

# Procedural Justice and Complaints about Police

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## ABSTRACT

Prior to this research, legal practitioners and client advocates in New South Wales were regularly reporting that their disadvantaged or marginalised clients were mistrustful of, and dissatisfied with, the NSW Police complaints system. In an online survey, 239 client advocates described a recent incident in which a client with grounds to lodge a complaint against police declined and provided the reasons for their client's decision. Qualitative analyses of the narrative responses confirmed the anecdotal evidence, thereby indicating a diminished sense of the legitimacy of the police service. The research findings were then examined against the four principles of procedural justice – trustworthiness, respectful treatment, neutrality and voice – which have been established as critical for securing and maintaining police legitimacy. This allowed conclusions to be drawn about how police might restore community confidence.

**Keywords:** police, complaints, procedural justice, legitimacy

## INTRODUCTION

In a survey about experiences with the New South Wales Police Force (NSWPF) complaint system, client advocates described the most recent incident for which a client had adequate grounds to complain about police but declined to do so. The project was instigated in response to anecdotal evidence from legal practitioners and client advocates in New South Wales indicating that their disadvantaged or marginalised clients have low levels of trust in, and significant levels of dissatisfaction with, the police complaints system. These reports also suggest fear of retaliation

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by police against complainants. In some cases, the legal practitioners and client advocates are advising their clients not to make a complaint against police, despite serious allegations about police misconduct. While these reports have serious implications for the integrity of policing in NSW, and for the human rights of people in contact with the police, prior to this research, no scientifically robust empirical evidence existed to support or refute these claims. This article reports findings in relation to three open-ended questions to participants about circumstances in which their clients declined to formally complain or they advised their clients not to pursue a complaint.

While the findings were interesting in a number of ways, of particular note was the frequency with which participant responses referred to domestic violence (almost one-third of all responses) and unprofessional and/or illegal conduct by police (61% of all responses). Findings in relation to domestic violence were reported in a previous article (Goodman-Delahunty & Corbo Crehan, 2016). The present paper provides an overview of the issues raised by participants about police behaviours, and considers the implications of those findings in light of procedural justice theory.

## REVIEW OF THE LITERATURE

### *Procedural Justice Theory*

According to procedural justice theory, the use of fair procedures by those in authority improves compliance and satisfaction with discrete exercises of their authority thereby promoting acceptance of the legitimacy of that authority. Two broad views of the importance of such fair procedures have been posited. The first view, which might seem the more intuitively apt, is fundamentally instrumental in nature, asserting that fair procedures are valued because of the “favourable outcomes” they produce (Elliott, Thomas, & Ogloff, 2011; Goodman-Delahunty, Verbrugge, Sowemimo-Coker, Kingsford, & Taitz, 2013). The second view, that has been confirmed in multiple international tests of the theory, asserts that the fairness of the process by which outcomes are achieved may be more important than the favourability of the outcomes themselves (Elliott,

Thomas, & Ogloff, 2011; Mazerolle, Bennett, Davis, Sargeant, & Manning, 2013a). This phenomenon is known as “the fair process effect”.

Irrespective of the mechanism, when applied to policing, procedural justice theory leads to a “process-based model [that] calls attention to procedural factors that may have significant impacts on citizens’ behaviour during encounters with police” (Dai, Frank, & Sun, 2011, p. 159). While this appears to focus attention on discrete police encounters with members of their communities, the principles also apply more broadly to conceptions of police legitimacy or “public support of the police and policing activities” (Sunshine & Tyler, 2003, p. 513). As social psychologists have demonstrated, police work is legitimized in the eyes of the public when it is conducted fairly, thereby increasing the likelihood that people will “cooperate with policing efforts” (Sunshine & Tyler, 2003, p. 514). While “cooperation” with police may seem most relevant to suspects or offenders (i.e. people likely to be noncompliant with police directions), the importance of procedural fairness in police interactions with all citizens, including victims (Elliott, Thomas, & Ogloff, 2011) and in terms of police customer service more generally (Goodman-Delahunty, 2010; Goodman-Delahunty, Verbrugge, Sowemimo-Coker, Kingsford, & Taitz, 2013; Goodman-Delahunty, Verbrugge, & Taitz, 2013; Mazerolle, Bennett, Davis, Sargeant, & Manning, 2013a), has also been demonstrated.

In the context of policing, a wholly instrumental view of procedural justice is unlikely to be useful, given that police can engage in markedly fair procedures but still not bring about favourable or desired outcomes (e.g., because of a magistrate’s decision or a non-negligent failure to identify an offender). Indeed, Murphy has argued that ... recent social justice theories ... have steered away from ... an instrumentally focused view of individuals to suggest that procedural justice matters to people for reasons above and beyond self-interest concerns and the outcomes they receive (2014, p. 4027).

In terms of a non-instrumental perspective, “procedures matter as they convey important information to individuals about their value and status in society” (Elliott, Thomas, & Ogloff, 2011, p. 594); “When people feel they are treated with procedural fairness, their sense of self-worth is

bolstered” (Murphy and Cherney, 2011, p. 237). On this view, “perceptions of fair procedures ... shape the perceived legitimacy of the authority, which, in turn, encourage adherence to the rules, and cooperation with and support for authority” (Elliott, Thomas, & Ogloff, 2011, p. 592). And these fair procedures manifest in four components or values, “trustworthiness, respectful treatment, neutrality, and voice” (Goodman-Delahunty, 2010, p. 404; Mazerolle, Bennett, Davis, Sargeant, & Manning, 2013b; Mastrofski, Jonathan-Zamir, Moyal & Willis, 2016).

