

18 June 2015

Mr Andrew Tink AM
Review of Police Oversight in NSW
policeoversightreview@justice.nsw.gov.au

Dear Mr Tink,

Thank you for the opportunity for Community Legal Centres NSW to submit to the Review of Police Oversight in NSW. Community Legal Centres NSW would like to see greater consultation with community members about this Review of Police Oversight in NSW and ask that submissions to this review be made public, unless they are expressly confidential.

About Community Legal Centres NSW

Community Legal Centres NSW (CLCNSW) is the peak representative body for the 38 Community Legal Centres (CLCs) in NSW. CLCs provide free legal advice, legal information and community legal education to the communities they serve. CLCs are independent community organisations providing equitable and accessible legal services. NSW CLCs work for the public interest, particularly for disadvantaged and marginalised people and communities.

Some CLCs provide specialist statewide legal services, for example, Women's Legal Services NSW, Intellectual Disability Rights Service, Warringa Baiya Aboriginal Women's Legal Service, The Aged Care Rights Service and the Tenants Union of NSW. Other CLCs are generalist centres striving to meet a portion of the unmet legal needs of the vulnerable communities within their catchment areas.

Why are we interested in this issue

Solicitors and domestic violence support workers in CLCs around NSW have identified police oversight as a priority area of concern. The experience of CLCs is that the current system does not provide an unbiased, transparent and safe mechanism for individuals to pursue concerns about police action (or inaction) in situations where their human rights have been violated. This is particularly so for vulnerable groups of people who may be most likely to have contact with police (e.g. victims of domestic violence, young people, Aboriginal people, people affected by mental illness).

Frustrations expressed by our lawyers and domestic violence support workers include:

- Insufficient communication, including NSW Police dismissing complaints without any reasons being provided

- clients fearing retaliation by police if they make a complaint
- alleged retaliation by police toward a complainant
- serious incidents not being reported because victims are unwilling to make a complaint to a system where the complaint will be managed by another police officer from the same Local Area Command.

From a human rights perspective, there must be a mechanism for individuals to hold the state to account if their human rights are violated by police. Unfortunately neither the civil law system, nor the current complaints system, is sufficient to meet Australia's obligations in this regard.

Police oversight

Community Legal Centres NSW in 2011 completed a research project about the current police complaints system in NSW. Information about this project can be found on our website at the following link

http://www.clcnsw.org.au/cb_pages/police_complaints_project_introduction.php

The NSW Parliamentary Research Service in their June 2015 'External oversight of police conduct' briefing paper

<http://www.parliament.nsw.gov.au/prod/parlment/publications.nsf/key/Externaloversightofpoliceconduct> describes our research project in the following way:

The only published survey that could be found of satisfaction with the police complaints system is a 2011 survey of the experiences of client advocates and legal practitioners with the NSW Police Force complaints process.¹ A total of 378 completed survey responses were received: the majority (61%) were client advocates in social or community services; 35% were legal practitioners. One half of respondents had personal experience submitting one or more police complaints. The survey found that 76% of users were dissatisfied with the complaint process and 75% of users were dissatisfied with the outcome. A high proportion (67%) also reported that clients with legitimate complaints declined to make a formal complaint against their advice; clients were reluctant to complain because – they were afraid of complaining (51%), they believed the behaviour was normal for police (42%), the process was too protracted (18%).

*1. J Goodman-Delahunty, A Beckley and B Hanckel, The NSW Police Force complaints process: Experiences of client advocates and legal practitioners, Community Legal Centres NSW, 2012
www.clcnsw.org.au/public_resource_details.php?resource_id=370*

We have attached our recommendations for reform of the police complaints system following this research, a summary of the research and a journal article about the research in the hope that they will assist you in your Review of Police Oversight in NSW.

Community Legal Centres NSW supports an independent oversight body that carries out the functions of the complaints system, investigates critical incidents

and identifies systemic issues. This oversight body must be properly resourced and the findings and decisions of this body must be binding.

In the context of domestic violence, there needs to be a broad definition of what is considered a 'critical incident' which can be the subject of an independent investigation. What may seem minor – for example, rudeness, delay in responding or failure to take a report – can have very serious consequences in the context of domestic violence, including lethal consequences. The victim/survivor may not contact police again if there are further incidents of violence; there may be no apprehended violence orders in place for the protection of the victims/survivor; the violence may be allowed to continue without consequence.

The number of police complaints documented in the NSW Ombudsman's 2011 *Audit of domestic violence related police complaints* appears low (6% of total complaints in 2008). The relatively small number of complaints should not be taken to mean there are few problems in police responses to domestic violence. The NSW Ombudsman posited some possible reasons for low reporting including: lack of confidence that police will respond appropriately and effectively; fear any complaint may influence whether police respond to future incidents of violence; lack of time; wish to avoid further contact with police. These reasons are borne out in the experience of Community Legal Centres in NSW, who deal extensively with domestic violence matters.

Some systemic issues that Community Legal Centres have identified in NSW police dealing with domestic violence victims include:

1. the failure to record complaints from domestic violence victims in COPS
2. the failure to take out apprehended violence orders (AVOs) where required
3. the failure to take action on AVO breaches
4. the failure to correctly identify the primary aggressor and the primary victim

Community Legal Centres NSW understands that there is a good policy in the Victorian Police's Code of Practice for the Investigation of Family Violence to help police identify the primary aggressor and victim and welcomes a similar policy being adopted in NSW. Community Legal Centres NSW is also supportive of there being a specialist domestic violence complaints unit in both the police and an independent oversight body.

Community Legal Centres NSW supports the work of other Community Legal Centres on this issue. Our member Community Legal Centre, Public Interest Advocacy Centre produced a Submission to the Ten Year Review of the Police Oversight System in NSW which is available on the following link <http://www.piac.asn.au/publication/2006/05/sub-re-ten-year-review-police-oversight-system-nsw>. Our member Community Legal Centre, Redfern Legal Centre has a Police Accountability service, which has developed significant expertise on this issue, and we understand that they intend to make a submission to this review.

It is particularly crucial and timely to improve the police oversight system given that police powers in NSW have expanded notably over the past decade.

Our recommendations for reform

Our objective is reform of the police complaints system (as it affects civilian complainants), to achieve an effective and fair system, involving:

- Real independence & impartiality;
- Transparency of process and results;
- Improved accessibility;
- More effective oversight and accountability; and
- Safeguards to protect complainants from retaliation (or fear of retaliation).

We draw to your attention our specific recommendations for reform, which are attached as a separate document. These recommendations have been developed by CLCNSW working with individual Community Legal Centres, as well as other community and legal organisations.

If you have any queries in relation to this letter please contact Kerry Nettle, our Advocacy & Human Rights Officer, on (02) 92127333 or email: kerry_nettle@clc.net.au

Yours sincerely,



Alastair McEwin
Executive Director
Community Legal Centres NSW

Enclosed

1. *Recommendations for Reform June 2012*
2. *Summary of research findings 2012*
3. *Article on research published in Australasian Dispute Resolution Journal (volume 25/2, May 2014)*

Recommendations to increase confidence in the handling of complaints against police

**Community
Legal Centres
NSW**

CLCNSW believes that the recommendations set out below will:

- improve confidence in the handling of complaints against police;
- improve access to justice for people whose rights have been violated;
- provide the basis for a system which is fair for individual complainants, as well as for police officers;
- make the NSW Police regulatory system for employee conduct more effective; and
- provide a pathway for NSW to become compliant with international human rights obligations, and to implement certain recommendations made by the Royal Commission into Aboriginal Deaths in Custody.

