

Background Paper

Reasonable force? Complaining at police stations about violence during the criminal investigation process

By Fernanda Dahlstrom

La Trobe Law Student on Clinical Legal education Placement at the West Heidelberg Legal Service under the supervision of Dr Liz Curran, Lecturer in Law, La Trobe Law/ West Heidelberg Legal Service

INTRODUCTION

This report will examine the procedures in place for recording complaints regarding police misconduct that are brought to police stations. It will discuss experiences of clients of the legal service in lodging or attempting to lodge complaints and the common feeling that these attempts are being 'fobbed off'. There was a lack of awareness among complainants and also among professionals working with them of the procedures in place for the recording of formal complaints against police. The report will show how the inaccessibility of information on the complaints process to the public is compounding the atmosphere of fear, intimidation and mystification surrounding police complaints procedure. This report will also highlight the extent to which police are able to discourage or circumvent the making of complaints through inadequate disclosure of procedures. It will point out the ignorance of the youth sector in particular of the limits on police powers to search and seize and the prevalence of police exploitation of this ignorance which often leads to uncertainty about whether or not a complaint of misconduct is warranted. The author will argue on the basis of this discussion that procedures used by police when taking complaints need to be made publicly available and that there is a need for a comprehensive education program targeting young people on the nature and extent of police powers to reduce misconceptions among the youth about police powers.

Although there are a number of related issues within the broader police complaints framework which contribute to the difficulty complainants have in obtaining independent scrutiny of the actions of police – such as the referral of 'low-level' complaints to the Office of Police Integrity back to the Police Department for internal investigation – these issues fall outside the scope of this report. It is the intention of this report purely to examine the procedures utilized for recording complaints at the police station level and the factors which inhibit the recording of such complaints.

CONTEXT

As coercive force is a fundamental feature of police work, allegations of the use of excessive force by members of the police force are common in Victoria and throughout the country. The concept of police mistreatment can include physical, psychological, verbal, racist or sexist abuse. The authorisation of police to use 'reasonably necessary force' often makes the legality of the actions of police officers ambiguous or contestable.¹ A number of factors render police brutality notoriously difficult to prove. Incidents usually take place in low-visibility locations in the absence of witnesses, or with witnesses whose credibility is easily challenged.² The lack of any definition of what constitutes 'lawful force' by the police necessarily makes 'excessive force' equally difficult to define.³ Police violence is also arguably to some extent condoned by society when it is directed against members of particular social groups in certain circumstances.⁴ It has often been alleged that police violence is a greater problem in Victoria than in other states, however it is difficult to make an accurate comparison of the instances of police brutality between states as there is no universal definition. Furthermore, some states record the total number of complaints lodged and others record each individual allegation.⁵

The 'code of silence' maintained by police officers makes it extremely difficult to implement an effective complaints procedure or keep a check on police misconduct. Police officers who participated in a NSW study stated that they felt 'confident they would receive the support of fellow officers if a complaint was made; and it was most unlikely that any complaint would be sustained if it came down to their word against that of a criminal.'⁶ Police everywhere obey 'the unwritten rule – you don't dob.'⁷ Members of the police force are reported to experience a feeling 'that you can't do the job without dirtying your hands' and the knowledge that at some stage they have all deviated from the book renders them unable to hold their colleagues accountable.⁸ It has been noted that the police loyalty expressed in the 'code of silence' is related to the loyal commitment that motivates police heroism, and that many police personnel believe that the two cannot be separated.⁹

The scandals surrounding police misconduct in Victoria in recent decades have generally been portrayed as irregularities perpetrated by 'bad apple police' and as having been adequately internally addressed.¹⁰ There are few criminal prosecutions of police; fewer still result in convictions.¹¹ Recent ombudsman reports have been 'explained and warded off by senior

¹ Janet Chan in Coady et al *Violence and Police Culture* (Melbourne: Melbourne University Press, 2000)

² Above note 1 p90

³ Andrew Goldsmith 'An impotent conceit' in Coady above note 1

⁴ Above note 1, p88

⁵ Walsh 1993 cited by Salvatore Biondo, *Police Brutality In Victoria: Invisible Victims of State Power* Latrobe University, 1997

⁶ Above note 1

⁷ A female police officer quoted by Ian Freckleton in Coady *et al* above note 1, p178

⁸ John Kleinig in Coady *et al* above note 1.

