

Original

Final Summary Report

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prepared for

Attorney General's Department

Our ref: 40338

Your ref: National Human Rights Consultation

September 2009

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1 BACKGROUND AND METHODOLOGY

The National Human Rights Consultation was launched on 10 December 2008. The Australian Government identified three key questions for the Consultation:

1. Which human rights (including corresponding responsibilities) should be protected and promoted?
2. Are these human rights currently sufficiently protected and promoted?
3. How could Australia better protect and promote human rights?

The Australian Government appointed an independent Consultation Committee to conduct the National Human Rights Consultation (NHRC, or “*the Consultation*”). The role of the Committee is to bring together the full range of views as to how Australian society should protect and promote human rights. The Committee undertook a series of roundtable sessions across the country, as well as running a written submission process and an on-line forum.

In order to establish a reliable and representative benchmark of community attitudes, and partly to assist in contextualising the inputs from the self selection consultation components, a robust qualitative and quantitative research project was commissioned. Colmar Brunton Social Research completed this research in May and June 2009.

It consisted of 15 focus groups (one metropolitan, one regional group in each state and territory – except the ACT where no regional group was conducted) followed by a national telephone survey to quantify attitudes and preferences. The telephone survey had a total sample size of N=1200, and was stratified as n=150 in each state / territory in order to allow jurisdictional analysis. To maximise the representativeness of the survey sample, true random digit dialling was used; and age, gender and metropolitan / regional quotas were used to structure the raw sample, with statistical weighting used to correct any final discrepancies to the actual population.

Human Rights is a particularly difficult concept to research, for several reasons. It is a very broad and complex area, and knowledge and understanding are likely to be limited to a greater or lesser degree for most people. It is also an area in which both emotion and logic have a role to play, which inevitably results in complex and sometimes conflicting views - even within an individual. As a result, it is easy for research to fall back into ‘motherhood’ type statements, failing to delve more deeply into attitudes. Generic probes such as “are human rights important” are not sufficient to fully explore this complexity, as they will simply generate unthinking and apparently universal agreement – but only measure attitudes at a superficial level. While these can be illustrative, they are not sufficient to really understand what the community thinks and feels.

This project deliberately tried to go beyond this by using the qualitative stage to identify more meaningful questions that could better explore the complexities of the issue in the survey stage. The questionnaire used was designed only after the qualitative stage was completed, allowing a more careful and effective use of question formats and word selections, and also better selection of issues to be covered.

2 KEY RESULTS

2.1 Common Ground

There were a lot of issues where we saw broad levels of agreement and consistent experiences across the people involved in both stages of the research.

There were only isolated examples where significant differences were observed between gender and age groups, or between people in different states and territories. Overall, the community level results were a good indicator of the prevailing views of these groups.

Most are happy with their experience, but lack detailed knowledge

Human Rights were important to most people in both stages of the research. In the survey, 75% of respondents said that they were important or very important – and this strongly reflected the mood of the focus group discussions.

Most participants in the groups reported that they had had no experience of having their rights violated, or had ever even felt that they were under any particular threat. In the survey, only 10% of people reported that they had ever had their rights infringed in any way, with another 10% who reported that someone close to them had had their rights infringed.

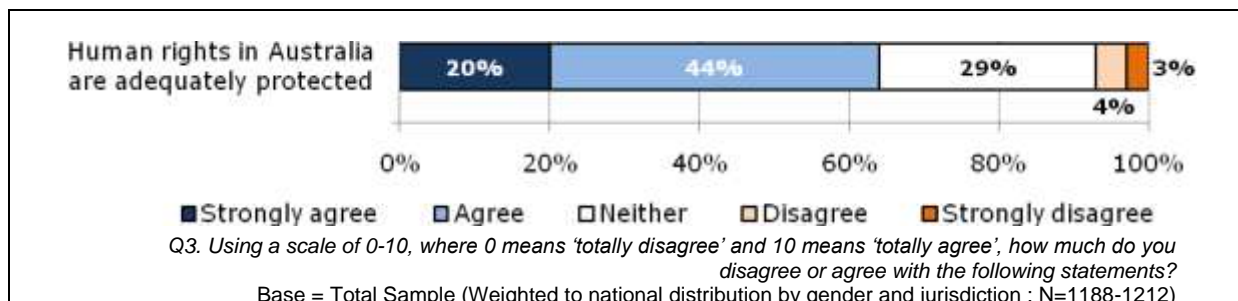
While experience of rights has been generally very positive, awareness and understanding of rights in any detail is very limited. Group participants indicated that their generally positive experiences meant there was no clear need for them to invest time and effort in knowing more. Most could only assume what their rights were, and had little specific knowledge of exactly what they could expect.

