

**Bills Committee on
Independent Police Complaints Council Bill**

**Response to issues raised at the Bills Committee meeting
held on 15 April 2008 (1)**

Purpose

This note provides information in response to a number of issues raised by the Bills Committee at its meeting held on 15 April 2008.

Members of the police force

To provide information on the categories of persons, such as contractors engaged by the Police and forensic pathologists, covered/not covered by the definition of “member of the police force” in clause 2(1); to review the definition of “member of the police force” in clause 2(1) and the scope of clause 10(a)(iii)

2. Clause 2(1) of the Bill defines a “member of the police force” as including “a public officer attached to the police force”, and defines “police force” as “the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233)”. “Public officer” is defined in section 3 of the Interpretation and General Clauses Ordinance (Cap. 1) as “any person holding an office of emolument under the Government, whether such office be permanent or temporary”. Taking the afore-mentioned provisions together, a “member of the police force” covers -

- (a) police officers of all ranks of the Hong Kong Police Force and auxiliary police officers of all ranks of the Hong Kong Auxiliary Police Force;
- (b) civilian staff of the police departmental grade; and
- (c) other civilian staff of the Government working in the Hong Kong Police Force.

A list of police officer ranks of the Hong Kong Police Force and auxiliary police officer ranks of the Hong Kong Auxiliary Police Force is at Annex A. A list of civilian grades working in the Hong Kong Police Force is at Annex B. The definition of “member of the police force” adequately covers all public officers working in the police force against whom complaints made by personally aggrieved members of the public will be monitored by the Independent Police Complaints Council (IPCC). This reflects the existing practice.

3. Forensic pathologists provide forensic services to the police force as and when necessary. They are staff of the Department of Health and do not hold any posts in the police force, and hence are not “members of the police force”. Any complaint received by the Police against a forensic pathologist will be referred to the Department of Health for follow-up actions.

4. Contractors whose services are engaged by the Police by way of a contractual relationship do not fall within the definition of “member of the police force”. Depending on the circumstances of the case, whether an individual case involving a contractor of the Hong Kong Police Force or an employee of a contractor of the Hong Kong Police Force is a complaint against police will be considered on a case-by-case basis. For example, a complaint against police operational matters (e.g. a decision of the police force) will be dealt with as a complaint against police. Where appropriate and with the complainant’s agreement, a complaint against the manner/conduct of an employee of a contractor of the police force will be referred to the contractor.

5. In the light of clause 10(a)(iii) of the Bill, a complaint received by the Police must be categorized as a reportable complaint if the complaint relates to any practice or procedure adopted by the police force and if the other criteria of a reportable complaint are met. This means that a complaint made by a member of the public personally aggrieved by any police practice or procedure, irrespective of whether such practice or procedure is documented, will be categorized as a reportable complaint if the other criteria of a reportable complaint are also met. The clause properly reflects the existing practice.

Clause 3 – Incorporation of the IPCC

To consider deleting the reference to “existing immediately before the commencement of this Ordinance” in clause 3(1)

6. Our policy intention is to convert the existing IPCC into a statutory body. The transitional and saving provisions in clauses 39 to 42 are drawn up to reflect such an intention and serve to preserve the continuity of things done by, in relation to or on behalf of the existing IPCC. These arrangements are important to facilitate the continued smooth operation of the police complaints system. Even if the expression “existing immediately before the commencement of this Ordinance” is removed from clause 3(1), the incorporation of the IPCC can only proceed on the basis that the existing IPCC will cease operation immediately before the statutory incorporation but not earlier. As the transitional and saving provisions can serve such a purpose, we have no objection to deleting “existing immediately before the commencement of this Ordinance” in clause 3(1).

7. Certain Members have suggested that given the civil litigation cases against the existing IPCC arising from the data leakage incident as reported in March 2006, there is a possibility of the existing IPCC being dissolved before the commencement of the Bill upon passage. The litigation cases concerned involve claims for compensation. We envisage that the chance of dissolving the existing IPCC on consideration of such claims is extremely remote.

To consider deleting “and known by the names referred to in section 3(1)(b)” in the definition of “Council” in clause 2(1)

8. “Council” is defined in clause 2(1) as “the body corporate incorporated by section 3 and known by the names referred to in section 3(1)(b)”. The phrase “known by the names referred to in section 3(1)(b)” serves to draw readers’ attention to the name of the IPCC as stipulated in clause 3(1)(b). We have no objection to deleting the phrase.

To consider relocating the provisions in clause 30 to clause 3

9. Clause 3 provides for the incorporation of the IPCC and is included in Part 2 of the Bill, which deals with the incorporation of the IPCC. Clause 30 stipulates the IPCC's power to hold property, enter into contracts and borrow money. It is more appropriate to include clause 30 in Part 3 of the Bill, which sets out the powers and duties of the IPCC.

