

# POLICING DISADVANTAGE

## Giving voice to those affected by the politics of law and order

TAMARA WALSH

### REFERENCES

1. See particularly Michael Tonry and David Farrington (eds), *Building a Safer Society: Strategic Approaches to Crime Prevention*, University of Chicago Press, 1995; Robert Reiner, *The Politics of the Police*, 3rd edition, 2000; John Braithwaite, *Inequality, Crime and Public Policy*, Routledge, 1979. In Australia, see particularly Rob White and Christine Alder (eds), *The Police and Young People in Australia*, Cambridge University Press, 1994; Mark Findlay and Russell Hogg, *Understanding Crime and Criminal Justice*, Lawbook Company, 1988.

2. There are some notable exceptions to this rule. For example, the work of Philip Lynch, particularly 'Understanding and responding to begging' (2005) 29(2) *Melbourne University Law Review* 518 and the writings of Cassandra Goldie, for example 'Living in public space: A human rights wasteland' (2002) 27(6) *Alternative Law Journal* 277.

3. The word 'poverty' is used with some reservation, and with an acknowledgment that people experiencing 'poverty' often do not view themselves in this way. Some respondents to this research agreed that they were 'struggling', 'broke' or even homeless but did not identify as poor. See Tamara Walsh, *No Vagrancy: An Examination of the Impacts of the Criminal Justice System on People Living in Poverty in Queensland*, 2007 at 49–50.

4. The complete findings of the research are reported in Walsh, *ibid*.

5. *Police Powers and Responsibilities and Other Legislation Amendment Act 2003* (Qld).

6. *Summary Offences Act 2005* (Qld) s 6.

7. *Police Powers and Responsibilities Act 2000* (Qld) ss 46, 47, 48.

8. Crime and Misconduct Commission, *Policing Public Order: A Review of the Public Nuisance Offence*, 2008 at Ch 10; Tamara Walsh and Monica Taylor, 'You're not welcome here': Police move-on powers and discrimination law' (2007) 30(1) *University of New South Wales Law Journal* 151; Tamara Walsh, 'Offensive language, offensive behavior and public nuisance: Empirical and theoretical analyses' (2005) 24(1) *University of Queensland Law Journal* 123.

There is a plethora of academic literature on the policing of disadvantage.<sup>1</sup> Yet, in those writings, there is often very little evidence of the reactions of the individuals being targeted by the law and order policies described and critiqued.<sup>2</sup> Those experiencing social and economic marginalisation continue to lack a voice in the debate, and their personal stories continue to be ignored, despite the fact that it is they who are having the experiments in law and order politics imposed upon them.

This project, conducted in Queensland, was aimed at ascertaining the views of those experiencing 'poverty'<sup>3</sup> regarding the ways in which operational policing, and associated reforms of the law, affect them. The central goal of the research was to provide these individuals with a voice, and to report on their experiences in an honest and unadulterated manner. Consistent with this goal, this article attempts to avoid criminological discussion, and present the views of the respondents to this research, as far as is practicable, in their own words.<sup>4</sup>

The results of this research indicate that people experiencing poverty in Queensland feel harassed, interfered with, and violated by the manner in which many police officers interact with them. The respondents reported disturbing incidents of police brutality, and many stated that they feel incapable of ensuring that their basic human rights are respected. The findings reflect poorly not just on law enforcers, but also on the legal community because, as one respondent remarked, 'none of [us] are too far removed from the system' to be absolved of blame.

### Poverty and crime in Queensland

A significant expansion of police powers has occurred in Queensland in recent years. In 2003, police powers to search individuals suspected of being in possession of volatile substances, and to seize items used for volatile substance misuse, were expanded.<sup>5</sup> In 2004, the 'public nuisance' offence was introduced, which has resulted in a more extensive use of the powers to charge people for engaging in disorderly and/or offensive behaviour.<sup>6</sup> And in 2006, police powers to move people on were extended beyond a set of prescribed places to all public spaces in Queensland.<sup>7</sup> Predictably, research has shown that these 'reforms' have impacted adversely on those experiencing disadvantage; in particular, Indigenous people, young people and those experiencing homelessness have been most affected.<sup>8</sup>

