

Appendix II

附錄 II

**INDEPENDENT POLICE  
COMPLAINTS COUNCIL BILL**

**投訴警方獨立監察委員會條例草案**

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INDEPENDENT POLICE COMPLAINTS COUNCIL BILL  
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## 投訴警方獨立監察委員會條例草案

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# A BILL To

Provide a statutory basis for the Independent Police Complaints Council, to define its functions and powers, and to provide for matters incidental thereto or connected therewith.

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

## PART I

### PRELIMINARY

#### 1. Short title and commencement

- (1) This Ordinance may be cited as the Independent Police Complaints Council Ordinance.
- (2) This Ordinance shall come into operation on a day to be appointed by the Secretary for Security by notice in the Gazette.

#### 2. Interpretation

In this Ordinance, unless the context otherwise requires—  
“Commissioner” (處長) means the Commissioner of Police;  
“complaint” (投訴) means a complaint in respect of—

- (a) the conduct of any member of the police force in the execution or purported execution of his duties; or
- (b) any practice or procedure adopted by the police force, made by a person who is aggrieved thereby (otherwise than in an official capacity as a member of the police force), but does not include any complaint in respect of an alleged contravention of any Ordinance relating to road traffic which carries a fixed penalty for such contravention;

# 本條例草案

## 旨在

為投訴警方獨立監察委員會提供一個法定基礎、界定其職能及權力，以及對附帶或相關事宜作出規定。

由香港總督參照立法局意見並得該局同意而制定。

## 第 I 部

### 導言

#### 1. 簡稱及生效日期

- (1) 本條例可引稱為《投訴警方獨立監察委員會條例》。
- (2) 本條例自保安司以憲報公告指定的日期起實施。

#### 2. 釋義

在本條例中，除文意另有所指外——  
“投訴”(complaint)指任何因以下事情而感到受屈(但並非因作為警隊成員的公職身分而感到受屈)的人士就該等事情所作出的投訴——  
(a) 任何警隊成員在執行或其意是執行其職責時的行為；或  
(b) 警隊所採納的任何常規或程序，  
但不包括就指稱違反關乎道路交通的任何條例(該條例規定對該項違反處以定額罰款)而作出的任何投訴；

“Council” (委員會) means the Independent Police Complaints Council referred to in section 3;  
 “member of the police force” (警隊成員) includes a public officer attached to the police force;  
 “police force” (警隊) means the Royal Hong Kong Police Force and also the Royal Hong Kong Auxiliary Police Force established under the Royal Hong Kong Auxiliary Police Force Ordinance (Cap. 233);  
 “witness” (證人) means a person who has provided or might be able to provide information or other assistance in connection with the investigation of a complaint.

## PART II

## INDEPENDENT POLICE COMPLAINTS COUNCIL

## 3. Continuance of the Council

The Independent Police Complaints Council existing immediately before the commencement of this Ordinance shall continue to exist as a body known as the Independent Police Complaints Council.

## 4. Membership of the Council

- (1) The Council shall consist of—
- (a) (i) a Chairman;
  - (ii) 3 Vice-Chairmen; and
  - (iii) not less than 8 other members, each of whom shall be appointed by the Governor for a term of 2 years; and
  - (b) the Commissioner for Administrative Complaints appointed under the Commissioner for Administrative Complaints Ordinance (Cap. 397) (who shall be an ex officio member thereof), or a person nominated by him as his representative.
- (2) The Chairman, any Vice-Chairman and any other member appointed under subsection (1)(a)—
- (a) may be reappointed upon expiry of their respective terms of office; and
  - (b) may resign his office by notice in writing to the Governor.
- (3) If, for any period—
- (a) the Chairman, any Vice-Chairman or any other member appointed under subsection (1)(a) is precluded by illness, absence from Hong Kong or any other cause from exercising his functions; or

