

《投訴警方獨立監察委員會條例草案》委員會

對在二零零八年一月二十九日(1)、二零零八年三月六日(2)
及二零零八年三月二十八日(1)條例草案委員會會議
所提事項的回應

目的

本文件為回應條例草案委員會分別在二零零八年一月二十九日、三月六日及三月二十八日會議上提出的部分事宜，提供資料。

轉授投訴警方獨立監察委員會（警監會）的權力

就警監會或個人資料私隱專員將其部分職能轉授予其聘用的技術及專業人士的權力，將《警監會條例草案》與《個人資料(私隱)條例》（第 486 章）作一比較；重新考慮增訂與第 486 章所載相若的條文，訂明警監會可將其部分職能，轉授予該會根據條例草案第 5(3)條聘用為其提供服務的技術或專業人士

2. 《個人資料(私隱)條例》（第 486 章）第 9(1)條訂明，個人資料私隱專員“可以僱用以外的方法聘用他認為合適的從事技術工作的人士或專業人士”。第 486 章第 10 條訂明，除非另有指明，個人資料私隱專員“可在他認為合適的規限條款及條件（如有的話）下，將他在本條例下的任何職能或權力，轉授予任何訂明人員，規限條款及條件（如有的話）須在授權書中指明”。第 486 章第 2 條把“訂明人員”界定為包括根據第 9(1)條獲個人資料私隱專員聘用從事技術工作的人士或專業人士。儘管有上述法定條文，個人資料私隱專員迄今未有將其任何職能，轉授予其聘用的技術或專業人士。（獲個人資料私隱專員根據第 480 章轉授其權力和職能的訂明人員名單，載於附件 A的憲報公告。）

3. 至於《警監會條例草案》，第 5(2)條訂明，警監會“可按它決定的條件，委任為協助它執行其職能所需的其

他僱員”，而第 5(3)條則訂明，警監會“可按它認為合適的方式及條件，聘用任何人提供技術或專業服務”。附表 1 第 25(1)條訂明，警監會“可用書面形式，將它在本條例下的任何職能轉授予某委員會、某警監會成員、秘書、法律顧問或警監會任何其他僱員”。條例草案沒有賦權警監會將其職能轉授予該會根據第 5(3)條聘用以提供技術或專業服務的任何人士。

4. 為法定警監會所作的擬議安排，與一些處理公眾投訴的其他法定機構（例如申訴專員、平等機會委員會和消費者委員會）的安排相若。雖然這三個法定機構可聘用技術或專業人士提供服務，以協助履行其法定職能，或就關乎執行其法定職能的事宜向這些機構提供意見，但規管這些機構的條例，並無賦權這些機構將其職能轉授予其聘用的技術或專業人士。

5. 我們理解警監會或有需要在其僱員以外聘用其他人士提供技術或專業服務，但預期警監會毋須將其任何職能轉授予這些人士。舉例來說，警監會可能需要聘請公關公司，協助進行推廣活動，加強公眾對警監會的角色認識¹。公關公司會策劃宣傳活動供警監會考慮，並推行警監會通過的活動，不過，加強公眾對警監會的角色認識這項職能仍會由警監會肩負。因此，我們認為毋需亦實在不宜訂明法定警監會可將其職能轉授予並非其僱員的外聘技術及專業人士。

警民溝通

重新考慮設立供警方及弱勢社羣定期溝通的渠道

6. 警隊在執行維持香港為安全城市的職務時，十分重視推動市民的參與，並致力尋求市民及不同持份者的意見以加強溝通和相互的了解。推動社羣參與是警隊的策略方針之一，警隊正推行多項高層次計劃，研究如何進一步提

¹ 根據第 7(1)(e)條，警監會的其中一項職能，是“加強公眾對警監會的角色認識”。

昇現正推行的多項社區性警務措施。在個別分區和警區的層面，警方已設立多個渠道，以便與持不同意見和關注的團體溝通。警方亦不時與代表非華裔人士、青年組織、專業團體、互助委員會、業主立案法團和商會等團體會晤。這些聯繫按情況或有系統地進行，頻密程度視乎須具體討論事項而定。上述安排行之有效，並取得正面的回應，亦能照顧不同持份者的需要。警方會繼續推行上述安排，並在有需要時與個別表示有關關注的團體會面。

詳題

考慮把條例草案詳題內“為就須具報投訴委任觀察員一事訂定條文”一句刪除，以及在“監察”一詞後，加入“覆檢”一詞

7. 詳題概述條例草案的內容。由於有關觀察員計劃的條文構成《警監會條例草案》一重要部分（第 31 至 35 條及附表 2），宜在詳題提述該事宜。因此，我們建議保留詳題內“為就須具報投訴委任觀察員一事訂定條文”。

8. 詳題的作用不是複述警監會在條例草案下訂明的各方面職能。條例草案第 7(1)條訂明的警監會職能，包括“觀察、監察和覆檢[警務處]處長處理或調查須具報投訴的方式...”和“覆檢處長依據本條例向它呈交的任何事項”。詳題所述“觀察和監察...處理和調查須具報投訴”這項概括性職能已包含警監會的上述覆檢職能。換言之，現有詳題已恰當及充分地涵蓋警監會的覆檢權力，及警監會在條例草案不同條文下所訂明的其他權力，使警監會得以執行觀察和監察須具報投訴的處理和調查這項概括性職能。

警監會的成員

考慮刪除條例草案附表 1 第 4 條委任人署任委任成員的條文，以及修正第 2(1)條“委任成員”的定義

9. 我們理解很多現有法定機構的監管法例均載有委任署任或臨時成員的條文，例子如下：

- (a) 消費者委員會（見《消費者委員會條例》（第 216 章）第 6(4)條）；
- (b) 香港藝術發展局（見《香港藝術發展局條例》（第 472 章）附表第 3 條）；
- (c) 機場管理局（見《機場管理局條例》（第 483 章）第 12(1)條）；
- (d) 法律援助服務局（見《法律援助服務局條例》（第 489 章）第 5(6)條）；
- (e) 財務匯報局（見《財務匯報局條例》（第 588 章）附表 2 第 3(2)條）；
- (f) 香港貿易發展局（見《香港貿易發展局條例》（第 1114 章）第 11(2)(c)條）；
- (g) 香港生產力促進局（見《香港生產力促進局條例》（第 1116 章）第 9(6)條）；以及
- (h) 香港學術及職業資歷評審局（見《香港學術及職業資歷評審局條例》（第 1150 章）附表 2 第 3 條）。

上述條文的摘錄載於附件 B。

10. 為顧及可能有需要按條例草案附表 1 第 4 條委任署理警監會成員（即某名警監會成員因疾病、不在香港或其他因由而不能執行其職能，或某警監會成員的職位懸空，有待新的委任或再度委任），我們建議保留該條文及將第 2(1)條“委任成員”現時的定義保留。

精神上無行為能力的人作出的投訴

解釋警方如何決定某人是否“精神上無行為能力”，包括有否規定需提供證明文件

11. 條例草案第 2(1)條訂明，“精神上無行為能力的人”指“《精神健康條例》（第 136 章）所指的患有精神紊亂或屬弱智的人”。根據第 136 章第 2 條的定義，“精神紊亂的人”指“任何患有精神紊亂的人”，而“弱智人士”指“弱智的人或看來屬弱智的人”。第 136 章第 2 條亦界定“精神紊亂”為(a)精神病；(b)屬智力及社交能力的顯著減損的心智發育停頓或不完整的狀態，而該狀態是與有關的人的異常侵略性或極不負責任的行為有關連的；(c)精神病理障礙；或(d)不屬弱智的任何其他精神失常或精神上無能力。第 136 章第 2 條就“弱智”所下定義，是“當用作名詞時指低於平均的一般智能並帶有適應行為上的缺陷，而當用作形容詞時，亦須據此解釋”。第 136 章對於上述用語的界定，並無訂明需提供任何文件以茲證明。

12. 條例草案第 14 條訂明，如投訴人是精神上無行為能力的人，其親屬或監護人（第 136 章第 2(1)條所界定者）可代投訴人作出投訴。警方會根據上文第 11 段所述的定義，判斷投訴人是否精神上無行為能力的人。投訴人的代表須證明他是投訴人的親屬或監護人，當局會根據第 14 條把他代投訴人作出的投訴視為須具報投訴。

