

*Using complaints to improve policing*¹

Introduction

“*Police complaints hinder arrests, says Ryan*” was the headline to a story published recently by *The Daily Telegraph*. The story, quoting the New South Wales Commissioner of Police, Peter Ryan, commenced by stating:

The system of recording and investigating complaints against police officers is hindering efforts to reduce crime... [police] officers were hesitant in going about their duties, fearing they may be the target of complaints from the public. (*The Daily Telegraph*, July 21, 1998, p 2)

The report raises two interesting arguments. First, that the complaints system hinders efforts to reduce crime. Second, that police are reluctant to do their job because they fear that complaints will be made against them and that these complaints will be held against them and will hinder their careers.

These two arguments have gained some currency in recent times. So much so, that they reflect a very real perception held amongst a number of front-line police even though the misapprehension that the complaints system hinders effective policing cannot be substantiated. Perceptions are rarely, if ever, adequate substitutes for truth. Nevertheless, perceptions, however deeply flawed, are very real phenomena. They have a real impact and they need to be addressed.

The second argument, that police are fearful of acting lest they generate a complaint against them is more likely to be accurate, which is of concern.

It is intended to address these perceptions by emphasising the positive aspects of the police complaints system and by demonstrating how complaints can be used to improve, and not hinder, policing.

The justification for civilian oversight of police

Firstly, a question of fundamental importance: Why is a police complaints system necessary?

Police possess enormous power and discretion. Experience suggests that wherever these two elements combine, there is the potential for abuse. Professor Geoffrey Palmer refers to this combination as “unbridled power”. Experience has also taught that civilian oversight of the exercise of police powers and discretion is a necessary bridle that helps prevent abuse. These principles are so well-accepted by the public that they are almost cliched. But cliched or not, they are a reminder of the necessity of civilian oversight of policing. In simple terms, the public wants, expects and supports oversight.

In any democratic society, the public has the right to say to its police, notwithstanding that the job of policing is difficult, demanding and dangerous, these are the standards of pro-

1 This comment is based on a presentation to the Institute of Criminology Seminar, “Trends in Police Powers and Practices”, University of Sydney Law School, Sydney, August 26, 1998.

fessionalism the police are obliged to meet and they shall be held to account by having their work subject to civilian oversight. And a police complaints system is one means by which their work will be subjected to civilian oversight.

Ultimately, policing is a consensual matter and it only works effectively where those being policed concede to those doing the policing their right to do so. An important component in this equation is for those being policed to know that their complaints about police will be dealt with properly. And herein lies one of the greatest benefits from the complaints system; it can generate legitimacy and confidence. The public can be assured that its concerns about police misconduct have been resolved in a manner that addresses the public's concerns and enhances police professionalism.

Enhancing professionalism through complaints

But - and there is regrettably always a but - in order for professionalism to be enhanced, it is necessary for those who are the subject of complaints to be open to them. In other words, to see complaints as a source of useful information about an organisation's performance. This does not necessarily apply to *all* complaints. Quite clearly some complaints are without merit. Not all complaints are going to be very useful sources of information about performance. Complaints made in good faith, however, can provide very useful information about how an organisation is going.

This point was made in the 1996-97 Annual Report of the New South Wales Ombudsman's Office. Increasing numbers of complaints may not always be a sign that an organisation's performance is declining. Sometimes, increasing complaint levels is a sign that people have increased confidence in the organisation's willingness and ability to handle complaints. In other words, the organisation's performance remains the same, but people feel confident in making suggestions about improvements, thereby providing an opportunity to identify and rectify problems. TARP, one of the world's leading agencies in advising corporations on dealing with complaints, gives this advice: with every complaint that is made there is usually something that you can acknowledge you could have done better and apologise for.

The importance of making the most out of those complaints received is illustrated by research about customer service that has established that customers who complain about routine problems represent a small fraction of all dissatisfied customers, between 2 and 4 per cent (TARP:1986). There are, of course, some significant differences between policing and other customer service organisations. What works for David Jones will not work for the NSW Police Service. Complaints, however, are an important source of information about police performance and ignoring that information is incredibly wasteful.

