

Report No. 76

A report on a review by the Parliamentary Crime and Misconduct Commissioner of the actions of the Crime and Misconduct Commission in its investigation of complaints made by Mr Terry Sullivan and others



LEGISLATIVE ASSEMBLY OF QUEENSLAND

PARLIAMENTARY CRIME AND MISCONDUCT COMMITTEE

**A report on a review
by the Parliamentary Crime and Misconduct Commissioner of the actions of the
Crime and Misconduct Commission in its investigation of complaints made by
Mr Terry Sullivan and others**

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October 2007

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52nd PARLIAMENT

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CHAIRMAN'S FOREWORD

Mr Terry Sullivan, then a member of the Legislative Assembly, members of his family, and others made a number of complaints to the Crime and Misconduct Commission (CMC) regarding officers of the Queensland Police Service, arising from events at Norths St Josephs Rugby League Football premises on 30 and 31 March 2002.

In 2006, Mr Sullivan raised concerns with the Parliamentary Crime and Misconduct Committee (PCMC or the Committee) regarding the actions the CMC took in response. On 9 August 2006, the Committee resolved to request the Parliamentary Crime and Misconduct Commissioner to review the actions of the Crime and Misconduct Commission in its handling of Mr Sullivan's allegations, and in particular examine whether the Commission's actions and determinations in the matter were appropriate; and report to the Committee on the results of such review.

The Parliamentary Commissioner, Mr Alan MacSporran SC, has reported on his review. In summary, the Parliamentary Commissioner concluded that, subject to one qualification, the CMC's actions and determinations were appropriate. That qualification relates to the CMC's assessment of allegations of police dog bites. The Parliamentary Commissioner stated it was open to the CMC on the material to assess those complaints differently. He believes that even had it done so, the ultimate determination would not have changed, but he goes on to state:

Significantly however, what may have changed is Mr Sullivan's perception of the process of the CMC's monitoring of complaints passed back to the QPS for investigation. That perception, in my view, is an important consideration in circumstances such as the present and was inadequately addressed in this process.

Mr MacSporran also noted some concern with the timeliness of the monitoring by the CMC of the handling by the Queensland Police Service of other police dog bite allegations arising from the events on the night in question.

This report attaches the report of the Parliamentary Commissioner, and includes relevant extracts from letters to the Committee from the CMC and the Parliamentary Commissioner regarding issues raised in the latter's report.

Paul Hoolihan MP
Chairman

October 2007

1. INTRODUCTION

The Committee has resolved to table the report of the Parliamentary Crime and Misconduct Commissioner (Parliamentary Commissioner) in the Legislative Assembly. It is the practice of the Committee when tabling such a report to provide some background detail regarding the role and powers of both the Committee and the Parliamentary Commissioner.

The PCMC monitors and reviews the performance of the functions of the CMC. The Committee is established under the *Crime and Misconduct Act 2001* as a bipartisan committee of the Queensland Legislative Assembly. It has the following functions:

- to monitor and review the performance of the CMC's functions;
- to report to the Legislative Assembly where appropriate on any matters pertinent to the Commission, the discharge of the Commission's functions or the exercise of the powers of the Commission;
- to examine reports of the CMC;
- to participate in the appointment of commissioners;
- to conduct a review of the activities of the CMC at the end of the Committee's term ("the Three Year Review"); and
- to issue guidelines and give directions to the CMC where appropriate.

The PCMC can also receive complaints and deal with other concerns which it may be aware of about the conduct or activities of the CMC or an officer or former officer of the CMC.

The Committee is assisted in its oversight process by the Parliamentary Commissioner. Mr Alan MacSporran SC was appointed as the Parliamentary Commissioner in December 2004. Mr MacSporran's appointment is on a part-time basis.

The Parliamentary Commissioner has a number of functions under the Act. These include carrying out the following, as required by the Committee:

- conduct audits of records kept by and operational files held by the CMC;
- investigate complaints made about or concerns expressed about the CMC;
- independently investigate allegations of possible unauthorised disclosure of information that is, under the Act, to be treated as confidential;
- report to the Committee on the results of carrying out the functions of the Parliamentary Commissioner; and
- perform other functions the Committee considers necessary or desirable.

To assist in the performance of these functions, the Parliamentary Commissioner has wide powers.

Any decision by the Committee to ask the Parliamentary Commissioner to investigate or review and report on a matter must be made unanimously or by a multi-party majority of the Committee.

The Parliamentary Commissioner has further responsibilities under the *Crime and Misconduct Act 2001* and the *Police Powers and Responsibilities Act 2000* pursuant to amendments made by the *Cross-Border Law Enforcement Legislation Amendment Act 2005*. These include:

- inspecting the records of the CMC to determine the extent of the CMC's compliance with legislative requirements relating to surveillance device warrants, retrieval warrants and emergency authorisations;
- reporting to the PCMC at six monthly intervals on the results of such inspections;
- inspecting the records of the CMC at least once every 12 months to determine the extent of the CMC's compliance with legislative requirements relating to controlled operations;
- reporting annually on the activities of the CMC under the controlled operations provisions to the Chair of the PCMC; and
- auditing the CMC's records relating to assumed identities at least once every six months.

2. BACKGROUND

In May 2006, Mr Terry Sullivan made a submission to the previous Committee's Three Year Review of the Crime and Misconduct Commission. That submission was not tabled. Mr Sullivan's submission raised various systemic issues, and also canvassed some aspects of a specific matter involving complaints made by him, members of his family, and others to the CMC regarding officers of the Queensland Police Service, arising from events at Norths St Josephs Rugby League Football premises on 30 and 31 March 2002.

By letter dated 28 July 2006, Mr Sullivan subsequently provided considerable further material in support of his submission.

At a meeting on 9 August 2006, the Committee resolved to request the Parliamentary Crime and Misconduct Commissioner to review the actions of the Crime and Misconduct Commission in its handling of Mr Sullivan's allegations, and in particular examine whether the Commission's actions and determinations in the matter were appropriate; and report to the Committee on the results of such review.

3. THE REPORT OF THE PARLIAMENTARY COMMISSIONER

The Parliamentary Commissioner has delivered his report to the Committee. That report, which is not a report of the Committee, speaks for itself.

In summary, the Parliamentary Commissioner concluded that, subject to one qualification, the CMC's actions and determinations were appropriate. That qualification relates to the CMC's assessment of allegations of police dog bites. The Parliamentary Commissioner stated it was open to the CMC on the material to assess those complaints differently. He believes that even had it done so, the ultimate determination would not have changed, but he goes on to state:

Significantly however, what may have changed is Mr Sullivan's perception of the process of the CMC's monitoring of complaints passed back to the QPS for investigation. That perception, in my view, is an important consideration in circumstances such as the present and was inadequately addressed in this process.

Mr MacSporran also noted some concern with the timeliness of the monitoring by the CMC of the handling by the Queensland Police Service of other police dog bite allegations arising from the events on the night in question.

4. THE CMC'S RESPONSE

The Committee provided a copy of Mr MacSporran's report to the CMC, and invited any comment it wished to make.

The CMC Chairperson, Mr Robert Needham, wrote to the Committee in response on 23 July 2007. In turn, the Committee referred Mr Needham's comments to the Parliamentary Commissioner, and Mr MacSporran responded by letter dated 22 August 2007. Extracts of the letters from Mr Needham and Mr MacSporran are set out below.

