

Audit and Needs Analysis: Human Rights Education and Training



2008

Victorian Council of Social Service



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1. Summary

Audit

Community Sector Organisations' (CSOs) understanding of the terms 'human rights' and 'training' is broad. For CSOs, human rights are generally conceived of as underlying principles of equality, fairness and dignity which include, but are not restricted to, the rights set out in the Victorian Charter of Human Rights and Responsibilities ('the Charter'). Likewise, 'training' encompasses both formal and informal processes and covers a variety of contexts in which education is provided.

CSOs have demonstrated an extensive engagement with human rights training and education in their past, present, and future plans. Such activities have been (and will be) directed to a wide target group including all levels of staff from managers to direct care workers, clients, and volunteers, as well as to the general public.

The subject matter of human rights training provided was mostly tailored to the individual organisation's area of work. While CSOs demonstrated a willingness to engage with the Charter, they usually did so in the context of a wider human rights and social justice perspective based on the underlying principles of human rights rather than legislative instruments. One reported limitation of using the Charter was the limited applicability of the rights contained to their areas of work, such as health or housing.

Training was often (but not exclusively) 'built-in' to existing programs. Training and development is an integral and ongoing part of organisational practice for most CSOs, and the human rights training that has taken place has largely been incorporated into existing staff training, induction and other such programs.

Uncertainty around future plans was generally a result of conflicting organisational priorities, or subject to future demand.

Needs analysis

Community Sector organisations expressed a strong interest in having human rights training and education provided. Of the small number that did not, most claimed that it was because they already had such training planned.

The greatest need was for training staff – both employees and managers – but a significant number also expressed interest in having training provided for clients and others, particularly volunteers and board members.

A variety of modes of delivery found support, including 'train-the-trainer' and single or multiple sessions of direct training.

There was a high demand for training on the Charter, particularly how it could be used

for advocacy. There was also a strong response for general human rights information and on working within a human rights framework as well as specific, targeted human rights topics such as children's rights.

Many respondents stressed the need for training to have direct, practical application to work the work of the organisation. For training to be relevant it must be applied rather than theoretical.

Respondents also stressed the importance of accessibility, whether this be in the format of materials provided, or the delivery of physically accessible training.

There was a high level of confusion around the category of 'public authorities', with almost half the organisations surveyed being unsure whether or not they were a public authority, and limited understanding of the meaning of the concept. This confusion was in part due to the nature of the definition of 'public authority' in the Charter itself, but also due to contradictory usage of the term or similar in other State or federal legislation.

A summary of the recommendations is provided in *Appendix 1*.

2. Introduction

The Victorian Council of Social Service (VCOSS) has served Victorians as the peak independent coordinating body of the social and community services sector for over 60 years. VCOSS raises awareness of the existence, causes and effects of poverty and inequality, and advocates for the development of a sustainable, fair and equitable society. As well as promoting the wellbeing of those experiencing disadvantage and contributing to initiatives seeking to create a more just society, VCOSS also provides a strong, non-partisan voice for the community sector.

VCOSS advocates on behalf of disadvantaged Victorians through:

- policy development and analysis;
- direct advocacy to government;
- evidence based research;
- reports, media releases and submissions;
- an annual State budget submission; and
- strengthening the community sector with collaborative initiatives and by
- providing a range of services to member organisations.

VCOSS is committed to promoting an understanding of, engagement with, and protection of human rights in Victoria. Stemming from this commitment is a responsibility to ensure that those Victorians who experience disadvantage and/or who are marginalised are able to both fulfil their human rights and engage in processes and decisions which impact on their lives.

VCOSS currently engages in a range of human rights work. VCOSS has incorporated a human rights framework explicitly into its policy and advocacy work since 2001. In doing so, VCOSS has sought to link domestic policy and advocacy discussions to the various international human rights Conventions.

In 2005, VCOSS and the Federation of Community Legal Centres were funded to conduct a series of 15 community consultations around the introduction of the Victorian Charter of Human Rights and Responsibilities ('the Charter'). Since then, VCOSS has been actively involved in human rights policy, advocacy, and education, particularly focused on the Victorian Charter but also working on local, national and international human rights issues which impact on Victorians.

2.1 *Background*

The introduction of the Charter on 1 January 2007 included a commitment to public education on human rights and the Charter.¹ There was clearly both a mandate and a

1. 41.Functions of the Commission: The Commission has the following functions in relation to this

need for human rights education – partly because the Charter imposed a new legislative regime that individuals and organisations needed to understand and incorporate in their work, and partly because the Charter was intended as a first step in creating a broader culture of human rights.

The 2006-07 State Budget allocated \$6.5 million to fund a range of measures to ensure compliance with the new Charter, which translates to \$1.6 million per year over 4 years. This included providing education and training for key government agencies, establishing a human rights unit in the Department of Justice to analyse policy and legislation, and providing additional resources for the Victoria Equal Opportunity and Human Rights Commission to undertake community education and reporting functions.

The limited funding available for human rights education has necessarily led to prioritisation in its provision, and consequently the need to find a way to target this education most effectively. It was VCOSS' view that any training or education delivered to the community sector should be driven by actual need and for this reason, VCOSS undertook an audit and needs analysis of human rights training and education in the community sector.

Methodology

A survey of 10 questions was developed, covering both existing training and education programs and plans, and the level of demand for training and education to be delivered. The survey was distributed through VCOSS' monthly newsletter 'Noticeboard', was posted on VCOSS' website and distributed through various community sector email networks. A total of 52 surveys were returned over a 3 month period between May 2007 and August 2007. These came from a variety of community sector organisations (CSOs), ranging from disability service providers to women's organisations to community legal services and many others in between.