Membership of the IPCC

To explain, with the provision of information on the length of membership in the IPCC and the number and name of advisory and statutory bodies served by the respective members of the existing IPCC, whether the appointment of the existing IPCC members is in compliance with the six-year and six-board guideline

10. The appointment of all IPCC members for their current term complies with the six-year and six-board guideline, i.e. a person will not be appointed to more than six advisory and statutory bodies (ASBs) and will not sit on an ASB for more than six years in the same capacity. Details are set out in Annex C.

To review whether clause 4(2) as presently drafted could exclude political appointees and person who are not civil servants but fall under the definition of "member of the police force" in clause 2(1) from being appointed as IPCC members

11. Clause 4(2) provides that a person who is a civil servant of the Government, or who was a member of the police force, is not eligible for appointment to the IPCC. Taking into consideration Members' comments, we propose replacing "civil servant" with "public officer" in clause 4(2). This will render political appointees and Government employees (including Government employees on non-civil service contract terms) ineligible for appointment to the IPCC.

To consider appointing the Chairman of the IPCC on a full-time basis

12. The Bill provides for a minimum number of members of the IPCC. The IPCC will be supported by its Secretary, Legal Adviser and other staff. There will also be a pool of observers to assist the IPCC to monitor the Police's investigation of complaints by observing the interviews or collection of evidence conducted by the Police. We consider that these arrangements should adequately enable the IPCC to perform its statutory functions. Should the workload increase in future, consideration could be given to appointing more members to the IPCC. In the meantime, we do not consider a full-time IPCC chairman necessary as this will unnecessarily shrink the pool of possible candidates. Many existing statutory bodies, such as the Hong Kong Trade Development Council, the Urban Renewal Authority and the Consumer Council, do not have full-time chairmen.

Secretary and Legal Adviser of the IPCC

To consider deleting the requirement for approval by the Chief Executive or adding "employment" before "terms" in clause 5(1)

13. Clause 5(1) provides that the IPCC must appoint a Secretary and a Legal Adviser on terms approved by the Chief Executive on the advice of the IPCC. From the viewpoint of ensuring that public money allocated to the IPCC is properly expended, we consider it appropriate to maintain clause 5(1) as currently worded. We understand that the appointment of the executive heads and the terms and conditions of their appointment of many existing statutory bodies are subject to the approval of the Chief Executive. Examples include the Consumer Council, the Urban Renewal Authority and the Hong Kong Trade Development Council. Meanwhile, we have no objection to adding "of employment" after "terms" in clause 5(1).

**Police officer ranks of the Hong Kong Police Force and
auxiliary police officer ranks of the Hong Kong Auxiliary Police Force**

Hong Kong Police Force	Hong Kong Auxiliary Police Force (HKAPF)
Commissioner of Police	Commandant, HKAPF
Deputy Commissioner of Police	Deputy Commandant, HKAPF
Senior Assistant Commissioner of Police	Chief Superintendent (Auxiliary)
Assistant Commissioner of Police	Senior Superintendent (Auxiliary)
Chief Superintendent of Police	Superintendent (Auxiliary)
Senior Superintendent of Police	Chief Inspector (Auxiliary)
Superintendent of Police	Senior Inspector (Auxiliary)
Chief Inspector of Police	Inspector (Auxiliary)
Senior Inspector of Police	Station Sergeant (Auxiliary)
Inspector of Police	Sergeant (Auxiliary)
Probationary Inspector of Police	Senior Constable / Constable (Auxiliary)
Station Sergeant	
Sergeant	
Senior Constable / Constable	

Civilian grades working in the Police Force

Police Departmental Grades	Other Grades
Force Armourer	Accounting Officer
Force Welfare Officer	Administrative Officer
Interviewer	Analyst/Programmer
Police Communications Assistant	Armourer
Police Communications Computer Operator	Artisan
Police Communications Officer	Calligraphist
Police Research Officer	Clerical Assistant
Police Telecommunications Inspector	Clerical Officer
Police Translator	Clinical Psychologist
Traffic Warden	Computer Operator
	Confidential Assistant
	Cook
	Cultural Services Assistant
	Curator
	Data Processor
	Executive Officer
	Foreman
	Information Officer
	Lecturer (Non-graduate)

Police Departmental Grades	Other Grades
	Leisure Services Manager Librarian Management Services Officer Mechanical Inspector Motor Vehicle Examiner Office Assistant Official Languages Officer Personal Secretary Programme Officer Property Attendant Radio Mechanic Senior Artisan Special Photographer Statistical Officer Statistician Supervisor of Typing Services Supplies Assistant Supplies Officer Supplies Supervisor Tailor Technical Officer

Police Departmental Grades	Other Grades
	Technical Officer (Cultural Services) Telecommunications Engineer Transport Services Officer Treasury Accountant Typist Vehicle Tester Workman

