Australian Journal of
Human Rights
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- to monitor human rights developments in this region.

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The Journal is proud to have as its patrons the Hon Elizabeth Evatt AC, Professor Philip Alston and Father Frank Brennan SJ AO.

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# Australian Journal of Human Rights

*Special issue: Policing and human rights*

**Volume 20 Issue 2 2014**

## Table of contents

### Introduction

*Simon Bronitt,* *Melanie O’Brien* and *Melissa Bull*

Linking policing and human rights: a recent invention or an enduring legacy?  

### Speech

*David Hambly*

Police and human rights: 1963 and 2013  

### Articles

*Marlene Easton*

‘Blind spot’ policing in Belgian multicultural neighbourhoods and the implications for human rights  

*Clare Farmer*

‘Is a 24-hour ban such a bad thing?’  

Police-imposed banning orders: compatible with human rights or a diminution of due process?  

*Kelly Richards and Angela Dwyer*

Unspeakably present: the (un)acknowledgment of diverse sexuality and gender human rights in Australian youth justice systems  

*Jane Goodman-Delahunty, Alan Beckley and Melissa Martin*

Complaints against the New South Wales Police Force: analysis of risks and rights in reported police conduct
Diane Sivasubramaniam, investigative interviews: the role of recording and interview duration limits 107

Jane Goodman-Delahunty, Martin Fraser and Melissa Martin

Clive Harfield Law, morality and the authorisation of covert police surveillance 133

Seumas Miller Human rights, police corruption and anti-corruption systems for police organisations 165

Book reviews

Linda Briskman Crime, Justice and Human Rights
By Leanne Weber, Elaine Fishwick and Marinella Marmo 181

Justine Nolan The Politics of Global Supply Chains
By Kate Macdonald 185
Complaints against the New South Wales Police Force: analysis of risks and rights in reported police conduct

Jane Goodman-Delahunty, Alan Beckley and Melissa Martin*

Citizens subjected to wrongful arrest, incivility or other police misbehaviour need access to a sound and objective system for making complaints about police conduct that infringes their fundamental human rights. This qualitative empirical study examined potential human rights violations in written descriptions by 91 legal practitioners and client advocates of events culminating in a formal complaint against the New South Wales Police Force (NSWPF). The descriptions were systematically coded to identify the types of police behaviours that led to complaints, the nature and extent of any human rights violations, and the degree of legal risk exposure to the NSWPF in the reported conduct. The majority of the complaints resulted from police inaction (30%) or unlawful behaviour (25%), and involved moderately high or high risk behaviours exposing the police to potential legal liability and diminishing police legitimacy. The reported police conduct was not trivial and impinged upon multiple rights of citizens, particularly the right to security of person and equality before the law. Increased awareness of human rights issues implicated in citizen complaints and the potential for costly litigation will assist police in responding more effectively to complaints and will enhance community confidence in police.

Keywords: police, accountability, citizen complaints, human rights violations

Introduction

All people living in Australia have the right to protection from infringement of their fundamental human rights, whether explicitly provided by legislation or by international instruments. However, Australia, as a liberal democracy, is unique in that it does not have a national integrated human rights legal framework (Marmo, de Lint and Palmer 2012, 641). Residents in some states and territories, such as Victoria and the Australian Capital Territory, are protected by local human rights legislation.

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(Charter of Human Rights and Responsibilities Act 2006 (Vic); Human Rights Act 2004 (ACT)). In states and territories where no explicit rights-based legal system exists, such as New South Wales, all residents are accorded protections enumerated in the Universal Declaration of Human Rights (UDHR). In 1948, all members of the United Nations (UN) General Assembly, including Australia, adopted the UDHR (Australian Human Rights Commission 2006). Australia has also ratified most major international human rights instruments,¹ and issued a standing invitation to UN human rights experts to visit and report on the protection of human rights in Australia (AHRC nd).

The protection and infringement of individual human rights are inextricably linked with everyday operational policing activities. Many police powers — such as stop, search, seizure, arrest, detention and interview — impact the rights to personal freedom and the privacy of persons with whom police interact in the course of operations to prevent and detect crime. Other rights, such as freedom of speech and lawful assembly, are affected by policing efforts to ensure public order and to prevent obstruction of free passage. Furthermore, decisions relating to the granting or refusal of licences, which form part of police administrative activities, and access to criminal justice, such as the right to a fair trial and employment, affect the rights of individuals (Beckley 2000, 1). During normal police operations, such as crime investigations and peacekeeping, the human rights and fundamental freedoms of citizens can be infringed if police use excessive force, make a wrongful identification or arrest, fail to act, or simply misinterpret a situation.

Additional sources of protection for citizens’ human rights are inherent in professional standards and codes of conduct for police (Prenzler, Bronitt and Beckley 2012), such as the UN Code of Conduct for Law Enforcement Officials (1979) which states at Art 1:

Law enforcement officials shall at all times fulfil the duty imposed upon them by law, by serving the community and by protecting all persons against illegal acts, consistent with the high degree of responsibility required by their profession.