警監會的職能

解釋條例草案中有關“職能”的提述是指警監會的權力抑或責任，並考慮以“權力”或“責任”（視何者適用而定）取代“職能”一詞

13. 條例草案第 2(1)條訂明，“職能”包括權力及責任，以清晰表明因應個別條文所述的情況，“職能”一詞包含權力和責任的意思。法定職能一般包含與職能相關的權力和責任。此定義是法例草擬中一種久經確立的簡略表述方式，慣用於香港及其他司法管轄區的法例。香港和海外法例採納此定義的例子載於附件 C。

14. 條例草案有關“職能”的提述，標示於附件 D。概括來說，有關提述泛指警監會的法定職能或關乎觀察員的職能。就有關的條文而言，具上述定義的“職能”一詞使用恰當，以概括表述警監會和觀察員亦享有與指明的職能相關的各項權力和責任，因此應予保留。

15. 如需提述警監會或警監會觀察員的某特定權力或責任，條例草案有關條文會有明確的表述，例如第 29 和 30 條訂明警監會收取費用、持有財產、訂立合約和借入款項等權力。

保安局
二零零八年四月

附件 A

第 4155 號公告

個人資料私隱專員公署

個人資料 (私隱) 條例 (第 486 章)

現依據《個人資料 (私隱) 條例》(“條例”) (第 486 章) 第 10(1) 條的規定，將條例第 VII 部賦予本人的下列職能及權力，轉授予個人資料私隱專員公署的下開指定人員：

權力	條例中的有關條文	獲轉授權力的人員
行使視察個人資料系統的酌情權	第 36(a) 及 36(b) 條	副個人資料私隱專員
依據進行視察的決定對任何個人資料系統進行視察	第 36(a) 及 36(b) 條	高級個人資料主任及以上職級人員
就引起投訴的行為或作為進行調查	第 38(i) 條	個人資料主任及以上職級人員
在無接獲投訴時行使就某項行為或作為進行調查的酌情權	第 38(ii) 條	副個人資料私隱專員
依據進行調查的決定，在無接獲投訴時對某項行為或作為進行調查	第 38(ii) 條	個人資料主任及以上職級人員
行使不進行或不繼續進行調查的酌情權，並將有關決定通知投訴人	第 39(1)、39(2) 及 39(3) 條	副個人資料私隱專員
行使進行或繼續進行由投訴引發的調查的酌情權，即使投訴人已撤回該投訴	第 40 條	副個人資料私隱專員
將進行視察或調查的意向告知有關資料使用者	第 41(1) 條	副個人資料私隱專員
行使為視察或調查而進入處所的權力，並告知有關資料使用者該情況	第 42(1)、42(2)、42(3) 及第 42(5) 條	副個人資料私隱專員
依據進入處所的決定進入處所進行視察或調查及出示手令 (如有)	第 42(1)、42(2) 及 42(10) 條	高級個人資料主任及以上職級人員
可為調查的目的而獲提供資訊、文件或物品及作出查訊	第 43(1)(a) 條	個人資料主任及以上職級人員
決定須否為調查的目的而進行聆訊；若需要進行聆訊，須否在不公開情況下進行；為調查的目的進行聆訊及其他對程序有影響的附帶事宜	第 43(1)(b)、43(2)、43(3)、43(4) 及 43(5) 條	副個人資料私隱專員
行使酌情權傳召能夠為調查的目的提供任何資訊的人士	第 44(1) 條	副個人資料私隱專員
訊問私隱專員為調查目的而傳召的人士，以及規定該人士提供資訊及出示由該人士所管有或控制的任何文件或物品	第 44(1) 條	高級個人資料主任及以上職級人員
為根據第 44(1) 條進行訊問的目的而監誓	第 44(7) 條	副個人資料私隱專員／首席律師

權力	條例中的有關條文	獲轉授權力的人員
告知有關資料使用者視察或調查的結果，以及條文所規定的其他事宜	第 47(1) 及 47(2) 條	副個人資料私隱專員
告知投訴人由有關投訴人所引發的調查的結果，以及條文所規定的其他相關事宜	第 47(3) 條	副個人資料私隱專員
行使酌情權決定所有與執行通知及送達執行通知有關的事宜	第 50 條	副個人資料私隱專員

上述權力轉授由 2004 年 7 月 2 日起生效，而以前在憲報公布的權力轉授隨即撤銷。

2004 年 7 月 2 日

個人資料私隱專員鄧爾邦

**在其規管條例中有就委任署任或臨時成員
訂定條文的法定機構的例子**

(A) 消費者委員會

《消費者委員會條例》(第 216 章)第 6 條規定—

“(1) 委員會由以下委員組成—

- (a) 主席一名，由行政長官委任，任期不超過 2 年；
- (b) 副主席一名，由行政長官委任，任期不超過 2 年；
- 及
- (c) 其他委員不超過 20 名，各委員均由行政長官委任，任期不超過 2 年。

(4) 凡主席、副主席或任何其他根據第(1)(c)款獲委任的委員因暫時無行為能力或其他因由，以致有一段期間無法執行主席、副主席或委員的職能，則行政長官可委任另一人在該段期間署理其職位，而該另一人所具有的一切權利、權力、職責或法律責任，均猶如他是根據第(1)款獲委任一樣。”

(B) 香港藝術發展局

《香港藝術發展局條例》(第 472 章)附表第 3 條規定—

“如在任何期間—

- (a) 主席因不在香港或其他理由而不能擔任主席職務；或
 - (b) 副主席或某成員因暫時喪失履行職務能力或其他理由而不能執行副主席或成員的職能，
- 行政長官可委任另一人在該段期間署理主席、副主席或該成員的職位。”

(C) 機場管理局

《機場管理局條例》(第 483 章) 第 12 (1) 條規定—

“如行政長官信納管理局的主席或任何其他成員因暫時喪失行為能力或因其他因由，以致不能以管理局成員身分行事，行政長官可委任另一人在該項委任所指明的期間內，代替該名成員行事。”

(D) 法律援助服務局

《法律援助服務局條例》(第 489 章) 第 5(6)條規定—

“如委任成員不在香港或不能行事，行政長官可委任另一人擔任臨時成員。”

(E) 財務匯報局

《財務匯報局條例》(第 588 章) 附表 2 第 3(2)條規定—

“如財務匯報局任何委任成員(主席除外)因不在香港或任何其他原因以致不能執行他所擔任的成員職位的職能，則行政長官可在符合第(3)款的規定下，委任另一人為臨時成員，以在該成員不在香港或無履行職務能力期間代他行事。”

(F) 香港貿易發展局

《香港貿易發展局條例》(第 1114 章)第 11 條規定—

“(1) 發展局由以下成員組成—

.....

(d) 由行政長官指名委任的成員 6 名。

(2) 凡在任何期間，...根據該款(c)或(d)段獲提名或委任的發展局成員中的任何人，因不在香港或患病而不能行使發展局成員職位的權力或執行發展局成員職位的職責，則—

.....

(c) 就根據...該款(d)段獲委任的成員而言，行政長官可委任另一人為發展局的臨時成員，在上述期間代替該成員。”

(G) 香港生產力促進局

《香港生產力促進局條例》(第 1116 章)第 9(6)條規定—

“如主席以外的任何成員不在香港，或因任何其他理由而不能行使促進局成員職位的權力或執行促進局成員職位的職責，則行政長官可委任另一人在該成員不在香港或無行為能力期間出任促進局臨時成員。”

(H) 香港學術及職業資歷評審局

《香港學術及職業資歷評審局條例》(第 1150 章)附表 2 第 3 條規定—

“如在某段期間—

(a) 主席因不在香港或因其他理由不能執行主席職務；或

(b) 任何成員因不在香港或因其他理由不能執行成員的職務，

行政長官可委任另一人在該段期間署理主席或該成員的職位。”

香港本地和海外法例把“職能”界定為包括權力及責任的例子

香港

<u>條文</u>	<u>成文法的名稱</u>	<u>制定的年份</u>
第 54A 條	《釋義及通則條例》(第 1 章)	1975
第 2 條	《銀行業條例》(第 155 章)	1986
第 53A 條	《保險公司條例》(第 41 章)	1988
第 2 條	《工廠及工業經營條例》(第 59 章)	1997
第 5A 條	《外匯基金條例》(第 66 章)	1992
第 43 條	《建築物條例》(第 123 章)	1994
第 2 條	《存款保障計劃條例》(第 581 章)	2004
第 2 條	《財務匯報局條例》(第 588 章)	2006
第 2 條	《青沙管制區條例》(第 594 章)	2007