Key Recommendations

Build confidence through an independent, binding, complaint option

- 1** Civilian complainants must have recourse to a complaints-handling organisation which is institutionally and culturally independent of NSW Police. The findings and decisions of this body must be binding.
- 2** A NSW Law Reform Commission inquiry be established to consider and report on the most appropriate model for independent complaint resolution (including whether this should occur at the initial stage, or as an administrative review option if the complainant is dissatisfied with an initial NSW Police decision).
- 3** *In the interim*, a ‘one-stop-shop’, independent of the NSW Police, be established that accepts all complaints against police and forwards them on to the appropriate complaints body (or appropriate police command), taking into account the nature and seriousness of the allegations, the need for impartiality in managing the complaint, and the safety of the complainant.

Additional and Interim Recommendations for NSW Police

Preserve integrity of investigations

4 Refrain from expressing public support for police officers' conduct during the media reporting of serious incidents involving police (where there is any hint or possibility of misconduct or error). In particular, senior police who were not present at an incident should not defend, justify or express any opinion about police actions until the investigation into the incident has been finalised.

5 Add provisions to the *Police Act 1990* (NSW) to preserve the integrity of initial investigations into incidents involving police officers where:

- a. a person dies; or
- b. there are allegations of serious injury, sexual assault, or injury resulting from the use of a firearm or conducted energy device.

This must include a prohibition against communication between officers involved in the incident; and the segregation of police officers present, until they can be interviewed by the investigators in charge of the investigation.

Increase transparency and provide complainants with information about process and results

6 Provide as much information as possible, in writing, to the complainant at the conclusion of the investigation. This should include:

- a. a summary of the steps taken to investigate the complaint, including which parties were interviewed. Details of each interviewed police officers' account of the incident should be provided to the complainant;
- b. the findings of the investigation;
- c. any actions already taken, or planned, as a result of the investigation; and
- d. that if dissatisfied with the manner of investigation, the complainant can contact the Ombudsman's Office to request a review.

Section 150 of the *Police Act 1990* (NSW) be amended to require provision of the above information to the complainant.

7 Provide the complainant with the reason(s) for a decision (under s139 of the *Police Act 1990* (NSW)) that a complaint does not need to be investigated. Section 139 of the *Police Act 1990* (NSW) be amended to this effect.

8 Notify the complainant not only of any decision to discontinue investigations, but the reason(s) for that decision. This requirement be included in s148A(4) of the *Police Act 1990* (NSW).

Make information available and accessible to prospective complainants to allow an informed decision about whether to complain

9 NSW Police to provide greater public access to information, via their website, in relation to making a complaint. For example:

- a. Make the NSW Police policy document “Complaint Handling Guidelines” publicly available, in accordance with the *Government Information (Public Access) Act 2009* (NSW).
- b. If possible, provide information about which types of incidents / allegations are actually managed (not just overseen, or provided for in legislation) by the various bodies involved in the complaint process, including: the Ombudsman, the Police Integrity Commission, Complaints Management Teams within the Local Area Command, local police stations, and the Professional Standards Command.
- c. Provide details about what safeguards (if any) are in place to protect a complainant from retribution / retaliation. Include information about how details of complaints are stored, and who has access to the database.
- d. Make information about how to make a complaint about a police officer more prominent and accessible on the NSW Police website.
- e. Provide links or contact details for the Ombudsman and the Police Integrity Commission, and information about the role of those organisations.
- f. Provide information about complaints against police in major community languages. The titles and links to these documents should be in each of the relevant community languages.

10 Ensure that every police station has publicly accessible and prominent information about making complaints.

Introduce measures to protect complainants from retaliation: Inspire confidence that it is safe to complain

11 Make it a criminal offence to victimise a complainant. A new specific offence should be incorporated in the *Police Act 1990* (NSW),

12 Allow complainants to choose how they want to be contacted by NSW Police during the processing & investigation of their complaint (in addition to communication in writing). This should include whether or not they consent to being contacted by NSW Police by telephone, or by house visit, and whether they wish to be contacted via their lawyer / advocate. Include these options in the NSW Police online form and downloadable form, and future forms designed by the Ombudsman and/or NSW Police.

13 For serious allegations, police management must make arrangements to minimise the likelihood of contact between the police officer involved and the complainant, until the complaint is finalised. This should include appropriate arrangements for complainants held in custody.

14 Transfer a complaint to the Ombudsman for direct investigation where a complaint is lodged in relation to an incident, and the complainant is subsequently

charged with an offence relating to that incident. In other words, charges laid after a complaint has been made must be scrutinised for possible police misconduct in and of themselves. Establish a process for identifying all such situations.

Take complaints seriously despite charges against the complainant

15 Take complaints about police conduct seriously even if there are charges or convictions against the complainant relating to the same timeframe. These complaints must not be automatically dismissed. If necessary, the complaint should be kept open, but the investigation deferred until prosecution of the relevant charge is complete.

If there is an adverse judicial finding against police, any previously declined complaint should be reopened and investigated on the merits.

Additional and Interim Recommendations for NSW Ombudsman

Make information available and accessible to prospective complainants to allow an informed decision about whether to complain

16 Enhance information on the Ombudsman's website to improve accessibility. For example:

- a. Include a template specifically for making a written complaint about police, available online and in hardcopy.
- b. Contain links or contact details for police commands or the Commissioner, and instructions about which organisation is most appropriate for which type of complaint; and
- c. Include more detailed information about complaints against police in major community languages. The titles and links to these documents should be in each of the relevant community languages. For allegations of serious misconduct by the police, the information should not direct the person to contact the police first.

17 Provide additional information, on the Ombudsman's website and in printed material, in relation to the management of complaints against police. For example:

- a. Which types of incidents / allegations are actually managed (not just overseen, or provided for in legislation) by the various bodies involved in the complaint process, including: the Ombudsman, the Police Integrity Commission, Complaints Management Teams within the Local Area Command, local police stations, and the Professional Standards Command.
- b. What safeguards (if any) are in place to protect a complainant from retribution / retaliation. This should include information about how details of complaints are stored, and who has access to the database.

Other issues

Recommendations **8**, **14**, and **15** (above) also apply to the NSW Ombudsman.

The above set of recommendations is endorsed by:



The Shopfront

YOUTH LEGAL CENTRE

THE NSW POLICE FORCE COMPLAINTS PROCESS: EXPERIENCES OF CLIENT ADVOCATES AND LEGAL PRACTITIONERS

The NSW Police Force (NSWPF) implemented a complaint process on the recommendation of the Wood Royal Commission. Since that time it has not been updated, despite some acknowledged problems.¹ In 2009, the NSWPF adopted a Customer Service Charter and Customer Service Program to enhance police-community relations.

Practitioners who represent disadvantaged clients have reported client avoidance of the complaints process, and when it is used, dissatisfaction with the outcomes. This study explored reasons for this recalcitrance, and recommendations to improve the process.

