

For discussion on
4 July 2002

Legislative Council Panel on Security

**The Proposed Independent Police Complaints Council Bill:
Briefing on Results of Public Consultation**

Purpose

This paper seeks to inform Members of the results of the public consultation exercise on the proposed Independent Police Complaints Council (IPCC) Bill. It also provides supplementary information on issues raised by Members at the meeting on 2 May 2002.

Background

2. At the meeting of the Security Panel on 2 May 2002, Members were informed of the interim position of the public consultation exercise. The Administration undertook to brief Members on the results of the public consultation exercise at the meeting in July.

Results of public consultation exercise

3. The Administration attended 19 meetings of District Councils, District Council Committees and District Fight Crime Committees to collect their views on the proposed IPCC Bill. Eight meetings were also held with the Heung Yee Kuk and other community organizations. A list of the organizations is annexed. Apart from views collected from those meetings, written

submissions were received from individuals and organizations. In total, the Administration has received views from some 224 parties.

4. The views collected often touch on several common key points. The general patterns are presented below:

- (a) An overwhelming majority of the parties support turning IPCC into a statutory body.
- (b) A number of parties express their satisfaction with the present Police complaints system and clear support for the Administration's legislative proposals. Many others indicate their agreement with some of the proposals and make suggestions as to how certain proposals may be modified. Only four reject the legislative proposals outright.
- (c) Amongst those who have commented on the issue of investigative powers, some support the status quo, i.e. that CAPO should continue to conduct investigations. Others support investigative powers for IPCC. Few address the issues of whether CAPO should become independent of the Police Force and whether an independent body should be established to investigate complaints against the Police.
- (d) Comments have also been received on the functioning of IPCC and the Lay Observers, and on matters relating to their appointment.

5. Those who support giving IPCC investigative powers or making CAPO independent of the Police Force contend that IPCC can only exercise very limited monitoring powers under the present system. Some opine that there is intrinsic problem with "Police investigating the Police".

6. People who oppose to giving investigative powers to IPCC or making CAPO independent of the Police Force are of the view that the existing system is running well. They do not think the Police are having excessive powers. Investigation of complaints is a supervisory function which should not be taken

away from the Police management. Giving the IPCC investigative powers would confuse its role as the monitoring body. They also note that IPCC already has a wide range of powers enabling it to discharge its monitoring functions effectively.

7. Other points of interest include –

- publicity of the Police complaints system should be strengthened to remove any misconception regarding the fairness of “Police investigating the Police”;
- consideration should be given to appointing a full-time Chairman and substantially strengthening the staffing of the IPCC Secretariat;
- IPCC should have the power to publicly state its disagreement with the Police’s handling of complaint cases;
- more members of the public should be appointed as Lay Observers, in order to enhance the transparency of the system;
- a minimum limit should be set on the number of observations made by Observers within a given period of time;
- IPCC should also accept complaints against the Police. The complaints could then be referred to CAPO for follow up. This could allay the fear of some people in lodging complaints directly to a Police officer;
- IPCC should have greater influence over the penalty to be imposed on offending officers;
- the quorum for an IPCC meeting as proposed in the consultation paper should be raised;
- measures should be introduced to prevent abuse of the system by people making false complaints; and

- IPCC should provide support to complainants in pursuing their complaints e.g. by providing legal advice.

Issues raised at the Panel meeting in May

8. At the Panel meeting in May, Members also raised several issues for follow up by the Administration. The issues are –

- (a) mechanism for investigating complaints against senior Police officers;
- (b) investigations of complaints conducted in parallel with legal proceedings against complainants; and
- (c) complaints about corruption.

Mechanism for investigating complaints against senior Police officers

9. According to the established procedures for handling complaints against Police, the person overseeing an investigation must be at least one rank higher than the officer being investigated. If a complaint is made against an officer at the rank of Assistant Commissioner of Police or above, an officer senior in rank to the complainee will oversee the investigation. In case a complaint is made against the Commissioner of Police, a senior Government officer will be appointed by the Chief Executive to conduct or oversee the investigation.

Complaint investigations conducted in parallel with legal proceedings against the complainants

10. CAPO has a Sub Judice procedure in which investigation into the complaint will be suspended if it relates to a matter likely to be raised before a

court in connection with a charge or summons. This is to protect the interests of the defendant so that his line of defence will not be revealed to the police prior to his trial. CAPO will re-open the case upon conclusion of the trial.

11. There are exceptional situations where CAPO will not suspend investigation even if the matter is Sub Judice. These include situations where the complaint is serious and there is sufficient evidence or good reasons to suggest that it is likely to be substantiated, or when there is indication of police misconduct which justifies early investigation by CAPO.

12. Between 1999 and 2002 (up to end of May), CAPO conducted investigations on six cases in parallel with legal proceedings against the complainants. The breakdown is shown in the table below:

	1999	2000	2001	2002 (up to 31 May)
Number of complaints investigated by CAPO in parallel with legal proceedings against the complainants	1	2	3	Nil

13. One complaint was substantiated. The Police officers involved were charged and convicted. One case was classified as “not fully substantiated”. One case was classified as “unsubstantiated”. Two cases were classified as “false”. In one case, some allegations were classified as “no fault” and others as “unsubstantiated”.

Complaints about corruption

14. If a complaint against police involving an allegation of corruption is lodged with CAPO, CAPO will refer it to Independent Commission Against Corruption (ICAC). ICAC investigation will normally take precedence over CAPO investigation if other allegations in that complaint only involve disciplinary matters. In such cases, the CAPO investigation will be suspended pending results of ICAC investigation.

15. The total number of CAPO cases referred to ICAC since 1999 is 21. The yearly breakdown is shown below:

	1999	2000	2001	2002 (up to 31 May)
Number of complaints referred to ICAC	2	6	8	5

16. There were three complaints where parallel investigations were conducted by ICAC and CAPO. In these cases, the CAPO investigations only covered aspects which were not related to corruption. There was liaison between CAPO and ICAC to ensure that the CAPO investigations would not prejudice the ICAC investigations. ICAC investigations revealed no evidence of corruption activities in all three cases.

Way Forward

17. The legislative proposals will be refined as appropriate taking into account public views collected. The Administration intends to introduce the Bill into Legislative Council before the end of this year.

Security Bureau
June 2002

The District Councils, District Fight Crime Committees and other organizations met by the Administration in the consultation exercise

District Councils

Central and Western

Eastern

Islands*

Kwai Tsing*

Kwun Tong

North*

Sai Kung

Sha Tin

Southern

Wan Chai*

Yau Tsim Mong

Yuen Long

(*The consultation paper was discussed at relevant Committee of the District Council.)

District Fight Crime Committees

Central and Western

Kwai Tsing

North

Sham Shui Po

Sha Tin

Wan Chai

Wong Tai Sin

Others

Heung Yee Kuk

Federation of Hong Kong Guangdong Community Organizations Ltd.

Hong Kong Association of International Investment

Hong Kong Federation of Fujian Associations

The Hong Kong Island Federation

The Hong Kong Overseas Chinese General Association

Kiangsu and Chekiang Residents (HK) Association

Rotary Club of Kowloon Golden Mile