The survey covered both an audit of human rights training and education that had been undertaken in the past or was currently being provided, and a needs analysis of the types of training and education that organisations wanted or felt they needed to be provided in the future. The audit also includes additional information about the major sources of human rights education or information in Victoria. The findings are presented below.

Charter—

...

(d) to provide education about human rights and this Charter;

3. Audit

3.1 Overview

Human rights education and training appears to be widespread in the community sector. Overall, organisations demonstrated a high level of commitment to human rights education amongst both their staff and their clients.

- A third of organisations surveyed were currently delivering human rights training;
- 44% had done so in the past; and
- more than half had plans to deliver training in the future.

Only a quarter of the 52 organisations surveyed had never delivered human rights education or training, nor had plans to do so in the future.

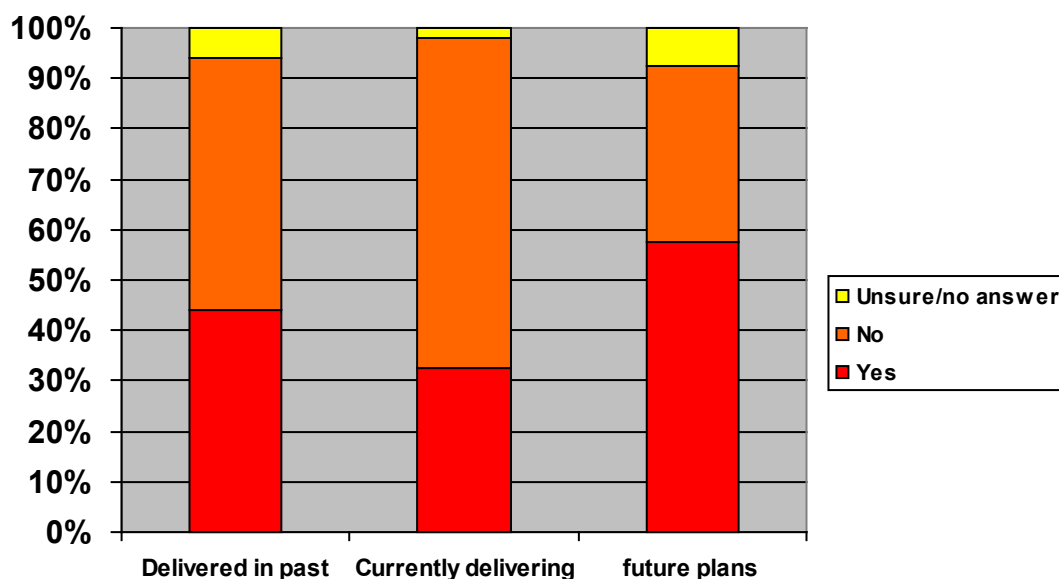


Table 1: Delivery of human rights training : past, present and future

3.2 Training conducted in the past

‘Human rights’ was understood quite broadly. The survey questions deliberately did not specify what was meant by ‘human rights’ or provide a definition. While some organisations reported conducting training specifically on human rights or on the Victorian Charter, many others took a broader view of what constituted ‘human rights’.

While some of the training provided was general, most was tailored to their area of work. This was particularly true of the more informal training that occurred. Training was provided for both staff and service users.

Content: Human rights specific training

For the few organisations that had conducted training specifically on human rights, the Charter was often a focal point, but rarely the central concern. Some had conducted consultations and forums on human rights prior to the introduction of the Charter, and one mentioned general training incorporating references to United Nations Conventions and other human rights. More frequently training was tailored to specific areas of interest which incorporated all relevant human rights instruments including the Charter and international Conventions or Treaties.

One organisation had conducted training and education for the youth sector and other professional groups on child rights awareness in a human rights context; another had done so on rights of people with mental illness, particularly in relation to the United Nations Convention of Human Rights. A community health organisation had run a forum on “Why health is a human right” for consumer advocates and health professionals from the acute and community health sectors. A housing service had run training on implementing human rights in service delivery and advocacy, targeting homelessness assistance services network in the Loddon Mallee Region.

One respondent incorporated elements of human rights into a broad training schedule that included around 600 training events per year. These were both internal, such as sessions on sexual harassment or bullying for staff, or training they conducted externally. All new staff were required to complete an induction training module that included human rights.

At the time the survey was conducted there had been little opportunity post-introduction of the Charter to conduct training, and it is likely that more Charter-specific training has taken place in the last 12 months. Nevertheless, it seems likely that the Charter will remain only a part of the overall human rights picture given the focus of organisations on tailoring training to their work areas and interests, and the limited applicability of the Victorian Charter to issues relevant to the organisations surveyed, such as health, housing, women and children.

Content: Wide interpretation of ‘human rights’:

Many respondents mentioned training they conducted that was ‘not specifically’ human rights. This seemed to be based on a discrepancy between what people understood as formal human rights, such as legislative instruments or the United Nations system, compared with a broader understanding of underlying human rights principles. For example, one organisation did work based on social justice principles, including ‘people’s entitlements and how to access these; how to make a complaint; rights &

responsibilities'. Another ran regular training looking at ways to ensure their clients have a better understanding of their rights and how their staff relates to them.

For many respondents working with particular population groups, such as people with disability, people from culturally diverse backgrounds or women-specific services, the work they did was seen as inherently rights-based.

One organisation conducted in-house training for staff every six months or so that was 'not strictly human rights, but women's rights'. Another provided 'women-sensitive training - not termed human rights but it deals with all the issues of human rights in relation to women.' One large women-specific service focussed primarily on gender and diversity training and self-advocacy to individuals, groups and professional organisations including hospitals, schools, community organisations, private practice and government departments.