With input from Community Legal Centres New South Wales Incorporated (CLCNSW), a research team from Charles Sturt University Australian Graduate School of Policing and Security devised an online anonymous and confidential survey to assess the experiences and perceptions of NSW practitioners about the NSWPF complaint process.²

Aims of the Study

- Test the veracity of the anecdotal reports of dissatisfaction and avoidance, by surveying legal practitioners and community workers
- Compare perceptions of the NSWPF complaints process among practitioners with and without experience using the system
- Uncover reasons that legitimate complainants avoid the process

¹ Committee on the Office of the Ombudsman and the Police Integrity Commission, *Ten Year Review of The Police Oversight System in New South Wales* (2006) Report No. 16/53, Parliament of New South Wales; Police Integrity Commission, *Special Report to Parliament: Project Dresden, an audit of the quality of NSW Police Service internal investigations* (2000) Police Integrity Commission.

² J Goodman-Delahunty, Alan Beckley and Benjamin Hanckel, *The New South Wales Police Force Complaints Process: Experiences of Community Advocates and Legal Practitioners* (2012), Report prepared for Community Legal Centres New South Wales, Charles Sturt University.

Study participants

Practitioners were recruited via email and sent a link to a secure website.

- Participation took 10-20 minutes.
- A total of 378 completed responses were received in the study period.
- On average, participants had 10 years of professional work experience.
- Most participants were women (73%).
- Practitioners were dispersed across NSW metropolitan and rural locations.
- The majority (61%) were client advocates in social or community services; 35% were legal practitioners; 4% worked in other settings.
- Most legal practitioners (78%) were employed by CLCNSW, Legal Aid or Aboriginal Legal Services.
- One half (52%) had personal experience submitting 1 or more police complaints.

To redress client concerns about treatment by the NSWPF:

- Most participants were aware that it is possible to make a formal complaint about a NSW police officer
- Most complaints were lodged with the NSWPF or NSW Ombudsman.
- Few practitioners knew of the NSWPF Customer Service Charter.

Substance of complaints lodged by participants during past 24 months:

The most common category of complaint involved allegations that police had:

- ignored the client;
- failed to follow NSWPF guidelines, e.g. in relation to domestic violence;
- applied unnecessarily oppressive treatment;
- harassed the client.

To assist clients, practitioners reported that:

- 72% attempted informal resolution
- 34% filed a formal written complaint
- 23% finalised a complaint
- 25% assisted a client with litigation against the NSWPF
- 8% sought compensation from the NSWPF for a client

Experience with the NSWPF complaints process:

- The period between submission and finalisation ranged from 1-18 months.
- The average amount of time to finalise a complaint was 6 months
- No routine issue of a progress report.
- 50% received no contact before complaint finalisation.
- No standard procedures for interim contact or finalisation: phone/writing.
- Legal practitioners were more likely than client advocates to receive updates.

Experience with finalised written complaints against the NSWPF:

- 76% of users were dissatisfied with the complaint *process*.
- 75% of users were dissatisfied with the *outcome*.

Representatives who had complaints finalised in the past 24 months commented on process outcomes. They perceived that:

- Complaint procedures were biased.
- Complaint handlers were discourteous
- Clients mistrusted the process.
- Practitioners lacked opportunities to convey their viewpoint.
- Complaint handlers ignored their viewpoint.
- Practitioners were treated disrespectfully.
- Despite these criticisms, users would recommend complaints to future clients.

Post-complaint interactions between police and clients:

One issue of great concern according to anecdotal reports was the perception that police would victimise complainants by withholding police services or paying them increased negative attention. We asked the representatives whether client-police relations improved or deteriorated after a complaint was filed. Participants with relevant knowledge reported that:

- 40% of clients received more negative police attention after complaining.
- Repercussions took the form of:
 - unnecessary police visits at home;
 - more frequently followed by police;
 - increased threats by the police.

Avoidance of NSWPF complaints process

A high proportion of practitioners (67%) reported that clients with legitimate complaints declined to make a formal complaint against their advice. Clients were reluctant to complain because:

- 51% were afraid of complaining
- 42% believed the behaviour in issue was normal for police
- 18% found process too protracted
- 17% were dissuaded by friends or family
- 11% lacked free/affordable professional assistance
- 5% acted on advice from other professionals to avoid it
- 4% resolved the issues informally
- 3% by-passed the complaint process to file a civil action

Perceived barriers to use of the NSWPF complaints process:

- 60% of participants found the complaints process intimidating.
- 63% rated the complaints procedures as difficult to use.
- 89% perceived the complaints process as inaccessible and daunting to the public

- 90% agreed that citizens require professional assistance to make a complaint
- Practitioners most familiar with the complaint system rated it significantly less user-friendly and more intimidating than those who had never used it

Feedback about the complaints process:

Participants specified positive and negative features of the complaints process:

Positive features

- Process was relatively easy to instigate
- Some officers were helpful in securing a speedy and effective response

Negative features

- Insufficiently rigorous investigations
- Complaints were almost inevitably declared “unsubstantiated”
- Lack of impartiality “police investigating police”
- Lack of transparency
- Complainants were intimidated, treated aggressively, subject to police scrutiny
- Fear of police retribution chilled complainants from lodging complaints

Consensus emerged that NSWPF staff:

- Do not apply the law in an even-handed manner
- Treat members of certain vulnerable groups more harshly than others
- Lack integrity and trustworthiness
- Protect their colleagues before being honest about the incident
- Display low levels of neutrality and respect in dealing with the public

Conclusions

Client advocates and legal practitioners provided unique user insights into the fairness and effectiveness of the NSWPF complaints process. Their experiences are a valuable police resource to inform service development.

Recommendations by participants to improve the NSWPF complaints process:

Problem	Solution
Lack of transparency and information	<ul style="list-style-type: none"> ▪ Increase publicity about NSWPF complaints process ▪ Distribute updated material that is easy to access ▪ Ensure openness, privacy and confidentiality
Police-community relations	<ul style="list-style-type: none"> ▪ Provide police training on interviewing, working with young people, vulnerable persons and traumatised victims ▪ Increase police training in compassion, nonjudgement, empathy, active listening. ▪ Improve compliance with NSWPF Code of Conduct related to domestic/family violence. ▪ Increase support for complainants, especially persons with special needs (disabilities, non-English language background). ▪ Provide support in regional areas, e.g., AUSLAN interpreters ▪ Attend community meetings to explain complaints process ▪ Establish local Aboriginal Community Justice Panels
Feedback about complaint status	<ul style="list-style-type: none"> ▪ Correspondence should address incident in issue rather than generalities ▪ Assign NSW police staff to assist in complaint writing and follow-up
NSWPF culture	<ul style="list-style-type: none"> ▪ Establish complaint process independent of the NSWPF ▪ Increase involvement by police oversight bodies ▪ Take actions to address the culture of fear and bullying in the organization. ▪ Ensure adequate counselling of NSW Police Officers to address personal issues.

Resolving or escalating disputes? Experiences of the NSW Police Force complaints process

Jane Goodman-Delahunty, Alan Beckley and Melissa Martin*

In 1997 the NSW Police Force implemented a complaints process on the recommendation of the Wood Royal Commission. Client advocates and legal practitioners who represent disadvantaged clients reported client avoidance of the complaints process as a form of dispute resolution and, when it was used, dissatisfaction with the outcomes. Using a mixed-method survey with input from Community Legal Centres New South Wales Inc, the experiences and perceptions of 493 New South Wales practitioners about the complaint process were examined. Results revealed widespread dissatisfaction and mistrust in the process, more extreme among those with personal experience using the system. Reasons for avoiding the system included a perceived lack of independence in complaint investigation, ineffective communication between police and complainants and experiences of victimisation by the police after making an official complaint. Recommendations to improve the use of the process include creating more opportunities for informal dispute resolution.