In relation to a police complaints system, two temporal points of police-citizen contact are especially relevant to procedural justice: (a) the point in time when the relevant police behaviour occurred; and (b) the point in time when the complaint was addressed. This article focuses on ways in which people were treated that evoked consideration of a complaint against police.

### ***Police Complaints Systems***

The statutory provision for complaints about police officers in NSW is contained in Part 8A of the Police Act 1990. Following legislative changes in mid-2017, there are two avenues by means of which complaints about police officers’ conduct can be made: the NSW Police Force itself via any member of the Force, and the Law Enforcement Conduct Commission. This Commission “replaces the Police Integrity Commission (PIC) and the Police Compliance Branch of the NSW Ombudsman with a single oversight body ... [and will] focus its attention and efforts on ... serious cases of misconduct and maladministration ...” (Law Enforcement Conduct Commission, n.d.). Serious misconduct is defined by the Commission as ... conduct that could result in prosecution for a serious offence (an offence punishable by imprisonment for life or for a term of 5 years or more) or serious disciplinary action (e.g. termination of employment) or a pattern of conduct indicating systemic issues or corrupt conduct (Law Enforcement Conduct Commission, n.d.).

According to the Commission, serious maladministration, which may occur at either agency or officer level, is defined as “conduct of a serious nature that is unreasonable, unjust, oppressive or improperly discriminatory or arises wholly or in part from improper motives”. At

officer level, such maladministration is conduct that “although not unlawful, is of a kind that is procedurally unfair”. Importantly, it remains the case that “the NSW Police Force ... [is] primarily responsible for investigating complaints involving their employees” (n.d.).

This system of police investigating police is not without problems, which have been well-canvassed (e.g. Brown, 2012; NSW Coroner, 2011; Independent Broad-based Anti-corruption Commission, 2015; Federation of Community Legal Centres (Victoria), et al., 2011; Police Accountability Project, 2017; Commission for Public Complaints against the RCMP, 2009). In 2011, the NSW Coroner, in findings related to a death in police custody, said of the underlying police investigation that it “was seriously flawed, ... and will have failed to persuade the community that the circumstances surrounding ... [the] death were investigated scrupulously and fairly” (para. 124). This same issue of community confidence was raised by the Commission for Public Complaints against the Royal Canadian Mounted Police, which commented in 2009 that the “fundamental” issue is “whether this process can engender public confidence in the transparency, impartiality and integrity of the criminal investigation and its outcome” (p. 1). And a UK Inquiry concluded, *inter alia*, that “Investigation of police officers by their own or another Police Service is widely regarded as unjust, and does not inspire public confidence” (Macpherson, 1999).

The United Nations Office on Drugs and Crime (UNODC) goes further than simply observing a causal link between the investigation of police complaints and community confidence by stating that “The aim of a complaints procedure is to prevent impunity and restore (or enhance) public confidence” (2011, p. 36). Public confidence is not, then, simply an effect of a properly-constituted police complaints procedure, but the *raison d’être* for the existence of such a procedure. A police complaints process that does not contribute to public confidence is simply not fit for purpose; if the key purpose of a police complaints system is ensuring public confidence, then a good (or appropriate) complaints system must be one that does ensure public confidence.

Indeed, UNDOC makes an interesting observation about how to gauge whether a complaints system is working well:

It is often observed that the number of complaints increases (rather than decreases) if police enhance their efforts to improve integrity and the complaints procedure in particular. An absence of complaints must not be interpreted as a sign that police performance is meeting with overall satisfaction, but may indicate a lack of faith in the effective handling of complaints (2011, p. 36).

In relation to the survey results reported below, any lack of confidence in the NSWPF complaints system will be interpreted as an indication that the system is not achieving the goals it ought to be achieving.

#### SURVEY RATIONALE

The survey was initiated in response to anecdotal reports from client advocates and legal practitioners in New South Wales indicating that their disadvantaged or marginalised clients had low levels of trust in the police complaints system (Goodman-Delahunty, Beckley, & Martin, 2014). These reports also suggested fear of retaliation by police against complainants; in some cases, client advocates and legal practitioners had advised their clients not to make a complaint against police, even when allegations of serious police misconduct were involved. These reports raised serious concerns about the integrity of policing in NSW, and the human rights of citizens, particularly vulnerable victims, in encounters with the police. However, no scientifically robust empirical evidence supported or refuted these claims, thus motivating the present survey.

In collaboration with Community Legal Centres, Inc. NSW, the second author developed an online survey to test the truth of the anecdotal claims referred to above. The survey sought evidence from client advocates and legal practitioners about their experiences with and perceptions of the NSWPF complaints system in relation to their non-police clients (Goodman-Delahunty, Beckley, & Martin, 2014).

## METHOD

### *Participants*

Employers at Community Legal Centres, Aboriginal Legal Services ACT/NSW, Legal Aid NSW and the NSW Council for Social Services facilitated recruitment of participants for the survey. In addition, the Law Society of NSW distributed the survey link to its members via email. Participation was voluntary, no incentives were provided, and completion of the survey took approximately 20 minutes.