In New South Wales, a police officer who successfully enters the NSW Police Academy and becomes a police constable is bound by the following Oath of Office:

I ... swear that I will well and truly serve our Sovereign Lady the Queen as a police officer without favour or affection, malice or ill-will until I am legally discharged, that I will see and cause Her Majesty’s Peace to be kept and preserved and that I will prevent to the best

¹ Such as the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR).
of my power all offences against that Peace and that while I continue to be a police officer I will to the best of my skill and knowledge discharge all the duties thereof faithfully according to Law. So help me God. [Police Act 1990 (NSW), s 207D.]

Moreover, the New South Wales Police Force (NSWPF) Customer Service Charter includes items relevant to the protection of the human rights of witnesses, victims and community members, undertaking to ‘be accessible to all persons regardless of their culture, language, age, sexuality, physical and mental ability, locality and socio-economic background’, and to treat customers ‘fairly and with respect’ (NSWPF 2013b).

Notably, the major instruments that protect human rights are not part of Australian law. The UDHR, although not a treaty, comprises part of customary international law and can be perceived as a source of law in Australia (Gans et al 2011, 10), but is non-binding. The Code of Conduct for Law Enforcement Officials (UN 1979) is recognised worldwide in policing (Neyroud and Beckley 2001, 62; Smith 2010) as a guide to best practice in managing policing operations (Cawthray 2013; Prenzler, Bronitt and Beckley 2012). Section 47 of the Australian Human Rights Commission Act 1986 (Cth) declared that seven international instruments were part of it, including the International Covenant on Civil and Political Rights (ICCPR). However, the courts have held that when executive agents of the government sign a treaty this does not create rights or obligations for private citizens unless these instruments are incorporated into domestic Australian law. Therefore, the instruments are not the bases of any actionable rights (Gans et al 2011, 19).

The ICCPR encompasses all the human rights and fundamental freedoms that exist in other instruments, such as the UDHR. The incorporated rights most relevant to the investigation and prosecution of crime are the right to life (Art 6); the right to liberty and security of the person (Art 9); the right not to be subject to torture or to cruel, inhuman or degrading treatment or punishment (Art 7); the right to privacy (Art 17); the right to silence (Art 14); and the right to a fair trial (Art 4) (Gans et al 2011, 37). These rights are interpreted in a similar way to those enumerated in the UDHR and have been mentioned in many criminal and civil cases in Australia, especially cases on deaths in police custody (Office of Police Integrity 2009) and excessive use of police force (UN Human Rights Committee 2009). Some of these rights have been incorporated into Australian statutes and human rights law, where it exists.

2 See Walker v Baird, 1892. An example of a law enacted to give rights to Australian citizens is the Sex Discrimination Act 1984 (Cth), which emanates from the Convention on the Elimination of All Forms of Discrimination against Women.
According to Gans et al (2011, 47), the right to privacy remains ‘relatively insecure’ in Australia. The value of human rights in Australia has been the basis of some scepticism in legal circles: ‘because rights do not have an absolute value they have no special value at all’ (Ashworth and Redmayne 2010, 36). This somewhat jaundiced view seems to emanate from uncertainty of the interpretation and weight that an Australian court will accord to a particular right recognised under the ICCPR.3

Many academics and international non-governmental organisations have recognised the importance of considering human rights in policing. For instance, police owe citizens a duty of care, requiring them to be ‘critically aware of shared human rights, and the ways these ethical stances and legal structures can lead to better practical outcomes for vulnerable people and populations, and all “users” more generally’ (Bartkowiak-Theron and Asquith 2012, 14). International sources are more prescriptive about human rights principles — for example, the UN training manual for police officers states: ‘Law enforcement officials are obliged to know, and to apply, international standards for human rights’ (UNOHCHR 2004, 1).

Whereas in ex-Warsaw Pact or other countries with totalitarian regimes the purpose of policing is to protect the state or its ideology, the purpose of policing in democratic countries is ostensibly to protect the human rights of individual citizens — a diametrically opposite approach.4 Countries such as Australia, deemed liberal democracies, aspire to achieve policing models described as democratic (Bayley 2006) that are accountable to the public, and have attained ‘legitimacy’ (Jackson 2013). Political systems achieve legitimacy when they (a) meet certain objective criteria related to the acceptance of domestic norms; and (b) observe human rights (Hough

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3 Where it is alleged to a court that evidence presented has been unlawfully or improperly obtained, the court may consider whether to exercise discretion to exclude evidence obtained ‘contrary to or inconsistent with a right of a person recognised by the ICCPR’ (s 138(3)(f) of the Australian uniform evidence legislation: see, for example, the Evidence Act 1995 (Cth)). This factor has been considered in several cases (for example, R v Sotheren, 2001) to apply to the rights of the person in accord with Australian law, not a wider interpretation of other jurisdictions. In addition, because Australia acceded to the First Optional Protocol to the ICCPR, complainants may petition the UN Human Rights Committee for a determination on whether Australian law complies with the ICCPR. If a petitioner is successful, through a long and painstaking process, changes to the law are not enforceable, but may be considered by the Australian government. The potential for success should not be dismissed, however, as proven by the well-known decision in Mabo v Queensland, 1992, a remarkable case in which the High Court of Australia first recognised the merits of native land rights of a Torres Strait Island citizen.