INTRODUCTION

A healthy complaints system is a form of dispute resolution advocated to avoid costly litigation and provide accessible procedures that allow the resolution of matters at the lowest formal level possible in the continuum of disputing practices.¹ Using complaints as an evaluative tool to gain insight into public perception is a method derived from organisational psychology and consumer research on customer service that has, in recent years, found its way into a number of other disciplines, including policing.² The Council of Europe Commissioner for Human Rights asserted that a fair and effective police complaints system is a signature component of democratic and accountable policing.³ Conversely, an ineffective complaints system is the mark of a society at risk of developing a culture of impunity in which human rights abuses occur unchecked. For this reason the Commissioner advocated an approach to police complaints in which “every complaint matters”, from minor instances of police rudeness to serious violations of human rights. Even if complaints are unsubstantiated, resources spent on investigating complaints to public sector organisations are not wasted because complaints investigation builds confidence in a well-functioning and trustworthy system. The current study investigated aspects of stakeholders’ experiences of using the New South Wales Police Force (NSWPF) complaints system. An aim of this survey was to examine the views of professionals who represent individuals who interact with the police.

Public trust is an important aspect in evaluating the effectiveness of a system dealing with complaints against the police and perceptions of the procedural fairness accorded to complainants.

* Jane Goodman-Delahunty: School of Psychology, Australian Graduate School of Policing and Security, Charles Sturt University. Alan Beckley: Evaluation Manager & Adjunct Fellow, Office of Widening Participation and Adjunct Fellow, School of Social Sciences & Psychology, University of Western Sydney. Melissa Martin: School of Psychology, Australian Graduate School of Policing and Security, Charles Sturt University.

¹ Goodman-Delahunty J, *Capitalising on Complaints: Insights into Handling Finance Sector Complaints*, Keynote Address to the Australian Securities and Investment Commission Stakeholder’s Forum (Sydney, November 2001).

² Goodman-Delahunty J, Verbrugge H and Taitz M, “Complaining to the Police: Insights from a Psychological Analysis” (2013) 7(3) *Policing: A Journal of Policy and Practice* 280.

³ Smith G, “Every Complaint Matters: Human Rights Commissioner’s Opinion Concerning Independent and Effective Determination of Complaints against the Police” (2010) 38 *International Journal of Law, Crime and Justice* 59.

When public trust is low, the system will be avoided.⁴ Independently of considerations regarding complaints procedures, many researchers, dating back to the foundation of the Metropolitan Police in London, have noted that the trust placed in the police by members of the public and the community is fundamentally important to ensure police accountability and legitimacy.⁵ International research has revealed a decline in public trust in the police.⁶ Although community confidence in the NSWPF has been steadily increasing in recent years, research has demonstrated that when the public learns of police misconduct, for example, involving receipt of gifts and gratuities,⁷ trust in the police diminishes.

Research has also revealed some adverse aspects of police culture in response to complaint procedures.⁸ For instance, the Australian police service was described as having a “blue wall” or “blue curtain” of silence during investigations into alleged police misconduct.⁹ Internationally, major inquiries into police corruption, such as the Knapp commission in the United States, and the Wood Royal Commission in Australia, identified this issue. The phenomenon of the “blue curtain” of silence manifests in extreme loyalty among colleagues within the organisation, with police officers failing to report other co-workers when witnessing malfeasance, and intentionally covering up misconduct. This type of workplace culture resists investigations into complaints because co-workers “cover each other’s backs” when they perceive investigation as “us against them,” namely police officers against every person/organisation outside the police service.¹⁰ Resistance against inquiry and extreme defensiveness can also arise in response to investigations whether conducted by internal affairs departments or independent oversight bodies.¹¹

BACKGROUND TO THE CURRENT STUDY

In 2009, the NSWPF implemented a Customer Service Charter¹² and a Customer Service Program which emphasised procedural justice in interacting with members of the public. The current study gathered empirical evidence of the experiences and perceptions of legal practitioners and client advocates with the police complaints system in the period after the NSWPF Customer Service Charter was adopted.

⁴ Schafer JA, “The Role of Trust and Transparency in the Pursuit of Procedural and Organisational Justice” (2013) 8(2) *Journal of Policing, Intelligence and Counter Terrorism* 131.

⁵ The Metropolitan Police’s nine principles of policing including trust of the public are listed in an Appendix in Bronitt S and Stenning P, “Understanding Discretion in Modern Policing” (2011) 35 *Crim LJ* 319. See also Jackson J and Bradford B, “What is Trust and Confidence in the Police?” (2010) 4(3) *Policing: A Journal of Policy and Practice* 241; Mazerolle L, Bennett S, Davis J, Sargeant E and Manning M, “Legitimacy in Policing” (2013) 10 *Crime Prevention Research Review* 1; Mazerolle L, Bennett S, Davis J, Sargeant E and Manning M, “Legitimacy and Policing: A Systematic Review of the Research Evidence” (2013) *Journal of Experimental Criminology* 1.

⁶ Prenzler T and Mackay T, “Police Gratuities: What the Public Think” (1995) 14(1) *Criminal Justice Ethics* 22; Crime and Misconduct Commission, *Operation Tesco: Report of an Investigation into Allegations of Police Misconduct on the Gold Coast* (2011) p 30. See also Jackson J, Bradford B, Stanko B and Hohl K, *Just Authority? Trust in the Police of England and Wales* (Routledge, 2012) pp 32-35; Tyler TR and Huo Y, *Trust in the Law: Encouraging Public Cooperation with the Police and Courts* (Russell Sage Foundation, 2002); UK Home Office, *Policing in the 21st Century: Reconnecting Police and the People* (2010); Waddington T, “Policing with Trust and Confidence” (2010) 4(3) *Policing: A Journal of Policy and Practice* 197.

⁷ See NSWPF, *Annual Report 2011-2012: Serving the State of New South Wales* (2012) p 22, www.police.nsw.gov.au/data/.../NSWPF_Annual-Report_2011-12.doc?; Prenzler T, Beckley A and Bronitt S, “Police Gifts and Benefits Scandals: Addressing Deficits in Policy, Leadership and Enforcement” (2013) 15(4) *International Journal of Police Science and Management* 294.

⁸ Chan JBL, “Changing Police Culture” (1996) 36(1) *British Journal of Criminology* 109; Vito GF, Wolfe S, Higgins GE and Walsh WF, “Police Integrity: Rankings of Scenarios on the Klockars Scale by Management Cops” (2011) 36(2) *Criminal Justice Review* 152.

⁹ Prenzler T, *Police Corruption: Preventing Misconduct and Maintaining Integrity* (CRC Press, 2009) pp 23-25, 38-39; Wood JRT, *Royal Commission into the New South Police Service – Final Report* (1997) p 134.

¹⁰ Bryett K and Lewis C (eds), *Un-Peeling Tradition: Contemporary Policing* (Macmillan, 1994) p 97.