“委員會” (Council) 指第 3 條所提述的投訴警方獨立監察委員會；  
 “處長” (Commissioner) 指警務處處長；  
 “證人” (witness) 指在調查投訴方面已提供或可能有能力提供資料或其他協助的人；  
 “警隊” (police force) 指皇家香港警隊及根據《皇家香港輔助警隊條例》(第 233 章) 成立的皇家香港輔助警隊；  
 “警隊成員” (member of the police force) 包括隸屬警隊的公職人員。

## 第 II 部

## 投訴警方獨立監察委員會

## 3. 委員會的延續

在緊接本條例生效日期前已存在的投訴警方獨立監察委員會須沿用此名稱而繼續存在。

## 4. 委員會的成員

- (1) 委員會須由以下人士組成——
- (a) (i) 主席 1 名；
  - (ii) 副主席 3 名；及
  - (iii) 最少 8 名其他成員，  
 每人均須由總督委任，任期為 2 年；及
  - (b) 根據《申訴專員條例》(第 397 章) 委任的申訴專員 (申訴專員須為委員會的當然成員) 或一名由他提名為其代表的人。
- (2) 主席、任何副主席及任何根據第 (1)(a) 款獲委任的其他成員——
- (a) 在其各別的任期屆滿時可再獲委任；及
  - (b) 可藉向總督給予書面通知而辭職。
- (3) 如在任何期間——
- (a) 主席、任何副主席或任何根據第 (1)(a) 款獲委任的其他成員因患病、不在香港或任何其他因由而不能行使其職能；或

(b) the office of any one of them is vacant pending a new appointment or reappointment, the Governor may appoint another person to act in his place during that period and as such to exercise and perform all the functions, powers and duties of the Chairman, Vice-Chairman or member, as the case may be.

#### 5. Meetings of the Council

(1) The Council shall meet as often as is necessary, and at such times and places as the Chairman or in his absence, one of the Vice-Chairmen may appoint from time to time for the purpose of exercising its functions.

(2) The following provisions shall apply to every meeting of the Council and subject thereto the Council may regulate its own procedure—

- (a) at any meeting of the Council, 5 members or 1/3 of the number of members, whichever is the lesser, shall form a quorum;
- (b) the Chairman shall preside or in his absence, the members present shall appoint one of the Vice-Chairmen to preside or, if both the Chairman and the 3 Vice-Chairmen are absent, the members present shall appoint one of themselves to preside;
- (c) every question shall be determined by a majority of votes of the members present and voting thereon;
- (d) in the event of an equality of votes the member presiding shall have a casting vote in addition to his ordinary vote;
- (e) anything which may be done at a meeting of the Council may be done by the circulation of papers for the consideration of members; and a resolution signed by a majority of the members shall be as valid and effectual as if it had been passed at a meeting by the votes of the members so signing.

#### 6. Appointment of Secretary

(1) The Governor shall appoint a public officer to act as the Secretary of the Council who shall not be a member of the Council.

(2) The Council shall determine the duties of the Secretary, and may delegate to him such authority as may from time to time be required.

#### 7. Functions of the Council

The functions of the Council shall be—

- (a) to monitor and, where it considers appropriate, review the manner in which complaints are handled by the police force;
- (b) to keep under review the statistics referred to in section 8(1)(e);

(b) 他們當中任何一人的職位懸空以待新的委任或再委任，總督可委任另一人在該段期間內暫代該人的職位，以行使和履行主席、副主席或成員（視屬何情況而定）的所有職能、權力及職責。