其他司法管轄區

<u>條文</u>	<u>成文法的名稱</u>	<u>制定的年份</u>
第 8 條	Ministers of the Crown (Transfer of Functions) Act 1946 (英格蘭)	1946
第 98 條	Control of Pollution Act 1974 (英格蘭)	1974
第 2 條	Electricity and Gas Inspection Act 1985 (加拿大)	1985
第 579 條	Education Act 1994 (英格蘭)	1994
第 58 條	Goods Vehicle (Licensing of Operators) Act 1995 (英格蘭)	1995
第 2 條	Air Navigation and Transport (Amendment) Act 1998 (愛爾蘭)	1998
附表的第 2 部	Interpretation Act 2005 (愛爾蘭)	2005

就“職能”的提述

C790

《投訴警方獨立監察委員會條例草案》

本條例草案

旨在

使現存的投訴警方獨立監察委員會成立為法團；為該委員會在觀察和監察警務處處長處理和調查須具報投訴方面的職能訂定條文；為該委員會的關乎其事務和運作的權力訂定條文；為就須具報投訴委任觀察員一事訂定條文；以及為相關事宜訂定條文。

由立法會制定。

第1部

導言

1. 簡稱

本條例可引稱為《投訴警方獨立監察委員會條例》。

2. 釋義

(1) 在本條例中，除文意另有所指外——

“分類”(classification)指經調查後由處長將須具報投訴作以下分類——

References to “Function”

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

C791

A BILL

To

Incorporate the existing Independent Police Complaints Council; to provide for the Council's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police; to provide for the Council's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters.

Enacted by the Legislative Council.

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Independent Police Complaints Council Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—

“appointed member” (委任成員) means a member of the Council referred to in section 4(1)(c), and includes a person appointed under section 4 of Schedule 1 to act as an appointed member;

Annex D
附件 D

- (a) 簡便方式解決；
- (b) 獲證明屬實；
- (c) 無法證實；
- (d) 投訴撤回；或
- (e) 經警監會及處長同意的其他類別；

“主席”(Chairman)指第4(1)(a)條提述的警監會主席，並包括根據附表1第4條獲委任而署任主席的人；

“投訴人”(complainant)指作出某投訴或覆核要求的人，如某人代另一人作出投訴或覆核要求，則指由該人代為作出該投訴或覆核要求的該另一人；

“委任成員”(appointed member)指第4(1)(c)條提述的警監會成員，並包括根據附表1第4條獲委任而署任委任成員的人；

“委員會”(committee)包括警監會根據附表1第13條設立的任何專責委員會或小組；

“法律顧問”(Legal Adviser)指根據第5(1)條獲委任的警監會法律顧問；

“秘書”(Secretary)指根據第5(1)條獲委任的警監會秘書；

“副主席”(Vice-Chairman)指第4(1)(b)條提述的警監會副主席，並包括根據附表1第4條獲委任而署任副主席的人；

“處長”(Commissioner)指警務處處長；

“須具報投訴”(reportable complaint)指按照第3部第1分部必須歸類為須具報投訴的投訴；

“無須具報投訴”(non-reportable complaint)指按照第3部第1分部必須歸類為無須具報投訴的投訴；

“精神上無行為能力的人”(mentally incapacitated person)指《精神健康條例》(第136章)所指的患有精神紊亂或屬弱智的人；

“職能”(function)包括權力及責任；

“覆核要求”(request for review)指第12條提述的要求覆核某須具報投訴的分類的覆核要求；

“歸類”(categorization)指由處長將某投訴歸類為——

- (a) 須具報投訴；或
- (b) 無須具報投訴；

“警方行為”(police conduct)指第10(a)條提述的行為、常規或程序；

“categorization” (歸類) means the categorization by the Commissioner of a complaint as—

- (a) a reportable complaint; or
- (b) a non-reportable complaint;

“Chairman” (主席) means the Chairman of the Council referred to in section 4(1)(a), and includes a person appointed under section 4 of Schedule 1 to act as the Chairman;

“classification” (分類) means the classification after investigation by the Commissioner of a reportable complaint as one that is—

- (a) for informal resolution;
- (b) substantiated;
- (c) unsubstantiated;
- (d) withdrawn; or
- (e) of such other description as agreed between the Council and the Commissioner;

“Commissioner” (處長) means the Commissioner of Police;

“committee” (委員會) includes any panel or sub-group established by the Council under section 13 of Schedule 1;

“complainant” (投訴人) means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;

“Council” (警監會) means the body corporate incorporated by section 3 and known by the names referred to in section 3(1)(b);

“function” (職能) includes a power and a duty;

“Legal Adviser” (法律顧問) means the Legal Adviser to the Council appointed under section 5(1);

“member of the police force” (警隊成員) includes a public officer attached to the police force;

“mentally incapacitated person” (精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

“non-reportable complaint” (無須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a non-reportable complaint;

“observer” (觀察員) means a person appointed to be an observer under section 31;

“police conduct” (警方行為) means the conduct, practice or procedure referred to in section 10(a);

“police force” (警隊) means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);

“警隊” (police force) 指香港警務處或根據《香港輔助警隊條例》(第 233 章) 設立的香港輔助警察隊；

“警隊成員” (member of the police force) 包括派駐警隊工作的公職人員；

“警監會” (Council) 指由第 3 條成立為法團並以第 3(1)(b) 條提述的名稱為名的法人團體；

“觀察員” (observer) 指根據第 31 條獲委任為觀察員的人。

(2) 在本條例中，凡提述執行職能之處，均包括行使權力及履行責任。

第 2 部

投訴警方獨立監察委員會成立為法團

3. 警監會成立為法團

- (1) 在緊接本條例生效前存在的投訴警方獨立監察委員會——
 - (a) 現成立為法人團體；並
 - (b) 繼續以“投訴警方獨立監察委員會”為其中文名稱及以“Independent Police Complaints Council”為其英文名稱。
- (2) 警監會屬永久延續，並可以其中文名稱或英文名稱起訴和被起訴。
- (3) 警監會不是政府的僱員或代理人，亦不享有政府的地位、豁免權或特權。

4. 警監會的成員

- (1) 警監會由以下成員組成——
 - (a) 由行政長官委任的主席一名；
 - (b) 由行政長官委任的副主席 3 名；及
 - (c) 由行政長官委任的其他成員 8 名或以上。
- (2) 現屬政府公務員或曾屬警隊成員的人，不具備根據第 (1) 款獲委任的資格。

“reportable complaint” (須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a reportable complaint;

“request for review” (覆核要求) means a request for reviewing the classification of a reportable complaint referred to in section 12;

“Secretary” (秘書) means the Secretary to the Council appointed under section 5(1);

“Vice-Chairman” (副主席) means a Vice-Chairman of the Council referred to in section 4(1)(b), and includes a person appointed under section 4 of Schedule 1 to act as a Vice-Chairman.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

PART 2

INCORPORATION OF INDEPENDENT POLICE COMPLAINTS COUNCIL

3. Incorporation of Council

(1) The Independent Police Complaints Council existing immediately before the commencement of this Ordinance—

- (a) is hereby incorporated as a body corporate; and
- (b) continues to be known in the English language as “Independent Police Complaints Council” and in the Chinese language as “投訴警方獨立監察委員會”。

(2) The Council has perpetual succession and may sue and be sued in its English or Chinese name.

(3) The Council is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

4. Membership of Council

(1) The Council consists of the following members—

- (a) a Chairman appointed by the Chief Executive;
- (b) 3 Vice-Chairmen appointed by the Chief Executive; and
- (c) not less than 8 other members appointed by the Chief Executive.

(2) A person who is a civil servant of the Government, or who was a member of the police force, is not eligible for appointment under subsection (1).