¹¹ Den Heyer G and Beckley A, “Police Independent Oversight in Australia and New Zealand” (2013) 14(2) *Police Practice and Research: An International Journal* 130.

¹² NSWPF, *Customer Service Charter* (2009), http://www.police.nsw.gov.au/services/our_customer_service_program_and_charter.

The *Police Act 1990* (NSW) governs complaints about the NSWPF; s 126 allows any person to make a complaint anonymously. All complaints must be written (s 127) and conduct specified in a complaint that is “notifiable” (s 121) must be investigated and reported to the Ombudsman.

The NSWPF defines an “informal resolution” as a method for dealing with complaints against the police relating to minor matters, where no need exists to gather evidence to substantiate an investigation into the matter, before a “swift, fair, impartial, equitable and discrete” conclusion.¹³ This course of action is available only for reported written complaints where the police action in issue was determined to be correct, or cases where the complaint would not, even if substantiated, result in significant disciplinary action. If the matter comes within these policy guidelines, the enquiring officer is authorised to resolve the complaint informally by offering an explanation or an apology for less than acceptable service.

Anecdotal reports to Community Legal Centres in New South Wales Inc (CLCNSW) and from legal practitioners and client advocates who represent disadvantaged or marginalised clients, indicated that clients had low levels of trust in the police complaints system, and were significantly dissatisfied with both the process and outcomes.¹⁴ These practitioners also reported concerns in the minds of potential complainants of retaliation by police if they complained, either against themselves or their family members, in the form of reduced levels of service by the police, or unwanted increases in police attention, and even harassment. While these reports had very serious implications for the integrity of policing in New South Wales and the human rights of citizens in contact with the police, no scientifically robust empirical evidence existed to support or refute these claims.

AIMS OF THE STUDY

The present study had three objectives: (1) to test the veracity of the anecdotal reports by surveying practitioners whose clients were likely to have police contact; (2) to compare perceptions of the NSWPF complaints process among practitioners with and without first-hand experience using the system; and (3) to uncover reasons why legitimate complainants avoid using the complaints process.

THE MIXED-METHOD SURVEY

Survey questionnaire

An online survey consisting of 42 questions was compiled and divided into four sections addressing: (1) awareness of the NSWPF complaints process and knowledge about seeking redress/making a complaint; (2) experiences with the NSWPF complaints process (the number of complaints lodged, attempted informal resolutions, compensation requests and litigation against police); (3) experiences with finalised written complaints against NSWPF (the incident of concern, reasons for complaining, duration of the process, satisfaction with the process, and clients’ experiences with police after complaining);¹⁵ and (4) feedback and recommendations to improve the NSWPF complaints process (five open-ended questions). To ensure that the information regarding complaints was relatively fresh in participants’ minds, and thus more reliable, the reporting period was limited to two years prior to the survey administration in 2011. Participants who had first-hand experience with the police complaints system responded to a series of additional open-ended, follow-up questions probing the nature of those experiences.

Procedures

Practitioners were recruited via email through CLCNSW professional networks, and were asked to pass on the invitation to their staff or colleagues. CLCNSW also placed advertisements in the

¹³ NSW Police Force Professional Standards Command, *Complaint Handling Guidelines* (2012) p 32.

¹⁴ Goodman-Delahunty J, Beckley A and Hanckel B, *The NSW Police Force Complaints Process: Experiences of Community Advocates and Legal Practitioners* (Community Legal Centres New South Wales, 2012), http://www.clcnsw.org.au/cb_pages/police_complaints_survey_findings.php.

¹⁵ Participants indicated their agreement with items on a six-point Likert-type scale where lower numbers (1-3) indicated disagreement and higher numbers (4-6) indicated agreement.

newsletters of the National Council of Social Services and the New South Wales Branch of Australian Association of Social Workers. Participants were sent a link to a secure website. Participation took between 10 and 20 minutes.

Study participants

A total of 493 participants responded to survey questions within the study period from July to December 2011. Approximately two-fifths of the participants self identified as client advocates (41%), about one-quarter as legal practitioners (27%), and one-third (32%) either belonged to another professional group (such as criminologists, counsellors, family dispute resolution practitioners) or failed to specify their professional practice group, and were designated as "other practitioners".

Participants were well dispersed across a diverse range of metropolitan and rural locations in New South Wales. The eight postcodes where the majority of participants worked, listed in descending order of frequency, were: 2000 (Sydney, 7.1%); 2150 (Parramatta, 3.4%); 2500 (Wollongong, 3%); 2016 (Redfern, 2%); 2541 (Nowra, 1.8%); 2830 (Dubbo, 1.8%); 2450 (Coffs Harbour, 1.6%); and 2560 (Campbelltown, 1.6%).

RESULTS

Results of the survey are presented below supplemented by excerpts from participants' responses to open-ended questions.

Awareness of and experience with the NSWPF complaints process

Most participants (94%) were aware of the NSWPF written complaints procedures; significantly fewer knew of the Customer Service Charter (57%) and the Customer Service Unit (44%). About one-half of the participant cohort had prior, first-hand experience using the NSWPF complaints process (52%). A greater proportion of legal practitioners (72%) than client advocates (43%) reported use of these complaints procedures on behalf of their clients.

Nature of complaints

An examination of the type of police conduct that formed the basis for the complaints lodged on behalf of a client revealed that the issues raised were not trivial. Many involved allegations of serious police misconduct or mistreatment, as shown in the following examples of the matters reported by legal representatives and client advocates:

"Failure to take out an ADVO [Apprehended Domestic Violence Order] or charge perpetrator after a vicious assault of a woman and her adult disabled daughter which required hospital treatment and failure to provide and advocate for the daughter when questioning her at the police station" (Client Advocate 21).

"Police harassing the client to a point he was considering suicide" (Other Practitioner 14).

"Attitude of the police when arresting based on circumstantial evidence" (Client Advocate 16).

"My client complained that the officer was insulting and disrespectful as well as rude and inappropriate" (Client Advocate 18).

Responses revealed that the incidents of concern leading to client dissatisfaction involved both victims and suspects, and encompassed a variety of types of police conduct. The conduct included police actions and inactions, for example, police did not follow routine protocol, were unnecessarily oppressive, harassed the client, or clients reported that the police had not listened to what they said.

Perceptions of the NSWPF complaints process

Many participants had negative, scathing and cynical perceptions of the NSWPF complaints process. Illustrative comments from experienced users included:

"Limited information. Buck-passing between Ombudsman, Police Integrity Commission. Video tapes of police misconduct always disappear" (Legal Practitioner 9).

"I have had several experiences where a complaint to NSW police gets lost, so that it is then necessary to submit the complaint again, many months after the original submission" (Legal Practitioner 6).

Furthermore, the NSWPF complaints process was uniformly rated as inaccessible to members of the public, and daunting and intimidating to professionals, including legally trained professionals.

“I received no information and had to repeatedly chase it up” (Legal Practitioner 8).

“It’s intimidating and long” (Legal Practitioner 30).

The lack of confidence in the system was shown in statements such as:

“No faith that it would really make a difference” (Client Advocate 31).