They also had very little knowledge about how, or how well, their rights were protected. It was assumed by many participants that rights were protected by legislation (though they did not know what specific legislation), and by the welfare system, community action, access to the media and advocacy groups who they could turn to. Advocacy groups were considered especially important in the event that Government itself infringed rights, which is recognised as a real concern.

Most group participants appeared unable to distinguish between the *experience* of a right and its *protection*. Many participants appeared to make the assumption that because they experience a right on a daily basis, that it must therefore be sufficiently protected. This underlies all attitudes then expressed about protection, including how urgent improvements to protection are, and how to go about making improvements.

Given that most participants' assessment of the sufficiency of protection of their rights was based on their daily experiences and these experiences were generally very positive, it followed that most participants felt that protection of their rights was good. This was confirmed in the survey, with 64% of respondents agreeing or strongly agreeing that *human rights in Australia are adequately protected*. Only 7% disagreed with this.

Figure 1. Perceptions of protection



In the survey, 42% of respondents were generally positive about the human rights situation in Australia, 32% more moderate, and 26% were concerned.

Some people and groups “fall through the cracks”

However, while group participants generally had very positive personal experiences, it was common for participants to feel that there were some people and groups who did ‘fall through the cracks’ and have less positive experiences. They tended to have little specific knowledge of exactly who these groups were, but were aware that they existed in the community.

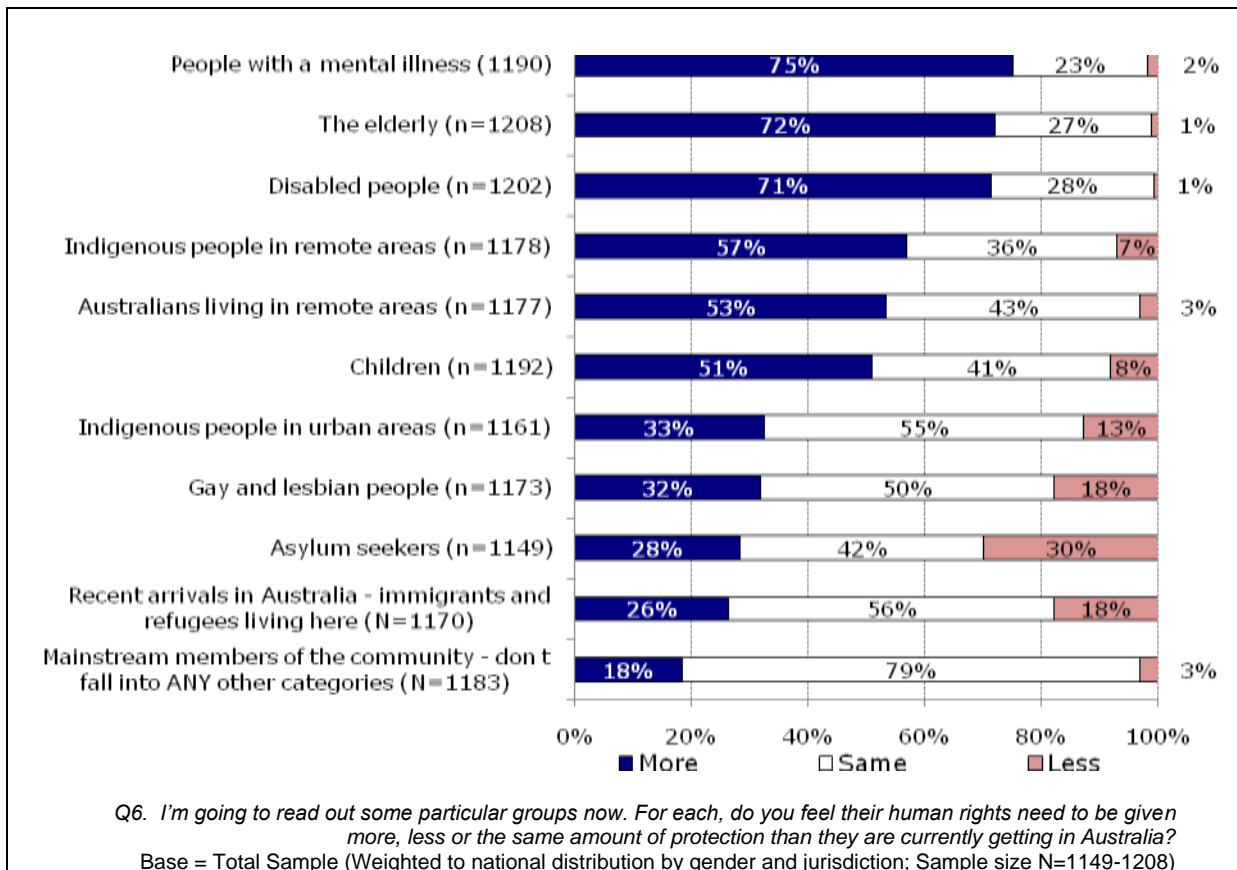
There should be no special group rights, but some need more assistance