5. 秘書、法律顧問及其他僱員的委任

(1) 警監會必須按行政長官在參照警監會意見後批准的條件，委任一名秘書及一名法律顧問。

(2) 警監會可按它決定的條件，委任為協助它執行其職能所需的其他僱員。

(3) 警監會可按它認為合適的方式及條件，聘用任何人提供技術或專業服務。

6. 附表 1 適用於警監會

附表 1 就以下事宜具有效力：警監會成員、警監會的處事程序、委員會、財務事宜及警監會簽立文件，以及警監會其他雜項事宜。

第 3 部

警監會的職能

7. 警監會的職能

(1) 警監會的職能是——

- (a) 觀察、監察和覆檢處長處理或調查須具報投訴的方式，並（如警監會認為適當）就須具報投訴的處理或調查，向處長或行政長官或兼向上述兩者作出建議；
- (b) 監察處長已經或將會在與須具報投訴有關連的情況下對任何警隊成員採取的行動，並（如警監會認為適當）向處長或行政長官提供或兼向上述兩者提供它對該行動的意見；
- (c) 在警隊採納的常規或程序中，找出已經或可能會引致須具報投訴的缺失或不足之處，並（如警監會認為適當）就該等常規或程序，向處長或行政長官或兼向上述兩者作出建議；
- (d) 覆檢處長依據本條例向它呈交的任何事項；
- (e) 加強公眾對警監會的角色之認識；及

5. Appointment of Secretary, Legal Adviser and other employees

(1) The Council must appoint a Secretary and a Legal Adviser on terms approved by the Chief Executive on the advice of the Council.

(2) The Council may appoint, on terms determined by the Council, such other employees as the Council requires to assist it in performing its functions.

(3) The Council may engage any person for his technical or professional services in such manner and on such terms as it thinks fit.

6. Schedule 1 applicable to Council

Schedule 1 has effect with respect to the members, proceedings, committees and finances of, and the execution of documents by, and other miscellaneous matters of, the Council.

PART 3

FUNCTIONS OF COUNCIL

7. Functions of Council

(1) The functions of the Council are—

- (a) to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of the handling or investigation of reportable complaints;
- (b) to monitor actions taken or to be taken in respect of any member of the police force by the Commissioner in connection with reportable complaints, and to advise (as the Council considers appropriate) the Commissioner or the Chief Executive or both of them of its opinion on such actions;
- (c) to identify any fault or deficiency in any practice or procedure adopted by the police force that has led to or might lead to reportable complaints, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure;
- (d) to review anything submitted to it by the Commissioner pursuant to this Ordinance;
- (e) to promote public awareness of the role of the Council; and

(1) (在不限制上文的一般性的原則下) 由或根據本條例或其他條例授予它的任何職能。

(2) 警監會可作出為執行它在本條例下的職能而合理地需要作出，或附帶於或有助於執行該等職能的所有事情。

第1分部——關於處長將投訴歸類的職能

8. 處長須呈交投訴列表

(1) 處長必須按他與警監會議定的相隔期間及方式，向警監會呈交——

- (a) 一份須具報投訴列表；及
- (b) 一份無須具報投訴列表。

(2) 根據第(1)(a)款呈交的列表，必須包括處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有須具報投訴的摘要描述。

(3) 根據第(1)(b)款呈交的列表，必須包括——

- (a) 處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有無須具報投訴的摘要描述；
- (b) 將該等投訴歸類為無須具報投訴的理由；及
- (c) 就儘管藉第11(a)條而屬無須具報投訴的投訴而言，處長認為該投訴並不屬性質嚴重的理由。

9. 不予歸類的投訴

在編製第8(1)(a)或(b)條所指的列表時，處長不得考慮以下投訴——

- (a) 某人以他本人身為警隊成員的公務身分作出的投訴；
- (b) 由發出傳票而產生，並且與警方行為無關的投訴；
- (c) 由根據任何成文法則發出施加定額罰款通知書而產生，並且與警方行為無關的投訴；或

(1) (without limiting the generality of the foregoing) any function conferred on it by or under this or any other Ordinance.

(2) The Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

Division 1—Functions relating to Commissioner's Categorization of Complaints

8. Commissioner to submit lists of complaints

(1) The Commissioner must submit to the Council at such intervals, and in such manner, as the Commissioner and the Council may agree—

- (a) a list of reportable complaints; and
- (b) a list of non-reportable complaints.

(2) A list submitted under subsection (1)(a) must include a brief description of all reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted.

(3) A list submitted under subsection (1)(b) must include—

- (a) a brief description of all non-reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted;
- (b) the reasons for categorizing the complaints as non-reportable complaints; and
- (c) in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the reason for the Commissioner's opinion that the complaint is not of a serious nature.

9. Complaints not to be categorized

In compiling a list under section 8(1)(a) or (b), the Commissioner must not take into account any complaint that—

- (a) a person makes in his official capacity as a member of the police force;
- (b) arises from the issue of a summons and does not relate to police conduct;
- (c) arises from the issue of any notice for the imposition of a fixed penalty under any enactment and does not relate to police conduct; or

- (d) 某人依據任何其他條例授予他的權能而有權調查的投訴，但如該投訴與警方行為有關而該調查權力並不遍及至可調查該警方行為，則屬例外。

10. 歸類為須具報投訴的投訴

在符合第 9、11 及 12 條的規定下，如處長接獲的投訴——

(a) 關乎——

- (i) 某警隊成員在當值或執行職務或其意是執行職務時的行為；
- (ii) 某警隊成員在休班並表明他是警隊成員的情況下行為；或
- (iii) 警隊採納的任何常規或程序；

(b) 屬處長認為並非瑣屑無聊或無理取鬧而且是真誠地作出的；

(c) 由受到該警方行為直接影響的投訴人作出，或由某人代該投訴人作出；

(d) 由妥為表露身分並向處長提供本身的聯絡方法的人作出（不論是由他本人作出或代投訴人作出）；及

(e) 在某人代投訴人作出投訴的情況下屬按照第 14 條作出，

則該投訴必須歸類為須具報投訴。

11. 逾期投訴須屬性質嚴重方可歸類為須具報投訴

任何投訴除非符合以下說明，否則不可歸類為須具報投訴——

(a) 該投訴在以下期間內向處長作出——

(i) 自導致該投訴的事件發生的日期起計的 24 個月；或

(ii) 如在第 (i) 節提述的期間內，關乎該投訴所針對的本項的法律程序，已在任何法庭、裁判法院或法定審裁處展開，則為自該等法律程序獲最終裁定作出之日起計的 12 個月，

兩者以較後屆滿者為準；或

- (d) a person is empowered to investigate pursuant to any function conferred on the person by any other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

10. Complaints categorized as reportable complaints

Subject to sections 9, 11 and 12, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

(a) relates to—

(i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties;

(ii) the conduct of a member of the police force who identified himself as such a member while off duty; or

(iii) any practice or procedure adopted by the police force;

(b) in the opinion of the Commissioner, is not vexatious or frivolous and is made in good faith;

(c) is made by or on behalf of a complainant directly affected by the police conduct;

(d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and

(e) (if made by a person on behalf of a complainant) is made in accordance with section 14.

11. Related complaints may be categorized as reportable complaints only if serious in nature

A complaint may not be categorized as a reportable complaint unless—

(a) the complaint is made to the Commissioner—

(i) within a period of 24 months from the date of the incident giving rise to the complaint; or

(ii) where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in subparagraph (i), within a period of 12 months from the date of the final determination of such proceedings,

whichever expires later; or

- (a) 在投訴或覆核要求(視屬何情況而定)作出時,該投訴人未滿 16 歲,而有關代表是他的父母或監護人;
 - (b) 該投訴人是精神上無行為能力的人,或因死亡或疾病而不能夠親自作出投訴或覆核要求(視屬何情況而定),而有關代表是——
 - (i) 該投訴人的親屬;或
 - (ii) 該投訴人的監護人(《精神健康條例》(第 136 章)第 2(1) 條所界定者);或
 - (c) 有關代表獲該投訴人書面授權代該投訴人作出投訴或覆核要求(視屬何情況而定)。
- (2) 就第 (1)(b) 款而言,“親屬”(relative)指——
- (a) 配偶、子女、父母、祖父母或外祖父母、孫、孫女、外孫或外孫女;或
 - (b) 兄弟、姊妹、伯父母、叔父母、舅父母、姑丈或姑母、姨丈或姨母,或該等人的後裔。
- (3) 為第 (1)(b) 及 (2) 款的目的而推究關係時——
- (a) 受領養人須視為其領養人的子女;
 - (b) 因婚姻而產生的關係須視為血親關係,半血親關係須視為全血親關係,而任何人的繼子女須視為該人的子女;及
 - (c) 非婚生子女須視為其母親及據稱的父親的婚生子女。