Barriers to use of the NSWPF complaints process

To assess the presence of potential barriers to using the NSWPF complaints process, the survey asked about the perceived ease with which a complaint against an officer of the NSWPF could be filed. Overall, half of the participants (49%) rated the complaints procedures as difficult to use, 27% rated the procedures as easy to use, and 25% expressed no opinion (those in the latter group had not used the system). The view from most participants was that to initiate a complaint was onerous and intimidating:

“Quite intimidating to the client who had repeatedly made police complaints over the course of a year and nothing was done” (Other Practitioner 18).

“Complicated and lack of communication regarding process and decisions” (Other Practitioner 7).

Those who had the most experience in using the complaint system, that is, the lawyers, rated it as more difficult to use than those groups with less experience. Moreover, 69% of participants agreed that professional assistance was required to lodge a written complaint, that is, making a complaint was not a task that most clients could undertake on their own.¹⁶

The overwhelming perception of participants was that the system for complaining against the police system was not independent, transparent, objective or accountable, as was reflected in their open-ended comments;

“Not impartial – judgemental (clearly had a relationship with the perp [sic]). Told differing stories from alleged witness input (which were non-factual). Covered up information from the constable to whom the complaint was made against” (Other Practitioner 18).

“Lack of transparency” (Other Practitioner 7).

Although most participants who personally used the NSWPF system to make at least one complaint within the previous 24 months reported that the process was not intimidating (63%),¹⁷ more than one-third who had used the system nonetheless regarded it as daunting (37%). Closer examination of the proportion of users of the system in past 24 months (see Figure 1) showed that many with personal experience were frequent users (three or more complaints filed in the past 24 months). No doubt repeated use accounted for the greater perceived ease of use of the complaint procedures in this group (63%), whereas those who had lodged one or two complaints nonetheless found the experience intimidating.

Attempted informal resolution

Of the participants with experience assisting clients with complaints against the police ($n=258$), the majority (62%) had assisted a client in attempting an informal resolution in the past 24 months. Most participants (45%) who had attempted informal resolution had done so between one and five times in that time period. This activity indicated that the practitioners were not focused exclusively on litigating against the NSWPF. Informal resolution was primarily sought with the Local Area Commander (42%), the manager at the relevant police station (38%), or the police officer in question (29%); comparatively few participants sought an informal resolution by contacting the NSWPF Customer Assistance Unit (5%) or the Office of the Minister for Police (2%). In general, attempts at informal dispute resolution of the complaint issues were unsuccessful, with only 2% of participants reporting that their clients did not pursue formal procedures because the matter had been informally

¹⁶ Approximately one-quarter (23%) of the participant sample did not respond to this question.

¹⁷ $M=3.22$, $SD=1.53$, $Md=3$. (1=strongly disagree, 6=strongly agree).

resolved. Reasons for the failure for informal resolution were unclear. One participant reported:

“The client had a made complaint to the Local Area Commander with a poor response” (Legal Practitioner 12).

Avoidance of the complaints process

A series of questions sought information about circumstances in which the participants perceived that their clients had grounds for a legitimate complaint against the police, but the clients declined to make a formal complaint (58%; $n=287$). In many of those cases, the avoidance of the complaint process by the clients was against the advice of their advocates or legal representatives (43%; $n=123$). These cases were of particular interest to examine perceived or real barriers to using the complaints system. Participants confirmed the reasons that their clients declined to complain from a list of 10 items, and could indicate more than one reason where applicable. The results showed that the major reasons that many clients opted not to pursue a complaint were: they were fearful about making a formal complaint; they believed the conduct engaged in by the police was normal police behaviour; the complaint process was time-consuming; and/or they were advised by their family or friends not to make a formal complaint. Examples of comments from participants about reasons for avoidance of the complaints system included:

“Many clients believe, and perhaps they’re right, that if they complain against police then there will be a degree of ‘payback’ by other police when they deal with that person in the future – plus, it becomes obvious that police do what they can to protect their colleagues (as I would probably want to do), rather than be fully honest” (Other Practitioner 5).

“Nobody believes it really will make a difference” (Client Advocate 31).

TABLE 1 Reasons for client declination to lodge complaint against the NSWPF (%)

Reason for declination	Overall sample
Client expressed fear	27
Client followed my advice (not to complain)	25
Client believed behaviour was normal for police	22
Other unspecified reason	14
Process too time-consuming	9
Client friends or family discouraged	9
Lack of free/affordable assistance to make a written complaint	6
Issue was resolved informally	2
Client pursued civil action without formal complaint	1
Another lawyer, advocate or other professional discouraged a complaint	1
<i>N</i> =287; total exceeds 100% because more than one reason could be specified.	

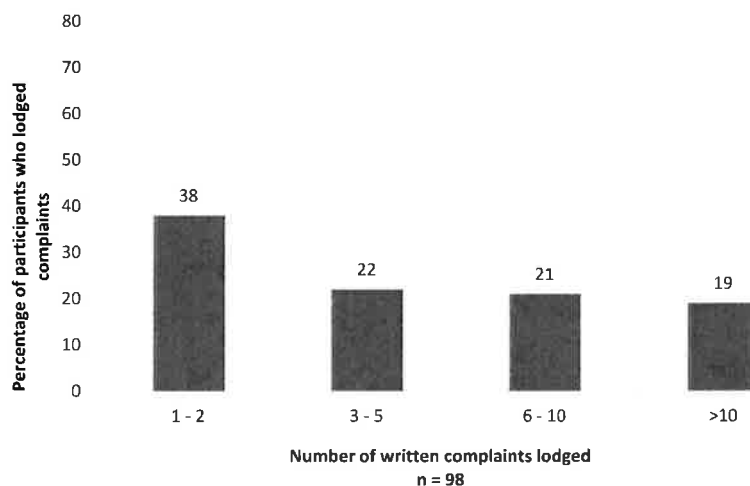
Experience making formal complaints against the NSWPF

Approximately one-half of participants had experience making a formal complaint in the past 24 months. These complaints were most likely to be lodged with the NSWPF and the NSW Ombudsman, as shown in Table 2.

TABLE 2 Prevalence of complaints against NSWPF in the past 24 months, by agency (%)

Agency	%
NSW Police Force	78
NSW Ombudsman	67
Anti-Discrimination Board	21
Police Commissioner	16
Police Integrity Commission	9
Minister for Police	8
N=103. Total exceeds 100 because more than one agency could be specified.	

In the preceding 24 months, of those participants who had assisted a client to lodge a formal written complaint, most had engaged in this action between one and five times, as shown in Figure 1. Of those, one in four participants (25.2%) had lodged more than 10 complaints in the previous 24 months, averaging seven complaints each in this period ($M=7.00$; $SD=7.68$). Complaints were most frequently lodged with the NSWPF (90.9%), the NSW Ombudsman (82.1%), or the Anti-Discrimination Board (66.4%). Formal complaints were less likely to be lodged with the NSW Police Commissioner (28.6%), the Police Integrity Commissioner (17.0%), or the NSW Minister for Police (15.1%).

FIGURE 1 Number of complaints lodged in the past 24 months

Note: Five participants did not specify the number of complaints filed with any agency.