The tendency to waste the opportunities provided by complaints

There has been a tendency within the Police Service to dismiss the value of complaints as a performance indicator. This inclination to ignore the information provided in complaints and to view complaints and complainants as irritations is not a new situation. It has been there since the beginning of civilian oversight of police in this state.

The initial development of the police complaints system did not focus on improving service delivery but rather on whether or not there was misconduct by individuals. In its early stages, the system had little support from senior police; not because they didn't want to deal with officers who stepped out of line but because they weren't going to have an outside

body like the Ombudsman telling them what to do. The difficulty was not so much with oversight, as *external* oversight, and *civilian* external oversight at that. The Ombudsman's Office responded by resorting to formal hearings and the robust application of its statutory powers. The whole process ended up being about whether misconduct could be proved according to strict legal tests. The process became very adversarial. Ultimately, neither police nor the public were winners.

In the late 1980s a significant shift occurred in the process. Findings against individual police following investigations went up from 8% to around 50%. Despite this increase, the process was not sufficiently outcome focused. The system still operated within the strait-jacket of proving misconduct. If misconduct could not be proven, then the attitude of police was: "case closed". There was little effort by police to see the information contained in the complaint as an indicator of what could be done better. What made things worse was that the complaints system, being centralised and not locally based, drove individual performance management issues by police. There was a perception by police that an otherwise competent and professional officer with a few sustained complaints about minor matters would not get very far up the career ladder. It was as if an honest mistake existed in isolation from a more holistic approach to performance. The error or mistake is noted and it adversely affects the remainder of an officer's career. The Police Service's approach provided a powerful incentive for the rank and file officer to stay out of harm's way. This meant steering your career away from operational policing towards less risky duties.

Such an approach is a misuse of the information contained in complaints. On the one hand it ignores totally those complaints which do not meet the strict legal tests of proven misconduct. On the other, where the complaint does result in proven misconduct, this then became the principal source of information about *individual* performance. And it is a dysfunctional organisation that relies primarily on complaints to identify *individual* performance management issues.

Addressing concerns about minor complaints being held against individuals

The Ombudsman's Office has been active in urging the Police Service to address perceptions by police that they will be unfairly treated for simply doing their job. The cure to this perceived ill is not the removal of the rights of the public to make complaints. Rather, it is by accepting the necessity for the sensible use of complaint records. The Police Service has been urged to address its officers' concerns on this issue and explain how records arising from complaints might influence future promotion decisions and if so, for how long. In addition to articulating how these records might be used, the Police Service needs to address the frustration of a number of ordinary rank and file officers that there is little recognition for good performance. Although the Police Service is attempting to deal with these concerns, it appears that front-line officers are yet to be convinced, and the public is the loser.

Keeping your head down: a more flexible approach?

The historical approach identified above is one of the bases for the perception that police should keep their head down so as to avoid being complained about. Other matters such as the command and control nature of management systems contributed to a culture where police were protective of their own. And the challenge since the finalisation of the work of the Royal Commission is the development of a complaints system that addresses this concern

and aims to restore some balance in the process. More balance means having the ability to respond flexibly to the broad range of matters that are thrown up by the complaints system.

The range of matters that are the subject of complaints will range from customer service issues such as being dealt with in a rude or unprofessional manner right through to serious criminal conduct such as drug dealing, sexual assault and the like. How one responds to a customer service issue will of course be very different to how one approaches an allegation that police have been stealing drugs from dealers for on-sale by themselves. The key here is for there to be flexibility in the complaints system so that each is dealt with on its merits. The task for police managers is to match appropriate measures to particular complaints.

Streamlining the complaints system

Since I have been Ombudsman, I have endorsed a number of initiatives designed to streamline the process of dealing with complaints. For example, there has been an agreement to widen the types of matters caught by the "class and kind" agreement between the Commissioner of Police and the Ombudsman with regard to the complaints about which the Ombudsman's Office does not have to be compulsorily notified. This has freed police from having to process *internal* complaints about minor or trivial matters.