Even the most conservative estimates of the incidence of poverty indicate that it is a widespread social problem in Australia. Estimated poverty rates range from 5 per cent to 23 per cent of the population, with most researchers agreeing that at least two million Australians live in poverty.<sup>9</sup> In Queensland, a recent study undertaken by the University of Queensland's Social Research Centre suggests that around 400 000 people — 21 per cent of the Queensland population — were living in poverty in 2003–04,<sup>10</sup> although other estimates sit at around 10 per cent.<sup>11</sup> The situation is far worse for Indigenous Australians: up to 41.1 per cent are in the lowest earning group in Australia.<sup>12</sup>

Those coming into contact with police, the courts and the corrections system seem overwhelmingly to be poor.<sup>13</sup> There is nothing new in this. Justice Sackville, author of the Second Report of the Commission of Inquiry into Poverty in 1976, commented:<sup>14</sup>

Not all would acknowledge that the law plays a significant part in this pattern of deprivation... Lawyers and laymen alike consider it unthinkable that the legal system should discriminate against a person simply because he [sic] is poor. Yet even on these uncontentious criteria the law has failed to accord equal treatment to all people and has therefore contributed to the perpetuation of poverty in Australia.

This thirty-year-old report noted unequivocally that people experiencing poverty were disproportionately represented within the criminal justice system, but concluded that this was not because they committed the most crime.<sup>15</sup> Rather, it was observed that the system seemed to be 'geared towards catching some offenders rather than others'.<sup>16</sup> It was said that their high levels of visibility, lack of access to legal advice and representation, lack of knowledge of their rights, and lack of confidence to ensure the enforcement of their rights, meant that people experiencing poverty were more vulnerable to the operations of the criminal justice system.<sup>17</sup> High levels of police discretion were also implicated; it was said that a focus on geographical areas characterised by economic and social disadvantage, and the more frequent enforcement of public order laws against rough sleepers, meant that those experiencing poverty were more likely to be 'fed into' the criminal justice system.<sup>18</sup> Recent research throughout Australia suggests that little has changed.<sup>19</sup>

### Methods

This research was commissioned by a collaboration of community organisations — including UnitingCare Centre for Social Justice, Sisters Inside, Queensland

... people experiencing poverty in Queensland feel harassed, interfered with, and violated by the manner in which many police officers interact with them.

Council of Social Service (QCOSS), Queensland Shelter and Centacare — that wanted to provide people experiencing disadvantage in the state with an opportunity to contribute to the law and order debate. To this end, the research methodology adopted aimed to provide as many people experiencing disadvantage as possible (within the project's time and resource constraints) with an opportunity to comment on their lived experience of 'law and order' policies.

Field researchers attended homelessness, welfare and related organisations in Brisbane, Townsville and Cairns over a seven-month period and invited clients present at the service to participate in the research.<sup>20</sup> Respondents could undertake an individual or group interview, depending on their preference. Researchers conducting the interviews across the various locations used the same semi-structured interview schedule for each contact.

A total of 131 people experiencing 'poverty' participated in interviews or focus groups: 115 in Brisbane, nine in Cairns and seven in Townsville.<sup>21</sup> Respondents were asked to provide certain demographic information (presented in the Table below), and were then invited to respond to a series of questions regarding their experiences and interactions with the criminal justice system in Queensland. Invariably, though not by design, the conversation turned towards policing rather than the court or corrections systems.

#### Interview and focus group respondent demographics

Respondent demographics	%
Gender:	
Male	54
Female	46
Indigenous status:	
Identified as indigenous	34
Non-indigenous	66
Age:	
17 years or under	17
18–24 years	18
25–29 years	13
30–39 years	24
40–49 years	10
50 years or above	14
Age unknown	5
* % rounded up	

## Results

When asked whether they felt that people experiencing poverty were more likely to be charged with criminal offences than those who were not poor, predictably the overwhelming consensus was to the affirmative.