Experiences with finalised written complaints against the NSWPF

Once a complaint is recorded in writing and formally processed within the NSWPF complaint classification system, there are four possible complaint outcomes: resolved, sustained, not sustained, or not selected.¹⁸ A finalised complaint is one that has been assessed and allocated an outcome. Participants were asked about their experience with finalised complaints in the past 24 months. Approximately one in every five participants, that is, almost half of the participants who had assisted

¹⁸ NSWPF Professional Standards Command, n 13.

a client in filing a complaint against the NSWPF (45%) had experience with a finalised complaint in the previous 24 months.¹⁹

TABLE 3 Finalisation of client complaints against NSWPF within the past 24 months

No of complaints finalised per participant	Assisted client with a written complaint against NSWPF which was finalised in the past 24 months (%)
1-2	69
3-5	18
6-10	10
10+	3
N=94 (nine participants did not specify the number of complaints finalised).	

After a complaint was lodged, the experience of the representatives varied in terms of practices by the investigating agency to keep them informed of the status or progress of the complaint. About equal numbers of participants reported that they were (42%; n=43) and were not (41%; n=42) contacted about the progress of their complaint before finalisation. Participants reported:

“I still haven’t received any information back to this date today” (Client Advocate 4).

“Phone – either I rang, or they rang. Different officers, different discretion, different level of care. Charter not followed” (Other Advocate 5).

“By phone. I found this highly unsatisfactory. I want stuff in writing. A request to confirm in writing was not acted upon” (Legal Practitioner 6).

Agencies investigating the complaints were more likely to provide an update to legal practitioners than to client advocates or other practitioners. One participant stated:

“Kept client informed throughout the process and generated confidence in the client” (Legal Practitioner 25).

The reported lapse of time between complaint submission and notice of a final decision on the complaint ranged from one to 18 months, as shown in Table 4. The average number of months reported by participants between submission of the complaint and receipt of notice that the complaint was finalised was six.

TABLE 4 Lapse of time between complaint submission and final decision (%)

No of months	Participants who filed a complaint (%)
1-2	32
3-5	20
6-10	17
11-15	17
16-18	11
No resolution	3
N=85 (18 participants did not respond to this question).	

¹⁹ In all, 266 participants did not respond to this question and 124 participants specified that they did not assist a client to make a written complaint in this period.

Notice of the outcome of the complaint process was not uniformly provided to the representatives in writing, although written notice was the most common form of communication used (58%). Outcome information was often transmitted via telephone (25%). Other forms of communication (16%) involved informal discussions with the police or a police manager, information received through the court process, a meeting through the local area command, or no response from any source.

Satisfaction with the NSWPF complaints process

Some complainants were annoyed that they or their clients were not kept informed of the progress of their complaint. About three-quarters of practitioners (73%)²⁰ who had recent experience filing a complaint reported dissatisfaction with communications during the complaint handling process. For example, participants said:

“As a solicitor, I wasn’t kept in the loop. Meeting with client and police went ahead without informing me and I was not advised about the resolution of the complaint” (Legal Practitioner 10)

“Police didn’t call me throughout the process, they approached the client directly, and wouldn’t allow her to have time to contact me for information and advice before they gathered information from her” (Legal Practitioner 18).

Participants reported a lack of satisfaction about the finalised written complaints. This led some to explore other avenues of redress:

“I can’t really go into details, because even though the NSWPF considers the complaint finalised, neither myself nor my client does” (Legal Practitioner 29).

“Police officer harassing an accused person by door knocking the local government area defaming the client while seeking support for a prosecution which was ill considered, baseless and totally without merit. Prosecution subsequently discontinued half way through the committal proceedings in consideration for accused’s promise not to seek costs from the police” (Legal Practitioner 44).

“The woman is now lodging a complaint with the ombudsman” (Client Advocate 21).

Participants were asked about dissatisfaction with the process and the outcome, and whether they would use the complaint system in the future. About three-quarters of participants were either not satisfied with the outcome (72%; $n=79$) or the process (73%; $n=81$). About one-third (31%; $n=24$) stated that they would avoid the process in the future. Others did not perceive any viable alternatives. More than two-thirds of practitioners in this group (69%) indicated that if they had a client in a similar situation in the future, they would recommend use of the complaint process to make a formal complaint. Despite their dissatisfaction, most participants did not regard the exercise as futile, although this was the conclusion of some of their clients:

“Lack of police interest led my client to believe it would be a pointless exercise” (Client Advocate 28).

Clients’ post-complaint experiences

Participants reported their clients’ experience of police retribution, withdrawal of police services or that police officers protected their colleagues rather than honestly say what occurred. Examples of some comments from participants on the fear of retribution by police were:

“That there is not enough surety with the system that they will protect people and that complaints will not result in retributive actions by other officers” (Legal Practitioner 50).

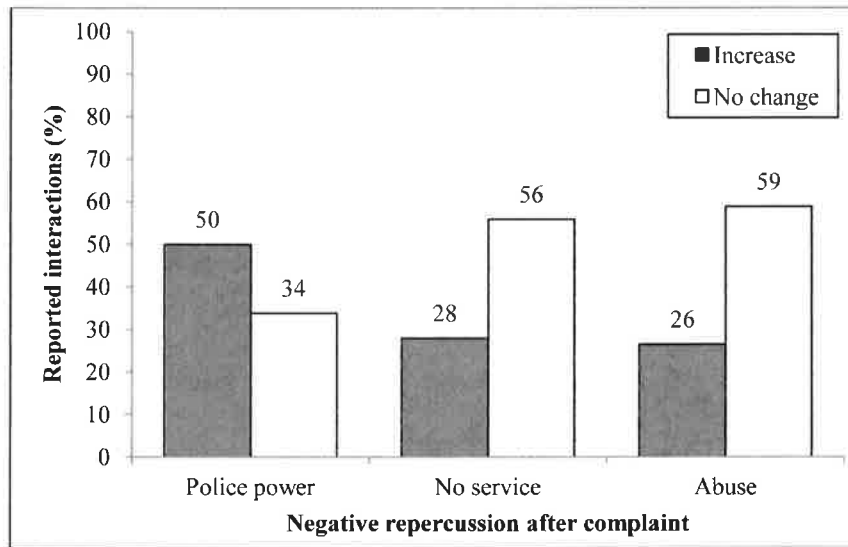
An issue of great concern to participants was their clients’ beliefs that if they made a complaint, the police officer complained of or their colleagues would victimise or bring retribution in the form of official police action against the complainant.

In light of anecdotal reports of retributive or retaliatory action (and/or fear of such action) by police against clients who lodged complaints against them, the authors of the study made specific inquiries about any such occurrences among participants who had lodged complaints for their clients in the past 24 months ($n=103$). They were interested to learn whether their clients’ interactions with the police improved or deteriorated after a complaint was filed. The survey included queries about the

²⁰ Twenty-two participants did not respond to this question.

commission of specific types of police behaviours (for example, being unexpectedly charged with a new offence, negative police attention and/or unnecessary visits at home or in the workplace), acts of omission (such as requests being ignored by police, lack of assistance), as well as interpersonal hostility and abuse (such as racist comments, abusive language, threats, and/or assault) that were reported to the participants by their clients. One-third (34%; $n=35$) provided no information about the nature of any changes in police-client interactions in the period after the complaint was lodged. Of the remaining participants, two-thirds (66%; $n=45$) reported at least one form of retaliation against their clients who had received more negative attention from the NSWPF after submitting a complaint. Figure 2 displays the proportion of participants who reported no change or an increase in perceived abuses of police power, service failures or interpersonal abuse after making a complaint.