There was a very strong view that there should be no groups in the community whose rights differ from the rest of the community. It was recognised that Indigenous communities in remote areas which had a continuous cultural tradition may be special cases, but in general there was no acceptance of parallel rules or laws, or for some groups to have rights that others did not.

However, it was recognised that not all groups currently have an equal experience and some may require deliberate efforts to approach an equitable experience. People who cannot speak or act for themselves (eg: children, or those with a mental illness) were seen as requiring more assistance and protection. The elderly and carers were other groups who were seen as being at risk and potentially requiring more systemic protection and assistance.

In the survey, respondents were asked whether the amount of protection given to some groups should be more, less or the same as it is currently. Respondents most strongly felt that people with a mental illness (75%), the elderly (72%) and the disabled (71%) required more protection than they currently get. More respondents felt that Indigenous (57%) and non-indigenous (53%) people in remote areas required additional protection than felt Indigenous people in urban areas did (33%). Asylum seekers were the only group which as many respondents felt should get less protection than they currently do (30%) as felt they should get more (28%).

Figure 2. Amount of Protection Required By Groups



There is a hierarchy of human rights

Group participants appeared to use two criteria in considering particular rights – importance and conditionality. ‘Conditionality’ refers to whether a right can ever be limited or removed, and those which can never be limited or removed are seen as conceptually different. Only ‘importance’ was addressed in the survey, and the results were broadly consistent with those views expressed in the groups. Basic human survival rights typically emerged from both stages as most important, but all of the rights identified were considered important or very important by more than 60% of respondents.

Using the two concepts of importance and conditionality that focus group participants talked about, it is possible to identify a hierarchy of three categories or levels of rights. These are characterised as below. Note that the labels used here are *not* ones used in the community. They are applied here to convey the concept of the category – but these distinctions are not explicitly made in the community without significant probing, and hence there is no natural language for them. These are drawn only from the qualitative component of the research:

1. Absolute Rights – Those which are especially important to survival and / or are unconditional rights that can never be limited.
 - i. Basic amenities (water, food, clothing, shelter)
 - ii. Essential health care
 - iii. Access to equitable justice
 - iv. Freedom of speech, religious expression and from discrimination
 - v. Personal safety
 - vi. Education
2. Qualified Rights – Those which are not directly related to survival, and can be conditional under some circumstances.
 - i. Be considered for employment
 - ii. Vote
 - iii. Association and public assembly
 - iv. Parent children as desired
 - v. Freedom of movement
 - vi. Dignity in death (euthanasia)
3. Desirable Rights – These are not universally seen as rights per se – they are more complex and conditional, but clearly desirable if achievable.
 - i. Privacy
 - ii. Clean environment
 - iii. Social welfare
 - iv. Choice
 - v. Abortion