In his letter, Mr Needham stated that it appeared there were only two issues raised by the Parliamentary Commissioner which could be said to be critical of the actions of the CMC. These related to, firstly, the differing assessment decisions made by the CMC in the Currell complaint as compared to the Sullivan complaint and, secondly, the monitoring by the CMC of the investigation of the Currell complaint.

Assessment issue

In relation to the assessment issue, Mr Needham stated:

The assessment decision with respect to the Currell complaint was that the matter was suitable for referral for investigation by the Queensland Police Service (QPS) 'subject to the CMC's monitoring role under the Act'. The CMC requested that the QPS advise, in due course, how it dealt with the complaint and the outcome of the investigation. That assessment decision and the actions taken on it occurred within a very short time of the receipt of the complaint on 19 April 2002.

As pointed out in the Parliamentary Commissioner's report, the assessment decision on the Sullivan matter was delayed at the request of the Sullivans until after the outcome of the charges brought against Mr Sullivan in the Magistrates Court. Those charges were withdrawn, and in his decision on an application for costs, the Magistrate made comments strongly critical of the police actions in the events of the night. It was these comments that caused a different assessment decision to be made, namely that, whilst the matter was referred to the QPS for investigation, the CMC required that the QPS provide regular interim reports on the progress of the investigation and a final investigation report, to be reviewed prior to the QPS taking any action. In my view, the comments of the Magistrate plus the fact that Mr Sullivan was a Member of Parliament fully justified the differing assessment decisions.

In his letter to the Committee dated 22 August 2007, Mr MacSporran responded:

Mr Needham has perhaps misconstrued my use of the words "assess" and "assessed" in the concluding paragraph of my report as relating to the CMC's assessment decision upon receipt of the complaints. That was not my intended meaning. I was actually referring to the CMC's assessment of the police investigation of the dog bite complaints. The report contains no criticism of the initial assessment decisions in either the Currell complaint or the Sullivans' complaints. In fact, the Committee would note that under the heading of "Devolution" at pages 7 and 8 of the report I have endorsed the CMC's assessment decision in respect of all the complaints.

Monitoring issues

In his letter to the Committee, Mr Needham accepted a criticism made by the Parliamentary Commissioner regarding the delay by the CMC in its monitoring of the Currell complaint.

Mr Needham also referred to the Parliamentary Commissioner's view that:

...the police investigator was prepared to too readily accept denials by the dog handlers of any impropriety and prepared to be unduly critical of the account of events given by the complainant Currell and his friend.

Mr Needham responded:

Such an attitude on the part of a police investigator of a complaint against fellow police officers must always be a matter of concern. Accordingly, whilst I have not read in detail every last statement in the investigation, I have generally reviewed them and have read the two investigation reports by the investigator. I must say I did not form the same conclusion as the Parliamentary Commissioner appears to have.

... the final conclusion of the investigator as set out in his second report ... suggests to me that, rather than merely relying upon a denial by the police involved, the investigating officer has quite properly placed a great deal of weight upon the evidence of the independent witnesses at the scene.

...

I would agree that there will be some cases where, while the reviewer within the CMC agrees with the ultimate conclusion expressed by the police investigator in his/her report, a criticism should be made and conveyed back to the QPS of the approach taken by the police investigator if it shows a too ready acceptance of the subject police officers' versions and a possible unwillingness to discover evidence prejudicial to those police officers. However, I cannot agree that the investigation carried out into the Currell complaint was one which warranted the taking of such action.

In his letter to the Committee, Mr MacSporran stated that he remained of the view that "the police investigation of the boys' allegations lacked objectivity which should have been apparent to the CMC when the investigation file was reviewed".

He goes on:

Mr Needham states that the police investigator placed a great deal of weight upon the evidence of the independent witnesses at the scene. In summarising his investigation, the police investigator stated that "In the light of these conflicting statements [of Mr Currell and his friends – there were some inconsistencies as you would expect] it may be prudent to remove the police versions and those of the party quests and to rely solely on the residents of Wellington Street as independent witnesses."

In my view this approach was flawed and artificial in that it failed to take into account that one of the independent witnesses provided evidence of an incident which corresponded with the description of events leading to the alleged dog bite on Mr Currell as provided by some of his friends. The evidence of that independent witness also corroborated the evidence of Mr Currell and others that the police officers ran along the street with the dogs in pursuit of the boys. These parts of the evidence of the independent witness were not mentioned in the investigating officer's report.

Upon my reading of the material, the police investigator placed a great deal of weight upon the evidence of the independent witnesses only to the extent that their evidence coincided with that provided by the subject police officers; for example on the issue of the dogs being restrained at all times throughout the incident.

Mr Needham is of the view that the critical disparity between the police version and the version of Mr Currell and his friends was whether the dogs were unrestrained at the time the dog bites occurred. Whilst that is an important issue I do not see the disparity as capable of rendering the evidence of Mr Currell and his friends wholly unreliable, especially when other aspects of their evidence are supported by the evidence of an independent witness.

5. THE COMMITTEE'S COMMENTS

As noted above, the Parliamentary Commissioner concluded in his report that it was open to the CMC to assess the complaints regarding allegations of police dog bites differently. He states at page 14 of his report:

The issue of whether the dog still had its leash attached when it allegedly bit Kane Currell is the only significant inconsistency between the descriptions of events provided by many of the boys. In my view there was a prima facie case that a police dog did bite Kane Currell in the circumstances described by the boys. There may have been some difficulties with the identification of the responsible officer but, in my view, the investigation of the boys' allegations lacked objectivity. This should have been apparent to the CMC when they ultimately reviewed the file after July 2004.

The referral back to the Queensland Police Service for it to investigate these complaints against Police was an instance of the policy of devolution. In other words the complaint against the Police was made to the CMC, and was "devolved" to the Police to investigate. One basis of the policy of devolution is to instil a culture of compliance with appropriate standards of conduct within public sector organisations (in this case, the Police) by making superior officers responsible for enforcing them. The Parliamentary Commissioner was specific in not criticising the decision by the CMC to devolve this case. The Committee does note that the decision to devolve this case to police was within the scheme of the Act.

The Committee believes however that the problems with the police investigation in this case raise concerns regarding the current statutory framework and policy of devolution. There have been a number of other examples that have from time to time come to the attention of the Committee. The Committee will continue to closely monitor similar instances and will also consider issues associated with the policy of devolution in its Three Year Review of the Crime and Misconduct Commission.

APPENDIX A

**REPORT ON THE REVIEW OF THE
CRIME AND MISCONDUCT COMMISSION'S
HANDLING OF ALLEGATIONS BY
MR TERRY SULLIVAN MP
AND OTHERS AGAINST THE
QUEENSLAND POLICE SERVICE**



**OFFICE OF THE
PARLIAMENTARY CRIME & MISCONDUCT COMMISSIONER**

JUNE 2007

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INTRODUCTION

On the evening of 30 March 2002 a private 18th birthday party was held at Norths St Joseph's Junior Rugby League clubhouse at Wellington Street, Virginia. The party was attended by approximately 200 guests. Daniel Sullivan, the son of former Member of Parliament Terry Sullivan, was a member of the band that was playing at the party. The venue was unlicensed, so guests had brought their own drinks.