15. 處長重新考慮初類

- (1) 警監會如認為根據第 8 條包括在無須具報投訴列表上的某投訴應歸類為須具報投訴,可向處長提供其意見,而處長必須——
- (a) 顧及上述意見;及
 - (b) 重新考慮該投訴的歸類。
- (2) 處長必須在完成第 (1) 款所指的重新考慮後,在切實可行範圍內,盡快知會警監會他重新考慮的所得結果。
- (3) 為執行第 (1) 款所指的警監會的職能,警監會可要求處長提供支持以下事項的解釋——
- (a) 將某投訴歸類為無須具報投訴;及

- (a) the complainant is below the age of 16 years at the time when the complaint or request for review (as the case may be) is made and the representative is his parent or guardian;
 - (b) the complainant is a mentally incapacitated person or is unable to make the complaint or request for review (as the case may be) himself due to death or illness, and the representative is—
 - (i) a relative of the complainant; or
 - (ii) a guardian (as defined in section 2(1) of the Mental Health Ordinance (Cap. 136)) of the complainant; or
 - (c) the representative has written authorization from the complainant to make the complaint or request for review (as the case may be) on behalf of the complainant.
- (2) For the purposes of subsection (1)(b), “relative” (親屬) means—
- (a) a spouse, child, parent, grandparent or grandchild; or
 - (b) a person who is, or is the issue of, a brother, sister, uncle or aunt.
- (3) In deducing any relationship for the purposes of subsections (1)(b) and (2)—
- (a) an adopted person is treated as the child of the person or persons by whom he was adopted;
 - (b) any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child of a person as the child of that person; and
 - (c) an illegitimate child is treated as a legitimate child of his mother and reputed father.

15. Reconsideration of categorization by Commissioner

- (1) If the Council considers that a complaint included in the list of non-reportable complaints under section 8 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—
- (a) have regard to such opinion; and
 - (b) reconsider the categorization of the complaint.
- (2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.
- (3) For the purpose of performing the Council's function under subsection (1), the Council may require the Commissioner to provide explanations to support—
- (a) the categorization of a complaint as a non-reportable complaint; and

- (b) 就僅憑第 11(a) 條而屬無須具報投訴的投訴而言，處長認為該投訴並不屬性質嚴重。

第 2 分部——關於須具報投訴的調查報告或
中期調查報告的職能

16. 處長須呈交須具報投訴的調查報告

- (1) 處長必須在完成其須具報投訴的調查後，在切實可行範圍內，盡快向警監會呈交調查報告。
- (2) 除第 (3) 款另有規定外，根據第 (1) 款呈交的調查報告必須載有——
- (a) 有關調查的摘要；
 - (b) 就有關投訴所作的對事實的裁斷，及支持該裁斷的證據；
 - (c) 有關投訴的分類，及作該分類的理由；
 - (d) 一項敘述，述明處長已經或將會在與有關投訴有關連的情況下採取的行動；及
 - (e) 處長認為需要的其他資料。
- (3) 第 (2)(a) 及 (b) 款不適用於被分類為屬簡便方式解決的須具報投訴的調查報告。

17. 處長須呈交須具報投訴的中期調查報告

- (1) 如某須具報投訴的調查未能在以下期間內完成——
- (a) 自接獲有關投訴的日期起計的 6 個月；或
 - (b) 警監會與處長議定的較短期間，
- 處長必須在該 6 個月或該較短期間屆滿後，在切實可行範圍內，盡快向警監會呈交中期調查報告。
- (2) 在有關調查完成之前，處長必須在以下期間屆滿後，向警監會呈交進一步的中期調查報告——
- (a) 每段接續的為期 6 個月的期間；或

- (b) in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the Commissioner's opinion that the complaint is not of a serious nature.

Division 2—~~Functions~~ relating to Investigation or Interim
Investigation Reports on Reportable Complaints

16. Commissioner to submit investigation
reports on reportable complaints

- (1) The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report.
- (2) Subject to subsection (3), an investigation report submitted under subsection (1) must contain—
- (a) a summary of the investigation;
 - (b) a finding of facts in relation to the complaint and the evidence in support of the finding;
 - (c) the classification of the complaint, and the reasons for the classification;
 - (d) an account of the action taken or to be taken by the Commissioner in connection with the complaint; and
 - (e) such other information as the Commissioner thinks necessary.
- (3) Subsection (2)(a) and (b) does not apply to an investigation report on a reportable complaint classified as one that is for informal resolution.

17. Commissioner to submit interim investigation
reports on reportable complaints

- (1) If the investigation of a reportable complaint is not completed within—
- (a) 6 months from the date of receipt of the complaint; or
 - (b) such shorter period as the Commissioner and the Council may agree,
- then, the Commissioner must, as soon as practicable after the expiry of those 6 months or that shorter period, submit to the Council an interim investigation report.
- (2) Until the completion of the investigation, the Commissioner must submit to the Council further interim investigation reports after the expiry of every successive period of—
- (a) 6 months; or

- (4) 本條所指的會面必須以非公開形式進行。
- (5) 在不抵觸第(7)款的條文下，警監會可決定誰人可在會面時在場。
- (6) 除非律師或大律師是根據本條接受會見的人，否則他在會面中，沒有向警監會發言的權利。
- (7) 如任何根據本條接受會見的人（“該人”）未滿16歲，或如警監會知道該人屬精神上無行為能力的人，則該人必須在以下的人在場時接受會見——
- (a) 他的父母或監護人；
 - (b) 某名在該人的福利方面具有利害關係，並且被警監會認為適合在會面時在場的成年人；或
 - (c) 警監會在任何特定個案中決定的其他人。
- (8) 警監會必須就根據本條進行的每次會面保存紀錄，而該紀錄不得用於根據本條例執行警監會的職能以外的任何目的。
- (9) 就第(8)款而言，任何為第37條所容許的目的而作的資料披露，均不視為使用有關紀錄。

第3分部——關於須具報投訴的其他職能等

20. 警監會可要求處長提供關於須具報投訴的資料等

- (1) 警監會可要求處長——
- (a) 提供關於某須具報投訴的任何資料或材料，包括自警隊成員就某須具報投訴而會見的人錄取的書面陳述，以及有關會面的任何錄影紀錄；及
 - (b) 澄清關於某須具報投訴的任何事實或差異。
- (2) 在本條中，“錄影紀錄”(video recording)指以任何媒介記錄的紀錄，並包括附連的聲軌，而該紀錄可藉任何方法產生移動的影像。

- (4) An interview under this section must be conducted in private.
- (5) Subject to subsection (7), the Council may decide who may be present at an interview.
- (6) A solicitor or counsel does not have a right of audience before the Council at an interview unless he is the person who is interviewed under this section.
- (7) Where a person who is interviewed under this section (“that person”) is below the age of 16 years, or is known to the Council to be a mentally incapacitated person, that person must be interviewed in the presence of—
- (a) his parent or guardian;
 - (b) an adult who has an interest in the welfare of that person and is, in the opinion of the Council, an appropriate person to be present at the interview; or
 - (c) such other person as the Council may decide in any particular case.
- (8) The Council must keep a record of every interview under this section, and such record must not be used for any purpose other than for performing the Council's functions under this Ordinance.
- (9) For the purposes of subsection (8), disclosure of information for any purpose that is allowed under section 37 is not to be regarded as use of the record.

Division 3—Other functions relating to Reportable Complaints etc.

20. Council may require Commissioner to provide information etc. relating to reportable complaints

- (1) The Council may require the Commissioner—
- (a) to provide any information or material relating to a reportable complaint, including any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint, and any video recording of the interview; and
 - (b) to clarify any fact or discrepancy relating to a reportable complaint.
- (2) In this section, “video recording” (錄影紀錄) means a recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

第4分部——警監會的關乎其事務的權力

29. 警監會可收取費用

警監會可就提供警監會文件或刊物的文本或摘錄，收取費用。

30. 警監會可持有財產、訂立合約及借入款項

為施行本條例，警監會可——

- (a) 取得、持有及處置動產或不動產；
- (b) 訂立合約或其他協議；及
- (c) 在財政司司長的批准下，以提供保證的方式或按其他條件借入款項。

第4部

觀察員計劃

31. 觀察員的委任

(1) 在符合第(2)款的規定下，保安局局長可委任他認為合適的人為觀察員。

(2) 任何人如——

- (a) 現屬政府公務員、秘書、法律顧問或警監會任何其他僱員；或
- (b) 曾屬警隊成員；

即不具備獲委任為觀察員的資格。

32. 觀察員的職能

觀察員的職能是協助警監會按照本部的條文觀察處長處理或調查須具報投訴的方式。

33. 附表2適用於觀察員

附表2就觀察員具有效力。

Division 4—Council's Powers relating to its Affairs

29. Council may charge fees

The Council may charge fees for providing copies of, or extracts from, documents or publications of the Council.