4 One of the authors, who was a serving police officer, witnessed this factor while working with pre-accession countries to the European Union (Beckley 2012, 275).
2012; Goodman-Delahunty et al 2013b). In the criminal justice system, legitimacy exists when people accept that authorities have earned the right to command, willingly obey systems of authority, and perceive police as legitimate (Hough 2012, 146; Goodman-Delahunty et al 2013b). Police legitimacy is intrinsically linked to accountability to the public (Bennett et al 2009; Mazerolle et al 2011; 2013a; 2013b; 2013c). Police accountability is maintained through a system of complaints against the police scrutinised by police oversight bodies such as the Ombudsman or specific bodies such as the Police Integrity Commission.5

**Legitimacy, policing and the ‘social contract’**

As part of the ‘social contract’ (Neyroud and Beckley 2001, 20), citizens are content to comply with legislation and participate in maintaining good order in return for protection by the state, as well as safety and security. Operational policing, by the nature of its activity, often engenders conflict between citizens and stakeholders6 that culminates in complaints against the police. Members of the public require a fair and objective means through which to communicate their displeasure when they are a witness to or a victim of police conduct that entails incivility, dishonesty, misconduct or more serious issues such as excessive use of force or corruption. A complaints system is a mechanism to deter police misbehaviours, hold police accountable for their actions, and empower citizens to assert that their rights are upheld. When citizens are subject to wrongful arrest, incivility or other police misbehaviour, they need access to a valid and trusted system of complaints that, when activated, results in an open, transparent, objective, timely and fair investigation with an acceptable outcome in most cases (Goldsmith 1999, 34; Prenzler 2009, 61). The significance of a well-managed complaints system in protecting citizens against human rights abuses should not be minimised: ‘In all jurisdictions, whether or not a culture of police impunity prevails, complaints and the way they are handled serve as important indicators of police professionalism, responsiveness and accountability’ (Smith 2010, 71).

**Complaints against the NSWPF**

In New South Wales, legislation covering the detailed procedures for complaints against the police is provided by the *Police Act 1990* (NSW) (Goodman-Delahunty et al 2012; NSWP 2012). Media sources reported that the total number of complaints

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5 All states and territories in Australia have some form of independent oversight to ensure accountability of the police. See den Heyer and Beckley 2013; Goldsmith 2001; Lewis 1994.

6 The ‘stakeholders’ in this context are all members of society, whether citizens or visitors, and, in particular, elected members and police oversight or scrutiny bodies.
filed against the NSWPF in 2011 was around 7000, including both formal and informal complaints from internal and external sources (Domjen 2012). The numbers of citizen complaints against police recorded in NSWPF annual reports in recent years are shown in table 1.

Despite what appears to be a substantial number of written complaints, the volume of recorded complaints against police in Australia has been described as ‘only the tip of the iceberg’ (Prenzler 2009, 61). Prior research in the United Kingdom indicated that up to 90% of persons who have legitimate grounds to lodge a complaint based on negative experiences in their interactions with police did not formally lodge a complaint, despite their dissatisfaction with police conduct and service (Maguire and Corbett 1991).

An investigation of complaints lodged against the NSWPF in the 12-month period May 2009–May 2010 revealed 3131 discrete external complaints from citizens, extracted directly from the NSWPF computerised complaints recording system, ‘c@ts.i’, which is the tracking system database used by the NSWPF to manage all written complaints, accessible to the NSW Ombudsman and the NSW Police Integrity Commission (Goodman-Delahunty et al 2011). A common perception among some police officers is that the majority of complaints are non-meritorious, initiated either by disgruntled suspects who are motivated to retaliate against the police or by housewives with too much time on their hands (Goodman-Delahunty et al 2011, ix). However, an analysis of the content of the complaints revealed that the majority were initiated by law-abiding community members who reported serious and actionable misconduct that exposed the NSWPF to substantial legal risk (Goodman-Delahunty et al 2011; 2013a). When classified using the NSWPF taxonomy, which distinguishes 23 separate issues related to specific police behaviours, these complaints reported on 6460 separate issues, indicating that many events reported by complainants raised more than one issue of alleged police misconduct (Goodman-Delahunty et al 2011). To date, however, few researchers have examined the nature and scope of human rights violations in complaints about police conduct. The current study addresses this issue.

<table>
<thead>
<tr>
<th>NSWP</th>
<th>Year of complaint</th>
<th>Source of data</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2009/10</td>
<td>2010/11</td>
</tr>
<tr>
<td>Complaints per thousand sworn police officers</td>
<td>301</td>
<td>289</td>
</tr>
</tbody>
</table>
| Total number of complaints | 5196 | 5516 | 5135 | 4928 | NSWPF annual reports (1 July to 30 June annually)
Research aims
The purpose of the current study is to examine the extent to which human rights abuses were alleged in police conduct that formed the basis of formal written complaints lodged by legal professionals and community advocates who represented members of the NSW community following their clients’ negative interactions with the police.

Method

Research design and materials
A mixed-method online survey questionnaire containing 42 questions was designed in collaboration with Community Legal Centres NSW\(^7\) (Goodman-Delahunty et al 2014). Ethics approval to conduct the study was secured through the Charles Sturt University Human Research Ethics Committee (2011/062).