Shortly before midnight, a large number of youths "gate-crashed" the party and confrontations between them and the invited guests soon escalated to physical violence. A number of bottles were thrown at guests and at the club-house, showering those inside with broken glass. Fights also broke out inside the clubhouse with bottles and chairs being thrown about the place. Daniel Sullivan and three other guests then separately telephoned "000" requesting the attendance of police.

Sergeant Patrick Swindells, the first police officer to arrive at the scene, saw groups of people fighting in and around the vicinity of the clubhouse, although a number of the gate-crashers apparently decamped across the playing fields upon his arrival. Bottles were thrown at Sergeant Swindells and two other officers who arrived moments later, as they entered the clubhouse. Sergeant Swindells called for the officers to request further, urgent police back-up to try to control the situation.

Eventually at least 10 police cars, several vans and three dog-squad vehicles were in attendance at the scene. The police proceeded to clear the area of the clubhouse and purported to use "move on" powers to direct people down Wellington Street and nearby Nixon Street towards the Virginia railway station, several hundred metres away. The three police dog-handlers were involved in this procedure.

Daniel Sullivan has stated that whilst he was talking to a police officer asking to go back into the clubhouse to check on his band's equipment a dog-handler came up behind him and set a police dog on to him. Daniel used his mobile telephone to call his father at home. He told his father that the police were forcing the party guests along the footpath and setting dogs onto them. Terry Sullivan then drove to the vicinity of the Virginia railway station and the clubhouse accompanied by his wife and eldest son. Mr Sullivan also took with him, his camera, mobile telephone and tape-recorder.

Mr Sullivan parked his car and searched for his son Daniel. After a short time he located Daniel in Wellington Street amongst or near a group of people from the party. Mr Sullivan was clearly upset at what he perceived to be the heavy-handedness of the police and he approached two officers asking to speak to an Inspector or some other person in charge. Mr Sullivan wanted an explanation as to why the police had set the dogs onto his son. The police officers spoke with Mr Sullivan and Daniel for a short time before asking them to move on. A third police officer (Constable Scott Burger) then approached Mr Sullivan and shone a torch in his face. He purported to give Mr Sullivan a formal direction to move on and he told him that he would be arrested if he failed to comply.

Mr Sullivan maintains that he had started to move in the direction indicated, although he was still facing the police and was walking backwards. He continued to remonstrate with the police and asked Constable Burger for his name. Constable Burger then grabbed Mr Sullivan's right arm. Mr Sullivan protested "*I am moving. I am moving*". Constable Burger said "*In the van sir. You're under arrest.*" Another police officer grabbed Mr Sullivan's left arm.

Mr Sullivan tried to give his tape-recorder, mobile telephone and camera to his wife. The police told him to “*Stop resisting arrest.*” Mr Sullivan said that he wasn’t resisting arrest, just trying to give the items to his wife. The police then forced Mr Sullivan to the ground. They placed handcuffs on him with his hands behind his back and placed him in the rear of a police van. At some stage the handcuffs were removed then placed back on with Mr Sullivan’s hands in front of, rather than behind, him.

Some time later Mr Sullivan’s handcuffs were removed. Constable Burger began completing a “Notice to Appear” form and requested identification from Mr Sullivan. Mr Sullivan handed him one of his parliamentary business cards. Constable Burger (inexplicably) said words to the effect of “*Is this some indication of a bribe?*” Mr Sullivan told Constable Burger not to be stupid before producing his driver’s license. Constable Burger informed Mr Sullivan that he had been charged with contravention of a lawful direction and obstructing police and was required to appear in court on 1 May 2002 to face these charges. Mr Sullivan was handed the Notice to Appear form and was then permitted to leave the area.

Mrs Trish Sullivan made a complaint to the Crime and Misconduct Commission (“CMC”) about the behaviour of the police in a letter dated 12 April 2002. She asked that the CMC not commence an investigation of her complaint until after the charges against her husband were finalised. Daniel Sullivan made a complaint in similar terms at the same time.

Prior to the date of Mr Sullivan’s first appearance in court, the QPS determined that the Norths St Joseph’s Junior Rugby League Club was not a “prescribed place” therefore the “move on” direction was not a lawful direction pursuant to sections 38 and 39 of the *Police Powers and Responsibilities Act 2000* (“PPRA”). Consequently, the charge of contravening a lawful direction against Mr Sullivan was withdrawn in the Magistrates Court on 1 May 2002.

After a number of further mentions in the Magistrates Court, the remaining charge of obstructing police was also discontinued in court on 16 September 2002. The charge was discontinued on the basis of a submission made to the police by Mr Sullivan’s legal representative. It was submitted that the police’s evidence in respect of this charge was not supported by the audio tape recording of the incident made on Mr Sullivan’s tape-recorder. This issue and others were addressed in the decision of the presiding Magistrate in relation to an application for costs made by Mr Sullivan’s legal representative. The Sullivans later relied upon comments made in the Magistrate’s decision in support of their complaints to the CMC.

In October 2002 the CMC referred Mrs Sullivan’s and Daniel’s complaints to the QPS to investigate, subject to monitoring by the CMC. In October and November 2002 the CMC received complaints in similar terms from Mr Sullivan and a further complaint from Mrs Sullivan. Mrs Sullivan’s further complaint concerned alleged false statements sworn by QPS officers in the brief of evidence for the initial charges against her husband. An investigation of the complaints was commenced by the Ethical Standards Command (“ESC”) within the QPS.

In July 2003 the ESC provided the CMC with an interim investigation report. Simply put, the outcomes and recommendations contained in the report were not what the Sullivans would have hoped for. Having considered the information contained in the interim report, senior CMC officers met with Mr Sullivan at his electoral office for four hours on 16 September 2003 to discuss his concerns in some detail.

On 22 December 2003 the Director of Complaints Services, Ms Helen Couper, wrote to Mr and Mrs Sullivan and Daniel Sullivan to advise of the CMC's determinations in respect of their complaints. Reflecting the outcomes and recommendations contained in the ESC's interim investigation report, the CMC's determinations were again not what the Sullivans had hoped for.

Mr Sullivan initially did not respond to Ms Couper's letter but, after reading the Parliamentary Crime and Misconduct Committee's Report Number 64 (Three Year Review of the Crime and Misconduct Commission), particularly the Committee's comments concerning devolution, he felt compelled to do so. Mr and Mrs Sullivan and Daniel each wrote to the CMC on 4 April 2004 expressing dissatisfaction with the CMC's determinations. Mr Sullivan detailed a number of concerns the family had with the investigation of their complaints.

Ms Couper acknowledged the letters but stated that it would take some time to consider the concerns raised, due to the extent of their submissions. She met with Mr and Mrs Sullivan on 10 June 2004 to further discuss the issues Mr Sullivan had raised in his letter of 4 April.

Mr Sullivan heard nothing from the CMC until he, his wife and son wrote to Ms Couper again on 31 March 2005. To those letters the Sullivan's initially received only an unsigned pro forma acknowledgement of receipt from the CMC dated 4 April 2005. Mr Sullivan wrote to the Chairperson on 7 April before Mr Needham provided a comprehensive, twenty-page response to the various issues raised, by letter dated 15 June 2005.