Likewise, those organisations providing disability services did not see themselves providing human rights education specifically, but saw what they did as 'fit[ting] into human rights'. These included community legal education, primarily directed at people who have an intellectual disability but also to service providers; a training course called 'Being Your Boss' about people with disabilities taking more control over their support services to teach about their rights and what they can expect in the community; two respondents provided general disability rights training 'which incorporates human rights, but not specifically as human rights' to internal staff and other organisations; while a national disability advocacy service provided information on disability discrimination laws including access to services, advice and feedback to government as a representative body on issues that affect blind and vision impaired people.

Other training conducted included cross-cultural or multicultural training provided to service users, corporate sector and community organisations; legal training given to phone advisors, schools, unions and the general public about employment rights which they considered fell under the rubric of human rights 'under [a] broad definition of human rights including employment rights'.

Two respondents did work on men's behavioural change programs, including training for clients on managing violence or personal skills education (such as men's responsibility training), training around the pitfalls and dangers of working with men who have used violence for Family Violence Court Workers, and training for staff which included topics such as 'Dealing with Occupational Disruption and Aggression', 'Depression and Anxiety' and 'Dealing with Adolescent Violence Towards Parents'.

All of the examples mentioned above were put forward as illustrations of 'human rights training', demonstrating a broad conception in the community sector of what constitutes 'human rights'. Interestingly, examples of broader human rights training were usually offered with a qualifying comment along the lines of 'it's not specifically "human rights", but...' There appears to be a significant demarcation between what CSOs *call* 'human rights' and what they *see* as human rights.

'Training' in one form or another is generally part of almost every organisation's regular practice, whether it be staff training and development, client support, or networking with other organisations. The work done by CSOs by its nature often comes from a social justice perspective that fits well within or alongside a human rights framework, which most see as a beneficial approach to organisational practice.

Form of Training Conducted

A broad interpretation was also given to the terms 'education' and 'training'. Again, a deliberate decision was made not to define these terms in the survey.

No organisation surveyed reported that they had specifically designed and delivered a formal human rights training program. Most of the training provided was either short term program-based training, incorporated into an existing training program or staff induction, or single stand-alone events.

The form of training seemed largely dependant on the target audience. One respondent had run a forum on "Why health is a human right" for consumer advocates and health professionals from the acute and community health sectors. They considered this to be part of a community education and advocacy program, and not necessarily 'training' per se. A homelessness assistance service ran a full-day training session each year for the last four years for their sector on implementing human rights into service delivery and advocacy, with follow-up work in between the sessions.

Two organisations mentioned having a regular formal training program for staff approximately every six months, and one included training as part of an induction model for new staff.

Others with a broader focus on information provision conducted regular training as part of their work. Examples included state-wide training for volunteers; men's violence training provided to students (as part of a graduate certificate in social science), professionals in the field, clients and staff; and gender and diversity training to government, private practice, community organisations and women themselves.

Many respondents mentioned informal training that took place, including general information provision to clients, advice to government, intra-organisational meetings and subcommittees, conferences, personal skills education and consultations with clients.

3.3 Current initiatives

About a third of organisations surveyed were conducting human rights training at the time, compared to nearly half which had conducted training in the past. This is unsurprising given the significant overlap between current initiatives and past training and education delivered. As outlined above, much of the training and education provided is through regular and ongoing programs and is usually built-in as part of an

organisation's regular functions. Training in this context is most appropriately seen as a continuum rather than as discrete training 'events'.

Like training delivered in the past, there was a degree of 'human rights specific' training, but much fell under the broader understanding of human rights described above, such as gender diversity, equal opportunity, women-specific dealing with 'human rights in relation to women', personal skills training to clients, and training volunteers.

There were some specific initiatives unique to the current training offered; these were largely focused on including information on the Victorian Charter. One service working with young people were running four sessions focusing on awareness raising of human rights generally which incorporated information about the Victorian Charter. A community legal service had two half-day sessions planned for community legal education workers in community legal centres covering basic human rights and the Charter.

For others, training occurred on an ad hoc basis on request and usually subject to capacity.

3.4 Future plans

Plans for future training or education had the highest response, with nearly 60% of organisations responding positively and many more being unsure whether or not they will conduct human rights training in the future. Again, given the ongoing and regular nature of much of the training, there was a significant overlap with both past and current training being conducted and many responses were marked 'as above'. Like current training, future plans were also more likely to include the Charter as a component.

Some specific plans for future training included:

- A forum looking at how the Charter fits with the Victorian *Mental Health Act*, aimed at the general public and clients. The organisation was expecting significant interest from consumers of their service.
- Workshops for blind and vision impaired persons;
- Workshops for service providers who want to understand what the Charter means, particularly in light of people with disabilities;
- A pilot training program for people who experience communication or speech difficulties; and
- Training for Neighbourhood House staff and volunteers.

A number of respondents were unsure of whether or not they would be providing human rights training in the future. Either no concrete plans had been made and the organisation was still deciding whether or not to run training, or provision of such services was dependant on demand and subject to capacity. A number were in the process of planning but could not be specific about what form this would take or when

it would happen. For some, this was connected to a wider process of organisational evaluation. For example, one organisation had decided to implement human rights standards into their policies and procedures following recent Charter training they had received, and so were unsure of whether or not further training was going to be necessary. Another was 'open to integrating a human rights framework in our work more consistently/effectively' and were therefore considering the possibility of human rights training but were unclear about the detail.

One organisation noted that it was unlikely they would conduct human rights training in the future as most of their internal training is related to making sure they can meet their obligations in relation to their funding agreements. They did acknowledge, however, that rights (in this case, children's rights) were seen as 'one of the building blocks of the services they provide.'