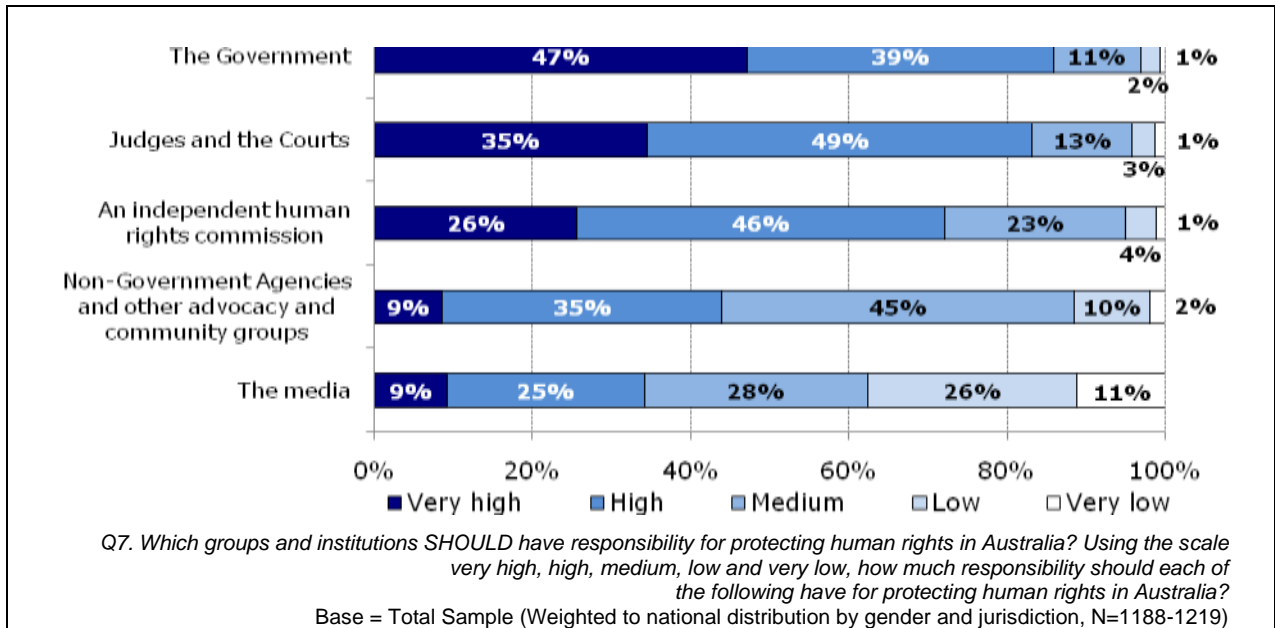
Participants thought some rights (Qualified and Desirable) could be limited or removed under some circumstances, though this was usually only temporary. There were generally only two situations in which such a limitation or removal would be considered appropriate – i) where individuals do not meet their responsibilities; and ii) for the short term broader good of the community.

There was a view widely expressed in the groups that ‘punishments’ should be directed at individuals and not groups. This was an example of where individual rights and community good clashed, and even though there was some willingness to consider a group penalty ‘if the ends justified the means’, there was generally some discomfort about this. The survey did however show that 41% of people agreed that if some members of a group abuse the wider community’s rights then it was reasonable to restrict the entire group’s rights, and only 26% disagreed (the rest were undecided). By comparison, 57% agreed that it was reasonable to reduce or take away an individual’s rights if they did not respect the wider community’s rights, and only 17% disagreed.

Both Government and the Courts have a role to play in protecting rights

Many survey respondents thought the Government and the courts had the main responsibility to protect human rights in Australia – with the Government (in its broadest definition and encompassing both the Government of the day and Parliament) just being seen to be the main protector. 86% thought that the Government had a high or very high responsibility, with 47% choosing the very high category. 84% thought the courts had a high or very high responsibility, but with a slightly lower 35% choosing the very high category.