Participants
Survey participants were 493 legal professionals and community advocates in New South Wales contacted via email through the Law Society of New South Wales and professional networks of the Community Legal Centres NSW\(^8\). They were dispersed across a diverse range of metropolitan and rural locations in New South Wales. Survey participation took approximately 10–20 minutes, depending on the scope of participants’ experience with the NSWPF complaints procedures.\(^9\) In all, 378 participants completed all questions in the survey. More than half of the participants \((n = 195)\) had experience directly assisting their clients to make a complaint against...
a police officer or to seek redress from the NSWPF. Approximately one in every four survey participants (23%; \( n = 91 \)) had a client’s complaint against the NSWPF finalised within the 24-month period prior to completing the survey. A finalised complaint is one where an investigation into a matter has been assessed and allocated an outcome. These participants were asked the following open-ended question: ‘For the most recently finalised written complaint, what was the incident of concern?’

Responses from those participants who reported firsthand experience within the past 24 months of lodging a formal complaint on behalf of a client against the police comprised the sample for the current study. This report analyses their written responses to this question. The majority of the participants in this group (51%; \( n = 47 \)) were legal practitioners; 30% (\( n = 27 \)) were client advocates who worked in social or community services in New South Wales; and 19% (\( n = 17 \)) were other advocates. Most participants were women (62%); 26% were men; and 12% did not disclose their gender.

**Data analysis and coding procedures**

To assess the extent to which issues complained of infringed upon the clients’ human rights, participant responses describing the police conduct leading to the most recent finalised complaint were reviewed and manually coded on three dimensions indicative of the gravity of that conduct: (1) the nature of the police conduct in issue; (2) the level of legal risk exposure to the NSWPF in the reported conduct; and (3) the human rights, if any, breached by the conduct.

**The nature of the reported police conduct in issue:** The police conduct described in participant narratives was classified as one of the following 10 behaviours: (1) illegal or unlawful conduct (behaviour contrary to criminal law); (2) undue aggression or force; (3) incivility, rude or abusive behaviour; (4) unprofessional conduct; (5) discriminatory or biased treatment; (6) inaction; (7) poor communication; (8) infliction of mental distress; (9) property damage; and (10) other. Where behaviours fitted within more than one classification, they were counted in the most appropriate category as determined by the researchers by assessing the most serious of the actions.

**Legal risk exposure:** The level of legal risk exposure to the NSWPF in the reported police conduct was classified in one of five categories of legal risk, ranging from low to high (Goodman-Delahunty et al 2011; 2013a), as follows: (1) low risk consisted of rudeness, intolerance or minor inaction; (2) low–moderate risk consisted of police inaction involving vulnerable persons, repeated behaviour, costs to complainants with little public impact; (3) moderate risk conduct was action or inaction involving
public visibility, but no significant consequences or use of force; (4) moderate–high risk conduct resulted in physical or psychological injury, including assaults; and (5) high risk conduct resulted in severe injury or detriment to police public image — for example, serious assaults, severe intimidation, negligence, failure of duty, deceit, corruption or wrongful death. Based on civil torts law, conduct that was rated low or low–moderate in risk was that posing a negligible risk of civil litigation against the police.

**Human rights abuses:** Using the definitions of human rights enumerated in the Articles contained in the UDHR, descriptions of the reported police conduct were reviewed and coded. The comparative framework of the UDHR was used because it is an internationally accepted and well-understood framework regarding the scope and reach of its Articles.\(^{10}\) All responses were coded by two independent raters,\(^ {11}\) who were blind to other survey responses provided by participants. To ensure the accuracy and reliability of the coding, the degree of consensus was tested statistically using a measure devised for coding the reliability of open-ended verbal responses.\(^ {12}\)

**Results**

**Finalised complaints against NSWPF**

On average, each participant had experience with between one and two finalised written complaints against the NSWPF in the past two years. In total, they had experience with 211 separate formal written complaints in this period.

\(^{10}\) Other instruments could have been used, such as the ICCPR, which does have a place in the legal system of Australia, albeit a marginal one, or the Convention on the Elimination of All Forms of Discrimination against Women, but the gender of complainants was not always clear. Taking the foregoing factors into consideration, the researchers based the coding on the longer-established and clear credentials of the UDHR.

\(^{11}\) Raters were the second and third authors, legal professionals with expertise in policing and human rights law.

\(^{12}\) For the nature of the police conduct in issue, this yielded a Krippendorff’s alpha of 0.7; for the legal risk exposure, 0.8; and for the human rights codes, 1.00. Inter-rater reliability was in the ‘good’ to ‘very good’ range.
Participants’ descriptions of details of the events that had generated the most recently finalised complaint revealed that the incidents of concern encompassed a variety of types of police conduct — for example, their clients reported that the police had not listened to what they said, did not follow routine protocol, were unnecessarily oppressive or harassed them. Systematic analyses of the nature of the police conduct in issue in the formal complaints that were lodged, as described by the client