On 28 July 2006 Mr Sullivan made a submission to the Committee's Three Year Review of the CMC. Mr Sullivan's submission raised various systemic issues as well as specific concerns about the complaints made by him, members of his family and others to the CMC regarding officers of the QPS. Mr Sullivan provided a considerable volume of material to the Committee in support of his submission. Clearly, the Committee could not deal with Mr Sullivan's specific concerns in the course of the Three Year Review.

TERMS OF REFERENCE

At a meeting on 9 August 2006 the Parliamentary Committee resolved in accordance with section 295(2)(f) of the *Crime and Misconduct Act 2001* (the *C&M Act*), that I be asked to:

1. *review the actions of the Crime and Misconduct Commission in its handling of allegations by Mr Terry Sullivan MP and others against officers of the Queensland Police Service arising from events at Norths St Josephs Rugby League Football premises on 30 and 31 March 2002 (“the matter”), and in particular examine whether the Commission’s actions and determinations in the matter were appropriate; and*
2. *report to the Committee on the results of such review.*

RESULTS OF INVESTIGATION

The complaints by Mr Sullivan MP and others

The terms of reference ask that I review the actions of the Crime and Misconduct Commission in its handling of allegations against officers of the Queensland Police Service arising from events at Norths St Josephs Rugby League Football premises on 30 and 31 March 2002, which allegations were made by *“Mr Terry Sullivan MP and others”*. The CMC received complaints in relation to this incident from a number of sources over a period of more than six months. The complaints were organised into four files within the CMC.

File 520-02-04-142

In early April 2002, prior to the CMC receiving any complaints about this matter, an article appeared in The Courier-Mail newspaper in which two young men who had been at the party, Kane Currell and Josh Seaman, alleged they had been bitten by police dogs. The article also highlighted the fact that Mr Sullivan had been arrested at the party. On 16 April 2002, the Ethical Standards Command (“ESC”) of the Queensland Police Service (“QPS”) forwarded a copy of the newspaper article and a QPS Dog Squad Incident Report to the CMC for consideration and advice.

On 18 April 2002, Mrs Irene Currell, the mother of Kane Currell, wrote to the CMC to make a complaint about the behaviour of QPS officers on the night in question and, in particular, the dog bites sustained by her son. On 1 May the CMC wrote to Mrs Currell advising that the allegations would be investigated by the QPS, *“subject to the CMC’s monitoring role under the Act”*. The letter of referral from the CMC to the ESC (dated 3 May) requested that the QPS *“advise the CMC in due course how the service has dealt with this complaint and the outcome.”*

The investigation of Mrs Currell’s complaint was conducted separately from the investigation of the Sullivans’ complaints by Inspector Horrocks of the Operations Support Command. The CMC’s monitoring of the QPS investigation of the Currell complaint was, initially at least, somewhat less than that afforded to the investigation of the Sullivans’ complaints. The assessment decision was that the CMC would review the QPS investigation after finalisation. Interim reports were not required.

File 520-02-04-123

On 17 April 2002 the CMC received letters of complaint from Mrs Trish Sullivan (dated 12 April) and Daniel Sullivan (dated 15 April). Since the letters were received at the CMC on the same day and were similar in content, they were allocated the same file number. The letters detailed a large number of allegations about the behaviour of police on the night of the party. However, Mrs Sullivan requested that *“regardless of whether the matter is to be dealt with by police or yourselves, my complaint not be proceeded with until after the matters relating to the incident have been dealt with in the courts.”*

On 29 April the CMC wrote to Mrs Sullivan and Daniel acknowledging receipt of their complaints and confirming *“that the matters raised by you will not be considered by officers in Complaints Services until the court matters arising out of the above incident are dealt with.”*

In accordance with this undertaking, the CMC took no further action in respect of these complaints until the appropriate time. However, investigations continued in respect of Mrs Currell's related complaint. It should also be noted that the QPS were aware of the complaints made to the CMC by Mrs Sullivan and Daniel Sullivan. The Assistant Commissioner of the ESC provided a briefing note to the Police Commissioner advising of this fact the day after the complaints were received by the CMC. The briefing note identified twelve allegations contained in the complaints of Daniel and Mrs Sullivan.

The last remaining charge against Mr Sullivan was discontinued in the Magistrates court on 16 September 2002. The following day Mrs Sullivan spoke to a principal complaints officer at the CMC. The officer informed Mrs Sullivan that, having regard to the dismissal of the charges against her husband, her complaint (and that of her son) could now be assessed by the Misconduct Assessment Committee. Mrs Sullivan was advised that it was likely the complaints would be referred to the QPS for investigation. Apparently, Mrs Sullivan expressed some concerns about this course but she was advised that the QPS investigation would be subject to monitoring and review by the CMC.

On 25 October the CMC formally referred Mrs Sullivan's and Daniel's complaints to the QPS for investigation. The CMC required that the QPS provide regular interim reports on the progress of the investigation and a final investigation report to be reviewed prior to the QPS taking any action. Mrs Sullivan and Daniel were advised of the referral by letter that same day. They were told that *"Upon receipt of the finalised investigation report, it will be examined by officers of the CMC to ensure all appropriate inquiries have been conducted, the correct conclusions drawn, and any appropriate action taken."*

520-02-10-202

On 29 October 2002 Mrs Sullivan made a further complaint to the CMC by telephone. She alleged that the tape recording that Mr Sullivan made with his micro-cassette recorder on the night of the incident established that the sworn statements of the arresting and corroborating officers, prepared for the prosecution of her husband, were false. An assessment decision was made on 14 November and on 25 November the complaint was formally referred to the QPS for investigation.¹ The QPS were required to provide regular interim reports on the progress of the investigation and a final investigation report to be reviewed prior to the QPS taking any action. Mrs Sullivan was advised of the referral by letter that same day.

520-02-10-205

On 17 November 2002 Mr Terry Sullivan made his complaint to the CMC. The material he provided listed 24 complaints or concerns which effectively covered all the complaints previously made by his wife and son. Along with his complaint, Mr Sullivan provided:

- 8 pages of references to details supporting his complaints;
- his 9-page statement in relation to the events of the night of the incident;

¹ According to file notes, the CMC delayed the formal referral of Mrs Sullivan's complaint to the QPS until after such time as Mr Sullivan's complaint had been received. Mr Sullivan telephoned the CMC on 30 October to discuss the lodgement of his complaint. The CMC expected the complaint would be received on 1 November but it did not arrive until sometime on or about 17 November 2002.

- copies of the micro-cassette tape recording that he made on the night of the incident and a transcript thereof;
- a copy of two QPS communication tapes relating to the incident and transcripts thereof;
- a copy of the tape recording of four 000 calls made to the QPS concerning the incident and transcripts thereof;
- a sketch map of the area surrounding the Norths St Joseph's Junior Rugby League clubhouse at Wellington Street, Virginia;
- photographs of the area surrounding the Norths St Joseph's Junior Rugby League clubhouse at Wellington Street, Virginia and of injuries to persons in attendance;
- copy of the QP9 (or Court Brief) for the prosecution of charges against Mr Sullivan;
- copy of Bench Charge Sheets for the prosecution of charges against Mr Sullivan;
- copy of the Notice to Appear for the charges against Mr Sullivan and the arresting officer's identification card;
- extracts from QPS activity logs obtained by Mr Sullivan's solicitor pursuant to an FOI request;
- various statements from the QPS brief of evidence for the prosecution of charges against Mr Sullivan;
- copy of the decision of the presiding Magistrate on an application for costs following the withdrawal of charges against Mr Sullivan.