Thematic analysis yielded three main reasons provided by respondents as to why this might be the case:

- unjust and discriminatory policing and police practices;
- the criminal activity was practically unavoidable; and
- a lack of knowledge of, or capacity to enforce, legal rights.

### 1. Police practices as unjust and/or discriminatory

Harassment was by far the strongest theme to emerge from the interview and focus group data on the subject of policing. Allegations of harassment were made in most of the interviews and focus groups held in Brisbane. Further, 12 of the 16 regional respondents (75 per cent) related incidents of harassment by police.

Respondents reported being constantly interfered with by police on the basis of their race, age, homeless status, disheveled appearance, criminal record or family member's criminal record. Police harassment generally took the form of constantly being 'pulled up', questioned, moved on and/or searched 'for no reason' or in circumstances where no criminal wrongdoing had been committed. Many said they received unwarranted police attention every day; some said they were approached by police multiple times a day. Respondents' comments included:

*'When you're walking down the street, they pull you up and ask you like "What are you walking the streets for?" "Shit, man — there's no law in Australia [that says] you can't walk.'*

*'This morning I was walking down Roma Street coming down here and the police looked at the bandanna and said "Excuse me, can you take your bandanna off?" I said "Why, what's wrong?" and he says "I've got nothing wrong with the way you dress or anything, mate, but I just don't like your bandanna. We don't like people running around with bandannas."*

One respondent compared police officers to school bullies, saying:

*'[Police officers are] like a bully in school... who's playground monitor or something. He goes out to the people he doesn't like and he uses his authority and*

9. For a comprehensive summary of poverty incidence study results, see Senate Community Affairs Reference Committee, *A Hand-Up Not a Hand-Out: Renewing the Fight against Poverty*, Commonwealth Parliament (2004) 35.

10. University of Queensland Social Research Centre (with the Queensland Council of Social Service), *Poverty in Queensland, University of Queensland* (2006) 6.

11. See, eg. figures from the National Centre for Social and Economic Modelling, in Tony Kryger, *Poverty Rates by Electorate, 2004–05*.

12. *Ibid* 30.

13. For recent Australian research, see Eileen Baldry et al., 'Ex-prisoners, homelessness and the State in Australia' (2006) 39(1) *Australian and New Zealand Journal of Criminology* 20; Tamara Walsh, 'Won't pay or can't pay? Exploring the use of fines as a sentencing alternative for public nuisance type offences in Queensland' (2005) 17(2) *Current Issues in Criminal Justice* 217.

14. Ronald Sackville, *Commission of Inquiry into Poverty – Second Main Report: Law and Poverty*, Commonwealth Parliament (1976) 1.

15. *Ibid* 196–200.

16. *Ibid* 196.

17. *Ibid* 196–200.

18. *Ibid* 199.

19. Suzie Forell, Emily McCarron and Louis Schetzer, *No Home, No Justice: The Legal Needs of Homeless People in NSW*, 2005; Tamara Walsh, 'The overruled underclass: The impact of the law on Queensland's homeless people' (2005) 28(1) *University of New South Wales Law Journal* 122; Legal Aid Queensland, *Homelessness and Street Offences Project*, Legal Aid Queensland (2005).

20. Participating services included the Brisbane Homelessness Service Centre, West End Community House, Boystown, Sisters Inside, Mission Café, HART 4000 and Far-North Queensland Family and Prisoner Support Service.

*oversteps the mark. Because they've got a badge and a blue uniform, they think they are above the law.'*

Respondents also reported high levels of intrusive searching. Many respondents stated that they had been searched in circumstances where the police officer had no basis (other than their criminal history or 'shabby' appearance) for forming a reasonable suspicion that they had been, or were planning to be, involved in criminal activity. Respondents made comments like:

*'Every time they see you, it's like "come here, empty your pockets, blah, blah, blah." You don't have to be doing anything wrong or anything. You'll just be walking down the street, mate.'*

*'It's a bit embarrassing when you can't walk out in public. I mean, everyday you're getting your pockets emptied.'*