Figure 3. Perceived Levels of Responsibility for Rights Protection

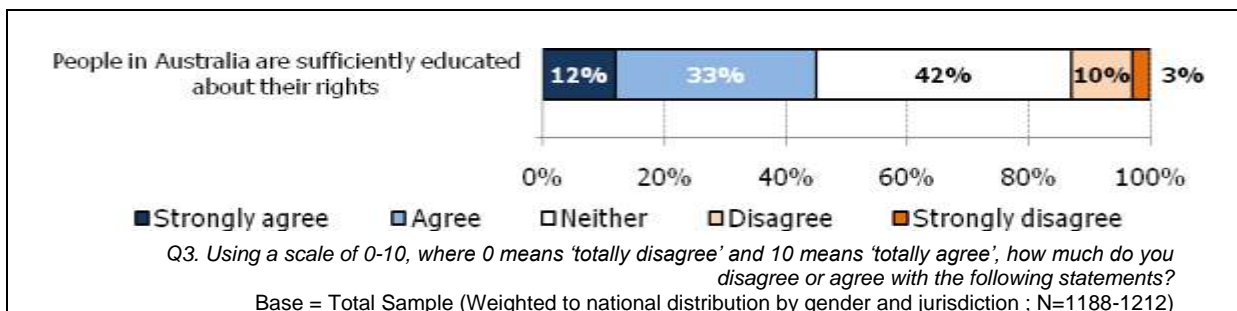


61% of survey respondents supported a system where the courts can tell Parliament if new legislation seems to impact on human rights of any groups in Australia – but with Parliament always having the final say on the law. Only 11% were opposed to this role for the courts. 69% preferred that the courts interpret parliamentary laws ‘in a way that they feel most respects human rights’ rather than ‘exactly as they are worded’.

There is a need for more education

Group participants recognised their lack of knowledge about a subject that they acknowledged was important to them, and frequently noted that more education on the topic would be advantageous. This was also seen in the survey, with only 45% of respondents feeling that people in Australia were sufficiently educated about their rights.

Figure 4. Perceptions of education



2.2 Points of Difference

While there was a lot of common ground, there were some points of difference where quite strongly held but divergent views were seen.

The need for a Human Rights Act

The need for a Human Rights Act was strongly advocated by some participants in the focus groups, but not universally accepted. While there was moderately strong support for some sort of legislative approach to the enhanced protection of human rights, support for this approach was not as strong as for approaches which did not seek to add any further levels of protection to what was already in place. There was generally more support for a document outlining rights than for a formal piece of legislation *per se*.

The arguments for an Act

Documenting rights more explicitly was widely supported in the focus groups (though not universally), and 72% of survey respondents agreed that it was important to have human rights explicitly defined rather than relying on a set of general principles.

Those participants in the groups who were most able to distinguish between experience and the more abstract concept of formal protection seemed most consistently to support the introduction of some form of Human Rights Legislation, based on their understanding that rights are currently poorly protected.

Many participants were sceptical about the practical value of any legislation, but felt that it at least created a common starting point which people could refer to.

The Devolved Consultation phase (a set of discussions with vulnerable and marginalised groups in the community, and the bodies that represent and service them) also showed a very strong desire for there to be a formal documentation of rights to which people and organisations could refer.

The arguments against an Act

Those opposed to the concept generally expressed concern that to write an Act would create loopholes and exclusions that were worse than no documentation at all, given that the status quo seemed largely to work well. There was a preference for the protection provided by human rights to be interpreted in the most inclusive manner possible in order to maximise the protection provided. A well defined legal basis was felt by some to impact negatively, making it clear that some cases would fall outside of the protection potentially provided.

Legislation was seen by some participants as being unwieldy and too hard to change later – a criticism especially directed at any constitutional change. Others saw it as being, conversely, too weak, with future Governments able to change it easily as suited them.

How best to enhance and protect rights

While it was universally agreed that human rights and their protection were important, views on how to achieve this were more varied. In particular, views on the need or otherwise of legal protection varied; and given current understanding of the situation, there was a greater preference for enhancing protection with currently available protections than introducing additional protection.