<table>
<thead>
<tr>
<th>Type of police conduct reported</th>
<th>%</th>
<th>Example of reported conduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inadequate police service — inaction</td>
<td>30</td>
<td>They had done no investigation and intended to do no investigation, and despite me giving them information as to witnesses before — as the matter developed, during, and immediately after, they took no details, didn’t care (Other Advocate 5)</td>
</tr>
<tr>
<td>Illegal/unlawful conduct</td>
<td>26</td>
<td>Client claimed the police searched her in the main street, asking her to lift up her top, showing her bust in the main street. Witness can back up the claim, and observed this happening (Client Advocate 11)</td>
</tr>
<tr>
<td>Unprofessional conduct</td>
<td>11</td>
<td>Police officers passed on information to the RTA [Roads and Traffic Authority] that was distinctly contrary to evidence given in court, causing my client to have their licence suspended (Legal Practitioner 27)</td>
</tr>
<tr>
<td>Undue aggression</td>
<td>10</td>
<td>Excessive force against a young person and arresting instead of using alternatives (Other Advocate 10)</td>
</tr>
<tr>
<td>Discriminatory treatment: biased action or inaction</td>
<td>9</td>
<td>The NSWPF dismissed the concerns of a person with disability (Client Advocate 17)</td>
</tr>
<tr>
<td>Incivility; rude and abusive behaviour</td>
<td>7</td>
<td>My client complained that the officer was insulting and disrespectful as well as rude and inappropriate … told she was a liar and that no one would ever believe a junkie hooker (Client Advocate 18)</td>
</tr>
<tr>
<td>Inadequate communication</td>
<td>3</td>
<td>Lack of provision of Auslan [sign language] interpreters (Client Advocate 13)</td>
</tr>
<tr>
<td>Property loss or damage</td>
<td>1</td>
<td>Non-return of property following an arrest (Legal Practitioner 47)</td>
</tr>
<tr>
<td>Undue mental distress</td>
<td>1</td>
<td>A victim in DV [domestic violence] being re-traumatised by the Officer in Charge (Client Advocate 7)</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>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)</td>
</tr>
</tbody>
</table>

Note: N = 91. A behaviour that fitted more than one category was counted only once in the most appropriate category, determined by the researchers by assessing the most serious of the reported actions.

The nature of police conduct leading to complaints

Participants’ descriptions of details of the events that had generated the most recently finalised complaint revealed that the incidents of concern encompassed a variety of types of police conduct — for example, their clients reported that the police had not listened to what they said, did not follow routine protocol, were unnecessarily oppressive or harassed them. Systematic analyses of the nature of the police conduct in issue in the formal complaints that were lodged, as described by the client
advocates and legal professionals, revealed that three in every 10 complaints (30%) arose because of police inaction, or failure to fulfil their duties and obligations. One in every four complaints (26%) described conduct that violated the law, such as assaults. Other forms of police conduct that led to complaints were less frequent: one in every 10 complaints (11%) was characterised as a form of unprofessional behaviour, or undue aggression or force, or discriminatory/biased treatment. The nature of the police conduct reported, the proportion of complaints in each category, and examples provided by the legal representatives and client advocates of each type of conduct are displayed in table 2.

A supplementary assessment of the gravity of the police conduct reported was provided by analysing the level of legal risk exposure to the NSWPF inherent in that conduct. The results revealed that the actions taken by police officers exposed NSWPF to substantial levels of legal risk. Only 9% of the incidents were rated low or low-to-moderate risk. By far the substantial majority, 89%, were rated as moderate-to-high risk incidents. One-half of the behaviours described (49%) were classified as either moderate-to-high (23/89) or high risk (21/89). The proportion of complaints within each risk category and examples of the reported conduct in each category are shown in table 3.

<table>
<thead>
<tr>
<th>Level of risk</th>
<th>%</th>
<th>Example of conduct reported</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>3</td>
<td>My client complained that the officer was insulting and disrespectful as well as rude and inappropriate (Client Advocate 18)</td>
</tr>
<tr>
<td>Low–moderate</td>
<td>5</td>
<td>Attitude of the police when arresting based on circumstantial evidence (Client Advocate 16)</td>
</tr>
<tr>
<td>Moderate</td>
<td>38</td>
<td>Lack of action from attending police, on behalf of victim of domestic violence (Client Advocate 2)</td>
</tr>
<tr>
<td>Moderate–high</td>
<td>25</td>
<td>The police performed a strip search of my client at the back of a pub with the door partially ajar (instructs my client). My client was detained for 30 minutes while a female police officer was called from a nearby town. Nothing was found. My client was unhappy with the bullying behaviour of the police, the fact that she was made to wait and the fact that she was completely strip searched for the alleged theft of a purse (Legal Practitioner 9)</td>
</tr>
<tr>
<td>High</td>
<td>23</td>
<td>Client was seriously beaten by police, while not doing anything unlawful. Client was subsequently charged with assault police and use offensive language (Legal Practitioner 30)</td>
</tr>
<tr>
<td>Unable to be coded</td>
<td>2</td>
<td>Traffic matter (Legal Practitioner 39)</td>
</tr>
</tbody>
</table>

Note: N = 91.
Human rights abuses in the reported police conduct

Examination of the reported conduct in light of the Articles in the UHDR revealed that rights in all but three Articles (the right to political asylum, Art 14; the right to a nationality, Art 15; and the right to marry and found a family, Art 16) were potentially impacted by the exercise of police operations. The conduct reported by the participants was further analysed to determine the nature of the rights impacted by that conduct and the percentage of human rights violations in each category. In addition, the relevant police powers and authorisation for police actions impacting upon these rights were tabulated for each type of complaint.