Recommendation 1

That the training and education work already being done by Community Sector Organisations (CSOs) be recognised, and resourced to continue through financial and practical support. Training and development are a regular part of organisational functioning and CSOs have demonstrated that they are skilled at incorporating human rights into existing programs. Human rights training and education must focus on building existing capacity and facilitate integration with current practices.

Recommendation 2

That financial or practical resources provided should not be directive. They should allow organisations to tailor training according to need, taking into account the broad understanding of both 'human rights' and 'training' within CSOs.

Recommendation 3

That externally provided human rights education continue to be available through the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or other respected and known sources.

3.5 Further resources

The Victorian Equal Opportunity and Human Rights Commission

The Victorian Equal Opportunity and Human Rights Commission (VEOHRC) has responsibility to provide education about human rights and the Charter². The VEOHRC has established a human rights education unit delivering human rights education through training sessions and written material produced.

To date, the focus has been on community sector education. They have four workshops available: Introduction, Exploration (which looks at the Charter in more detail), Applied (which focuses on advocacy), and Operational, looking at organisational change. In 2007, the VEOHRC in conjunction with VCOSS and the Department of Human Services also ran a series of 20 forums in rural and regional Melbourne on the Charter.

The written material available provides a general overview of the Charter and its operation and is also available in easy English, audio and community languages.

- Victorian Charter of Human Rights & Responsibilities - Frequently Asked Questions;
- Victorian Charter of Human Rights & Responsibilities - Brochure
- Victorian Charter of Human Rights & Responsibilities - A4 Booklet
- Your Rights to Rights - Easy English
- Your Rights to Rights Audio
- Your Right to Rights in Community Languages: Amharic, Arabic, Bosnian, Chinese, Croatian, Dari, Greek, Italian, Khmer, Kurdish, Macedonian, Oromo, Polish, Russian, Serbian, Somali, Spanish, Tigrinya, Turkish, Vietnamese

The VEOHRC has also produced a detailed explanation of the rights contained in the Charter called 'Victorian Charter of Human Rights & Responsibilities - Civil and political rights explained'.

The human rights education unit of the VEOHRC has been funded initially for three years from 2007 to 2009. At this stage, there has been no commitment of further funding.

More information on the VEOHRC training program can be found at <http://www.humanrightscommission.vic.gov.au/human%20rights/Charter%20workshops/>

2 Charter of Human Rights and Responsibilities ACT 2006 (VIC), S.41(d)

The Department of Justice

The Department of Justice (DoJ) has established a Human Rights Unit which has primary responsibility for training government departmental staff on the operation and implementation of the Charter. The unit also has responsibility for assisting in the preparation of statements of compatibility for new legislation being introduced into parliament.

The DoJ has produced a range of communication materials for public authorities including an introductory DVD on the Charter, an employee guide called 'Think Charter'; an activity sheet called 'Charter chatterbox'; a FAQs brochure for public authorities; and promotional posters to raise awareness of the Charter. The material is available from the DoJ website at: <http://www.justice.vic.gov.au/wps/wcm/connect/DOJ+Internet/Home/Your+Rights/Human+Rights/Human+Rights+Charter/JUSTICE+-+Human+Rights+Training+and+Communication>

Ombudsman Victoria

The Ombudsman has produced a factsheet on the Ombudsman's role regarding the Victorian Charter. Further information can be found:

http://www.ombudsman.vic.gov.au/resources/documents/16_Human_Rights_and_Responsibilities_Charter1.pdf

The Human Rights Law Resource Centre

The Human Rights Law Resource Centre (HRLRC) runs an annual '*Human Rights Law, Advocacy and Campaigning Program*' directed at lawyers, community legal workers and NGOs with an interest in using human rights law in casework, advocacy and campaigning.

The HRLRC also maintains a database on Victorian and international caselaw relevant to the Charter, and articles of interest.

See the HRLRC website for more information: <http://www.hrlrc.org.au>

Australian Centre for Human Rights Education

Based at RMIT University, the ACHRE has developed two Post Graduate Programs in Applied Human Rights: a Graduate Diploma in Applied Human Rights and a Graduate Certificate in Applied Human Rights: <http://www.rmit.edu.au/ACHRE>

Victorian Human Rights Education Committee

The VHREC focuses on promoting human rights education in schools in Victoria. They have developed a 4-lesson plan aimed at late primary school students called 'Citizen of Humanity, that can be downloaded from their website: <http://www.vhrec.org.au/index.htm>

Amnesty International Australia

AIA has a number of human rights education resources including 'Human Rights today: Discussing the issues, Accepting the Challenge', a curriculum resource aimed at students in years 9 and 10; lesson plans; youth resources and refugee rights classroom resources: <http://action.amnesty.org.au/hre/>

Department of Education and Early Childhood Development

DEECD provides human rights education resources for teachers: <http://www.education.vic.gov.au/studentlearning/programs/multicultural/tchhredresources.htm>

The website includes a booklet titled 'Ideas for Human Rights Education' produced by the Multicultural Education Unit with lesson ideas for all school levels, and links to other human rights education resources.

Foundation House

Taking Action – Human Rights and Refugee Issues Teaching Resource (2005): <http://www.foundationhouse.org.au/publications.php>

The resource provides 11 lesson units that aim to develop attitudes and behaviours that promote human rights in schools.

4. Needs Analysis

4.1 Interest in having HR training provided

There is a strong interest among community sector organisations for having human rights training provided. Over 80 per cent of those organisations surveyed responded that they were interested in having human rights training provided.

Of the small number of respondents who said they weren't interested in having training provided 2/3 of those already had training planned. None of the respondents considered that they knew enough already ('not needed'), and only one did not think it was relevant.