⁹ Above note 8

¹⁰ Freckleton in Coady *et al* above note 1

¹¹ Above note 10

police'.¹² Attempts to litigate instances of police brutality through civil actions are rarely successful. Victims of police violence are generally individuals who speak little English, are young, intellectually disabled or mentally ill. The police involved by contrast, are accustomed to the litigation process and represented by experienced government lawyers.¹³

The problem of the police misuse of force has a disproportionate affect on the young and on members of ethnic minorities. It is predominantly males who are the victims. Aboriginal people and members of certain other ethnic minorities are stereotyped as being associated with criminality and targeted for police harassment.¹⁴ Surveys of victims of police violence conducted by in Victoria by Salvatore Biondo in the early 1990s found that the vast majority of complainants were male; the most common age group was 17 – 20 and a disproportionate number were unemployed.¹⁵ Most of the incidents experienced by respondents surveyed by Biondo involved more than one police officer; usually of the rank of constable or senior constable. Another study undertaken in New South Wales in 1994 found that a much higher number of Asian and Pacific Islander youths were searched upon contact with police than were their Anglo-Australian counterparts.¹⁶ Another study reported that demeanor, socio-economic class and deference were all influential factors in violent exchanges with youth.¹⁷ There have also been a significant number of instances of the use of undue force by Victorian police on people with mental illnesses.¹⁸

All of the studies discussed above found a significant disparity between the number of incidents of police violence experienced and the number of official complaints made. Reasons for not complaining given by respondents range from fear of reprisals, threats made by police, or the feeling that complaining would not achieve anything and not knowing how to complain.¹⁹

MAKING A COMPLAINT AT A POLICE STATION

Police state that few complaints are dealt with at the police station level. The majority of complaints made about police conduct are sent directly to the Police Conduct Unit or the Office of Police Integrity.

If a person wishes to make a formal complaint at the police station level, the complaint must be dealt with by an officer of the rank of sergeant or above. The usual procedure is that the complainant rings up and makes an appointment to speak to a sergeant who fills in a Form 918 and takes down a statement containing detailed of the conduct alleged.

¹² Above note 10

¹³ Above note 10

¹⁴ Above note 1

¹⁵ Biondo, above note 5

¹⁶ Report 'Nobody Listens' 1994 cited by Biondo, above note 5

¹⁷ Cowie 'Struggle for the Streets' (date unknown) cited by Biondo, above note 5, p29

¹⁸ Jude McCulloch 'Policing the mentally ill' *Alternative Law Journal* (2000) 25(5)

¹⁹ Above note 5

If the complainant is happy to make an informal complaint, the complaint can be dealt with by any police officer. The complainant needs to indicate the outcome he or she wants. For example, the complainant may wish to speak to the supervising sergeant on duty at the time the behaviour they are complaining about occurred.²⁰

The written documents setting out procedures police are to follow in taking complaints are not publicly available. Nor is information about making a complaint at a police station available on the Police Department or OPI websites, although the former contains a form that can be used to submit a complaint online. Information about complaining at police stations can be obtained orally from the Police Conduct Unit.

EXPERIENCES OF COMPLAINANTS

In researching this paper the author interviewed a small number of Melbourne community lawyers. This research provides an indication of the experiences of solicitors working with a client base from low socio-economic backgrounds. The solicitors interviewed had extensive experience of working with clients who had had contact with some form of police violence; their experience of clients lodging complaints about the mistreatment that had occurred was much more limited. The reason cited by clients for not complaining was overwhelmingly fear of some sort. Some clients were fearful of being 'targeted' if they made a complaint, while others had received specific threats from the police. One client had been told by a police officer who had assaulted him 'We'll do that again.' Others had been told 'We'll fuck you over like we fucked over X' (or words to that effect) referring to another young person known to the victim.²¹ The mothers of young people were also reported to have discouraged them from complaining saying they would be causing trouble for the family.²²

Lack of confidence in the system was also cited as a reason for not complaining.²³ Other reasons were the client feeling that he had 'done the wrong thing too' and a desire to 'move on'.²⁴ Solicitors also noted lack of organisation and motivation as a factor.

None of the solicitors interviewed had experienced any success when clients did attempt to make complaints at the police station level. One solicitor stated that out of three or four complaints made, all were dealt with properly and in accordance with the prescribed procedures but none of the clients were happy with the outcome. In each of these instances there was a lack of independent corroborating evidence and an alternative explanation was available.²⁵ Significantly, all of these clients had court cases in which allegations as to their mistreatment by police were not raised. Other solicitors found that the majority of clients who visited a police station to

²⁰ Victorian Police Force Policy. The document setting out the exact procedures to be followed is not available to the public. Phone conversation, Police Conduct Unit 21/4/8.

²¹ Interview with Tamar Hopkins, Principal Solicitor, Flemington and Kensington Community Legal Centre, 7th May 2008.

²² Above note 22

²³ Interview with Gary Sullivan, Principal Solicitor, West Heidelberg Legal Service, 7th May 2008.

²⁴ Above note 22

²⁵ Above note 24

complain were 'fobbed off'²⁶ or 'cajoled into not proceeding'²⁷. Some were asked if they wanted to make a formal complaint, but were not given any information as to how it would be handled. Others were simply not asked to make a statement and no form 918 was filled in. Most complainants are not aware of their right to make a formal complaint, or of the difference between a formal and an informal complaint. Significantly, even an experienced community lawyer who has handled dozens of allegations of police violence was unaware of the procedures supposed to be followed by police when a complaint is brought to a police station.