#### 5. 委員會的會議

(1) 委員會須為行使其職能的目的，在主席或（在主席不在時）其中一名副主席不時指定的時間及地點，舉行所需次數的會議。

(2) 以下條文適用於委員會的每次會議，而在不抵觸該等程序條文的情況下，委員會可規管其本身的程序——

- (a) 在委員會的任何會議中，5名成員或成員人數的三分之一（以較少者為準）即構成法定人數；
- (b) 須由主席主持會議；如主席缺席，則由出席的成員推選其中一名副主席主持會議；如主席及3名副主席均缺席，則由出席的成員推選他們其中一人主持會議；
- (c) 每項問題均須由出席會議並就該問題投票的成員的過半數票取決；
- (d) 如票數均等，主持會議的成員除有權投普通票外，另有權投決定票；
- (e) 任何可在委員會會議上處理的事項，均可藉傳閱文件供成員考慮的方式處理；由過半數成員簽署的任何決議，其有效性及效力須猶如該決議是在會議上由簽署該決議的成員投票通過的一樣。

#### 6. 秘書的委任

- (1) 總督須委任一名公職人員擔任委員會秘書，而該秘書不得擔任委員會成員。
- (2) 委員會須決定秘書的職責，並可將不時所需的權力轉授予秘書。

#### 7. 委員會的職能

委員會的職能為——

- (a) 監察和在其認為適當時檢討警隊處理投訴的方式；
- (b) 對第8(1)(e)條所提述的統計數字不時進行檢討；

- (c) to identify any faults or deficiencies in the procedures adopted by the police force which lead to or might lead to complaints;
- (d) to make recommendations in respect of the handling of any complaint or the action taken or to be taken in connection with any complaint to the Commissioner or, if it considers appropriate, to the Governor.

#### 8. Powers of the Council

- (1) The Council may, where it considers appropriate—
  - (a) require the Commissioner to submit to the Council a report on any complaint, to provide any information, file, document or material relating thereto or to clarify any fact or discrepancy pertaining thereto;
  - (b) require the Commissioner to investigate or reinvestigate any complaint or any matter relating to a complaint;
  - (c) interview any witness for the purpose of exercising its functions under this Ordinance;
  - (d) require the Commissioner to provide an explanation in respect of any action that has been taken by the police force arising out of a complaint;
  - (e) require the Commissioner to compile and submit to the Council statistics of the types of conduct of members of the police force that lead to complaints;
  - (f) monitor, review or report on any action taken by the police force in respect of a complaint;
  - (g) do all such other acts as are reasonably necessary for the exercise or performance of all or any of the powers or duties of the Council under this Ordinance or do any other thing which is incidental or conducive to the exercise of the functions of the Council.

(2) Notwithstanding section 4 of the Police Force Ordinance (Cap. 232), the Commissioner shall comply with any requirement under subsection (1)(a), (b), (d) or (e), unless he is satisfied that compliance with the requirement would likely prejudice the security of Hong Kong or the investigation of any crime.

#### 9. Procedure, etc.

- (1) Where the Commissioner has completed his investigation of a complaint, he shall as soon as practicable submit a report of the investigation to the Secretary of the Council which shall contain—
  - (a) a summary of the investigation;
  - (b) a finding of facts;

- (c) 找出警隊所採納的程序在引致或可能引致投訴方面的任何錯失或不足之處；
- (d) 就任何投訴的處理或就關乎任何投訴而採取或將會採取的行動向處長提出建議或在其認為適當時就該等事項向總督提出建議。

#### 8. 委員會的權力

- (1) 凡委員會認為適當，可——
  - (a) 要求處長就任何投訴向其呈交報告、提供與該宗投訴有關的任何資料、檔案、文件或材料，或澄清關於該宗投訴的任何事實或矛盾之處；
  - (b) 要求處長調查或重新調查任何投訴或與某宗投訴有關的任何事項；
  - (c) 為行使其在本條例下的職能而會見任何證人；
  - (d) 要求處長就警隊因某宗投訴而採取的任何行動作出解釋；
  - (e) 要求處長編製和向委員會呈交引致投訴的警隊成員的行為類別統計數字；
  - (f) 監察或檢討警隊就某宗投訴所採取的任何行動或就該行動作出報告；
  - (g) 作出所有為行使或履行委員會在本條例下的所有或任何權力或責任而合理地需要的其他作為，以及作出行使委員會職能所附帶的任何其他事情，或有助於行使委員會職能的任何其他事情。
- (2) 儘管有《警隊條例》(第232章)第4條的條文，處長須遵從根據第(1)(a)、(b)、(d)或(e)款所提出的要求，但如處長信納遵從該要求會相當可能危害香港的保安或任何罪行的調查，則屬例外。