On 25 November the CMC formally referred Mr Sullivan's complaint to the QPS for investigation. A copy of all the material that Mr Sullivan provided with his complaint was also supplied to the QPS. Once again the CMC required that the QPS provide regular interim reports on the progress of the investigation and a final investigation report, to be reviewed prior to the QPS taking any action. Mr Sullivan was advised of the referral by letter that same day. He was told that *"Upon receipt of the finalised investigation report, it will be examined by officers of the CMC to ensure all appropriate inquiries have been conducted, the correct conclusions drawn, and any appropriate action taken."*

From the time Mr Sullivan's complaint was received at the CMC, all the complaints made by the Sullivan family were basically dealt with in the same manner. It is not necessary for the purposes of this report to consider each file separately. Hereinafter these files are referred to as "the Sullivans' complaints". The complaint of Mrs Currell however remained distinct and, at times, will be discussed separately.

Devolution

The first issue for consideration in my review is whether the CMC's action in referring the various complaints to the QPS for investigation was appropriate. Section 34(c) of the *C&M Act* states that action to deal with misconduct in a unit of public administration should generally happen within the unit. Of course, this devolution principle is subject to the principles of cooperation and public interest and only applies where the unit of public administration has the capacity to deal with the alleged misconduct.

There is no question that the QPS had the capacity to deal with the misconduct alleged in the various complaints, and there is clear evidence of cooperation between the QPS and the CMC throughout the course of the investigations. The real issue here then, is whether the public interest principle required that the CMC retain the responsibility for the conduct of investigation.

It is unfortunately the case that, in terms of complaints against the QPS received by the CMC, the allegations made against the QPS officers arising from the incident at Norths St Joseph's Junior Rugby League clubhouse on 30 March 2002 were not particularly unusual. The CMC receives many such complaints of assaults by police, including dog bites, every year.

With regard to Mrs Currell's complaint in relation to the police dog bites, I do not consider that it could seriously be argued that the CMC acted inappropriately in referring the complaint to the QPS for investigation. There is no suggestion that the behaviour alleged by the dog-handlers was particularly prevalent or systemic within the QPS and there were no compelling public interest considerations which would necessarily require that the investigation be dealt with by the CMC directly.

With regard to the Sullivans' complaints, the two factors that make these complaints somewhat unusual are, firstly, the sheer number of allegations arising from a large-scale melee and secondly, that one of the complainants happened to be a member of parliament at the time. In my view, neither factor is sufficient to render the CMC's decision to refer the investigation back to the QPS, inappropriate – especially since the devolution was on the basis that the CMC would closely monitor and review the QPS investigation. (I shall address the CMC's monitoring later in this report.)

It should also be noted that on 3 July 2003, almost nine months after the investigation of the Sullivans' complaints was referred to the QPS, the QPS Commissioner wrote to the CMC Chairperson *"that due to the nature of the complaint, the position held by the complainants in the community and the media attention which will result from this investigation, that consideration be given to the CMC completing the investigation. The CMC investigation report would be seen to be independent of the Service."* By that stage the QPS had obtained most of the necessary statements and other evidentiary material and the CMC did assume responsibility for the completion of the investigation as requested.

Chronology of the CMC's handling of the Sullivans' complaints

It is necessary to look closely at the CMC's actions in relation to the Sullivans' complaints after responsibility for the investigation of the complaints was devolved to the QPS in October and November 2002. A chronology of CMC and QPS dealings with the complaints is the simplest way to do this.

- | | |
|-----------------|--|
| 29 October 2002 | The ESC wrote to the CMC noting the six-month delay in the referral of the complaints to the QPS for investigation and seeking the assistance of the CMC in obtaining a copy of the tape-recording that Mr Sullivan made of the incident. The letter also noted that the availability of the QPS to commit to such a large scale investigation would impact on the timeframes involved to finalise the matter. |
| 8 November 2002 | ESC investigators interviewed Mrs Sullivan. |

21 November 2002	ESC investigators interviewed Mrs Sullivan a second time.
25 November 2002	The CMC referred Mr Sullivan's complaints to the QPS (ESC) for investigation subject to monitoring by the CMC. A copy of all the material Mr Sullivan gave to the CMC was provided to the QPS.
26 November 2002	The ESC wrote to the CMC providing an early interim investigation report in relation to the first complaints made by Mrs Sullivan and Daniel and seeking Mr Sullivan's original micro-cassette tape recording of the incident.
27 November 2002	ESC investigators interviewed Daniel Sullivan.
29 November 2002	The ESC wrote to Mr Sullivan acknowledging the receipt of his complaint and advising the names and contact details of the principal investigators.
12 December 2002	ESC investigators interviewed Mr Sullivan.
13 December 2002	The CMC wrote to the ESC and provided the copy of the micro-cassette tape recording that the CMC had been given.
17 December 2002	ESC investigators interviewed Mr Sullivan at length about his complaints.
20 December 2002	Mr Sullivan wrote to the ESC investigators providing the original copy of the micro-cassette tape recording, a list of 51 names and addresses and information supplied to him by guests at the party and statements provided by ten guests for the purpose of Mr Sullivan's legal defence.
15 January 2003	ESC investigators interviewed Mrs Sullivan and Daniel Sullivan.
4 February 2003	The ESC wrote to the CMC requesting that the CMC explore with the Sullivans the possibility of mediating their complaints about the conduct of various QPS officers on the night of the incident.
12 February 2003	A CMC Legal Officer telephoned Mr Sullivan to arrange a meeting to discuss the possibility of resolving the complaints through mediation.
17 February 2003	A CMC Legal Officer met with Mr and Mrs Sullivan and Daniel to discuss the possibility of resolving their complaints through mediation. The Sullivans agreed to discuss the matter and contact the CMC with their response.
21 February 2003	The CMC wrote to the ESC confirming that they were still awaiting the Sullivans' decision on whether to participate in mediation (and requesting information as to the identities of the subject officers).
28 February 2003	The ESC wrote to the CMC advising of the identities of the subject officers.
10 April 2003	Mr Sullivan rang the CMC to advise that he and his wife and Daniel had decided not to mediate their complaints. He said that he would write to the CMC to confirm this advice.