The final number of survey participants was 493, of whom 41% were community advocates, 32% were other practitioners, and 27% were legal professionals. They were dispersed across metropolitan and rural locations in New South Wales (Goodman-Delahunty, Beckley, & Martin, 2014). Participants had an average of ten years of professional work experience. Almost three-quarters of the participants were women (73%). One half of the participants (52%) had personal experience submitting one or more written complaints against NSWPF in the past 24 months.

A total of 59% (n = 289) of the participants reported experience in this time-frame with a client who had declined to lodge a formal written complaint. These participants responded to two open-ended follow-up questions about the nature of the incident and the reasons behind the decision not to make a complaint: Why did your client decline to complain and I advised my client not to pursue a complaint because: - Please explain. Of those responses, 83% (n = 239) were codable (i.e., contained sufficient unambiguous information for further analysis).

### *Data Analysis*

All 239 natural language responses were de-identified for analysis. Analysis was conducted in two stages: initially, the first author read responses multiple times to facilitate immersion, and then she applied a systematic, thematic qualitative analysis (Hayes, 2000). An inductive analysis, based on the steps outlined by Braun and Clarke (2006), was used as this permitted novel themes to emerge. Notes were made in the margins of individual responses to code at the level of idea (phrase, sentence, or paragraph). Tentative themes were assigned to codes and refined after

reviewing further responses. Responses to all questions were read as a unit, and themes for each participant were systematically tabulated.

A random selection of responses was independently coded by a second rater. To ensure inter-rater reliability of the coding, the degree of consensus was statistically tested and found to be in an acceptable range: Cohen's kappa (K) were 0.72 for question (a) and 1.0 for question (b). Illustrative quotations which best exemplified participants' comments on the themes are reported below.

The themes and sub-themes identified in the responses were then examined through the prism of procedural justice, given that both police complaints systems and procedural justice are concerned with the legitimacy of policing.

## RESULTS AND DISCUSSION

### *Overview of Key Themes in the Responses*

Participants were first asked: For the most recent client who declined to formally complain - briefly describe the incident of concern. Within the 239 responses that were analysed, a total of 367 references to discrete problems in police-citizen interactions were distinguished, as some responses specified more than one type of problematic police action or inaction. Within these responses, 12 themes were initially identified. With further analysis these 12 were grouped under five overarching manifest (surface) themes: (i) Unprofessional conduct by police; (ii) Police do nothing (or take no action) in circumstances where action could justifiably be expected; (iii) Incorrect, possibly illegal, behaviour by police (excluding instances of excessive force); (iv) Excessive or inappropriate use of force; and (v) Insufficient information about police behaviour. The latter group contained codable information in relation to the other two questions.

The five themes were not mutually exclusive, but were chosen to best illuminate the information contained in the data. For example, excessive force is typically an instance of illegal police behaviour, but to have used the latter, more general, terminology to capture the former



occurrence would obscure important aspects of the data. No phrase or word was coded twice (e.g. text about an instance of excessive force was not coded for “excessive/inappropriate force” and “incorrect and/or illegal conduct” even if the former did meet the threshold of the latter). In some detailed responses, however, specific mentions of two related themes were evident (e.g., a response referring to both excessive force and some other instance of illegal behaviour by police) and so in those cases both themes were applied. The themes and sub-themes resulting from this question are captured below in terms of the types of problematic police behaviour identified.

Of the 239 participants who responded to the first question, 44% (n = 105) also responded to the second question Why did your client decline to complain? These 105 responses contained 111 references to reasons why a participant’s client had declined to complain. Seven themes were identified within these responses. No attempt was made to group them into fewer overarching themes because some were already complex. For example, the theme Nothing could be achieved included responses covered by the following descriptions: “didn’t think issues would be considered important by police”, “wouldn’t make any difference”, “waste of time”, “felt intimidated by police”, and “lost faith in police”. Unlike the themes drawn out of the responses to the first question, themes for this question were mutually exclusive: (i) Nothing could be achieved; (ii) Fear of further targeting; (iii) No clear reason expressed in response; (iv) Too scared/overwhelmed/stressed; (v) Other; (vi) Complaint would jeopardise legal proceedings; and (vii) Didn’t see point of complaint because relevant assistance had been gained. The reasons why clients were advised not to complain are detailed below.

Only eight participants (3% of the study sample) responded to the third question I advised my client not to pursue a complaint because ... (Please explain), precluding further analysis. These responses are presented in Table 1.

**Table 1.**

*Reasons why advocates advised a client not to pursue a complaint against police*

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- She was fearful of repercussions
  - The reaction by police in light of the circumstances of the incident was not totally inappropriate.
  - 2 laws apply
  - Referred the matter to the lawyer
  - There is no point making a complaint until after his current matters are settled. The police would likely have been called as witnesses against him in his current case. The complaint process would have adversely impacted their attitude to giving evidence against my client and increased hostility toward him.
  - The matter is ongoing and to ventilate this matter at this stage would not be in my client's interests
  - The client was of Aboriginal descent and had very little motivation to follow through apart from they felt they would be targeted more than they already are
  - Indigenous clients and young people in rural regions fear that they will be further targeted by police if they make a complaint
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***Types of Problematic Police Behaviour I – Unprofessional conduct by police***

The most common form of problematic police behaviour, accounting for more than two-fifths of the responses to the first question, was unprofessional conduct (43%; n = 158). Five sub-themes were identified, with responses evenly spread across the five. Table 2 presents these themes.