Two people who answered 'yes' said that it would depend on cost, and one who answered yes said that they did not have the time.

4.2 Who is the training for?

Nearly two thirds of respondents wanted training for management (63.5%) and for workers in their service (61.5%). A further 30% wanted training for clients of their services, and nearly a quarter (23.1%) indicated the need for training for other population groups, in particular volunteers (including committee members and advocates).

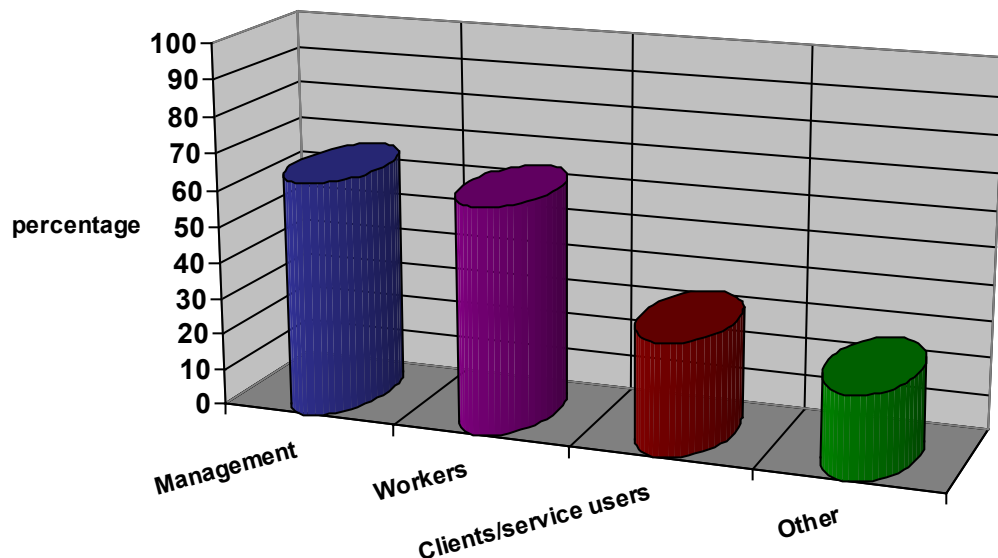


Table 2: Who would you like training for?

4.3 Form of training

Nearly half the respondents (46.2%) indicated that they would be interested in a ‘train-the-trainer’ model of delivery, where participants are provided with information and materials which enable them to provide formal or informal training to others in their organisation.

This model has a number of advantages: financially and in terms of personnel, this can often be an effective use of resources as it creates a ‘ripple effect’ which diversifies the pool of people able to deliver training and minimises the drain on particular individuals or organisations providing it. This model accords with community development principles by enabling communities to ‘own’ the information and the process by which it is delivered, and lessens the creation of human rights ‘experts’ who potentially act as gatekeepers of knowledge. Empowering communities with the tools and knowledge to implement the Charter increases the participation and engagement of the community in creating a culture of human rights.

One disadvantage of a train-the-trainer model is that community sector organisations are often operating beyond capacity and individual staff are already stretched within their current job parameters. Finding space within an individual staff member’s workload is often unfeasible and human rights training may not be an organisational priority. Since a high numbers of respondents wanted a train-the-trainer model, however, this option should be given serious consideration given the potential benefits outlined above.

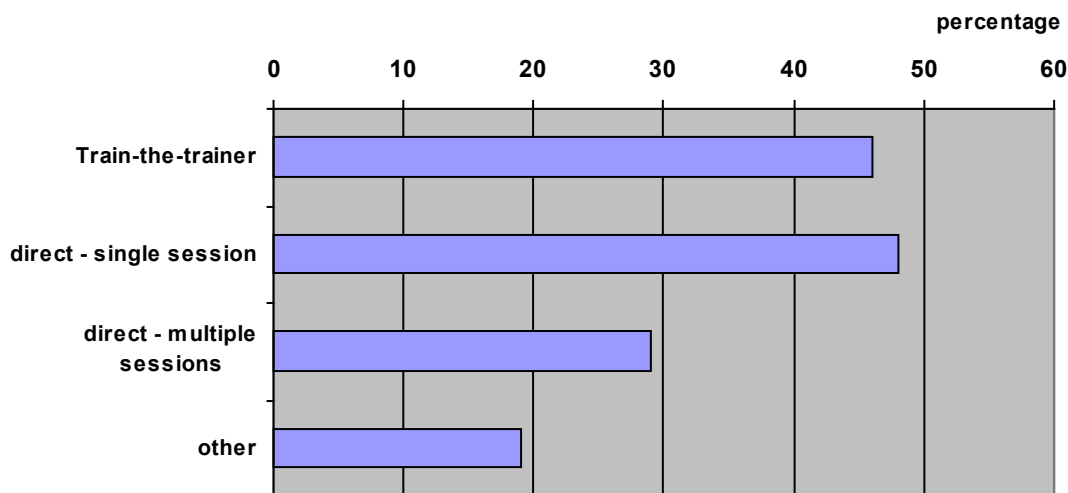


Table 3: Type of training requested

Considering these limitations to a train-the-trainer model, it is unsurprising that there were also a high number of people who wanted training provided directly to workers or clients. Almost half the respondents expressed interest in a single session of training,

while more than a quarter (28.8%) expressed interest in multiple sessions directly provided to workers or clients. In likelihood, this reflects the reality of time constraints on organisations, many of whom do not consider attending multiple sessions to be an effective use of time, or alternatively see it as a luxury they cannot afford.