In fact, some respondents stated that they had been 'strip searched' in a public place for no apparent reason, sometimes in the presence of a member of the opposite sex. One respondent said:

*'Each time they pull me up the street there, they search me. You know, they do a lot of things to me and it's just kind of horrible. It's embarrassing — being strip searched for no reason.'*

A 15 year old girl, who was homeless at the time, said of her 'first' experience with a strip search on the street:

*'It was the first really bad thing that ever happened to me. I couldn't stop crying.'*

Further to this, allegations of police brutality were made by many respondents. Some claimed that they had been assaulted by police officers, either in public places or while in police custody. A number of them said that they had reported these incidents to the Crime and Misconduct Commission (the agency responsible for investigating police and public sector misconduct in Queensland), however all of these respondents said that their complaint had either been ignored, or referred back to the Queensland Police Service for internal review. The latter was considered the less favourable of the two: indeed, some claimed that as a result of reporting the incident, they had been harassed even more by police.

When asked why they thought police paid them so much attention, respondents invariably attributed it to their being 'known by police', either as a result of their criminal history, or the fact that they had been living on the streets, and thus visible to police, for some time. One respondent said:

*'Once you've got a criminal record, they just keep picking on you. They won't give you a chance. Even when you're trying really hard to make a go of things, you still get dragged down and charged for the silliest things.'*

A 16 year old female respondent remarked:

*'It's always the ones that don't always dress up, or it's the streeties. It's always someone who hasn't got a well paid job that the coppers pick on. They should be picking on everyone, not just people who don't have much money. They shouldn't be picking on them because they don't dress in suits.'*

Others noted that indigenous people tend to be harassed most often by police. One young Aboriginal woman said:

*'Every Murri in Queensland gets categorised when it comes to the police. They all look at us as if we're going to turn around and smash them up or something. Not all of us are like that. Anywhere you go, you have brown skin, you have a Murri face or a Murri family who you hang around, you're treated the same way, too. You're categorised. It's not nice.'*

One non-Indigenous dark-skinned respondent said:

*'They think anyone that's dark is Aboriginal, so they immediately think you're a crim or a drunk.'*

Regardless of these stories, respondents were not unable to empathise with police officers, nor to demonstrate understanding regarding the difficulties associated with their role. One young respondent said:

*'I think they don't start out being arseholes and going "Hey, I'm going to wreck a bunch of people's lives". They start out wanting to save people's lives like every other emergency worker. But I think it's dealing with people that are just pricks, that are pissed off because they are getting busted. And then you come across people who get upset because they are getting busted for something they didn't do, but you don't have the power to change it. I don't think they start out wanting to hurt people.'*

Other young respondents noted sympathetically the pressures that police officers appear to be under from their superiors. They made comments such as:

*'It's mostly rookies who cruise around 'cos it makes them look good if they've got a whole lot of names on their book, 'cos they've gotta fill that book out and take it to the station and show the sergeant that they've been busy and stuff.'*

*'They've told me themselves, "We're not really harassing you. We've just got to get your name so it looks like we're working."'*

## **2. Criminal activity that is practically unavoidable**

In addition to criticising the manner in which police officers exercise discretion in the course of their beat duties, many respondents commented that criminal behaviour was committed by people experiencing poverty as a matter of necessity, rather than as a choice freely made. Shoplifting was presented by some as necessary in order to be able to obtain life's necessities. One respondent said:

*'If you are begging to the charities, you are flat out being able to feed your children and keep a roof over your head, juggling from week to week on charity. You go in there and people tell you to get lost, so what do you do?... You have no choice but to do crime.'*

Further, many respondents noted that offences committed in public spaces, particularly 'public nuisance', were unavoidable owing to the fact that their precarious housing situation necessitated their occupying public spaces more often than housed individuals. Many respondents related stories of people who are homeless, either themselves or others,

*... those with lived experience regarding the link between poverty and crime believe that discriminatory police practices, criminal behaviour directly related to poverty or its causes/ effects, and lack of knowledge of, or capacity to enforce legal rights, all contribute*

constantly being woken up and asked to move on, or 'locked up' for begging or being a 'public nuisance'. Respondents said:

*'They tend to harass you a lot more when you're homeless, and charge you with small charges until it builds up and builds up.'*

*'The police will walk past 10 other people and pretty much come straight to me... they pick on streeties.'*

*'They move you from here to there, and from there to there. It's harassment of the poor.'*

### 3. Lack of knowledge and enforcement of rights

When asked whether they felt their rights were respected, more often than not respondents stated that they felt they did not have any rights. One respondent stated:

*'I believe I don't have many rights. I feel I have got just enough rights to breathe. They are the only rights I've got.'*

*'I don't really know what [human rights] means because I don't get treated right, so I don't know what to look for in human rights.'*

Other respondents said that the problem was not one of lacking rights, but lacking knowledge of rights or a capacity to ensure that their rights were respected. Respondents' comments to this effect included:

*'We know our rights and stuff, but it doesn't matter to them [the police], you know what I mean? When there's nobody with authority around that's on our side, we got no chance.'*

One Indigenous girl related a story of her house being raided by police at a time when only children were present. She said the children demanded that the police produce a warrant before they would agree to open the door. Regardless, the police rammed the door and entered the house. She said:

*'We kept saying [to the police] "we know our rights, we were taught by the best", but they say "you're just kids, you don't know what you're going on about."'*

### Conclusion

This research demonstrates that those with lived experience regarding the link between poverty and crime believe that discriminatory police practices, criminal behaviour directly related to poverty or its causes/effects, and lack of knowledge of, or capacity to enforce legal rights, all contribute to this well-known phenomenon. The respondents also indicated that it is in this diagnosis that the answers for reform may be found.

With regard to police powers, Ronald Sackville said in 1976:

The point is not that the use of police discretion can or should be avoided or that its exercise usually produces undesirable results, but that the importance of the discretion, and the opportunity it provides for discriminatory treatment of poor people, should be recognized and studied closely.<sup>22</sup>

Some level of police discretion will always be necessary, and may in fact be advantageous. However, laws which allow, or indeed require, police officers to exercise their discretion based on factors that require subjective value judgments do have the potential to expose the police service to allegations of bias and discrimination.

There are a number of laws in Queensland that fit this description. In particular, the laws regarding police move-on powers and 'public nuisance' permit, if not encourage, police to take a law and order approach to social problems including poverty. The powers are framed very broadly: under move-on laws, a person's mere 'presence' may be enough to attract a move-on direction if their appearance could 'cause anxiety' to another person.<sup>23</sup> The offence of public nuisance allows police to charge a person if they behave in a 'disorderly' or 'offensive' way in a public place, even if there is no evidence that a member of the public (other than the police officer) has experienced affront as a result.<sup>24</sup>

The comments of some respondents in this research indicated that police officers may approach people to demonstrate that they have met a certain 'quota' for the day. The Queensland Police Service boasts of having a police to population ratio that exceeds the national average;<sup>25</sup> perhaps there are too many police officers on beat duties in the inner-city. At the very least, the results suggest that certain elements of police culture are in need of reform: a wide-scale review of police powers and the manner of their use amongst disadvantaged groups seems to be warranted.

Certainly police officers cannot and should not be required to act as social workers: 'the criminal law is a very clumsy and heavy-handed tool to use to care for people.'<sup>26</sup> However, it must be acknowledged that a law and order approach to disadvantage is ineffective. Alternative strategies are clearly required for dealing with the 'criminal' behaviour of those experiencing disadvantage. First, police might benefit from specialised training, and continuing education, regarding cultural awareness and sensitivity, and appropriate responses to certain individuals with special needs, including those

21. It is acknowledged, of course, that the number of regional respondents is low and that their comments cannot be generalised to those experiencing poverty either in those areas or regional Queensland generally. It should further be noted that the views expressed by the regional respondents cannot be considered representative of the views of those living in remote Indigenous communities.

22. Sackville, above n 14, 201.

23. *Police Powers and Responsibilities Act 2000* (Qld) s 47.

24. *Summary Offences Act 2005* (Qld) s 6.