These analyses demonstrated that the right most susceptible to violation was equality before the law (UDHR, Art 7), accounting for one-third of the complaints. A number of examples of complaints in this category were about domestic violence incidents, where participants reported a ‘lack of action in relation to domestic violence and applications for apprehended domestic violence orders’ (Legal Practitioner 25) by police, or that police treated victims of domestic violence inappropriately and insensitively and ‘put inappropriate comments in the AVO [apprehended violence order]’ (Legal Practitioner 14).

One in every five complaints was classified as a violation of the right to life, liberty and security of person (UDHR, Art 3). Typical complaints in this category were those where the clients reported that ‘excessive force’ was used by police, along with alleged ‘assaults’ by police when the clients were being detained or held in custody.

The proportion of complaints comprising violations of all other human rights was smaller. No breaches of Art 4 (no one shall be held in slavery or servitude), Art 18 (the right to freedom of thought, conscience and religion) or Art 20 (the right to freedom of peaceful assembly and association) were observed. Table 4 displays the percentage of violations of each article in the UDHR with examples of the reported police conduct that infringed each enumerated right.

Discussion

The current study aimed to evaluate human rights concerns within formal complaints lodged against the NSWPF. Specifically, the focus was on types of conduct or failures to perform assigned duties that generated citizen complaints.

The study participants were not the complainants themselves, but persons who, in their professional roles as legal representatives of clients who had experienced problems with police, regarded the police conduct in issue as sufficiently serious to warrant a formal written complaint. The fact that the complaints were lodged by
professionals who are subject to criminal sanctions for frivolous use of the complaint process (s 141(b) of the Police Act 1990 (NSW)) provided an additional degree of reliability regarding the nature of the reported police conduct that was the subject of this analysis. This feature of the survey distinguished it from studies that rely exclusively on self-reports by complainants, who may be more susceptible to self-serving biases.

The most frequent type of complaint against the NSWPF entailed reported police conduct that was inadequate or circumstances in which police inaction was unsatisfactory, along with behaviour that was considered unprofessional or unlawful. These behaviours translated into various violations of human rights. The violation that was most frequently reported was the right of all persons to be equal before the law. Another substantial complaint category concerned violations of the human right to life, liberty and security of person. The nature of the police conduct reported in these complaints comprised substantial violations of not only human rights laws, but also codes of conduct within the NSWPF. Members of the NSWPF are trained to respect human rights and they acknowledge international instruments such as the UDHR and the UN Code of Conduct for Law Enforcement Officials in their recruit training. Yet the results of this survey indicated that some police officers in New South Wales did not appear to comply with their Oath of Office or with good policing practice.

The NSWPF complaints system plays an important role in holding police officers accountable for their conduct, promoting fair treatment and protecting the human rights of citizens. A key function of the NSWPF complaints system is that it also provides an opportunity for the police to resolve disputes over conduct with complainants and maintain positive relationships with the community. When the NSWPF does not resolve adverse relationships with complainants, complainants rarely pursue the matter further. Although complainants can resort to alternative methods of resolving conflict with police, such as civil litigation for monetary damages, financial costs usually prevent this (Hopkins 2011; Ransley, Anderson and Prenzler 2007). One participant stated: ‘Need some [civil litigation] to make an impact on the current system [to document cases] where non-compliance with LEPRA is [regarded by police as] an acceptable form of behaviour’.

Civil litigation as a mechanism to redress complaints has a high success rate financially, with high costs to the police (Hopkins 2011). Unresolved complaints against the NSWPF leading to civil litigation have resulted in substantial compensation awarded in decisions against the police (Nine News 2012; Hekmat 2012). Overall, the NSWPF incurred $75 million in 2010 and $69.7 million in 2011 in costs related to contingent liabilities for all civil matter claims against the police (Dodd 2012, app 2). During the
Table 4: Reported violations of human rights and associated NSWPF powers