*Unprofessional and/or inappropriate conduct (not further described).* The largest sub-theme (26%; n = 42) comprised responses where the respective police conduct was clearly identified as unprofessional but no further detail was given about the nature of that conduct. Responses in this category

included a number of common descriptors: “appalling” (Participant 3), “poor” (e.g. Participants 39 and 104), “incompetent and inattentive” (Participant 215), “lazy and unhelpful” (Participant 230) and “inappropriate” (e.g. Participants 26, 38 and 59) treatment of clients. One advocate specifically referred to “extremely inappropriate” treatment of a client by a Domestic Violence Liaison Officer (DVLO) while at court (Participant 177), while another referred to “poor” treatment by a DVLO (Participant 226). Some participants referred to unprofessional verbal behaviour, for example: “police person made inappropriate comments about the DV [domestic violence] behaviour experienced by the woman while he was obtaining information for a statement” (Participant 49) and one advocate told of a client being transported to hospital by police who “said some things to her that were quite unprofessional” (Participant 72). Other examples of note within this sub-theme include an officer taking “4 sessions and 1 year to take ... [a] statement [about a ‘historical child sexual assault’]. Continually made excuses to the victim about appointments cancelled or forgotten” (Participant 114). One participant described an incident where “Police officers showed prejudice during investigation after finding out Other Party was involved in law enforcement previously” (Participant 236) and another reported an incident where “... the police prosecutor inflamed the court and the press with his choice of language based on false accusations and a completely wrong presentation of the facts” (Participant 225).

**Table 2.**

*Reported problematic behaviours by police, themes and sub-themes*

<b>Type of police action or inaction</b>	<b>N</b>	<b>%</b>	<b>n</b>	<b>%</b>
Unprofessional conduct by police	158	43		
• Unprofessional and/or inappropriate behaviour			42	26
• Aggression/intimidation/provocation/threat			34	21

• Disrespect (belittling, blaming)	31	20
• Harassment	26	17
• Racist or discriminatory treatment	25	16
Police inaction where action justifiably expected	80	22
• Police inaction, no reason given	41	51
• Police inaction (don't take client seriously)	19	24
• Police inaction (misunderstanding, failure to follow law, procedures)	15	19
• Police inaction (other reason)	5	6
Illegal or incorrect police conduct	66	18
Excessive or inappropriate use of force	46	12
Insufficient information about police behaviour	19	5
Total	369	100

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*Aggression/intimidation/provocation/threat.* Just over one fifth of the responses, the second largest sub-theme (21%; n = 34) reported police intimidation, aggression, provocation or threatening behaviour. Most instances of aggressive behaviour or the like were described as “bullying”, with one advocate (Participant 205) referring specifically to a client’s “feelings of fear and bullying”. One client advocate (Participant 8) referred specifically to police trying to “provoke” her client by speaking to them in a “derogatory manner”. Two advocates employed these descriptions in relation to a DVLO (Participants 158 and 177).

Some responses referred to police engaging in threatening or intimidating behaviour with a view to securing an end that was unrelated to the needs of the respective client indeed that ran counter to those needs. For example, a client advocate described a situation involving a “policyperson coercing client to make a retracting statement about ongoing

safety concerns after directly liaising with the perpetrator to drop another matter” (Participant 62). A young person who had been sexually assaulted was described by another advocate (Participant 122) as feeling “threatened into not pursuing the incident”. Worryingly, a domestic violence victim was told by police “that if they kept being called to her house they would arrest someone and said it in a way that was so intimidating that she stopped calling them. She eventually had to become homeless because of this” (Participant 182).

*Disrespect (belittling, blaming)*. An almost equivalent proportion of responses (20%; n = 31) were coded as disrespectful and included instances where police blamed a victim or engaged in conduct that was belittling. (Racist or otherwise discriminatory treatment was not included in this sub-theme.) Disrespectful treatment was reported in a variety of ways. A number of participants referred to “verbal abuse”, while others referred more generally to “rudeness” and clients being treated “with contempt” (Participant 32) or in a “demeaning” way (Participant 176) or “dismissed and victimised” (Participant 85). A client was described as being “taunted” by police as they took her to hospital (Participant 72), while another was “made to feel like she was being dramatic and crazy” (Participant 57).

Twenty-six percent of responses coded as instances of disrespectful treatment related to young people, one of whom was identified as having “diagnosed mental health issue” (Participant 180). In an additional 19% of responses the disrespectful treatment was directed at a victim of violence, in one case by a “DVLO at the local court [who] interrogated a victim of Domestic Violence as though she was a perpetrator” (Participant 177).

Two particularly revealing responses deserve a mention. One client was reported as saying that police they had dealt with while making a report at a police station were “rude, made assumptions, spoke over them, did not listen ‘spoke to me like I was an idiot” (Participant 108). In a response not likely to garner any confidence in police, another client advocate told of a client who “made a report about a burglary in her property to the police and was told by a policeman, ‘oh not you again, now what is it? Are you sure none of your relatives did it?’” (Participant 235).