The Office has also been involved with keeping a watchful eye on the piloting of the employee management or 'EM' system. EM emphasises the local resolution of complaints and encourages police managers to take a more managerial approach to the resolution of certain complaints. The model recommended by the Royal Commission (1997:368-72) envisioned a faster, more effective complaint handling where local commanders took responsibility for their own staff and developed more flexible options for managing individual performance. The old approach of a complaint being 'sustained' or 'not sustained' tended to be a strait-jacket which did not allow local commanders to take sensible corrective measures where they were necessary.

Further changes

Despite these measures, it is important to recognise that the complaints system is an evolving system. It is inconceivable that further change will not be contemplated and implemented. For this reason, the Police Commissioner, the Police Integrity Commissioner and the Ombudsman have agreed on changes to further improve the complaints system. These changes are presently being considered by the government.

The proposed changes aim to:

- Ensure that the Police Service 'owns' all aspects of the complaints process - i.e. that the Service has full responsibility for the fast, fair and effective resolution of complaints about its staff and its procedures.
- Enhance the Police Service's capacity to implement its own processes for assessing, investigating and responding appropriately to complaints.
- Encourage the Police Service to manage complaints in a way that is consistent with accepted standards of professionalism.
- Emphasise the need for the Police Service itself to improve its communication with and service to members of the public.
- Clarify and enhance the Ombudsman's capacity to oversee the complaints process, and to distinguish our complaint handling responsibilities from those of the Police Service.
- Clarify and streamline notification and reporting procedures in a manner consistent with this scheme.

The emphasis is on the Police Service's responsibility to take appropriate action in the circumstances of each case.

Generally, written complaints from members of the public will continue to be notified to the Ombudsman. However, it will be up to the Police Service to deal with each complaint as it considers appropriate. In some cases, it may be appropriate to attempt informal resolution at the outset. The emphasis is on taking appropriate action in the circumstances of each case.

The Service will also advise the complainant of the progress and outcome of the inquiries. The Service will advise the Ombudsman of the outcome, including information on whether the complainant was satisfied with the outcome.

Any complainant will have the option of raising with the Ombudsman any concerns about how the Police Service is dealing with their complaint both during and after the Police Service's inquiries into the complaint.

It is important to note that the Ombudsman's powers to directly investigate, monitor police internal investigations, and decline to have any involvement in matters, are unaffected by the proposed scheme. Additionally, nothing in the proposed scheme would affect the function of the Police Integrity Commission relating to the handling of Category 1 complaints.

One issue which has been problematic in the complaints area has been that all reports by police officers which contain allegations or issues of possible misconduct by other police officers are technically 'complaints' within the meaning of the *Police Service Act*.

The extent to which the Police Service must notify the Ombudsman of these 'complaints' - presently referred to as 'police internal' complaints - is currently determined by an agreement between the Ombudsman and the Commissioner of Police. This agreement is designed to exempt the Police Service from notifying the Ombudsman of reports concerning routine managerial matters. The agreement only requires notification of reports concerning:

- Criminal conduct (whether on or off duty)
- Serious neglect or omission of duty
- Serious harassment or victimisation.
- Police conduct in connection with three types of inherently serious incidents - deaths or injuries in custody; shootings by police; and high speed car chases resulting in death or serious injury.

These kinds of matters will continue to be notified to the Ombudsman. The Police Service should make appropriate inquiries into these matters, take any necessary action and advise the Ombudsman of the outcome.

The decision as to those matters which are 'serious' and which require notification to the Ombudsman on that basis should be determined through an agreement between the Ombudsman and the Police Integrity Commission.

Reviewing the police service's action

It is important to consider the role of the Ombudsman upon receiving the Police Service's report detailing the inquiries carried out and the action taken. Under these suggested changes the role of the Ombudsman would be to:

1. consider the manner in which the Service has dealt with or resolved complaints; and

2. keep under scrutiny the systems for handling complaints involving police.

The Ombudsman would not intervene if the Police Service has handled the issues raised by the complaint in a satisfactory manner.