<table>
<thead>
<tr>
<th>UDHR Article and human right</th>
<th>%</th>
<th>Examples of reported human rights infringement</th>
<th>Relevant police powers, code/legislation</th>
</tr>
</thead>
</table>
| 7. All are equal before the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination. (Note: also a right under UDHR, Art 12; ICCPR, Arts 2 and 17) | 34 | • Failure to act on assaults (Legal Practitioner 1)  
• Police officer refused to breach perpetrator on an AVO saying that it was a technical breach .... then perpetrator went back to premises an hour later and assaulted her (Client Advocate 6)  
• Client made a report of sexual assault as a teenager against her father. My client’s case was not followed up, and she later discovered paperwork had been mislaid (Other Advocate 6) | Discriminatory use of powers in investigating specific crimes/incidents and investigating/assembling evidence or omitting/declining to take prescribed action; Law Enforcement (Powers and Responsibilities) Act 2002 (NSW) (LEPRA), ss 114–138, 197–204 |
| 3. Right to life, liberty and security of person. | 20 | • Alleged assault by police officer (Legal Practitioner 3)  
• Use of excessive force by police during arrest (Other Advocate 8)  
• Client arrest for offence where the circumstances did not support the charge and police were or should have been aware that that was the case (Legal Practitioner 35)  
• Assault in custody on a female (Legal Practitioner 15) | Coercive force (minor to lethal); powers of entry, arrest, detention, search, seizure; LEPRA, ss 230, 231, 9–10, 99–108, 114–138, 20–45, 46–52 |
| 12. No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence. | 7 | • The client was not happy with her treatment and believed that she was treated with contempt each time police attended her home (Client Advocate 5)  
• Police heavy-handed in their bail checks (Legal Practitioner 7) | Powers of search and seizure; discretion/decision-making in granting/not granting licences administered by the police such as firearms, betting, gaming, liquor licences and other businesses; LEPRA, ss 211–229. |
| 5. No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. | 5 | • Strip search conducted at police station without complying with LEPRA (Legal Practitioner 2)  
• Victim in DV [domestic violence] re-traumatised by the OIC [officer in charge] (Client Advocate 7)  
• Client claimed the police searched her in the main street (Client Advocate 11) | Treatment of arrested persons and persons in custody; treatment of witnesses and vulnerable persons; LEPRA, ss 114–138; NSWPF 2010a |
<p>| 6. Right to recognition everywhere as a person before the law. | 5 | • Lack of using interpreters for CALD [culturally and linguistically diverse] community members (Client Advocate 1) | Discriminatory use of police powers, arrest, charging, prosecution; international treaties |</p>
<table>
<thead>
<tr>
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</tr>
</thead>
</table>
| 2. Everyone is entitled to rights and freedoms in this Declaration. | 3 | • Intellectually delayed client unfairly treated by police officers (Client Advocate 3)  
• Targeting of client with intellectual disability (Legal Practitioner 11) | Oath of Office, cl 8; Police Regulations 2000 (NSW); NSWPF 2008 |
| 9. No one shall be subjected to arbitrary arrest, detention or exile. | 3 | • False imprisonment when arrested by mistake (Legal Practitioner 33)  
• Attitude of the police when arresting based on circumstantial evidence (Other Advocate 13) | Powers of arrest, detention, deportation; move-on powers; LEPRA, ss 9–10, 99–108, 114–138, 20–45, 46–52, 197–204 |
| 10. Everyone is entitled in full equality to a fair and public hearing. | 3 | • Police officer lying and admitting lying under cross-examination (Legal Practitioner 19)  
• Fabrication of evidence assault committed, unlawful arrest (Other Advocate 16) | Investigations in specific crimes/incidents and assembly of evidence or lack of it; common law (Bar Rules); international treaties; Evidence Amendment (Evidence of Silence) Act 2013 (NSW) |
| 11. Everyone charged with a penal offence has the right to be presumed innocent. (Also right to representation, ICCPR, Art 14.) | 3 | • Two young people kept in police cell for nearly 48 hours without ALS [Aboriginal Legal Service] contact or put before a bail court (Other Advocate 9)  
• Corrupt conduct in the form of police encouraging clients not to seek legal assistance and demanding to know what the defence was by direct contact with represented clients (Legal Practitioner 16) | Investigations and interviews; common law (Bar Rules); international treaties; Evidence Amendment (Evidence of Silence) Act 2013 (NSW) |
| 13. Right to freedom of movement and residence within the borders of each state. | 3 | • Harassment of client by local police officers (Legal Practitioner 23)  
• Unlawful removal from transport and excessive force (Client Advocate 14) | Stop and search powers on foot or in vehicles; LEPRA, ss 35–45, 185–192 |
| 17. Right to own property alone as well as in association with others. | 3 | • Trespass by police, refusal to leave, foot in the door (Legal Practitioner 38)  
• Intimidation of elderly man and direction to leave his home (Legal Practitioner 42)  
• Non-return of property following an arrest (Legal Practitioner 47) | Search and seizure of property; LEPRA, ss 211–229 |
financial year 2010/11, $5.3 million was paid in compensation and legal costs only for matters involving unlawful arrests or detention (McNally 2012). These human rights violations impose an enormous financial burden on the NSWPF (Dodd 2012). A prudent public sector organisation should minimise public expenditures on litigation by effective interventions before matters escalate. Unresolved complaints diminish police legitimacy (Goodman-Delahunty et al 2013b), trust in the police, and the cooperation of the community (Maguire and Corbett 1991, 10; Mazerolle et al 2011).

Prior research revealed that obstacles to effective police complaint handling include the presumption by many police officers that complaints are mostly non-meritorious and are filed by police suspects who are motivated to retaliate against police (Goodman-Delahunty et al 2013a). This view was controverted by the findings in this study that most of the complaints entailed serious actionable police misconduct that exposed the NSWPF to significant legal risk.