*Harassment.* Harassment by police was mentioned in 17% of responses in this theme. The nature of police harassment was not specified in all cases (some participants, such as Participant 200, simply noted that their client was harassed by police with no further detail). In some responses, however, the harassment was linked to the respective clients being Indigenous (e.g. Participants 48 and 170) and in others it was linked to the respective clients being young people (Participants 80 and 212). One participant combined the two descriptors, giving an example of an Indigenous young person who was harassed by police (Participant 71). Two interesting results also showed up in this category. In two responses, police harassment was attributed to a female client's perceived attractiveness (Participants 67 and 181); and in another two responses, such harassment was identified as based on police assumptions about drug addiction ("they have that junkie look" and "no one would ever believe a junkie hooker", Participants 56 and 178).

*Racist or discriminatory treatment.* Sixteen percent of responses in this theme identified the behaviour of police as racist or discriminatory. Four responses describing racist or discriminatory behaviour by police, including racial abuse, were general in nature, referring only to "race" as the motivator of the respective police action. In an additional five responses, however, the police behaviour was specifically identified as motivated by a client's being Indigenous. Interestingly, five further responses referred to discrimination in relation to a client not being given access to an interpreter; one specifically referred to their client needing a "sign language interpreter" and this being "too difficult and too hard to organise" (Participant 76). Other types of discrimination referred to in the responses included discrimination against women qua women), discrimination based on a client's disability, and homophobic police behaviour.

***Types of Problematic Police Behaviour II – Police do nothing (or take no action) in circumstances where action could justifiably be expected***

The second most common form of problematic behaviour by police was characterised as police doing nothing (or taking no action) in circumstances where action could justifiably be expected (22%, n = 80).

Given the legal training of the participants, responses were coded into this category if the participant clearly indicated that police action was justifiably expected, and sub-themes were based around the reasons police gave for not acting.

*Police inaction, no reason given.* In most responses, the reasons for the particular police inaction were not specified (51%). Participant 232, for example, simply referred to “Reports of being a victim of violence not acted on by police”. Interestingly, almost two-thirds of the responses in this sub-theme referred to domestic violence issues. These issues included police failing or refusing to act on a breach of an AVO, police reluctance to take out an AVO on behalf of a victim, police not assisting with domestic violence incidents generally, and police completing an AVO application incorrectly. While not clear from the responses, it is interesting to speculate whether police feel less need to justify decisions not to act in relation to domestic violence, or whether participants did not think it necessary to record the police reasons.

*Police inaction (don't take client seriously).* In almost a quarter (24%) of the responses in this theme, police failed to take action on such grounds as disbelieving a person or not taking a person seriously. For example, one participant (Participant 89) described a client's problems with a neighbour and said “Police did not take him seriously and on most occasions do not even come”; while another (Participant 207) reported:

A client who I see for Domestic Violence Counselling reported that when she went into the police station the officer did not take her seriously about the recent Domestic Violence Incidence and declined to take a statement. She said ‘she [police officer] basically said it wasn't important to note’.

One response combined both disbelief and failure to take a client seriously:

... client felt that police didn't pursue his childhood sexual assault allegations seriously. Felt he was not believed by police and they thought he was just making complaint for purposes of victims' compensation (Participant 96).

In some reported instances, the police officers' attitude was attributed to a specific cause. For example, one participant noted police "not taking statements from witnesses ... if woman is distressed/emotional they tend to believe the articulate person's version of events" (Participant 60), while another reported:

Police were dismissive of a domestic violence incident, citing the 'intelligence' of both parties as a reason why they should be able to resolve the issue. The DV aspect was not taken into account at all (Participant 209).

Interestingly, two responses in this sub-theme referred to situations where police officers' personal relationships (with people other than the victim) had led to them not taking an incident seriously enough to offer assistance (Participants 1 and 84).

*Police inaction (misunderstanding, failure to follow law, procedures).* This sub-theme applied to 15% of all responses coded as police doing nothing in circumstances where action could justifiably be expected, with an alarming 93% of the responses specifically related to domestic violence issues. The one response that did not explicitly mention domestic violence did report police conduct that sounds very much like that reported in relation to domestic violence situations. It described a client who was "... being harassed and threatened, they were told when it was reported there is nothing they can do about it as the person has not harmed them physically" (Participant 18).

The ways in which the law was misunderstood or not properly known often related to the presence or absence of physical injuries. For example, Failure by Police to initiate an ADVO even though there were witnesses. Telling the victim that because she was not bruised or had broken bones they could not pursue the matter (Participant 95); and Female victim of DV wanting AVO, but because she wasn't bruised and battered she didn't receive it, until more threats had to be recorded and ongoing before the victim received the AVO (Participant 149).

Not all responses in this category related to police interpretation of law; in at least one case, the issue seems to be more about whether relevant



laws applied at all: one participant referred to “numerous ADVO breaches not considered or fobbed off as ‘technical breaches’” (Participant 62).

*Police inaction (other reason).* The remaining 5% of responses in this theme did not fit neatly into the sub-themes described above. In one a lack of police resources was the reason given by police to explain their failure to act:

Client lives approximately 150km out of [town]. She reports incidents to the local station but because it is so far out of town, officers rarely attend and comment ‘we don’t have enough patrols.’ On one occasion the client was severely bashed outside her house - police wouldn’t attend and she was taken via ambulance to the hospital (Participant 55).