#### 9. 程序等

- (1) 凡處長已完成對某宗投訴的調查，處長即須在切實可行的範圍內盡快向委員會秘書呈交一份調查報告，報告須載有——
  - (a) 調查的撮要；
  - (b) 對事實的調查所得；

- (c) the action taken or to be taken in respect of the complaint; and  
 (d) such other information as the Commissioner thinks necessary.
- (2) The Council shall advise the Commissioner in writing of—
- (a) its opinion on the investigation report submitted under subsection (1);  
 (b) its findings, if any, in respect of the complaint to which the investigation report relates; and  
 (c) its recommendations, if any, in respect of the handling of the complaint or the action taken or to be taken in connection with the complaint.
- (3) The Council may, if it considers appropriate, submit any of its recommendations referred to in subsection (2)(c) to the Governor.
- (4) The Council shall discuss from time to time with the Commissioner or his representatives nominated in that behalf any issue arising from the monitoring or review of any action taken by the police force in respect of a complaint.

#### 10. Interview with witness

- (1) At any time after the Commissioner has submitted an investigation report in respect of a complaint to the Council pursuant to section 9(1), the Council or any one or more of its members may interview any witness in connection with the complaint.
- (2) The Council may designate one or more of its members to conduct an interview and decide whether any other person shall be present at the interview.
- (3) Every interview shall be conducted in private.
- (4) No barrister or solicitor shall have a right of audience before the Council unless he is acting on his own behalf as a witness, but he may accompany a witness during an interview if the Council or the member or members conducting the interview thinks or think fit.
- (5) Unless the Council decides otherwise, a witness under the age of 16 shall attend an interview with his parent or guardian or a person over the age of 18 who has an interest in the welfare of the witness and is in the opinion of the Council or the member or members conducting the interview an appropriate person to be present at the interview.
- (6) The Council shall keep a record of every interview and such record shall not be used other than for the purpose of exercising its functions under this Ordinance.
- (7) Subject to this Ordinance, the Council may regulate the procedure of conducting interviews.

- (c) 對該宗投訴所採取或將會對該宗投訴採取的行動；及  
 (d) 處長認為需要的其他資料。
- (2) 委員會須以書面將以下各項告知處長——
- (a) 委員會對根據第(1)款呈交的調查報告的意見；  
 (b) 委員會就該調查報告所關乎的投訴而作出的裁斷(如有的話)；及  
 (c) 委員會就該投訴的處理或就關乎該投訴而採取或將會採取的行動提出的建議(如有的話)。
- (3) 如委員會認為適當，可將第(2)(c)款所提及的委員會提出的任何建議呈交總督。
- (4) 委員會須不時與處長或處長為此提名的代表討論因監察或檢討警隊就某宗投訴所採取的任何行動而引起的任何問題。

#### 10. 會見證人

- (1) 在處長已依據第9(1)條就某宗投訴的調查向委員會呈交報告後，委員會或其任何一名或多於一名的成員可在任何時間就該宗投訴會見任何證人。
- (2) 委員會可指定其任何一名或多於一名的成員會見證人，並可決定在會見時是否須有任何其他人在場。
- (3) 每次會見須以非公開形式進行。
- (4) 除非大律師或律師本身是證人，否則並無在委員會席前發言的權利，但如委員會或進行會見的成員認為合適，則大律師或律師可在會見時陪同任何證人出席。
- (5) 除非委員會另有決定，否則未滿16歲的證人須在其父母或監護人的陪同下，或在任何年齡超過18歲和對證人的福利有利關係並且是委員會或進行會見的成員認為適合在會見時在場的人的陪同下，出席任何會見。
- (6) 委員會須備存每次會見的紀錄，而該紀錄除為委員會行使在本條例下的職能的目的而使用外，不得用於其他用途。
- (7) 在符合本條例的規定下，委員會可規管進行會見證人的程序。

**11. Secrecy**

(1) Every member of the Council shall, subject to subsections (2) and (3), maintain secrecy in respect of all matters that arise from any complaint and come to their actual knowledge in the exercise of their functions.