A further 25% were interested in other forms of training. The most common response was that targeted training was required, including training with a focus on children's rights, women's rights, health, training for new and emerging communities, and specific training on United Nations conventions and the international context. This reinforces the need for tailored or targeted training that is seen as relevant to the daily work of the organisations.

Despite the interest in having training provided, cost will be a significant factor in the likelihood of CSOs taking up such opportunities. One respondent noted that 'not-for-profit funding is critically short, so [we] don't have much money to spend to bring in external trainers.' Training opportunities must be free or low-cost to attract a significant number of workers from CSOs.

Recommendation 9

Consideration should be given to developing both targeted train-the-trainer programs as well as direct training. Train the trainer programs would probably work most effectively at the management level (although staff resources are an issue), but also within communities.

4.4 Content

A third of respondents were interested in general human rights information. This indicates a strong interest in human rights, but also suggests that the current level of knowledge is relatively low.

There was a high response to the question of whether people wanted training on the Victorian Charter, with two thirds of all respondents indicating that they would like training around at least one of the three Charter options suggested. Forty percent were interested in an overview of the content of the Charter, again suggesting that there is a relatively low level of knowledge about it in the community sector. Over half wanted to know about the obligations of organisations under the new Charter, perhaps reflecting a concern about their potential liability and a concern with managing risk to the organisation. The greatest level of interest was for training on how the Victorian Charter might assist policy, research, advocacy and/or campaign work, with 60% of respondents indicating that this was attractive.

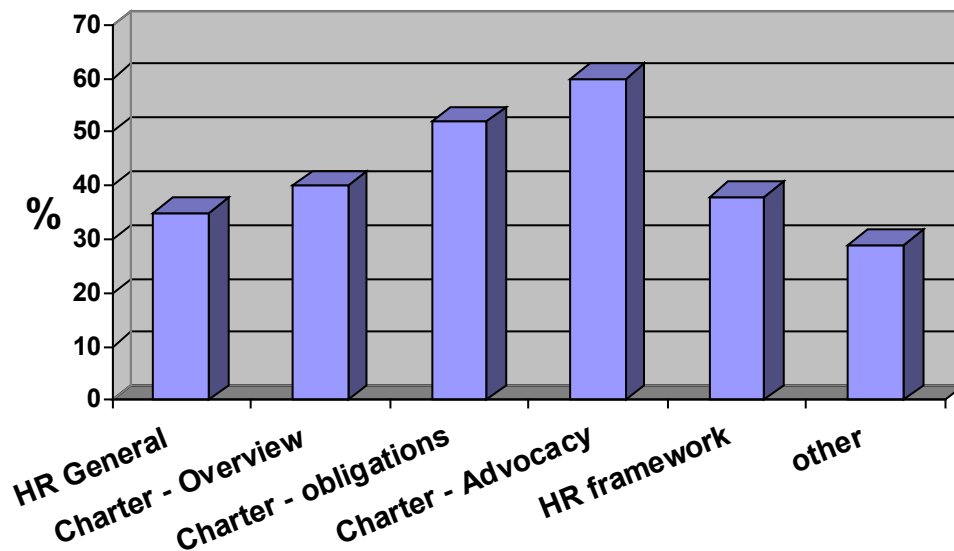


Table 4: Content of training

Nearly 40% were also interested in a more general approach to working within a human rights framework, and a further 30% indicated that they would be interested in other content; again this was largely around specific areas including women, children, health, and homelessness. One respondent wanted training for self-advocacy for clients, and another expressed interest in the international context 'to create a connection between the global village and everyday occurrences'.

Responses were clear that the most beneficial training is that involves a direct and practical application of human rights theory and the Charter specifically to their work in practice. One respondent emphasised that training needs to be 'Something local / practical (rather than theoretical)'; another requested information specifically on 'how it applies in our work practices with fellow workers and clients',

Most organisations function in complex policy contexts which may include both federal and state legislation (and funding), divergent and – at times – contradictory legislation and policy, as well as client charters, accreditation processes or internal policy directives. Appropriate training will need to consider the competing and sometimes contradictory legislative and policy contexts in which organisations work.

For instance, the grounds for alleging discrimination under the Victorian Charter are based on the protected attributes in the *Equal Opportunity Act 1995 (Vic)*. The term 'disability' is not used in the EO Act, but 'impairment' is a protected attribute under s6 (b). The definition of 'impairment' includes physical disability, mental illness, intellectual

disability and the presence of organisms in the body which cause disease.³ State and federal policy and legislation refer almost exclusively to ‘disability’ rather than ‘impairment’. The *Disability Act 2006* (Vic) contains a definition of ‘disability’ but this is different to, and considerably weaker than the definition of disability in the *Disability Discrimination Act 1992* (Cth), making its compliance with the *DDA*⁴ inconsistent. For example, the definition of disability in the *DDA*⁴ includes mental and physical illness, whereas the definition in the *Disability Act 2006*⁵ does not. The recent United Nations Convention on the Rights of Persons with Disabilities⁶ does not contain a specific definition of what constitutes a disability. Article 1, however, states that “(p)ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”.

It can be very complex for an organisation to negotiate the policy and legislative context with a view to state, federal and international obligations while also attempting to achieve best practice for their organisational and optimal outcomes for their service users, particularly without specific human rights expertise on staff, limited resources, and funding constraints. While many see the Charter as an opportunity to improve on best practice and service delivery, it can be difficult to translate the content of general training into the specific contexts in which organisations work, and any training provided will need to be mindful of the need for specificity and relevance.

4.5 Format

Overwhelmingly, organisations requested training in a format that was accessible. Nearly three quarters of the respondents (71.2%) had specific requirements about the way human rights education is presented.