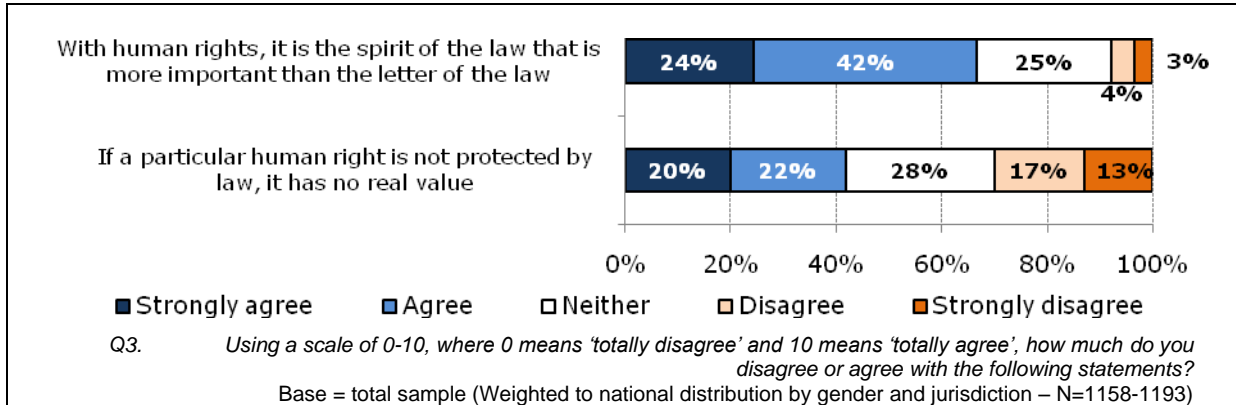
Need for legal protection

Some participants in the groups were adamant that if a right was not legally protected then it was not really a right at all. Others equally argued that rights were protected by what was accepted by the community and by the structures in place in society (such as the welfare system, the media and

advocacy groups). This latter group tended to argue that ‘grey areas’ were good, as they allowed the most inclusive interpretation, and did not feel that strict legal protection was necessary.

The survey supported both these observations. 42% of respondents agreed that *if a right is not protected in law then it has no value* – but 30% disagreed with this. Around two thirds of respondents (64%) agreed that *with human rights it is the spirit of the law that is more important than the letter of the law*. This is also consistent with the preference that courts should be able to interpret laws ‘in a way that they feel most respects human rights’ rather than ‘exactly as they are worded’

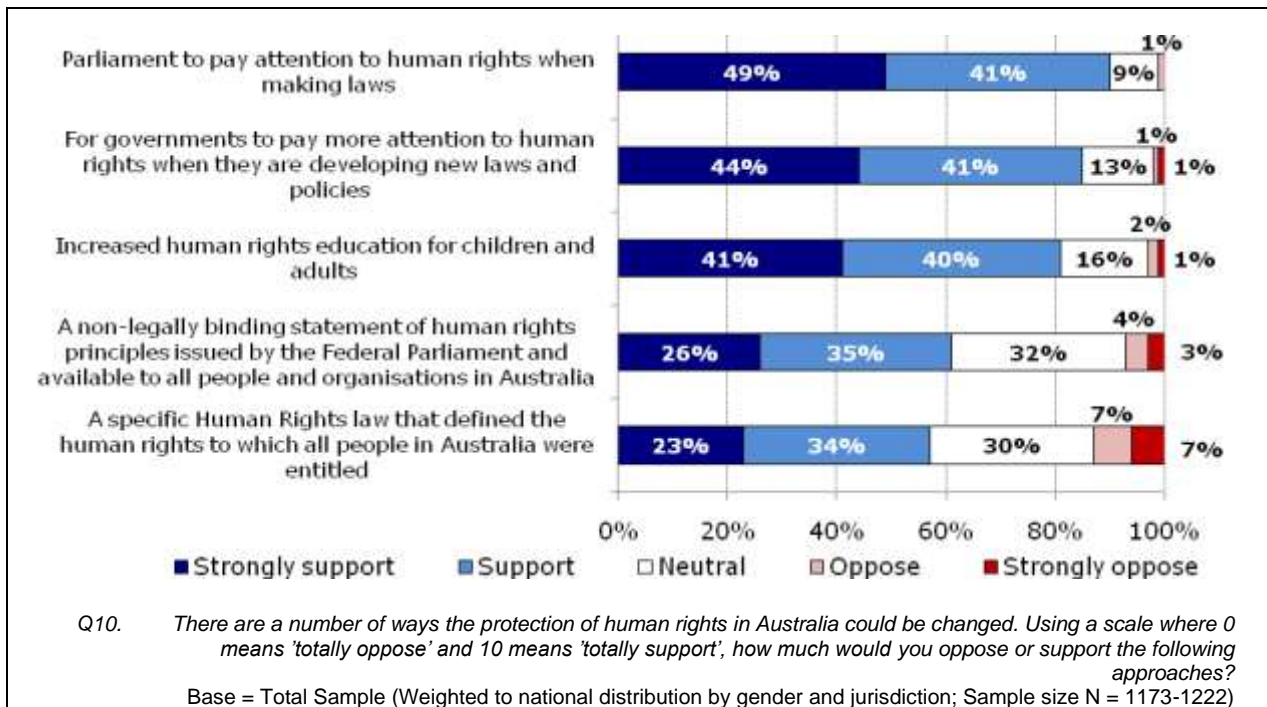
Figure 5: Importance of specific legal protection for rights