30. Council may hold property, enter into contracts and borrow money

For the purposes of this Ordinance, the Council may—

- (a) acquire, hold and dispose of movable or immovable property;
- (b) enter into contracts or other agreements; and
- (c) with the approval of the Financial Secretary, borrow money on security or other conditions.

PART 4

OBSERVERS SCHEME

31. Appointment of observers

(1) Subject to subsection (2), the Secretary for Security may appoint such person as he thinks fit to be an observer.

(2) A person—

- (a) who is a civil servant of the Government, the Secretary, the Legal Adviser or any other employee of the Council; or
- (b) who was a member of the police force,

is not eligible to be appointed as an observer.

32. Function of observers

The function of an observer is to assist the Council to observe, in accordance with the provisions of this Part, the manner in which the Commissioner handles or investigates reportable complaints.

33. Schedule 2 applicable to observers

Schedule 2 has effect with respect to observers.

(d) 關乎觀察員根據本部條文執行職能的運作事宜或安排。

第5部

保密及對警監會及其成員等的保障

36. 第5部的釋義

在本部中——

“受保護資料”(protected information)指任何指明人士在執行他在本條例下的職能的過程中實際知悉的、關乎任何投訴的事宜；

“指明人士”(specified person)指——

- (a) 警監會；
- (b) 警監會成員；
- (c) 秘書、法律顧問或警監會任何其他僱員；
- (d) 警監會聘用的提供技術或專業服務的人；
- (e) 觀察員；或
- (f) 曾在任何時間具備(b)、(c)、(d)及(e)段描述的身分的人。

37. 保密責任

- (1) 除在第(2)款所訂的情況下，指明人士不得披露任何受保護資料。
- (2) 如指明人士披露任何受保護資料是為以下目的而屬必需的——
 - (a) 為執行他在本條例下的職能；
 - (b) 為向他認為適當的有關當局報告關於任何罪行的證據；
 - (c) 為遵從關乎任何刑事或民事法律程序或紀律處分程序的——
 - (i) 法庭的命令；或
 - (ii) 某項成文法則或任何其他法律所訂的規定，或根據某項成文法則或任何其他法律而作出的規定；或

(d) any operational matter or arrangement that relates to the performance of the functions of observers under the provisions of this Part.

PART 5

CONFIDENTIALITY AND PROTECTION OF COUNCIL AND ITS MEMBERS, ETC.

36. Interpretation of Part 5

In this Part—

“protected information” (受保護資料) means matters relating to any complaint that come to a specified person's actual knowledge in the performance of his functions under this Ordinance;

“specified person” (指明人士) means—

- (a) the Council;
- (b) a member of the Council;
- (c) the Secretary, the Legal Adviser or any other employee of the Council;
- (d) a person engaged by the Council for his technical or professional services;
- (e) an observer; or
- (f) a person who at any time had any of the identities described in paragraphs (b), (c), (d) and (e).

37. Duty to keep confidence

(1) Except in the circumstances provided for in subsection (2), a specified person must not disclose any protected information.

(2) Subsection (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary—

- (a) for the performance of his functions under this Ordinance;
- (b) for the purpose of reporting evidence of any crime to such authority as he considers appropriate;
- (c) for the purpose of complying with—
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,
 in relation to any criminal, civil or disciplinary proceedings; or

(d) 為遵從根據《個人資料(私隱)條例》(第486章)第18條提出的查閱資料要求。

則第(1)款並不阻止有關指明人士披露該受保護資料。

(3) 除第(4)款另有規定外，第(2)(a)款並不授權披露以下的人的身分——

- (a) 任何投訴人；
- (b) 行為屬某投訴的對象的警隊成員；或
- (c) 協助或曾協助處長處理或調查某投訴的人。

(4) 如第(3)(a)、(b)或(c)款提述的身分是向以下人士披露的，該項披露可依據第(2)(a)款作出——

- (a) 第36條中“指明人士”的定義的(a)、(b)、(c)、(d)或(e)段所指的指明人士；
- (b) 有關投訴人；
- (c) 處長；
- (d) 協助或曾協助處長處理或調查某投訴的人；或
- (e) 依據第19條接受警監會會見的人。

38. 對警監會及其成員等的保障

(1) 如某指明人士在執行或其意是執行在本條例下的職能時，真誠地作出或沒有作出任何作為，則該指明人士不會因該作為或不作為，而須在民事法律程序中負上法律責任。

(2) 就非誹謗法而言，如指明人士——

- (a) 在任何書面或其他形式的通訊、報告或陳述中；並
- (b) 為執行他在本條例下的職能，

而就某投訴作出任何評論或發表任何事宜，則該項評論或發表享有絕對特權。

(3) 第(1)或(2)款給予的保障，並不適用於第36條中“指明人士”的定義的(d)段所指的指明人士。

第6部

過渡及保留條文

39. 第6部的釋義

在本部中——

(d) for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).

(3) Subject to subsection (4), subsection (2)(a) does not authorize the disclosure of the identity of—

- (a) any complainant;
- (b) any member of the police force whose conduct is the subject of a complaint; or
- (c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.

(4) A disclosure of any identity referred to in subsection (3)(a), (b) or (c) may be made pursuant to subsection (2)(a) if the disclosure is made to—

- (a) a specified person within the meaning of paragraph (a), (b), (c), (d) or (e) of the definition of “specified person” in section 36;
- (b) the complainant;
- (c) the Commissioner;
- (d) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint; or
- (e) a person interviewed by the Council pursuant to section 19.

38. Protection of Council and its members, etc.

(1) Any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under this Ordinance will not render the specified person liable to any civil proceedings.

(2) For the purposes of the law of defamation, if a specified person makes any comment or publishes any matter in relation to a complaint—

- (a) in any communication, report or statement, in writing or otherwise; and
- (b) for the performance of his functions under this Ordinance,

that comment or publication is absolutely privileged.

(3) The protection given by subsection (1) or (2) does not apply to a specified person within the meaning of paragraph (d) of the definition of “specified person” in section 36.

PART 6

TRANSITIONAL AND SAVING PROVISIONS

39. Interpretation of Part 6

In this Part—

"生效日期" (commencement date) 指本條例的生效日期；

"前警監會" (former Council) 指在緊接生效日期前存在的投訴警方獨立監察委員會；

"前觀察員" (former observer) 指屬在緊接生效日期前存在的名為"投訴警方獨立監察委員會觀察員計劃"的計劃下的觀察員的人。

40. 前警監會作出的事情的延續

(1) 本條例的制定，不影響在生效日期前由前警監會作出，或就它或代它作出的任何事情的有效性。

(2) 在生效日期前依據前警監會的職能或在與該職能有關連的情況下，由前警監會作出或就它或代它作出的任何事情，自該日期起，須在猶如該事情是由警監會作出或就它或代它作出一樣的情況下，具有效力。

(3) 在緊接生效日期前依據前警監會的職能或在與該職能有關連的情況下，而須由前警監會作出並正由它或正就它或正代它作出的任何事情，自該日期起，在符合本條例的範圍內，可由警監會繼續作出或就它或代它繼續作出。

41. 委任的延續

(1) 在符合第(2)款的規定下，任何人如在緊接生效日期前——

(a) 擔任前警監會主席、副主席或任何其他成員的職位；或

(b) 擔任前觀察員，

自該日期起，即繼續擔任警監會主席、副主席、該其他成員或觀察員（視屬何情況而定），猶如他是根據本條例獲委任一樣。

(2) 第(1)款所指的人繼續擔任有關職位的时间，僅為在他先前的委任下的剩餘任期，但該人有資格根據附表1第1(b)條或附表2第1(b)條（視屬何情況而定）再獲委任。

(3) 如任何人在緊接生效日期前是前警監會的人員（包括秘書及法律顧問），則該人自該日期起，按在緊接該日期前適用於該人的相同條款及條件，繼續為警監會的人員。

"commencement date" (生效日期) means the date of commencement of this Ordinance;

"former Council" (前警監會) means the Independent Police Complaints Council existing immediately before the commencement date;

"former observer" (前觀察員) means a person who was an observer under the scheme known as the Independent Police Complaints Council observers scheme existing immediately before the commencement date.