The length of membership in the IPCC and the number and name of advisory and statutory bodies (ASBs) served by the existing members of the IPCC as at the time when they were appointed / re-appointed for their current term

IPCC member	Years of previous service in the IPCC as at the time of appointment / re-appointment	Number of other ASBs served as at the time of appointment / re-appointment	Name of other ASBs served as at the time of appointment / re-appointment (and position held)
Mr WONG Fook-hum, Ronny (Chairman)	2	3	<ul style="list-style-type: none"> - Administrative Appeals Board (Member) - Air Transport Licensing Authority (Chairman) - Appeal Board Panel (Town Planning) (Chairman)
The Hon Daniel LAM Wai-keung (Vice-chairman)	2	2	<ul style="list-style-type: none"> - District Council, Islands (Chairman) <i>[Note : Hon Lam's appointment to the District Council was on an ex-officio basis (in his capacity as Chairman of the Peng Chau Rural Committee), hence did not count towards the six-board guideline.]</i> - Fisheries Development Loan Fund Advisory Committee (Member) - Municipal Services Appeals Board (Member)

IPCC member	Years of previous service in the IPCC as at the time of appointment / re-appointment	Number of other ASBs served as at the time of appointment / re-appointment	Name of other ASBs served as at the time of appointment / re-appointment (and position held)
Dr the Hon LUI Ming-wah (Vice-chairman)	2	1	- Council of the Hong Kong Polytechnic University (Member)
Dr the Hon Joseph LEE Kok-long (Vice-chairman)	0	3	<ul style="list-style-type: none"> - Hong Kong Housing Authority (Member) - Hospital Authority (Member) - Nursing Council of Hong Kong (Member)
Mr YEUNG Yiu-chung	2	1	- Commission on Strategic Development (Member)
Dr LO Wing-lok	2	4	<ul style="list-style-type: none"> - Advisory Council on Food and Environmental Hygiene (Member) - Commission on Strategic Development (Member) - Country and Marine Parks Board (Member) - Equal Opportunities Commission (Member)

IPCC member	Years of previous service in the IPCC as at the time of appointment / re-appointment	Number of other ASBs served as at the time of appointment / re-appointment	Name of other ASBs served as at the time of appointment / re-appointment (and position held)
Mr PONG Chong, Edward	4	2	<ul style="list-style-type: none"> - Security and Guarding Services Industry Authority (Chairman) - District Council, Tuen Mun (Member)
Mr HUI Yung-chung	4	1	<ul style="list-style-type: none"> - Appeal Panel (Housing) (Member)
Professor TSOU Ka-yin, Benjamin	4	2	<ul style="list-style-type: none"> - Chinese Language Interface Advisory Committee (Member) - Personalized Vehicle Registration Marks Vetting Committee (Member)
Dr TSUI Fuk-sun, Michael	4	2	<ul style="list-style-type: none"> - Municipal Services Appeals Board (Member) - Securities and Futures Appeals Tribunal (Member)
Dr TSE Tak-fu	2	1	<ul style="list-style-type: none"> - Chinese Medicine Council of Hong Kong (Member)

IPCC member	Years of previous service in the IPCC as at the time of appointment / re-appointment	Number of other ASBs served as at the time of appointment / re-appointment	Name of other ASBs served as at the time of appointment / re-appointment (and position held)
Ms Priscilla WONG Pui-sze	2	5	<ul style="list-style-type: none"> - Appeal Board (Betting Duty Ordinance) (Chairperson) - Appeal Board Panel (Consumer Goods Safety) (Deputy Chairman) - Board of Trustees of the Lord Wilson Heritage Trust (Member) - Council of the Hong Kong Academy for Performing Art (Member) - Management Committee of the Consumer Legal Action Fund (Member)
Mrs YUEN CHAN Suk-yee, Helena	2	0	Nil
Mr Barry CHEUNG Chun-yuen	0	1	<ul style="list-style-type: none"> - Urban Renewal Authority (Non-executive Director)

IPCC member	Years of previous service in the IPCC as at the time of appointment / re-appointment	Number of other ASBs served as at the time of appointment / re-appointment	Name of other ASBs served as at the time of appointment / re-appointment (and position held)
Dr Lawrence LAM Chi-kit	0	0	Nil
Mr WONG Kwok-yan	0	1	- Personalized Vehicle Registration Marks Vetting Committee (Member)
Mr TAO Kwok-lau, Clement	0	3	<ul style="list-style-type: none"> - Appeal Panel (Estate Agents Ordinance) (Chairman) - Fight Crime Committee (Member) - Panel of Witness Protection Review Board (Member)
Ms CHEUNG Mui-seung, Emily	0	3	<ul style="list-style-type: none"> - Copyright Tribunal (Member) - District Council, North (Member) - Drainage Appeal Board Panel (Member)