(2) Subsection (1) shall not apply so as to prevent any member of the Council from—

- (a) disclosing in the course of any criminal, civil or disciplinary proceedings in respect of which a complaint is relevant, any matter relevant to those proceedings;
- (b) reporting evidence of any crime to such authority as he considers appropriate;
- (c) disclosing to a person any matter referred to in subsection (1) which, in the opinion of the member, may be ground for a complaint by that person.

(3) The Council may disclose in any report made by it under this Ordinance any matter that in its opinion ought to be disclosed in order to establish grounds for its conclusions and recommendations, other than a matter in respect of which the Governor certifies that its disclosure might prejudice security, defence or international relations (including relations with any international organization) in respect of Hong Kong or would otherwise be contrary to the public interest.

(4) Any member of the Council who fails to comply with subsection (1) commits an offence and is liable on conviction to a fine at level 5 and to imprisonment for 2 years.

**12. Protection to members**

A member of the Council shall have such and the like protection and privileges in case of any action or suit brought against him for any act done or omitted to be done in the execution of his duty as is by law given to any magistrate acting in the execution of his office.

**13. Report**

(1) The Council shall in each year make a general report to the Governor concerning the exercise of the functions of the Council under this Ordinance during the previous year.

(2) In addition to the report referred to in subsection (1), the Council may from time to time make such other reports to the Governor as it deems necessary.

(3) The Governor shall cause the report referred to in subsection (1) to be laid before the Legislative Council.

**11. 保密**

(1) 除第(2)及(3)款另有規定外，委員會的每名成員均須將任何投訴所引起並在其行使職能時所實際知悉的一切事項保密。

(2) 第(1)款不得應用於阻止委員會的任何成員——

- (a) 在與投訴有關的任何刑事或民事法律程序或紀律處分程序中，披露與該等程序有關的任何事項；
- (b) 向其認為適當的主管當局舉報任何刑事罪的證據；
- (c) 在其認為第(1)款所提述的事項是可作為任何人作出投訴的理由時，向該人披露該事項。

(3) 委員會在根據本條例作出的任何報告中，可披露任何其認為應予披露以支持其結論及建議的事項，但如總督證明披露該事項可能有損香港的保安、防衛或國際關係(包括與任何國際組織的關係)，或會在其他方面有違公眾利益，則不得披露該事項。

(4) 委員會的任何成員不遵守第(1)款，即屬犯罪，可處第5級罰款及監禁2年。

**12. 成員的保障**

在針對委員會的成員就執行其職責時的任何作為或不作為而提出的法律行動或訴訟中，該成員享有的保障及特權，與裁判官在執行其職務而行事時獲法律所給予的保障及特權相同。

**13. 報告**

(1) 委員會須每年向總督作出報告，概述委員會在過去一年根據本條例行使委員會職能的情況。

(2) 除第(1)款所提述的報告外，委員會可不時向總督作出委員會認為需要的其他報告。

(3) 總督須安排將第(1)款所提述的報告提交立法局省覽。



**14. Power of Governor to make regulations**

The Governor may by regulation provide for—

- (a) the discharge by the Council of additional functions and duties;
- (b) the time, place and manner, when, where and in which the Council shall exercise and perform its functions and duties;
- (c) the Council being assisted by such other persons and classes of persons as may be prescribed, in the exercise and performance of all or any of its functions and duties;
- (d) any other matters required by or under this Ordinance;
- (e) generally, the carrying out of the provisions of this Ordinance.