The same client, on another occasion, received no assistance from police when she reported a breach of an AVO after “police allegedly phoned the perpetrator and [then] commented to the victim ‘he is 500 km away, you are imagining things’. At this point the victim resorted to filming the perpetrator in her yard” (Participant 55). One participant described police officers’ decision not to take seriously a domestic violence victim’s request for assistance:

The victim had been in a Domestic Violence relationship and had previously returned to the perpetrator of the violence after police had assisted her so when she was assaulted again and asked for assistance the police officer said ‘we tried to help you in the past and you f\*\*\*ed us around so why should we help you now’. The woman has been assaulted on two more occasions since this was said. The perpetrator of the DV has threatened to cut her throat. With the assistance of our service she is now out of that relationship (Participant 175).

In another incident involving domestic violence, it was reported that police believed a victim did not need an AVO and therefore would not assist with applying for one (Participant 60), while another participant recounted the experience of a client for whom “police would not extend [an existing] AVO, would not allow client to speak with DVLO and suggested this victim stop pushing the perpetrator’s buttons” (Participant 197). Finally in this sub-theme, a police failure to take action in a road rage

incident was attributed to the fact that the aggressor was “a prominent Community Member” (Participant 70).

***Types of Problematic Police Behaviour III – Incorrect, possibly illegal, conduct by police (not excessive force)***

This theme accounted for 18% of all problematic behaviours attributed to police. “Illegal” and “incorrect” actions were included within the one theme due to the difficulties in separating them based on the information provided by participants. One participant, for instance, noted that their client had been “incorrectly held in custody - police withdrew resultant charges in Local Ct [Court]” (Participant 7); and another referred to a client, a “young person”, being “arrested without sufficient reason” (Participant 14). In both cases, there was not enough information to determine whether the police acted illegally, though the clear inference is that they acted at least incorrectly. Furthermore, even reference to legislation would not have enabled identification of specifically illegal actions, given that illegality so often turns on the precise details of an event, details not provided in the relatively brief answers provided by participants. Instances of excessive force, although illegal, were coded in a separate theme.

In the previous theme, concerning police inaction, domestic violence related incidents were in the majority, compared to incidents that did not relate to domestic violence at all. That is, police were more likely to fail to take action, where action might reasonably have been expected, in situations involving domestic violence. In this theme, however, which involves policing doing something (rather than nothing) domestic violence incidents are in the minority (27% of cases in this theme). In relation to domestic violence related issues, police behaviour is more often problematic as a result of police doing nothing as compared to problematic behaviour from police taking action of some sort.

While a number of different actions were described within the responses coded into this theme, there were a number of common threads among the responses not related to domestic violence. Of those, 21% (n = 10) related to the arrest of clients and 17% related to the searching of clients. One response described an incident in which a client “was not told

why he was arrested or what was happening to him” (Participant 44), while another simply referred to clients “being arrested without sufficient cause” (Participant 228). One participant recounted a particularly embarrassing incident where their client was “arrested without proper cause causing client to soil their pants” (Participant 117). In a response related specifically to the searching of suspects, a participant reported:

Repeat offender. From disadvantaged socio-economic background, who frequents local shopping district and is found with prescription drugs in possession. Was validly prescribed such medication, but police officer who stopped and searched did not believe him. Advised client about LEPR [Law Enforcement (Powers and Responsibilities) Act 2002 (NSW)] and ‘reasonable suspicion’, etc. ... (Participant 146).

Another participant described an incident involving a young person who ... was walking down the street when he was stopped by police and verbally abused. When the young person retaliated verbally he was forcefully placed on the ground and searched by police for no apparent reason (Participant 93).

In five responses, misuse or abuse of powers was identified, usually in general terms but in one instance as “minor corruption” without further description (Participant 112). Perhaps most worryingly were the five responses that included references to strip searches. Two participants (Participants 75 and 125) referred simply to a strip search “in a public place”, with the latter response providing some additional information, namely that the search occurred “in front of everyone and was [of] a young person under 16”. Three responses (Participants 140, 210 and 212) also gave examples of strip searches conducted on young people, with one noting that their client “was subjected to a strip search without a responsible adult present, completed by a single officer” (Participant 140), and another referred to “Girls [being] stopped at night and strip searched without reason” (Participant 210). The response from Participant 212 included the disturbing information that police were “Constantly pulling YP [young person] over in street and searching and strip searching the YP, with no reasonable suspicion, just as a matter of course”. It could not be

determined from this response whether only one young person was being referred to in this answer, or whether it referred to young people in general.

Two other particularly disquieting responses coded within this theme included one where an "... Aboriginal girl of 15 ... was physically groped by a constable" (Participant 28), and another where the participant reported "police telling lies on oath" (Participant 221).

#### ***Types of Problematic Police Behaviour IV – Excessive or inappropriate use of force***

Instances of excessive or inappropriate use of force by police made up 12% of the problematic behaviours attributed to police. A number of responses contained little descriptive information beyond excessive force having been used; interestingly, the word "assault" was used twelve times in the responses. Nine percent (n = 4) of responses in this theme identified the excessive force as involving the use of OC spray (Participants 48, 63, 184 and 187), and one identified the use of a taser (Participant 184).