13 May 2003	Mr Sullivan rang and told a CMC Legal Officer that there had been an unintended delay in his confirming his family's wish not to participate in mediation but to have the matter investigated. The Legal Officer and Mr Sullivan agreed that the CMC should advise the ESC to proceed with the investigation so as not to cause any further delay. Mr Sullivan undertook to write to the CMC to confirm his oral advice in due course.
19 May 2003	The CMC wrote to advise the ESC to recommence the investigation because the Sullivans had decided they were not prepared to mediate these matters. The CMC requested that interim reports and a final investigation report be provided.
18 June 2003	The OIC of the ESC requested that the CMC consider assuming responsibility for the investigation or conduct a joint investigation " <i>given the sensitivity and the need for objectivity</i> ".
19 June 2003	The CMC wrote to the ESC referring to the letter of 19 May in which interim reports were requested and noting that no report had yet been received.
23 June 2003	At a CMC Misconduct Assessment Committee meeting there was a discussion about whether the recommenced investigation would prove productive. A decision was made that the CMC obtain a briefing from the ESC about the outcome of the investigation to date. The CMC wished to determine, in its monitoring role, whether any further investigation would be a justifiable use of resources.
2 July 2003	At the CMC – ESC liaison meeting it was agreed that the ESC investigating officer would provide a briefing concerning the current position of the investigation. A decision could then be made concerning the future direction of the investigation.
8 July 2003	The CMC wrote to the ESC requesting that the ESC arrange a briefing concerning the current position of the investigation in the near future. The letter also noted that no response had been received to the CMC's letter of 19 June.
9 July 2003	The CMC received a letter from the QPS Commissioner (dated 3 July 2003) requesting that the CMC undertake the finalisation of the investigation.
11 July 2003	The Assistant Commissioner, Misconduct, requested that the Director, Complaints Services arrange for the Monitoring and Support Unit ("MSU") to provide a report on the status of the investigation and recommend action.
16 July 2003	The OIC and two principal investigators from the ESC provided a briefing to the CMC's Director of Complaints Services concerning the current position of the investigation.
17 July 2003	The CMC sought an interim report and any supporting material from the ESC investigation so that the CMC could review the investigation and consider the request of the QPS Commissioner.

29 July 2003	The ESC provided to the CMC an interim investigation report dated 28 July and a box containing tape recordings of interviews and a large quantity of supporting material (including the Currell Investigation report and supporting documentation).
8 August 2003	A senior CMC officer prepared a seven-page report on the status of the investigation and recommended action for discussion by Complaints Services.
21 August 2003	A CMC Legal Officer telephoned Mr Sullivan's electorate office to arrange a suitable date for a conference with Mr Sullivan. Mr Sullivan's office suggested 16 September.
16 September 2003	CMC officers met with Mr Sullivan at his electorate office for four hours in a wide-ranging discussion about his family's complaints. Mr Sullivan was informed that a detailed report would be submitted to the Chairperson and a decision made as to the future direction of the matter. Mr Sullivan expressed the view that, at the very least, he hoped for some future benefit to come out of the situation, for example, the implementation of procedures and training for police in relation to incidents of gate-crashing.
4 November 2003	CMC officers from the Monitoring and Support Unit prepared a ten-page report summarising the investigation and the concerns raised at the meeting with Mr Sullivan.
22 December 2003	The Director, Complaints Services, sent detailed responses to Mr and Mrs Sullivan and Daniel discussing the action to be taken in respect of their complaints. The CMC determined that further action would be taken in relation to the Sullivans' concerns about the management of the incident by first response officers and about the conduct of the dog handlers, however, no further action was proposed in relation to the concerns about the conduct of the arresting and corroborating officers involved in Mr Sullivan's arrest.
9 January 2004	Pursuant to the determination mentioned in the letters of 22 December 2003, the CMC wrote to the ESC asking that the management of the incident by first response officers and the conduct of the dog handlers be further examined.
9 February 2004	The ESC wrote to the Human Resources Section of the QPS asking to have an officer allocated to conduct a review of first response procedures. Ultimately, Inspector Turner was nominated to carry out the review.
4 April 2004	Mr and Mrs Sullivan and Daniel each wrote in reply to the letters of 22 December 2003, expressing dissatisfaction with the outcome.
28 April 2004	The Director, Complaints Services, wrote in reply to each of the Sullivans advising that she would be considering their concerns but that it would take some time due to the extent of the submissions. She asked to meet with them to discuss their concerns.

5 May 2004	The CMC advised the QPS to take no further action on the proposed review by Inspector Turner pending the CMC consideration of Mr Sullivan's more recent concerns.
27 May 2004	Mr Sullivan sent an e-mail to the Director, Complaints Services, in reply to the letter of 28 April, suggesting that they meet on 10 June.
10 June 2004	The Director, Complaints Services, met with Mr and Mrs Sullivan.
28 July 2004	The CMC wrote to the ESC requesting the investigation file in respect of the complaint of Mrs Currell so the CMC could conduct a full review of the QPS investigation.
31 March 2005	Mr and Mrs Sullivan and Daniel wrote again to the CMC to follow up a number of concerns they still had with the investigation of their complaints.
7 April 2005	Mr Sullivan wrote again to inquire about a response to the family's concerns and to complain about an "Acknowledgement of Receipt" form letter.
15 June 2005	The CMC Chairperson sent lengthy, detailed responses to the letters of 31 March 2005 to each of the Sullivans.

Chronology of the CMC's handling of the Currell complaint

On 19 April 2002 the CMC received the letter of complaint from Mrs Irene Currell about the behaviour of QPS officers on the night in question and, in particular, the dog bites sustained by her son. On 1 May the CMC wrote to Mrs Currell advising that the allegations would be investigated by the QPS, "*subject to the CMC's monitoring role under the Act*". On 3 May, the complaint was formally referred to the QPS to investigate, subject to monitoring by the CMC. The CMC asked that the QPS advise, in due course, how it dealt with the complaint and the outcome.

The QPS investigation was conducted by Inspector Horrocks of the Major Event Planning Unit. An investigation report was provided to his Officer in Charge on 16 September 2002. On 2 October the report was reviewed by the Assistant Commissioner of Operations Support Command who recommended that further interviews be conducted with nominated potential witnesses. Once those further interviews were conducted, an amended investigation report was provided to the ESC on 19 November 2002. The investigator concluded that there was "*insufficient evidence to justify action against any police officers for either misconduct or official misconduct*".

It appears that the QPS did not formally advise the CMC how it dealt with the complaint and the outcome for some time, or in the usual manner. An interim investigation report for the Sullivans' complaints was provided to the CMC on 29 July 2003. That report included a one-page summary of Inspector Horrocks' investigation of Mrs Currell's complaint. Copies of Inspector Horrocks' investigation report and the complete investigation file were amongst the appendices to the interim report however these do not seem to have come to the attention of some of the legal officers involved in the monitoring of the Sullivans' complaints. A file note of 8 August 2003, briefly referred to the Currell investigation (in terms similar to those used in the summary provided in the interim investigation report for the Sullivans' complaints) and noted that the investigation report was "*not yet received by CMC*".

On 16 September 2003 CMC officers met with Mr Sullivan at his electorate office for four hours in a wide-ranging discussion about his family's complaints. Mr Sullivan was informed that the CMC's Research and Prevention Unit had been working on an investigation and research paper in relation to the use of police dogs in crowd control situations and incidents of police dog bites upon members of the public. Mr Sullivan agreed that his complaints about police dog bites should be dealt with during this initiative and treated as a separate issue to the rest of his complaints.

In a file note of 4 November 2003 two CMC legal officers again briefly referred to the Currell investigation (in terms similar to those used in the summary provided in the interim investigation report for the Sullivans' complaints) and reiterated that the investigation report of the Currell complaint was "*not yet received by CMC*".

In her letter to the Sullivans of 22 December 2003, the Director, Complaints Services, briefly referred to the Currell investigation (again, in similar terms to those used in the summary provided in the interim investigation report for the Sullivans' complaints) but she was also able to add that, based upon the evidence, the investigator had concluded that there was insufficient information to take disciplinary action against the police dog handlers.

On 15 March 2004 the CMC returned two boxes of material to the QPS. This material was essentially the appendices to the interim investigation report for the Sullivans' complaints. Amongst the material returned to the QPS were Inspector Horrocks' investigation report and the complete investigation file for the Currell complaint.