40. Continuance of things done by former Council

(1) The enactment of this Ordinance does not affect the validity of anything done by, in relation to or on behalf of the former Council before the commencement date.

(2) Anything done before the commencement date by, in relation to or on behalf of the former Council pursuant to or in connection with its functions has effect as from that date as if done by, in relation to or on behalf of the Council.

(3) Anything that, immediately before the commencement date, is required to be done and is in the process of being done by, in relation to or on behalf of the former Council pursuant to or in connection with its functions may, as from that date, be continued by, in relation to or on behalf of the Council to the extent that it is consistent with this Ordinance.

41. Continuance of appointment

(1) Subject to subsection (2), a person who, immediately before the commencement date—

(a) holds an appointment as the Chairman, a Vice-Chairman or any other member of the former Council; or

(b) is a former observer,

continues to be, as from that date, the Chairman, a Vice-Chairman or such other member of the Council or an observer (as the case may be) as if he were appointed under this Ordinance.

(2) The person in subsection (1) continues to hold his appointment only for the unexpired term under his previous appointment, but is eligible for reappointment under section 1(b) of Schedule 1 or section 1(b) of Schedule 2 (as the case may be).

(3) A person who, immediately before the commencement date, is an officer (including the Secretary and the Legal Adviser) of the former Council continues to be, as from that date, such officer of the Council on the same terms and conditions as those applicable to that person immediately before that date.

附表 1

[第 2、6 及 41 條]

關於警監會成員、警監會的處事程序、委員會、
財務事宜及警監會成立文件，以及
警監會其他雜項事宜的條文

警監會成員

1. 主席、副主席及委任成員的任期

主席、副主席或委任成員 (根據第 4 條獲委任的人除外)——

- (a) 的委任任期不得超過 2 年；並
- (b) 有資格再獲委任一段或多於一段任期，但再獲委任的每一段任期均不得超過 2 年。

2. 主席、副主席及委任成員的辭職

- (1) 主席、副主席或委任成員可藉給予行政長官書面通知，辭去職位。
- (2) 第 (1) 款所指的辭職，在行政長官接獲有關通知的日期當日或該通知指明的日期 (兩者以較後者為準) 生效。

3. 主席、副主席及委任成員的免任

行政長官如信納主席、某副主席或委任成員因永久喪失行為能力或其他充分因由，而不能夠或不適合執行其職能，則行政長官可藉書面通知將主席、該副主席或委任成員 (視屬何情況而定) 免任。

4. 署理委任

行政長官可在以下情況下，委任任何人署理主席、副主席或委任成員——

SCHEDULE 1

[ss. 2, 6 & 41]

PROVISIONS WITH RESPECT TO MEMBERS, PROCEEDINGS, COMMITTEES AND
FINANCES OF, AND EXECUTION OF DOCUMENTS BY, AND OTHER
MISCELLANEOUS MATTERS OF, COUNCIL

Members of Council

1. Term of office of Chairman, Vice-Chairmen
and appointed members

The Chairman, a Vice-Chairman or an appointed member (other than a person appointed under section 4)——

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of Chairman, Vice-Chairmen and
appointed members

(1) The Chairman, a Vice-Chairman or an appointed member may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

3. Removal of Chairman, Vice-Chairmen and
appointed members

The Chief Executive may by notice in writing remove the Chairman, a Vice-Chairman or an appointed member from office if the Chief Executive is satisfied that the Chairman, Vice-Chairman or appointed member (as the case may be) is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

4. Acting appointment

The Chief Executive may appoint any person to act as the Chairman, a Vice-Chairman or an appointed member if——

- (a) 主席、有關副主席或委任成員(視屬何情況而定)因疾病、不在香港或其他因由而不能執行其職能;或
- (b) 主席、有關副主席或委任成員(視屬何情況而定)的職位懸空,有待新的委任或再度委任。

5. 向主席、副主席及委任成員支付費用及津貼

警監會可向主席、副主席及委任成員支付行政長官所決定的費用及津貼。

警監會簽立文件

6. 警監會的印章及文件

- (1) 警監會須有法團印章。
- (2) 法團印章在有警監會決議的授權下,方可蓋在文件上。
- (3) 以法團印章蓋印,須由獲警監會授權(不論是為此而作出一般授權或特別授權)的任何2名警監會成員簽署認證。
- (4) 如任何文件看來是加蓋法團印章而妥為簽立的,則除非相反證明成立,否則該文件須視為妥為簽立。
- (5) 如任何合約或文書在由自然人訂立或簽立的情況下,是無須加蓋印章以訂立或簽立的,則該合約或文書可由獲警監會為此而作出一般授權或特別授權的警監會任何成員、秘書、法律顧問或警監會任何其他僱員,代警監會訂立或簽立。

警監會的處事程序

7. 警監會會議

- (1) 警監會須為執行其職能的目的,舉行所需次數的會議。
- (2) 主席可指定警監會會議舉行的時間及地點。

- (a) the Chairman, Vice-Chairman or appointed member (as the case may be) is precluded by illness, absence from Hong Kong or any other cause from performing his functions; or
- (b) the office of the Chairman, Vice-Chairman or appointed member (as the case may be) is vacant pending a new appointment or reappointment.

5. Fees and allowances to Chairman, Vice-Chairmen and appointed members

The Council may pay the Chairman, Vice-Chairmen and appointed members such fees and allowances as the Chief Executive may determine.

Execution of documents by Council

6. Seal and documents of Council

- (1) The Council is to have a common seal.
- (2) The common seal may be affixed to a document only if authorized by a resolution of the Council.
- (3) The affixing of the common seal is to be authenticated by the signatures of any 2 members of the Council authorized by the Council, either generally or specially in that behalf.
- (4) A document purporting to be duly executed under the common seal is to be regarded as having been duly executed unless the contrary is proved.
- (5) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under seal, may be entered into or executed on behalf of the Council by any of its members, the Secretary, the Legal Adviser or any other employee of the Council generally or specially authorized by the Council in that behalf.

Proceedings of Council

7. Council meetings

- (1) The Council is to meet as often as is necessary for the purpose of performing its functions.
- (2) The Chairman may appoint the time and place for the Council to meet.

12. 警監會可決定本身的程序

在本條例其他條文的規限下，警監會可決定本身的程序，包括在主席缺勤時，誰可指定警監會會議舉行的時間及地點。

警監會的委員會

13. 設立委員會

警監會可設立委員會、專責委員會或小組，以協助警監會執行它在本條例下的任何職能。

14. 披露利害關係

委員會成員如於在或會在委員會會議上討論的事宜中有利害關係，必須在會議上或會議前，披露該利害關係的性質。

15. 委員會主席

- (1) 委員會主席必須從該委員會成員之中選出。
- (2) 委員會主席必須主持委員會的任何會議。
- (3) 如委員會主席缺席或不主持會議，則會議必須由從出席的委員會成員之中選出的一名委員會成員主持。

16. 在委員會會議上決定事宜

- (1) 任何有待在委員會會議上決定的事宜，必須由出席會議和就該事宜投票的委員會成員，以過半數票決定。
- (2) 如票數相等，則主持有關會議的人除本身原有的一票外，有權投決定票。
- (3) 除第(5)款另有規定外，任何可在委員會會議上作出的事情，可藉向委員會所有成員傳閱文件的方式作出，而無須舉行會議。

12. Council may determine its own procedure

Subject to the other provisions of this Ordinance, the Council may determine its own procedure, including who may appoint the time and place for the Council to meet in the absence of the Chairman.

Committees of Council

13. Establishment of committees

The Council may establish committees, panels or sub-groups to assist the Council in the performance of any of its functions under this Ordinance.

14. Disclosure of interest

If a member of a committee has an interest in a matter being discussed or to be discussed at a meeting of the committee, he must disclose the nature of his interest at or before the meeting.