Need for additional protection

Support for five specific ways that protection of human rights in Australia could be improved was canvassed in the survey. Support for all of these was high – ranging from 57% to 90%. It is clear from the chart below, though, that the three most preferred approaches were those which provided the least *additional* definition of rights.

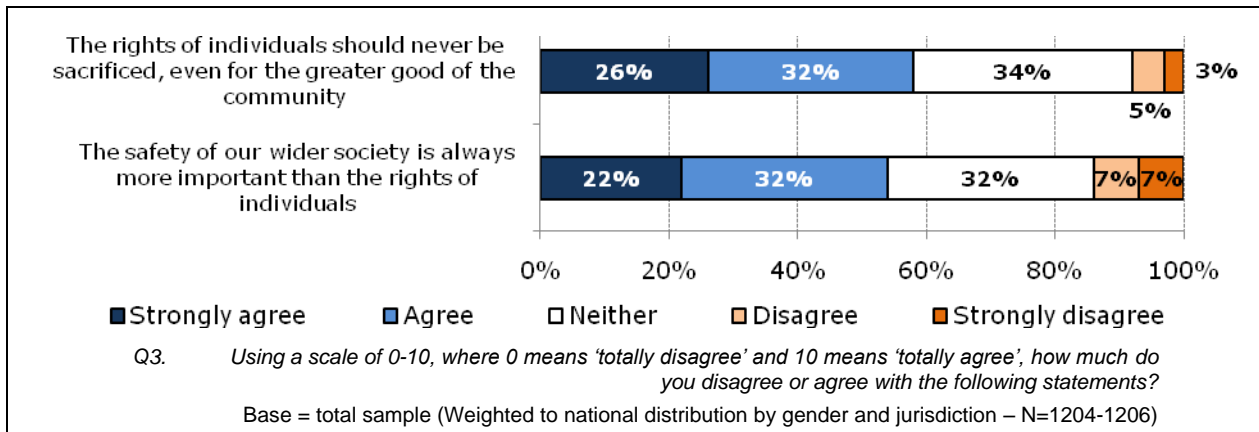
Figure 6. Support Levels for Various Protection Options



Balancing the rights of individuals and the good of the community

The focus groups suggested that probably the most difficult issue around human rights is the balance of the rights of individuals and the good of the community. Both were important to participants, with some clearly uncomfortable to trade one off for the other. The survey reinforced just how difficult this is, with respondents indicating that *both* are important to them, and many not really indicating one or the other was more important than the other. As the two almost inevitably require some degree of trade-off, some degree of dissatisfaction with any balance is therefore inevitable.