3 S 4 *impairment* means—

- (a) total or partial loss of a bodily function;
- (b) the presence in the body of organisms that may cause disease;
- (c) total or partial loss of a part of the body;
- (d) malfunction of a part of the body, including—
 - (i) a mental or psychological disease or disorder;
 - (ii) a condition or disorder that results in a person learning more slowly than people who do not have that condition or disorder;
- (e) malformation or disfigurement of a part of the body;

4 s 4 (1), *Disability Discrimination Act 1992* (Cth).

5 s 3 (1), *Disability Act 2006* (Vic).

6 There is no specific definition of what constitutes a disability in the UN Convention on the Rights of People with a Disability. The preamble states that “disability is an evolving concept and that disability results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others”. Article 1 states that “(p)ersons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others”. See <http://www.un.org/disabilities/default.asp?navid=23&pid=151#sqc3>

Between 10 and 20 percent of respondents indicated that they would like materials provided in accessible formats, including easy-read, languages other than English, on-line, CD-Rom, in print, or delivered at specific times. Three respondents requested information in Braille.

Half wanted training provided at a specific location, usually within a workplace or community setting. This is particularly important if an organisation wants all its employees or board to understand the human rights implications of their work (rather than only the manager or the single employee responsible for implementing human rights), or if there is an established group that meets regularly. For client groups particularly, information is often received more receptively if it is imparted in a setting in which they feel comfortable. Of course, location has a particular importance for people and organisations in rural areas who have a more limited access to training opportunities than those in metropolitan areas.

One respondent noted that training must be 'accessible in all senses', including having hearing access, wheelchair access, providing childcare, transport assistance where necessary, and expense. Again, cost was a factor mentioned by many – both for staff and for service users and will be an important consideration as to whether training opportunities are taken up.

Recommendation 10

That given the high demand for both introductory and specialised training, that priority be given to funding human rights training and education.

Recommendation 11

That training programs developed should consider both generic human rights information but also have the capacity to be tailored to specific interest or population groups.

Recommendation 12

That material be produced in accessible formats, including easy English, languages other than English, Braille, CD-Rom, on-line and in print

That training provided be fully accessible in terms of location, times, and physical access.

Recommendation 13

Training provided should be free or low cost to ensure that smaller organisations are not discouraged from attending.

4.6 Public Authorities

The survey also canvassed the level of understanding within the community sector about public authority status. Under the Charter, only public authorities can be held accountable for breaches of human rights. While all levels of government are public authorities, the definition will also encompass some companies or organisations that have a contract with government to provide services, whether they are for-profit or not-for-profit.

Respondents were asked whether any of their organisations' activities bring them with the definition of a 'public authority'. We were interested in finding out whether community service organisations understood the implications for them if they were public authorities and whether this impacted on the training they desired.

There was a high level of uncertainty about whether or not organisations were 'public authorities'. Nearly half the respondents (48%) were unsure whether or not they were a public authority. Only two respondents answered that they did not understand the question, suggesting that most people are at least aware of the concept of a public authority, even if they are unsure whether or not they are one. More than a third (38.5%) were certain of their status as public authority – 17% said they were certain they *were* a public authority and 21% were certain they were *not*.

There seemed, however, to be a high level of misunderstanding about what actually constituted a 'public authority'. Many of the organisations that were certain of their status (either a definite 'yes' or a definite 'no') did not offer an explanation. Of those that did, only one stated that they had asked their lawyer. Others believed that they were public authorities because they offer training to the public or because they are community services. One was confident that they fell within the definition of public authority and that they were discharging all of their human rights responsibilities properly but when prompted could not explain why.

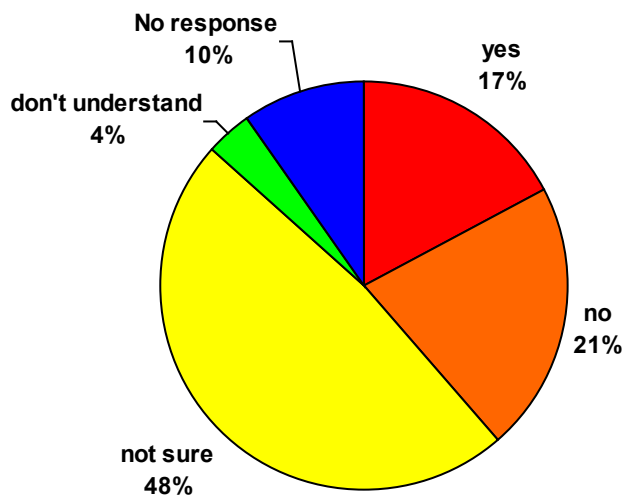


Table 5: Do any of your organisations' activities bring you with the definition of a 'public authority'?

Many were unsure of their status. One respondent was indicative of the confusion. On the one hand, they thought that 'because they receive public funding there is an argument that they could be [a public authority]'. Conversely, 'because they are incorporated they have always taken the view that they are not'. They acknowledged that 'It would really depend on the meaning of public authority.' They assumed that they are not a public authority but were aware there is an argument that they may be.

Under Section 4(c) of the Charter, a public authority is 'an entity whose functions are or include functions of a public nature, when it is exercising those functions on behalf of the State or a public authority (whether under contract or otherwise)'. Under this definition, there are two aspects to the test: 1. that the functions performed are of a public nature, i.e. that it is a function normally understood to be a responsibility of government; and 2. that it is being done on behalf of the State, meaning that they must be funded by the state to provide that service or undertake that activity.