Twenty-four percent of responses referred to the undue use of force occurring during an arrest, and four of these identified the arrest itself as problematic: "wrongful" (Participant 133), "unlawful" (Participants 184 and 217), "inappropriate" (a second incident referred to by Participant 184) and conducted "without sufficient cause" (Participant 228). One participant described an incident in which a client resisted arrest (Participant 48), while another specified the respective arrest was for a "minor offence" (Participant 58). Excessive force directed against young people was identified in 13% of cases in this theme; and two of the participants noted that their respective client had been "cooperating" (Participant 90) or "complying" (Participant 110) with police when the excessive force was used.

#### ***Reasons Why Clients Declined to Complain***

This question was answered by 105 participants, all of whom had answered the previous question about problematic police behaviours. Within these responses, 111 separate reasons were identified, which were coded into six distinct themes. Themes and frequencies are specified in Table 3.

**Table 3.***Themes indicating reasons clients declined to complain*

<b>Reasons clients declined to complain</b>	<i>N</i>	<b>%</b>
Nothing would be achieved	33	30
Fear of further targeting	31	28
No clear reason expressed	18	16
Other	12	11
Too scared/overwhelmed/stressed	10	9
Complaint would jeopardize legal proceedings	7	6
<b>Total</b>	<b>111</b>	<b>100</b>

*Nothing would be achieved.* The most common reason given by participants referred to the belief that nothing would be achieved (no difference would be made) if a complaint against the police were made (30% of all responses in this theme). Descriptors included “pointless”, and “nothing would change” if a complaint were made. In two responses, the participants referred to their own legal experiences as support for their client’s views: one said of their client that they “Felt their complaint would go nowhere, which is my experience as a criminal lawyer” (Participant 219), while the other reported that “Client thought that a complaint was a waste of time and I ... [could] not, in good conscience, advise him otherwise ...” (Participant 44).

*Fear of further targeting.* The second most common reason given by participants for not making a complaint about police was clients’ fear that such action would lead to further targeting of the complainant by police (28%). Fear was mostly identified as fear of something, including fear of “comeback” (e.g. Participant 22), of “retribution” (e.g. Participants 87 and 206), of “reprisal” (e.g. Participants 121 and 105), and of “repercussions” not otherwise specified (e.g. Participants 205, 211 and 236). Some

responses referred to clients who had previous experience of targeting by police and who believed this would be exacerbated by a complaint. For example, “My client was scared that if they made a complaint the targeting would get worse” (Participant 56), and “Aboriginal people will not complain about police because they fear that the police will then target them after the complaint, as this has happened in the past” (Participant 64). Nineteen percent of the responses in this category specifically identified a fear that police assistance would not be forthcoming in the future should a complaint be made. For example: “Client felt if complaint was followed up she would continually be ignored or treated like a liar by all police officer at that station” (Participant 32), and “concerns of refusal to assist in future should police support be needed” (Participant 78). Two participants gave more detail:

My client knew she had to rely on the police to continue to support and protect her against serious family violence as well as upholding the ADVO. Consequently she regarded making a complaint as inevitably lessening the likelihood of police support (Participant 215); and

She feared making a complaint could make things worse for her as she was still living in the house and would rely on the local police to respond to her if she needed them in the future, i.e. if she made a complaint the police would not help her in future (Participant 216).

An additional two responses were particularly concerning. One referred to a client who believed a complaint would result in her being “punished” by the police (Participant 54), while the other spoke of a client who had a “genuine fear that the unwanted police attention will increase as well as ferociousness” (Participant 181). The response from Participant 56 indicated the extent to which targeting by police might impact negatively on a client: “My client was scared that if they made a complaint the targeting would get worse, and the police would continue to fine them, and they would both lose their licences, lose their jobs and be placed in more financial hardship”.

Leaving aside those responses that did not clearly give a reason for a client's decision not to make a complaint against police (16%), the remaining responses coded into this theme referred to clients being too scared or too overwhelmed by the relevant matter to pursue a complaint for reasons other than a fear of future targeting by police (9%), clients perceiving a complaint would jeopardize ongoing legal proceedings (6%), and a 'mixed bag' of responses that were coded as "other" (11%). Illustrative quotes concerning clients' feeling too anxious or nervous to make a complaint include "My client was too tired, fearful and disheartened and wanted no further contact with the police" (Participant 190) and "Client was so exhausted by what she'd been through she did not want to prolong her stress and anxiety by making a formal complaint about the actions of police" (Participant 151). Responses coded into the "other" category, while not numerically significant, did raise some interesting matters. Only one cited police investigating police as a reason for not complaining (Participant 93). Two referred to cultural reasons: "... she is a Muslim woman and thought it was inappropriate for her to complain" (Participant 81) and "just being part of culture where reporting offences/making complaints is not done" (Participant 228). And one (Participant 193) made the particularly interesting observation that "Police insist on complaints being in writing, and many of my clients have literacy issues".

## GENERAL DISCUSSION

### *The Findings Through the Lens of Procedural Justice*

Overall, the findings support the anecdotal evidence that prompted this research, namely that disadvantaged or marginalized clients of legal practitioners and client advocates in NSW have low levels of trust in, and significant levels of dissatisfaction with, the police complaints system. Such a view of the system indicates a diminished sense of the legitimacy of the police service, since it is "taken as axiomatic that the [police] complaints system plays an important role in securing police legitimacy" (Torrible, 2016, p. 1). This, in turn, justifies applying the lens of procedural justice to the findings since its four principles of trustworthiness, respectful

treatment, neutrality and voice have been established as critical for securing and maintaining police legitimacy.