The research indicated clearly that negative racial profiling by police is a factor in the targeting of young people from particular communities for harassment. A young Somali Australian from the Flemington area is quoted as saying that being searched by police was so common that it was a routine part of his week.²⁸ Young African males living in the housing commission flats in Flemington are frequently raided, assaulted, threatened, sworn at, taken to the station and often released without charge. Racist comments, such as being told to 'Get back to Africa' while being searched are common. Police are also reported to frequently conduct searches 'by consent' in which a young person is asked to lift his shirt, drop his pants, and empty his pockets - directions which are not seen as a request but as a demand and a threat. None of these young people were asked to sign a consent form. A police officer stated these forms are kept at the station but 'no one uses them.'²⁹

Police disregard of protocols and community ignorance of police procedures thus make it difficult to mobilize existing complaints procedures, especially for the most vulnerable members of the community. This is illustrated by the following case study.

CASE STUDY: POLICE STATION

Mr D is an asylum seeker from overseas who left his country of origin because of persecution by terrorists. Mr D is on a bridging visa E, and does not have the right to work or study. Nor is he covered by Medicare. Mr D was chased by police in relation to traffic offences including speeding, drink driving and failing to keep a safe distance. Due to his experiences in overseas, Mr D was extremely fearful on being pursued by the police. Mr D stated that he was forcibly removed from his car and that one police officer knelt on his back while another searched his car. One of the police smashed Mr D's head against the concrete footpath. He sustained a cut to his head. His girlfriend saw the injuries he sustained but there were no independent witnesses.

Mr D complained to the police officer at the front desk at the police station. His head was bleeding at the time. The police officer told him 'It's just a scratch.' No further information was given to Mr D as to how to formalise the complaint. Mr D did not see a doctor as he was not covered by Medicare and was afraid that he could not afford to pay the bill. He did not know he could take the complaint further.

²⁶ Above note 21

²⁷ Interview with solicitor, West Heidelberg Legal Service, 28 May 2008.

²⁸ Hopkins, Tamar 'Policing in an era of human rights' *Alternative Law Journal* (2007) 32(4)

²⁹ Above note 26

One year after this incident Mr D was charged with offences. The time period in which to lodge a complaint had expired when these charges were laid.. He still has a scar on his head.

* * *

The overarching sense of fear that most complainants have of police is a major factor which inhibits formal and informal complaints. In choosing not to pursue a complaint clients cite reasons like 'I don't want a divvy van parked in my street or 'I don't want to be approached by unmarked cars'.³⁰ Clients have real apprehensions of retaliation by police and do not believe the legal system will protect them. In some cases, police officers have blatantly used intimidation to discourage the lodgement of a complaint as the following case study shows.

CASE STUDY: POLICE STATION

Mr S was savagely beaten by a police officer of the rank of Senior Sergeant during an interview at a police station. After the interview finished, Mr S was escorted out of the police station by another police officer. Mr S spoke to this officer and expressed his desire to complain about his treatment. The officer replied, 'If you want to make a complaint I'll have to take you back to the Senior Sergeant' (that is, the officer who had just perpetrated the violence against him). Mr S promptly dropped the complaint.

CONCLUSION

Both the published literature and the anecdotal evidence of victims of police violence suggest that the problems lie not solely with the procedures that are in place but also largely in the fact that members of the public are not familiar with these procedures and police rarely follow them. Ignorance of the limits on police powers is also an enormous factor in discouraging victims of police brutality from complaining. Significantly, a community lawyer commented during an interview that the level of police violence his clients consider acceptable is higher than the level he considers acceptable as a lawyer.³¹

The vast disparity between the incidence of police violence and the number of formal complaints recorded demonstrates that the statistics touted by the Police Department in its annual reports and other literature do not reflect reality. It is suggested that the entire system of police complaints handling is in need of reform – a fatal flaw in the system appearing to be the prevalence of investigations of complaints by police themselves. In the specific area of complaints taken at the police station level which is the subject of this report there are three critical measures which the author suggests would improve the quality and integrity of the complaints system.

³⁰ Above note 27

³¹ Above note 23

RECOMMENDATIONS

1. Police should make publicly available the procedures officers are to follow in taking a complaint at the police station level. These procedures and the Form 918 should be available at the counter of every Victorian police station. They should be written in clear, simple English and should also be available in other community languages and a sign indicating the availability of the forms should be visible to members of the public.
2. A thorough community education program should be undertaken targeting primary and secondary schools with a view to informing the young about the nature and extent of police powers. This would go some of the way towards dispelling the perception among many young people that police have unlimited powers to search and seize.
3. Police stations should be required to have surveillance cameras positioned in all areas.

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