The responses suggest that uncertainty is often based on an assessment of their funding sources: 'because at times we subcontract services from the government'; 'because we receive public funding'; 'we are a NFP organisation that receives some of its funding from taxpayers, making us a public organisation. Not sure whether we are a public authority, however'; and because 'most organisations that receive funding have a funding service agreement' were some typical responses. While funding source is a critical element in the definition of public authorities acting *on behalf of the State*, few seemed to grasp the nexus between funding source and the functions being performed.

Terminology also appeared to be contributing to the confusion. The legal definition of a 'public authority' in the Charter does not necessarily align with an organisation's status under other statutory frameworks.

In the health sector, for instance, any organisation 'that is a health service provider or collects, holds or uses health information' can be declared a 'public sector organisation'

under the *Health Records Act 2001* (Vic)⁷. One respondent noted that there is currently an issue for stand alone public health services (such as community health services) as to whether they are ‘public health authorities’ (sic). Likewise, the Victorian *Disability Act* refers to ‘public sector authorities’⁸ and the Commonwealth *Disability Act* includes reference to ‘a public authority’⁹.

Several organisations believed that classification as a ‘public authority’ under the Charter would impact on the charitable status of an organisation. One believed that it would have implications for their DGR status under federal tax law, while another believed that it would threaten the ability of an organisation to offer salary packaging to staff, again as a result of federal tax law.

Whether or not an organisation falls under the definition of a ‘public authority’ is clearly an issue which is causing a good deal of confusion and misunderstanding in community sector organisations. This is perhaps inevitable given the nebulous definition of ‘public authority’ in the Charter, but this compounds the problem on a practical level for organisations concerned about their obligations under the Charter.

Training has limited applicability on this issue. It can only partially ameliorate this confusion, given the confusing and often contradictory use of the term (or similar) in other state or federal legislation, the drafting of the Charter itself and the fact that the ultimate test of whether or not an organisation is a public authority will fall to the courts to decide.

A more appropriate approach for community sector organisations, particularly small to medium sized organisations would be the production of clear guidelines outlining:

- the elements of a public authority;
- the obligations on public authorities;
- the consequences of a breach of these obligations;

⁷ Part 2, Division 1, s 10 (1).

⁸ *Disability Act 2006* (Vic)

S38(6) **public sector body** means—

(a) a Department within the meaning of section 4(1) of the **Public Administration Act 2004**;

(b) a statutory authority which is prescribed for the purposes of this section;

(c) a statutory corporation which is prescribed for the purposes of this section.

⁹ *Disability Discrimination Act 1992* (Cth)

S4 (1) public authority of the Commonwealth means:

(a) a body incorporated, whether before or after the commencement of this Act, for a public purpose by a law of the Commonwealth or a law of a Territory, being a body corporate employing staff on its own behalf; or

(b) an authority or body, not being a body corporate, established, whether before or after the commencement of this Act, for a public purpose by, or in accordance with the provisions of, a law of the Commonwealth or a law of a Territory, being an authority or body employing staff on its own behalf; or

(c) an incorporated company over which the Commonwealth, or a body or authority referred to in paragraph (a) or (b), is in a position to exercise control.

- suggestions for organisational practice and service delivery that respect human rights obligations, including case studies and practical examples;
- where to go for further advice

It would also be helpful if an advice line was available to act as a preliminary point of information and advice for community sector organisations to on issues surrounding public authority status under the Charter.

Organisations that are, or are highly likely to be classified as a public authority will have further requirements:

- For those with more complex (or more pressing) legal questions regarding public authority status and the Charter more generally, a pro-bono legal service providing advice on a priority basis to not-for-profit community sector organisations unable to pay for legal advice would be a valuable resource; and
- A limited amount of highly specialised training should be made available for organisations clearly identified as potential public authorities, similar to the comprehensive staff training program that was provided to government by the Department of Justice following the introduction of the Charter.

Recommendation 14

That clear guidelines are developed outlining the elements of public authority status, obligations on public authorities, consequences of a breach of obligations and suggestions for organisational practice and service delivery.

Recommendation 15

An advice line should be established to act as a preliminary point of information and advice on public authorities for community sector organisations.

Recommendation 16

A pro-bono legal advice service should be established to provide legal advice on a priority basis to not-for-profit community sector organisations unable to pay for legal advice.

Recommendation 17

A limited amount of highly specialised training should be made available for

organisations clearly identified as public authorities.

5. Summary of Recommendations

Recommendation 1

That the training and education work already being done by Community Sector Organisations (CSOs) be recognised, and resourced to continue through financial and practical support. Training and development are a regular part of organisational functioning and CSOs have demonstrated that they are skilled at incorporating human rights into existing programs. Human rights training and education must focus on building existing capacity and facilitate integration with current practices.

Recommendation 2

That financial or practical resources provided should not be directive. They should allow organisations to tailor training according to need, taking into account the broad understanding of both 'human rights' and 'training' within CSOs.

Recommendation 3

That externally provided human rights education continue to be available through the Victorian Equal Opportunity and Human Rights Commission (VEOHRC) or other respected and known sources.

Recommendation 9

Consideration should be given to developing both targeted train-the-trainer programs as well as direct training. Train the trainer programs would probably work most effectively at the management level (although staff resources are an issue), but also within communities.

Recommendation 10

That given the high demand for both introductory and specialised training, that priority be given to funding human rights training and education.

Recommendation 11

That training programs developed should consider both generic human rights information but also have the capacity to be tailored to specific interest or population groups.

Recommendation 12

That material be produced in accessible formats, including easy English, languages other than English, Braille, CD-Rom, on-line and in print

That training provided be fully accessible in terms of location, times, and physical access.

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Training provided should be free or low cost to ensure that smaller organisations are not discouraged from attending.

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Recommendation 16

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Recommendation 17

A limited amount of highly specialised training should be made available for organisations clearly identified as public authorities.



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