Figure E3: Preferences for balancing community good and individual rights



3 CONCLUSIONS

Human rights are seen as important. However, this does not mean that the community are concerned about their rights, have experienced any violation of their rights, or feel that they are threatened. In fact, the opposite is true, with the majority of people in the research personally reporting generally positive experiences with human rights. They are mostly aware that some groups are “falling through the cracks” – but in the general community people who are seriously concerned about their own personal rights are uncommon.

Perhaps at least partly due to the generally positive experiences of living their human rights on a day-to-day basis, most people involved in the research have little specific knowledge about their rights or how they are protected. Most people appear to have a very experience-based understanding of rights, and are unable to distinguish easily between their daily experience of life with the benefit of the rights they value and the formal protection of these rights.

Which human rights should be protected and promoted?

People perceive a hierarchy of rights, based on importance and whether they can be conditional (ie: limited or removed under any conditions).

The most important rights to protect and promote in Australia are those seen as Absolute Rights – those that are essential for physical survival and / or those which cannot be limited or removed at any time. These include the right to:

- Basic amenities (water, food, clothing, shelter)
- Essential health care
- Access to equitable justice
- Freedom of speech,
- Freedom of religious expression
- Freedom from discrimination
- Personal safety
- Education

A second tier of Qualified Rights are more related to expression and development of individuals and the society, and can conceivably be restricted under certain circumstances (eg: failure to meet individual responsibilities, or for the short-term benefit of the wider community). These include the right to:

- Be considered for employment
- Vote
- Association and public assembly
- Parent children as desired
- Freedom of movement
- Dignity in death

Are these sufficiently protected and promoted?

Most people who participated in the research enjoy the benefits of these rights on a daily basis, and are unable to distinguish between these positive daily experiences and the more abstract concept of formal protection. Thus, in the absence of personal experience or knowledge to the contrary, they tend to think that human rights are sufficiently protected - even though many of the rights listed above have little or no formal, legal protection.

Improving protection of human rights is seen as desirable and possible, but because of perceptions of an existing sufficiency of protection, generally not urgent.

There is strong support for more education and the better promotion of human rights in Australia. It was apparent that few people have any specific understanding of what rights they do have, underlining a real need as well as a perceived need for further education.

How could Australia better protect and promote human rights?

There was strong support for better documentation of rights, though this was not universal. Those who supported this approach felt that it provided at least a common starting point, even if there was cynicism about how much it would really be worth if and when tested. A concern that was raised was that the more specific any such documentation was, the more it could create loopholes and exclusions which could be more problematic than the current situation. Those who had the greatest concern about the current level of protection were more likely to support better documentation of rights.

Government was seen to have a clear responsibility for protecting human rights, including the need to ensure that there are sufficient advocacy organisations to assist people - especially when they have an issue with Government itself. The courts' responsibility was seen to be only marginally lower. There was a strong preference for courts to be able to interpret laws in a way that most respects human rights, rather than reading them exactly as they are worded.

It was often felt that failures to deliver human rights to individuals were due to poor service delivery, and that this was an important avenue to make improvements. In particular, failure to be able to deal effectively with small numbers of problem cases (eg: abusive parents, criminal activity amongst bike gangs) was seen as being sometimes a catalyst to change the rules for everyone, often to the detriment of 'innocent' individuals and without the desired effect on the negative cases anyway.

Promotion and education about rights was also thought to be an important strategy for improving protection. However, this was predicated on a belief that rights do exist and are protected, and that education would communicate the detail of this which is currently missing. If this belief is not well-founded, and rights cannot easily be explicitly explained or protections defined, then education alone cannot be a viable solution.

While most participants in the groups felt that they could resolve a human rights issue if one arose for them, they do not have a clear idea of what avenues they could or should pursue. While this was not felt to be a major barrier, having a single point of contact for all human rights related issues (both queries and complaints) was generally considered desirable.

Of the five specific ways that human rights could be improved that were included in the survey, support for all of them was over 50%, and in some cases as high as 90%. However, support (and preference) was highest for those options which did *not* involve any *additional* definition of rights or protection. Parliament and Government paying attention to human rights when developing or making laws were the most supported; ahead of increased education; then a non-binding statement of human rights issued by the Federal Parliament; and then a specific human rights law, which was the least preferred of these options.