**15. Transitional provisions**

(1) Where any matter or thing has been commenced by or under the authority of the Independent Police Complaints Council existing immediately before the commencement of this Ordinance, such matter or thing shall be carried on and completed by the Council after such commencement.

(2) Every person who immediately before the commencement of this Ordinance holds an appointment as the Chairman, a Vice-Chairman, a member or the Secretary of the Independent Police Complaints Council shall continue, as from such commencement but subject to the terms of his appointment, to be the Chairman, a Vice-Chairman, a member or the Secretary of the Council, as the case may be, for the purposes of this Ordinance.

*Explanatory Memorandum*

This Bill seeks to provide a statutory basis for the Independent Police Complaints Council, the principal function of which is to monitor and review investigations by the Royal Hong Kong Police Force into complaints against the police.

2. Clause 2 contains the definitions necessary for the interpretation of the Bill.
3. Clause 3 provides for the continuance of the Council.
4. Clause 4 sets out the membership of the Council and provides for the appointment of its Chairman, Vice-Chairmen and members.
5. Clause 5 provides for the procedure at meetings of the Council.
6. Clause 6 provides for the appointment of the Secretary of the Council.
7. Clauses 7 and 8 provide for the functions and powers of the Council.

**14. 總督訂立規例的權力**

總督可藉規例就以下事宜訂定條文——

- (a) 委員會履行額外的職能及責任；
- (b) 委員會行使和履行其職能及責任的時間、地點及方式；
- (c) 由其他訂明的人及訂明類別的人，協助委員會行使和履行其全部或任何職能及責任；
- (d) 本條例所規定或根據本條例規定的任何其他事項；
- (e) 概括而言，本條例條文的施行。

**15. 過渡性條文**

(1) 凡任何事宜或事情已由在緊接本條例生效日期前已存在的投訴警方獨立監察委員會展開或已在其授權下展開，該項事宜或事情均須由該委員會在生效日期後繼續進行和完成。

(2) 為施行本條例，在緊接本條例生效日期前已出任投訴警方獨立監察委員會的主席、副主席、成員或秘書的每名人士，在其委任條款的規限下，由該生效日期起，繼續擔任該委員會的主席、副主席、成員或秘書（視屬何情況而定）。

**摘要說明**

本條例草案旨在為投訴警方獨立監察委員會提供一個法定基礎。該委員會的主要職能是監察和檢討皇家香港警隊對針對警隊的投訴所作的調查。

2. 草案第2條載有解釋本條例草案所需的定義。
3. 草案第3條規定委員會須予延續。
4. 草案第4條列出委員會的成員，以及對委員會的主席、副主席及成員的委任作出規定。
5. 草案第5條就委員會會議程序作出規定。
6. 草案第6條就委員會秘書的委任作出規定。
7. 草案第7及8條規定委員會的職能及權力。

8. Clause 9 sets out the working procedures between the Council and the police.
9. Clause 10 provides for the procedures of conducting interviews with witnesses.
10. Clause 11 imposes upon the Council a duty to maintain secrecy except in certain circumstances.
11. Clause 12 extends the same protection and privileges to members of the Council as are given to magistrates.
12. Clause 13 requires the Council to make reports to the Governor.
13. Clause 14 empowers the Governor to make regulations.
14. Clause 15 contains transitional provisions.

8. 草案第9條列出委員會與警隊之間的工作程序。
9. 草案第10條規定會見證人的程序。
10. 草案第11條規定委員會有保密的責任，但在某些情形下則例外。
11. 草案第12條將裁判官獲給予的保障及特權擴及委員會的成員。
12. 草案第13條規定委員會須向總督作出報告。
13. 草案第14條賦權總督訂立規例。
14. 草案第15條載有過渡性條文。