The fact that the majority of the study participants who had filed complaints on behalf of their clients were legal professionals reflected the fact that the current complaints

<table>
<thead>
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</tr>
</thead>
<tbody>
<tr>
<td>1. All human beings free and equal in dignity and rights. (Also ICCPR, Art 2.)</td>
<td>2</td>
<td>• Racial vilification, detained due to racial identification, racial slurs made to person (Other Advocate 4) • A client who had a number of encounters with NSWPF and the Charter of Victims’ Rights was not complied with (Legal Practitioner 13)</td>
<td>Oath of Office, cl 8; Police Regulations 2000 (NSW); NSWPF 2008</td>
</tr>
<tr>
<td>8. Right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law.</td>
<td>2</td>
<td>• Lack of thorough preparation of a prosecution in a breach of an AVO domestic (Legal Practitioner 8)</td>
<td>Discriminatory use of police powers; approach to specific crimes/incidents and investigating/assembling evidence or omitting/declining to take prescribed action; international treaties</td>
</tr>
<tr>
<td>19. Right to freedom of opinion and expression. (Also ICCPR, Arts 2 and 6; Convention on the Elimination of All Forms of Discrimination against Women, Arts 1 and 2.)</td>
<td>2</td>
<td>• The issue was that the police did not listen to a deaf woman who suffered domestic violence from her daughter at home (Client Advocate 9) • Lack of provision of Auslan [sign language] interpreters (Client Advocate 13)</td>
<td>Powers in managing/curtailing public protests/meetings; move-on powers; LEPRA, ss 87, 197–200</td>
</tr>
</tbody>
</table>
system was largely inaccessible to lay citizens and other members of the community (Goodman-Delahunty et al 2014, 83). If the system were more user friendly, community members who have negative experiences with the NSWPF would not have to seek legal representation to make a complaint about perceived violations of their rights (Goodman-Delahunty et al 2013a). Law texts feature details of the ICCPR prominently, although criticism has been levelled at Australia because of the lack of openness, access and transparency of the law to the general public (Gans et al 2011, 47), particularly in respect of the right to privacy (Beckley 2013a). Recommendations to increase options for complainants to avoid litigation should incorporate a number of intermediate steps (Goodman-Delahunty et al 2012), including:

- seeking to speak with the police officer concerned;
- seeking to speak with a more senior officer in the relevant police station;
- seeking to speak with the local area commander;
- seeking resolution via the NSWPF Customer Assistance Unit;
- making a formal written complaint (lodged with NSWPF, NSW Ombudsman or various other organisations);
- reporting a police officer to the Police Integrity Commission;
- filing a complaint with the Australian Human Rights Commission under anti-discrimination law;
- if relevant, raising concerns in the criminal defence of a client accused of an offence;
- sending a letter of demand for redress to NSWPF (such as for compensation); and
- commencing civil legal action against the NSWPF.

Conclusion

The human rights treaties that comprised measures of police operational actions in this article are not recognised in the domestic law of Australia, except where explicitly included (Gans et al 2011, 18). The situations in Victoria and the Australian Capital Territory, which have incorporated a Bill of Rights into the criminal justice system, are exceptions; the remaining states and territories of Australia comply in principle with human rights law, but do not offer effective legal protection to their citizens. An initiative commenced in 2009 to introduce a national human rights framework failed to gain acceptance (Australian Government 2011a) by the then federal government, apparently because ‘the majority of people did not foresee their rights being curtailed and were content with current arrangements’ (Marmo, de Lint and Palmer 2012, 641). The baseline study (Australian Government 2011b) for the framework set out Australia’s commitment to human rights:
Australia has a long tradition of supporting the protection and promotion of human rights at the international level and has been closely involved in the development of the international human rights system.\textsuperscript{13} [Australian Government 2011, 5.]

There have been some positive developments (AHRC 2011),\textsuperscript{14} but the lamentable conclusion of the national initiative and the government’s ostensible strong commitment to human rights have been questioned in several areas in recent years. Examples include the record on immigration (Human Rights Law Centre 2013; Hekmat 2013); discrimination against Indigenous peoples (Johnston 1991); people trafficking (Lindley and Beacroft 2011); and, specifically, the use of excessive force and lethal force by police officers in Australia (UN Human Rights Council 2010; Lillebuen 2013; Sommers 2013). The issue of the right to privacy and its lack of enforcement has also been discussed (Beckley 2013a). The findings of Royal Commissions and empirical studies\textsuperscript{15} can substantiate a basis to indicate that governmental action is required to protect citizens’ human rights and fundamental freedoms. The foregoing analyses of qualitative data about police conduct described by legal practitioners and community advocates comprising the basis of a formal complaint against the NSWPF revealed that almost all complaints lodged involved police conduct that infringed human rights. A more user-friendly complaints system that enables the resolution of complaints will assist in ensuring the legitimacy of the NSWPF.

One of the benefits to police organisations of the foregoing analysis of complaints is the opportunity to learn from mistakes and to identify best practice (Neyroud and Beckley 2001, 154–55). Ideally, the police organisation should have a process in place to capture the learning from adverse incidents or experiences involving members of the public and then disseminate information and training on practices, policies and procedures to eliminate the risk of human rights abuses (Beckley 2013b). Governments need to adopt a wider vision to ensure that human rights and fundamental freedoms for individual citizens are effectively protected, or they risk diminution of national standing, and dilution of the ideology and benefits of a liberal democracy. ●

\begin{flushleft}
\textsuperscript{13} For example, Dr H V Evatt, then Australia’s Minister for External Affairs, played a leading role in the adoption of the UDHR and, as President of the UN General Assembly, chaired the session at which the UDHR was adopted on 10 December 1948.

\textsuperscript{14} For example, scrutiny of all new legislation for compliance with human rights principles through the Parliamentary Scrutiny Act 2011 (Cth).

\textsuperscript{15} For example, Bartkowiak-Theron and Asquith 2012; UN HRC 2009; Johnston 1991; Office of Police Integrity 2009.
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