15. Chairman of committee

- (1) The chairman of a committee must be elected from amongst its members.
- (2) The chairman of a committee must preside at a meeting of the committee.
- (3) If the chairman of a committee is absent or vacates the chair, a member of the committee elected from amongst the members of the committee present must preside at the meeting.

16. Determination of matters at committee meetings

- (1) A matter for determination at a meeting of a committee must be decided by a majority of the votes of the members of the committee present and voting on that matter.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.
- (3) Subject to subsection (5), anything that may be done at a meeting of a committee may be done by circulation of papers to all members of the committee without a meeting.

- (a) 於本條例的生效日期開始而於隨後一年的 3 月 31 日完結的期間；及
- (b) 於其後每年至 3 月 31 日完結的 12 個月期間。

21. 警監會須備存妥善的帳目

- (1) 警監會必須就其財務往來，備存妥善的帳目。
- (2) 警監會必須在其任何財政年度完結後，在切實可行範圍內，盡快擬備——
 - (a) 一份該財政年度的帳目報表，其中須載有收支結算表及現金流轉表；及
 - (b) 一份顯示在該財政年度完結時警監會財務狀況的資產負債表。

22. 審計帳目報表

- (1) 警監會必須委任一名根據《專業會計師條例》(第 50 章)註冊，並持有該條例所指的執業證書的人，擔任它的核數師。
- (2) 有關核數師必須在警監會的任何財政年度完結後，在切實可行範圍內，盡快——
 - (a) 審計警監會為該財政年度擬備的帳目及帳目報表；及
 - (b) 就該帳目報表向警監會呈交報告。

23. 警監會的年報

- (1) 警監會必須在其任何財政年度完結後，在切實可行範圍內盡快，並無論如何須在 6 個月內，或在行政長官容許的較長限期內，向行政長官呈交——
 - (a) 關於警監會在該財政年度根據本條例執行其職能的報告；
 - (b) 警監會為該財政年度而擬備的帳目報表的文本；及
 - (c) 有關核數師根據第 22(2) 條就警監會擬備的帳目報表而向警監會呈交的報告的文本。
- (2) 警監會必須在接獲行政長官對它向立法會提交第 (1) 款所述的文件的批准後，安排在切實可行範圍內，盡快將該等文件提交立法會會議審覽。

- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; and
- (b) the period of 12 months ending on 31 March in each subsequent year.

21. Council to keep proper accounts

- (1) The Council must keep proper accounts of its financial transactions.
- (2) As soon as practicable after the end of a financial year of the Council, the Council must prepare—
 - (a) a statement of accounts for that financial year containing an income and expenditure account and a cash flow statement; and
 - (b) a balance sheet showing the financial position of the Council as at the end of that financial year.

22. Audit of statement of accounts

- (1) The Council must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of that Ordinance.
- (2) As soon as practicable after the end of a financial year of the Council, the auditor must—
 - (a) audit the accounts and the statement of accounts prepared by the Council for that financial year; and
 - (b) submit to the Council a report on the statement of accounts.

23. Annual reports of Council

- (1) As soon as practicable and in any case not later than 6 months after the end of a financial year of the Council, or such further period as the Chief Executive may allow, the Council must submit to the Chief Executive—
 - (a) a report on the performance of the Council's functions under this Ordinance during that financial year;
 - (b) a copy of the statement of accounts prepared by the Council for that financial year; and
 - (c) a copy of the auditor's report on the statement of accounts prepared by the Council that is submitted to the Council under section 22(2).
- (2) The Council must cause the documents referred to in subsection (1) to be tabled in the Legislative Council as soon as practicable after receiving the Chief Executive's approval for tabling.

24. 審計署署長的審核

- (1) 審計署署長可就警監會的任何財政年度，對警監會在執行其職能時使用其資源是否合乎經濟原則及講求效率及效能的情況，進行審核。
- (2) 審計署署長——
 - (a) 有權在所有合理時間，取覽他為根據本條進行審核的目的而合理地要求的由警監會保管或控制的所有紀錄、簿冊、憑單、文件、現金、收據、印花、證券、物料及任何其他財產；及
 - (b) 有權向持有該等文件或材料的人，或向須為該等文件或材料負責的人，要求提供他認為為上述目的而合理地需要的資料及解釋。
- (3) 審計署署長可向立法會主席報告他根據本條進行的審核的結果。
- (4) 第(1)款並不使審計署署長有權質疑警監會的政策目標是否可取。

雜項事宜

25. 轉授職能

- (1) 警監會可用書面形式，將它在本條例下的任何職能轉授予某委員會、某警監會成員、秘書、法律顧問或警監會任何其他僱員，但第(5)款所指明的職能不得如此轉授。
- (2) 本條所指的轉授可屬一般轉授或有限制的轉授，並可受條件規限。
- (3) 警監會可在任何時間修訂或撤銷根據本條作出的轉授。
- (4) 根據本條獲警監會轉授職能的人，在沒有相反證據的情況下，須推定為按照有關轉授條款行事。
- (5) 儘管轉授已作出，已轉授的職能仍可由警監會執行。
- (6) 第(1)款所指的警監會不可轉授的職能是——
 - (a) 根據該款作出轉授的權力；

24. Director of Audit's examination

- (1) The Director of Audit may, in respect of any financial year of the Council, conduct an examination into the economy, efficiency and effectiveness with which the Council has expended its resources in performing its functions.
- (2) The Director of Audit—
 - (a) has a right of access at all reasonable times to all such records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other property in the custody or under the control of the Council as he may reasonably require for the purpose of conducting an examination under this section; and
 - (b) is entitled to require from any person who holds or is accountable for any such document or materials such information and explanation as he considers reasonably necessary for that purpose.
- (3) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.
- (4) Subsection (1) does not entitle the Director of Audit to question the merits of the policy objectives of the Council.

Miscellaneous matters

25. Delegation of functions

- (1) The Council may delegate in writing any of its functions under this Ordinance to a committee, a member of the Council, the Secretary, the Legal Adviser or any other employee of the Council, but a function specified in subsection (6) may not be so delegated.
- (2) A delegation under this section may be general or limited and may be subject to conditions.
- (3) The Council may, at any time, amend or revoke a delegation made under this section.
- (4) A delegate of the Council under this section is presumed to be acting in accordance with the terms of the relevant delegation in the absence of evidence to the contrary.
- (5) A delegated function may be performed by the Council despite the delegation.
- (6) The functions that the Council may not delegate under subsection (1) are—
 - (a) the power to delegate under that subsection;

- (b) 根據第 23(1) 條向行政長官呈交年報、帳目報表及核數師報告的責任；
及
(c) 根據本條例第 28 條向行政長官作出報告的權力。

26. 豁免徵稅

警監會獲豁免而無須繳交《稅務條例》(第 112 章) 下的徵稅。

附表 2

[第 33 及 41 條]

關於觀察員的條文

1. 觀察員的任期

觀察員——

- (a) 的委任任期不得超過 2 年；並
(b) 有資格再獲委任一段或多於一段任期，但再獲委任的每一段任期均不得超過 2 年。

2. 觀察員的辭職

- (1) 觀察員可藉給予保安局局長書面通知，辭去職位。
(2) 第 (1) 款所指的辭職，在保安局局長接獲有關通知的日期當日或該通知指明的日期(兩者以較後者為準)生效。

3. 觀察員的免任

保安局局長如信納某觀察員因永久喪失行為能力或其他充分因由，而不能夠或不適合執行其職務，可藉書面通知將該觀察員免任。

- (b) the duty to submit an annual report, statement of accounts and auditor's report to the Chief Executive under section 23(1); and
(c) the power to make a report to the Chief Executive under section 28 of this Ordinance.

26. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

SCHEDULE 2

[ss. 33 & 41]

PROVISIONS WITH RESPECT TO OBSERVERS

1. Term of office of observers

An observer—

- (a) is to be appointed for a term not exceeding 2 years; and
(b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of observers

(1) An observer may resign from office by giving notice in writing to the Secretary for Security.

(2) The resignation under subsection (1) takes effect on the date the Secretary for Security receives the notice or the date specified in the notice (whichever is the later).

3. Removal of observers

The Secretary for Security may by notice in writing remove an observer from office if the Secretary for Security is satisfied that the observer is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.