales is preventing full realisation of the Act’s aims.

In terms of the Welsh Government, it is evident that more needs to be done to improve implementation of the Act, and to ensure that this is done consistently at all levels in both policy and practice. There appears to be a heavy reliance on the Commissioner’s office by the Welsh Government to support and advise on how the Act is incorporated into its work and this necessitates a culture change. The Welsh Government should redouble its efforts to embed the Act into the knowledge and understanding of its workforce so reliance on the Commissioner’s office is reduced.

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<sup>33</sup> Equality and Social Justice Committee, 7 February 2022, RoP, paragraph 61

<sup>34</sup> [Review by the Future Generations’ Commissioner into how the machinery of Welsh Government is carrying out sustainable development and safeguard the ability of future generations to meet their needs – Terms of reference](#), January 2022

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## Section 20

In terms of the use of Section 20 and the findings of the Commissioner's previous report into procurement, we note that the Welsh Government has yet to accept its recommendation in relation to the creation of a Centre of Excellence for Procurement.

We welcome the Commissioner's Section 20 review into the machinery of Welsh Government and consider this a timely endeavour.

**Conclusion 2.** While encouraging progress is being made in terms of the implementation of the Act, there is ample room for improvement, particularly in relation to the gap between policy and practice. Given the cross-cutting nature of the Act, we would like to draw the issues raised in this report to the attention of the wider Senedd. Embedding the Act into all aspects of Members' and Senedd Committee's work will be crucial in making further progress. The Act heralds transformative change for Wales, and ensuring its effective implementation in future will be key to achieving this ambition.

**Recommendation 3.** The Welsh Government should set out how it uses training and professional development to ensure its employees fully understand and comply with the Act, so as to reduce the apparent need for reliance on the Commissioner's office.

**Recommendation 4.** The Welsh Government should set out its plans for embedding the Act to ensure that all aspects of public life are shaped by the legislation and that the measures in place to monitor and evaluate progress in implementing the Act are fit for purpose.