On 28 July 2004 the OIC of the MSU wrote to the Assistant Commissioner ESC requesting "*the two boxes of material relating to this matter returned to your Command by CMC officers on 15 March 2004*" so the CMC could conduct a full review of the investigation of the Sullivans' complaints. The letter also asked for "*a copy of the file(s) in relation to the investigation by Inspector Horrocks into a complaint by Mrs Irene Currell including interview tapes, transcripts of interview (if available) and any exhibits.*" It appears that the officer was not aware that the investigation report and the complete investigation file for the Currell complaint had previously been provided and was amongst the two boxes of material returned to the QPS. It had been with the CMC for seven and a half months before it was returned. This indicates a lack of careful monitoring of the Currell complaint.

Monitoring of the complaints by the CMC

The Currell complaint

As stated, some of the legal officers involved in the monitoring of the Sullivans' complaints remained unaware for a significant period of time that the investigation report for the Currell complaint had been completed and provided along with the complete investigation file. Once it did become involved in the monitoring of the investigation of the Currell complaint, the CMC's views, after careful analysis, coincided for all practical purposes with the QPS view of the evidence.

A number of the boys who attended the party had provided reasonably consistent evidence about the alleged police dog bite incident involving Kane Currell. Kane Currell was said to have been walking away from the scene in compliance with the police direction when a police dog was allegedly let loose and bit him. In his letter to Mr Sullivan of 15 June 2005 the Chairperson stated that "*While a number of young people assert that the dogs were unrestrained, the dog handlers*

deny the allegations and other police and a significant number of independent witnesses provide evidence to the contrary.”

Mr Needham explained that *“it is not surprising that there are inconsistencies between the accounts of individuals present...one would expect that seeking to interview further persons would result in further inconsistencies, none of which could be resolved. In these circumstances, the CMC is of the view the further investigations would not be productive in determining whether any particular injury was caused by a particular dog and whether the conduct of the dog handler in that instance provides a sufficient basis to initiate criminal or disciplinary action against him.”*

The statements of Kane Currell, Ben Morgan, Joshua Seaman, Mitchell Benstead and Christopher Haslam are all fairly consistent in the description of some aspects of the alleged dog bite incident involving Kane Currell. The fact that the dog handlers deny the incident is not unexpected. Nor is it surprising that the evidence of other police does not support the boys’ allegations. However despite what Mr Needham wrote, the evidence of one of the independent witnesses does corroborate the boys’ description of events leading up to the alleged dog bite on Kane Currell and is contrary to the evidence of the police dog handlers.

Each of the dog handlers denied that they had run with their dog chasing any person.² However, Mr Arnold Long, who provided a statement in glowing terms about the behaviour of the police on the night, referred to an incident which is quite similar to the description of events leading up to the alleged dog bite on Kane Currell provided by some of the boys.³ Notably, this extract does not appear in the report prepared by the police officer who investigated Mrs Currell’s complaint.

Mr Long stated that *“I think there were three guys sitting or standing on the footpath right outside my place and the police had asked them several times to move on and instructed them to move on and one of them wanted to argue with them. In fact, he made comments to the dog squad holder like ‘That dog couldn’t hurt me. It couldn’t hurt anyone,’ and the dog handler said that ‘he could take you if he wanted mate, now move on, go on, out of here,’ and the bloke came back with more cheek and then the two dog handlers and a third officer started running along the road toward them and they ran very quickly down Wellington Street toward the railway station.”*

The issue of whether the dog still had its leash attached when it allegedly bit Kane Currell is the only significant inconsistency between the descriptions of events provided by many of the boys. In my view there was a prima facie case that a police dog did bite Kane Currell in the circumstances described by the boys. There may have been some difficulties with the identification of the responsible officer but, in my view, the investigation of the boys’ allegations lacked objectivity. This should have been apparent to the CMC when they ultimately reviewed the file after July 2004.

The Sullivans’ complaints

The Sullivans were informed that their complaints would be investigated by the QPS and that *“upon receipt of the finalised investigation report, it will be examined by officers of the CMC to ensure all appropriate enquiries have been conducted, the correct conclusions drawn and any appropriate action taken”*.

² *“At no stage did I run with the dog.”* Record of interview with Saxton at p7; *“At no time did we run after anybody at all.”* Record of interview with Austin at p8; *“I don’t know anything about a dog handler pursuing anyone or anything like that.”* Record of interview with Chapman at p8.

³ In particular the versions of events provided by Ben Morgan and Josh Seaman.

Unlike the Currell complaints, the CMC took a reasonably active role in monitoring the progress of the investigation of the Sullivans' complaints. As the chronology referred to above amply demonstrates, the CMC was responsive to the QPS requests for CMC involvement and readily provided appropriate assistance.

When one compares the way in which the complaints of the Sullivans and that of Mrs Currell were handled, it is clear that there was a different approach adopted. Initially this came about because different assessment decisions were made in respect of each matter. This was exacerbated by the fact that the Sullivans' complaints were put on hold until after the court proceedings involving Mr Sullivan were resolved whilst the Currell complaint was immediately and separately investigated by the QPS.

There does however seem to have been a less critical eye cast over the investigation of the Currell matter. This in turn, has had an impact upon the view taken of the appropriate outcome of the Sullivans' complaints in certain respects.

It is arguable that in carrying out the investigation into the Currell complaint, the investigator was prepared to too readily accept the denials of the dog handlers of any impropriety and prepared to be unduly critical of the account of events given by Kane Currell and his friends. As mentioned above, there is some support for the versions of events given by the boys in the statement provided by Mr Arnold Long. In particular, Mr Long corroborates the boys' versions that they were pursued by one or more of the dog handlers and dogs. This is significant because all three dog handlers who were present denied ever running with their dogs at any stage that evening.

However the CMC is correct in concluding that it would have been a waste of resources to further investigate this issue. It was never going to be possible to mount a criminal or disciplinary case against any individual police officer based upon the available evidence. However, it was a case where there needed to be a close examination of the use and deployment of police dogs and the incidents of dog bite complaints generally.

The CMC addressed this by referring the details of this case to a CMC research officer, Dr Gabi Hoffman, who was then in the process of completing a study into this topic. Mr Needham has recently advised (17 May 2007) that Dr Hoffman's report is "*undergoing final editing and is close to submission to the Commission and sending to the printer*". It is intended that the report be released publicly and a copy be provided to me and to Mr Sullivan.

Timeliness

There were two periods of significant delay in the course the CMC's handling of the Sullivans' complaints.

The first delay was for a period of more than three months from 4 February 2003, when the ESC requested that the CMC explore with the Sullivans the possibility of mediating their complaints, to 19 May 2003, when the CMC wrote to advise the ESC to recommence the investigation because the Sullivans had decided they were not prepared to mediate their complaints.

The CMC cannot be blamed for this delay. A CMC Legal Officer met with Mr and Mrs Sullivan and Daniel to discuss the possibility of resolving their complaints through mediation on 17 February 2003. The Sullivans agreed to discuss the matter and contact the CMC with their response.