However, the Ombudsman would be entitled to become involved where:

- a. the Ombudsman believes the Police Service has not conducted appropriate inquiries;
- b. the Police Service has conducted appropriate inquiries, but the Ombudsman believes that the Service has reached a view of the matter which is not justified by the available information, or has taken inadequate action in relation to the matter; or
- c. the Ombudsman believes the Police Service has unduly delayed the handling of a matter.

In all of these instances, the Ombudsman may ask the Police Service to conduct further inquiries, or recommend alternative action or request an explanation for the delay. It would be up to the Police Service to decide its response to the Ombudsman's requests and recommendations. The Service would be free to arrive at its own course of action, and would advise the Ombudsman of its reasons for its approach. It would then be open to the Ombudsman to report on any difference of opinion if it is in the public interest to do so.

These changes would streamline the complaints system and assist in ensuring that the focus of the complaints system is on the Police Service taking responsibility for resolving its own problems. This simpler system should generate greater commitment by police to the system. Police will own the complaints system and be entitled to determine the nature and extent of inquiries. The Ombudsman's Office will be entitled to offer input and report to the Minister and the Parliament if it is believed that the Police Service has made the wrong call but, at the end of the day police managers are responsible for making the decisions and they will be held accountable for them.

The furphy that the complaints system hinders efforts to reduce crime

It is important to address the misapprehension that the complaints system hinders efforts to reduce crime. The Ombudsman's Office will not allow the complaints system to be misused to penalise police officers from doing their job, and it will not allow the complaints system to hinder efforts to reduce crime. Fortunately, it is doubtful that this is an issue of genuine concern. It is worth noting that there has been no discernible increase in complaints arising from 'Operation CitySafe', the recent police initiative targeting anti-social and criminal behaviour around problem areas in the Sydney CBD. This operation appears to demonstrate that firm policing does not automatically lead to increased complaints. The same can be said in relation to Operation Innsbruck, an intensive policing operation in Bankstown.

In any event, the cure for the misapprehension about the complaints system hindering crime is certainly not the limiting of the right of ordinary members of the public to make complaints to either the Police Service or the Ombudsman. It is principally about seeing complaints as a management tool rather than as a potential threat against honest, hard-working police officers. Sanctions against individuals arising from complaints should only be relevant if serious misconduct is revealed, such as those matters in which there is sufficient evidence to prefer criminal charges. In 1997-98, there were almost 100 cases of this kind.

Unfortunately, some police commanders continue to see complaints as only being significant if criminality or other very serious misconduct is revealed. They show little understanding of basic principles of customer service: for example, some commanders decline to see an apology as a way of explaining conduct and conveying regret as opposed to a means of assigning blame and enforcing discipline. In such situations, it is possible to satisfy the legitimate concerns of the complainant without adversely reflecting on the actions of the relevant individual officers. The value of such management techniques should be obvious, but they still meet resistance from sections of the NSW Police Service.

Other public authorities see complaints as a useful tool to reveal systems problems, and seek to use complaint-related information to improve their services to the community. The fact that the Police Service - with an annual budget of more than \$1 billion - has no-one monitoring Service-wide complaint trends, illustrates that police still tend to see complaints as a threat rather than an opportunity.

Conclusion

The misapprehension that complaints hinder policing, and require police to exercise unnecessary self-restraint are real and they need to be dealt with effectively. Those who continue to hold to these beliefs should note the commitment of the Ombudsman's Office to ensure that the complaints system neither penalises honest mistakes nor hinders efforts to reduce crime. Continuing reforms to the complaints system will move towards addressing concerns about it causing police to keep their heads down and avoiding active duties.

The commitment of the Ombudsman's Office is clear: what then about the police? The Police Service must understand that the complaints system can be an effective means by which police can generate community trust and confidence. It can also lead to an enhancement of professionalism. The public expects this of the police. The Police Service is obliged to deliver, and the Ombudsman's Office will continue to use its oversight role to assess the Service's progress in this area.

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REFERENCES

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