The survey responses demonstrated significant and sometimes egregious breaches of each of the four principles of procedural justice. To a significant extent, police were not perceived as trustworthy by either the advocates or the clients whom they described. This lack of trust was evident in three different dimensions. First, there was a lack of trust expressed in the efficacy of utilising the police complaints system itself, with almost a third of the relevant responses stating that nothing would be achieved. Second, a lack of trust can be inferred from the fear expressed in an almost equal number of responses that clients would be targeted by police if they made a formal complaint. And third, a lack of trust is also implicated in the finding that in many instances, police took no action in situations where action could reasonably have been expected – i.e. in situations where people had reason to trust that the police would take some sort of action to assist them. These situations were not ones where police were unable to respond, either practically or legally; they were ones where they actively chose not to respond, which is arguably inimical to trustworthiness. In most of the situations described by participants, their clients were victims of crime, in which case not being able to trust police to provide assistance is likely to exacerbate victims' typical feelings of shock, anger, helplessness and violation.

Moreover, the police conduct described was not indicative of respectful treatment. Such treatment “can most clearly be paraphrased as ‘professional behaviour’” (Goodman-Delahunty, 2010, p. 404; emphasis added). Yet the largest category of problematic police behaviour identified in this study was that of unprofessional conduct, with all other categories of that behaviour fitting the broad description also. In addition, a number of participants indicated that police did not “treat individuals with dignity, [or] take them seriously” (Goodman-Delahunty, 2010, p. 404; Tyler and Lind, 1992), but rather dismissed their concerns, or belittled them.

A lack of neutrality was directly indicated in a number of ways in the survey responses, including via racist or discriminatory treatment, and harassment. There were reports of capricious police decision-making, as



distinct from decisions based on “consistently applied legal rules and principles and the facts of a case” (Murphy and Tyler, 2017, p. 288), and a number of participants identified a lack of transparency (Goodman-Delahunty, 2010, p. 404) on the part of the respective police officers. While conduct consistent with a breach of the Procedural Justice principle of neutrality were apparent across all categories of problematic police behaviours, it was perhaps most worryingly apparent in the numbers of participants who reported police acting in illegal ways and inappropriately using force. This sort of conduct is inconsistent with police “using only legitimate criteria for deciding how to exercise authority” (Mastrofski, Jonathan-Zamir, Moyal & Willis, 2016, p. 120).

In many ways, violations of the fourth principle of procedural justice – voice – tie together all the specific findings. Both advocates and clients, but more so clients, were silenced or had their voices disregarded by police in many ways, both at the time police assistance was sought and later when consideration was given to lodging a complaint. Moreover, in a number of instances police mocked the voices that clients tried to use, by belittling and blaming them, intimidating and threatening them or harassing them. In both their actions and inactions, police gave clients and advocates no reason to “infer that they are valued” by the police (Goodman-Delahunty, 2010, p. 405). In fact, while Mastrofski, et al. have said that the “the degree of PJ or injustice shown someone communicates a powerful symbolic message about the citizen’s status or worth” (2016, p. 121), many of the police officers referred to by participants eschewed even symbolic representations and made it quite clear to clients that they were not “valued by the authorities” (Goodman-Delahunty, 2010, p. 405).

## CONCLUSION

Overall, the findings support the anecdotal evidence that prompted this research, namely that disadvantaged or marginalised clients of legal practitioners and client advocates in NSW have low levels of trust in, and significant levels of dissatisfaction with, the police complaints system. This in turn indicates that the NSW police complaints system is not meeting the aim that UNDOC said should motivate all such systems, namely “to prevent impunity and restore (or enhance) public confidence”

(UNDOC, 2011, p. 36). There was no evidence of public confidence being enhanced; if anything, the data suggested an erosion in such confidence.

As indicated above, police legitimacy is diminished when complaints systems cannot be relied on. This is not simply a theoretical problem existing at the level of political philosophy; it has practical implications for the ability of police to do their job and carry out their sworn duties. When the legitimacy of police is questioned, members of the public are less willing to assist them (e.g. by “reporting incidents, undertaking crime prevention activities, and generally being helpful in the community”), and less willing to cooperate with them, thereby making crimes more difficult to solve and increasing the likelihood that force will be needed to resolve situations (Mazerolle, Sargeant, Cherney, Bennett, Murphy and Martin, 2014, pp. 5, 10). Viewing the current deficits in the police complaints system as failures of procedural justice provides a clear way forward for preserving and, if necessary, re-establishing, police legitimacy and, thereby, community confidence in their police –namely, instantiating the four tenets of procedural justice.

This would need to take place in a multi-dimensional way – at the level of the complaints system itself and in terms of individual officers who interact with the public. Arguably, individual officers’ perceptions of the complaints system should also be addressed as part of any remedial effort, since the frequency and types of police misconduct identified in this study suggest a sense of impunity on the part of the officers described in the data. Equally, that misconduct also suggests a significant level of frustration with the limitations of police work – and indeed of the human beings with whom police work. Any attempt to refocus police on the principles of procedural justice will need to address the cause of this frustration (a misunderstanding of what is achievable, community or departmental pressures to ‘make things right’?) to have any lasting effect.

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