25. Queensland Police Service, *Annual Statistical Review 2005/06* (2006) 'Commissioner's Foreword'.

26. Sackville, above n 14, 255.

27. The *Criminal Code 1899* (Qld) contains a very narrow list of defences. They are bona fide claim of right, mistake of fact, extraordinary emergency, insanity and intoxication by another; ss 22, 24, 25, 27, 28.

28. The recent case of *Rowe v Kemper* [2008] QCA 175 provides an apt example. In that case, a homeless man was directed to move-on from a Brisbane mall for eight hours. He was present at the mall because he was accessing the public toilets. He refused to leave the toilets and was charged with failing to move-on and obstructing police. His appeal was dismissed by the District Court (*Rowe v Kemper* [2007] QDC 187), but later upheld by the Queensland Court of Appeal.

who are poor and/or homeless. Second, police powers legislation may need to be tightened to appropriately limit police discretion, and to ensure that police officers will only interfere with individuals' use and enjoyment of public spaces if their behaviour poses a real risk of harm to another person. Third, a greater range of defences may be needed to ensure that behaviour related to status is not criminalised. In Queensland, the range of defences available is extremely limited;<sup>27</sup> in particular, there is no 'reasonable excuse' defence to a charge of public nuisance. As a result, defendants charged for reasons directly related to poverty or homelessness may have no recourse available to them.<sup>28</sup> Fourth, measures that seek to increase knowledge amongst community members regarding the circumstances under which they can lawfully be searched may be warranted, as the results of this research suggest that unlawful police searches routinely take place.

There seems to be little use in an extensive literature documenting the links between crime and poverty if this knowledge does not assist us to develop appropriate, sensitive laws and policies, or is ignored by those in key decision-making roles. If we are still searching for answers, perhaps we could start asking those who know most about this: those who live it, each day.

TAMARA WALSH is a senior lecturer in law at the University of Queensland.

© 2008 Tamara Walsh

I would like to extend my thanks to the other field researchers for this project: Lindsay Nicholson, Meeta Iyer, Judy Andrews and Joanne Solomon. Sincere thanks are also due to the sponsors of the project, particularly UnitingCare Queensland's Centre for Social Justice, Sisters Inside, Queensland Council of Social Service (QCOSS), Queensland Shelter, Centacare and Red Cross.

NSWYL Animal Law Committee

## 2008 ANIMAL LAW ESSAY COMPETITION

Entries are currently invited for the NSWYL's Animal Law Essay Competition, which is intended to foster interest and scholarship in the area of animal law in Australia.

**First prize:** \$500 donated by Voiceless, the fund for animals [voiceless.org.au](http://voiceless.org.au)

**Second prize:** \$300

**Third prize:** Book package to the value of \$150

The winning essay will be published in the *Alternative Law Journal* (subject to normal editorial processes).

### Suggested topics

Entries are invited on any current issue in the area of Animal Law. Suggested essay topics include:

- Animals, should they be persons or property?  
Discuss the possible introduction of legislation in Australia equivalent to the United States Animal Enterprise Terrorism Act
- Consider the utility of the Australian Animal Welfare Strategy in providing meaningful protection for farm animals  
You can trap and poison a rat but not a pet cat ... Discuss how and why some animals receive better treatment under the law than others, using examples

- Discuss the legality of the live export trade in light of recent case law.
- Discuss the issue of standing for animal protection groups, using examples.
- Consider the adequacy of the laws regulating the labelling of animal products.
- You have been appointed Commissioner for Animal Legal Aid — what will you do and why?
- Evaluate the effectiveness of Codes of Practice in ensuring animal welfare, using examples.

### Competition entries

Entries are limited to 2,500 words and the closing date is **7 November 2008**.

Entries may be submitted by post to Essay Competition, Animal Law Committee, NSW Young Lawyers, Level 6, 170 Phillip Street, Sydney, NSW, 2000 or electronically to [alc.chair@younglawyers.com.au](mailto:alc.chair@younglawyers.com.au)

NSW  
**YOUNG LAWYERS**

voiceless  
the fund for animals