On 10 April 2003 Mr Sullivan rang the CMC to advise that he, his wife and Daniel had decided not to mediate their complaints. He said that he would write to the CMC to confirm this advice but another month passed before Mr Sullivan rang the CMC to say that there had been an “*unintended delay*” in his confirming in writing his family’s wish not to participate in mediation. It was then, on 13 May 2003, that Mr Sullivan agreed that the CMC should advise the ESC to proceed with the investigation so as not to cause any further delay. Mr Sullivan said he would write to confirm his oral advice in due course. Six days later the CMC advised the ESC to recommence the investigation.

The second delay occurred between the date when the Director, Complaint Services, met with the Sullivans on 10 June 2004 to discuss their ongoing concerns and 15 June 2005 when the Chairman of the CMC wrote to Mr Sullivan addressing each of the family’s concerns.

The background to these events commenced with the CMC letter to the Sullivans of 22 December 2003, wherein the CMC expressed the view in effect that it would not be productive to further investigate these matters. That resulted in further letters from the Sullivans of 4 April 2004 expressing dissatisfaction with the outcome. On 28 April 2004, the Director, Complaint Services, wrote to the Sullivans indicating that their further concerns would be addressed but that it would take some time given the volume of material to be reviewed. The Director requested a meeting with the Sullivans and that occurred on 10 June 2004, during which the specific concerns were openly discussed.

In these circumstances, I am not in any way critical of the delay since it is apparent from the letter of Mr Needham of 15 June 2005, that the matters were taken very seriously by the CMC and that a great deal of time was necessarily spent in painstakingly assembling and reviewing the available evidence, together with the undertaking of further investigations by the CMC to properly review all of the concerns raised by Mr Sullivan.

Mr Sullivan’s specific concerns

The events concerning Mr Sullivan’s arrest (Tape recorder & falsely-sworn statements)

One of the most serious allegations raised by Mr Sullivan was that the police officers involved in his arrest committed perjury when they provided sworn statements outlining their versions of events and, in particular, conversations which took place around the time of Mr Sullivan’s arrest. This allegation is based largely upon the evidence of Mr Sullivan himself supported, he contends, in material respects by a recording of the events made on the micro-cassette recorder that Mr Sullivan brought with him to the scene.

The investigation revealed that the micro-cassette recorder recorded events using a built-in microphone that picked up conversations and events depending upon its location at the particular time. When the matter came before the Magistrate in relation to an application for costs (the charges having been previously withdrawn by the prosecution), the Magistrate, quite rightly on the evidence before him, placed significant weight on the transcript of the recording in expressing criticism of the two police officers involved.

His Honour found:

Both Constables Burger and Hoffman had provided written statements in the brief of evidence. Both officers give a version of events that is simply not supported in key elements by the transcript. In respect of the failure to comply with direction, Burger states that when given the

direction the defendant remained standing in front of him with wide open eyes and “displayed no intentions to move or co-operate”. In contrast, the transcript has the defendant asking the officer what his name is and then saying “I am moving, I am moving”, as the arrest is made.

In respect of the obstruction charge both the statements of Burger and Hoffman have Hoffman saying “Sir, do not resist, do not resist”. This is not recorded on the transcript. Both statements then have Burger saying “don’t resist Sir, give me your arm, don’t resist”. Again this is not evident from the transcript.

When the CMC reviewed the matter, the tape was played and found to be of very poor quality. There is much background noise and over-talking apparent. The CMC concluded, rightly in my view, that the tape could not safely be used to support the version of events given by either side.

The clearest example to illustrate the inadequacy of the tape recording for evidentiary purposes occurs in relation to the obstruct charge. As set out above, the Magistrate placed significance on the fact that the police officers had sworn that they warned Mr Sullivan not to resist and yet such warning did not appear on the transcript of the tape recording.

When Mr Sullivan made his complaints to the CMC, he included a statement of facts in which he freely (and clearly, truthfully) acknowledged that he had been warned to “*stop resisting arrest*”. In like vein, the statement of Mrs Sullivan confirmed that the police spoke at the scene in a way indicating their belief that Mr Sullivan was in fact resisting arrest.

It is clear beyond doubt that the tape recording did not record all conversations that occurred over the relevant period that evening. I agree entirely with the CMC analysis of the available evidence in respect of these matters. Having said that, one can readily understand Mr Sullivan’s frustrations with the events of that evening, particularly when he had only gone to the scene after receiving a telephone call from his son who was clearly in some distress.

Investigating complaints against the dog handlers

I have already commented upon what I consider to have been less than satisfactory aspects to this specific investigation and review. It must be remembered however that, so far as the issue of the behaviour of the dog handlers and dogs on the night, Mr Sullivan himself was content with that matter being treated somewhat separately and being the subject of research and report by the CMC. As set out above, the process is almost finalised.

The police response in dealing with the disturbance

A common theme in Mr Sullivan’s complaints concerns what he considered to be the inappropriate manner in which police responded to the situation confronting them on that night.

On the one hand, it is not difficult to feel sympathy for Mr Sullivan’s position in circumstances where he perceived that the police failed to adequately distinguish between invited guests at the function and “gate-crashers” who, in Mr Sullivan’s eyes, were the cause of the entire problem. On the other hand of course, the police who attended were faced with a crowd of between 150 and 200 persons, many of whom were actively involved in brawling and throwing bottles and other objects. Whilst in an ideal world, the police officers who attended would have appreciated the luxury of more time to separate the parties and restore order, the reality of practical policing in these circumstances is simply that they didn’t have the luxury of such time. They were forced to deal immediately with what was clearly a very volatile and potentially dangerous situation.

The CMC recognized this important contextual background when conducting their review of the investigation. Initially, a formal process of mediation was offered but when the Sullivans declined to participate in the process, the CMC suggested that a senior police officer (Inspector Turner) meet with Mr Sullivan to further discuss his concerns about the management of the incident by police. When Mr Sullivan considered that this was not a viable option either, the CMC embarked upon its own comprehensive review of the material.

It is perhaps unfortunate that there was no agreement to have Inspector Turner provide some input from an expert point of view. Inspector Turner is the officer in charge of all Police Operational Skills and Training (POST) programs and is regularly called upon to give evidence as an expert in various courts on behalf of the QPS.

I understand that there is currently a new initiative by the QPS to deal specifically with situations involving the gate-crashing of parties. This may in part directly address some of Mr Sullivan's ongoing concerns or at least be of interest to him.

However, from the point of view of the appropriateness of the CMC response to this issue, it is difficult to be critical in light of the attempts they made to reach a resolution of these matters that was satisfactory to all parties and particularly the Sullivan family.

Other complaints of the Sullivans

I should formally record that Mr Needham's response to the Sullivans in his letter of 15 June 2005, comprehensively and appropriately, in my view, dealt with the remaining matters of concern to the Sullivans. It is unnecessary therefore for me to further elaborate in light of the view I have formed concerning these matters.

CONCLUSION

After reviewing all of the material, I am of the view, subject to the qualification mentioned below, that the CMC's actions and determinations were appropriate.

The matter that forms the basis for the qualification is the appropriateness of the CMC's actions in dealing with the allegations of police dog bites. For the reasons already advanced, I am of the view that it was open to the CMC on the material to assess those complaints in a different manner. I reiterate however that even if the CMC had assessed the complaints differently, the ultimate determination would not have changed. Significantly however, what may have changed is Mr Sullivan's perception of the process of the CMC's monitoring of complaints passed back to the QPS for investigation. That perception, in my view, is an important consideration in circumstances such as the present and was inadequately addressed in this process.