FIGURE 2 Client’s interaction with police after complaint, as reported by participants



Examples of reports that the clients experienced police harassment following complaints included:

“Police officer told client to leave town and that she was a loud mouth and there was nothing the police could do to keep her safe” (Client Advocate 29).

“Client was falsely accused of a hit and run. Police pursued him for two years, with scant evidence against him. Interviewed him a year after the event. Interviewed wife 18 months after the event. Client acquitted in court case” (Legal Practitioner 48).

Experiences of false accusations and harassment resulted in avoidance by members of the public of the NSWPF complaint process, and have serious implications for effective police-community relations and the effective functioning of the complaint process.

The foregoing comments were balanced by some positive responses, acknowledging that policing was a difficult job in an increasingly complex society, and that police did good work in the community with “at risk” groups. Examples of some positive comments about the complaints process were:

“Police attempt to do their job with integrity” (Client Advocate 33).

“Despite having made some negative comments I think the police do a very good job and are fair to most young people” (Client Advocate 12).

DISCUSSION AND CONCLUSION

Using complaints procedures to evaluate public perceptions about police is a recent development. A complaint against police is a limited measure of protest about the way police interact with members of the community. A prior study of a comprehensive sample of complaints lodged against the NSWPF in

a 12-month period revealed that most complaints followed contact initiated by community members who were non-suspects, rather than contact initiated by police.²¹ In contact that is initiated by police, as was the case in many of the incidents described by participants in this study, citizens are sensitive to the powers²² and authority that the police hold over an individual during a potentially traumatic incident. To adequately resolve disputes between members of the community and the police it is necessary to have a sound, respected and objective system in place to deal with complaints, irrespective of whether the contact leading to the complaint is initiated by police, members of the community, or legal professional and other client advocates on behalf of community members. Experiences of client advocates and legal practitioners with the NSWPF complaint process provided important insights into their perspectives on the fairness and effectiveness of the complaints process as a means of dispute resolution between the police force and community members.

While a number of positive responses were noted about specific experiences with the NSWPF complaints system, the overwhelming majority of responses were negative. Participants made many comments about the shortcomings of procedures in the system of complaints against police, describing it as intimidating, time-consuming, difficult to access and use, lacking in impartiality and transparency, and that its use elicited a fear of retribution from the police.

Overall, the research findings highlighted four main areas of concern about the functioning of the NSWPF complaints system: (1) the independence and neutrality of the investigations following complaints; (2) effectiveness of communication between police and complainants, or their representatives; (3) the speed, accuracy of disposal of complaints; and (4) unreported complaints.

The main criticisms were the lack of independence and neutrality in the investigation of complaints. These issues were raised despite the complex system of statutory independent oversight described above. First, a change in the complaints process was recommended to make it more independent from NSWPF, possibly by increasing the involvement of independent oversight bodies. Past studies of complaints processes have revealed high levels of support for independent complaint processing, especially for serious matters.²³ In terms of police culture, the culture of bullying would need to be addressed along with the introduction of police training to ensure effective and sensitive interviews with vulnerable people.

The foregoing examination of the issues surrounding uses of the procedures available to client advocates and legal practitioners who assist members of the public in New South Wales to complain against police revealed that incidents of severe police misconduct and infringements of citizens' human rights went unreported, increasing the risk of damage to the reputation of the police force.²⁴ Moreover, although the complainants themselves were not directly polled, a substantial proportion of their representatives confirmed that their clients had received increased negative attention from police after making a complaint. About one in five participants reported that their clients feared retaliation from police officers, providing some evidence, albeit indirect, that fear of reprisal by the police for use of the complaints process had a factual basis. The convergence of findings revealing under-reporting, avoidance of, and retaliation for use of, the complaints system indicate that the NSWPF should take steps to protect and support vulnerable people, including complainants, responding with compassion, empathy and active listening.

Many criticisms centred on poor communication, including a lack of information (publicly and readily available) about the police complaints system. The complaint processing guidelines²⁵ only recently became available to members of the public and their representatives. The survey responses

²¹ Goodman-Delahunty et al, n 2.

²² Such as police powers of arrest, search, seizure, and requirements to undertake tests such as provide a sample for a blood or breath test.

²³ Prenzler T, Mihinjic M and Porter L, "Reconciling Stakeholder Interests in Police Complaints and Discipline Systems" (2013) 14(2) *Police Practice and Research: An International Journal* 155.

²⁴ Goodman-Delahunty J, Beckley A and Martin M, "Complaints against the New South Wales Police Force: Analysis of Risks and Rights in Reported Police Conduct" (2014, under review with the *Australian Journal of Human Rights*).

²⁵ New South Wales Police Force Professional Standards Command, n 13.

highlighted the fact that many legal practitioners and client advocates were unaware of the NSWPF Customer Service Charter and Customer Service Unit. Both of these facilities could have been useful to participants. Greater publicity about these police services might improve the experience of making a complaint against the police. Accordingly, the NSWPF is advised to increase publicity and communication about the complaints process and to highlight the Customer Service Charter and Customer Service Unit, using appropriate channels and levels of communication. More systematic and predictable procedures should be implemented to inform complainants of the progress of their complaint. Complaints against police should be investigated swiftly and thoroughly to a high quality standard, while keeping the complainant fully informed of the progress of the inquiries and possible outcomes.

Despite the fact that dissatisfaction with the complaint handling process was widespread, reported by 73% of the participants, most stated that they would still advise their clients to make a complaint if necessary in the future. Reliance by members of the community on this system provides a further incentive to enhance its functioning. Almost two-thirds of the practitioners considered or attempted informal dispute resolution methods before a written formal complaint was lodged. This form of alternative dispute resolution (ADR) appears to be undervalued by the police. Informal dispute resolution could accrue organisational and reputational benefits if the Customer Service Charter emphasised it as a serious viable option for complainants. After all, the police force incurs no cost by adopting “carefully managed forms of informal resolution” and mediation in more cases, except the requirement of accepting that incidents of low-level misconduct occur and providing an apology. The NSW Ombudsman’s audit of police force handling of domestic and family violence complaints reported that advocates in that sector were often able to “informally resolve” complaints with local police, rendering the “formal complaints unnecessary”.²⁶ However, the current NSWPF complaint system does not acknowledge complaints until they are written, and once complaints are recorded, procedures to resolve the issues are quite formal, precluding practitioners’ efforts at informal resolution. To foster less costly resolution of matters at the lowest formal level possible, ADR must be available both prior to and after filing a complaint. The benefits of exploring this option were confirmed by research conducted in Queensland revealing that complainants who experienced informal resolutions were more satisfied with the process and outcome than others who experienced a formal investigation.²⁷

Where there are allegations of police misconduct, there should be a viable and trustworthy system of complaints that, when activated, results in an open, transparent, objective, timely and fair investigation, with an acceptable outcome. Taken together, the study findings indicated that the police force should seriously consider expanding a program of ADR methods to enhance the effectiveness of the complaints system or will risk ongoing financial costs in compensation from legal actions, and damage to the organisational reputation through publications and media reports, diminishing its trust and legitimacy in the eyes of the public.

²⁶ NSW Ombudsman, *Audit of NSW Police Force Handling of Domestic and Family Violence Complaints* (2011) p 8.

²⁷ Prenzler et al, n 23 at 162.