

Legislative Council

Bills Committee on Independent Police Complaints Council Bill

Summary of views expressed/suggestions made by deputations on specific provisions in the Bill prepared by the Legislative Council Secretariat

(Position as at 6 May 2008)

<p style="text-align: center;">Organisation</p> <p>LC Paper No. of Written submission</p>	<p style="text-align: center;">Comments</p>	<p style="text-align: center;">Remarks</p>	
<p>Clause 2 - Interpretation</p>			
<p>* 1</p>	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) "informal resolution" and "withdrawn" should be removed from the definition of "classification" under clause 2. Reference to "informal resolution" should also be removed from clause 16; and</p> <p>(b) The Independent Police Complaints Council (IPCC) has advised in its further submission that unless "investigation" is extended to cover the preliminary steps taken prior to informally resolving a complaint, it would not be valid to consider "informal resolution" a classification (i.e. result of investigation)</p>	<p>The Administration has advised in LC Paper No. CB(2)1689/07-08(01) that it proposes amending the definition of "classification" in clause 2 to list out all the existing classifications, and to amend clause 12 to expressly provide that a request for review must not seek for the review of a reportable complaint that is classified as "for informal resolution". The Administration also advises that for reportable complaints classified as "withdrawn" (where the complainant does not wish to pursue the complaint made) and "not pursuable" (where the identity of the complaineer cannot be ascertained or where it</p>

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		<p>in clause 2. In fact, "informal resolution" is not regarded as a result of investigation in the Complaints Against Police Office (CAPO) Manual, and only represents a way of handling minor complaints. Reports on such cases are not termed as "investigation reports". To provide a statutory basis for "informal resolution" cases, clause 16(3) could be rephrased to stipulate that the Commissioner of Police's (CP's) must submit a report to IPCC on "informal resolution" cases, which are distinguished from investigation reports in clause 16(1) and (2).</p>	<p>has not been possible to obtain the cooperation of the complainant to proceed with the complaint investigation e.g. when the complainant declines to make a statement), the complainants may re-activate their complaints upon a change of mind or any other reasons. CAPO will handle such reactivated complaints as fresh complaints rather than requests for review. The Administration will consider the need to reflect this practice in clause 12.</p>
Clause 4 - Membership of Council			
* 3	<p>Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)</p>	<p>(a) Individuals who are closely connected to the Police Force, any related family members, or individuals with related substantial business transactions should not be appointed as IPCC members. A certain number of IPCC members should come from those who serve the user groups, like those non-government</p>	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(02) that -</p> <p>(a) Appointments to IPCC are made on an <i>ad personam</i> basis. Appointments are guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of IPCC, and an</p>

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	<p>organisations campaigning for criminal justice or civil liberty for sex workers and ethnic minorities. A number of members should have experience in dealing with Police complaints;</p> <p>(b) IPCC should be allowed to appoint co-opted members to assist it in discharging some, if not all, of its functions. It should also be able to delegate its powers to such co-opted members, its secretariat, contractors or any person it deems fit;</p> <p>(c) A tenure of two five-year terms should be adopted for IPCC members; and</p> <p>(d) The Chairman and Vice-Chairmen of IPCC should be appointed on a full-time basis.</p>	<p>individual's integrity, ability, experience, expertise and commitment to public service;</p> <p>(b) Clause 4(2) of the Bill 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 IPCC;</p> <p>(c) In considering appointments to IPCC, the Administration will take account of whether the candidates' background will affect the impartiality of the membership of IPCC;</p> <p>(d) In making appointments and re-appointments to IPCC, the Administration takes into account such factors as the performance of individual members during their term of office, the need to maintain continuity and the need to inject new blood to ensure a healthy turnover of members. It would be unnecessarily rigid to mandate that each term of appointment of IPCC members should be 5 years. Appointments to the statutory IPCC will have to comply with the 6-year guideline;</p>
<p>* 5</p> <p>Civil Human Rights Front LC Paper No. CB(2)499/07-08(04)</p>	<p>To appoint representatives of non-government organisations and ethnic minority and people with different sex orientation to IPCC.</p>	

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* 6	Zi Teng LC Paper Nos. CB(2)473/07-08(01) CB(2)530/07-08(01) CB(2)531/07-08(01)	The criteria for appointing IPCC Chairman and members should be open. Representatives from non-government organisations should be made involved in the selection process and be appointed.	(e) Under section 25(1) of Schedule 1 to the Bill, IPCC may delegate in writing any of its functions to a committee, an IPCC member, the Secretary, the Legal Adviser or any other IPCC employee. Such power of delegation should provide sufficient flexibility for IPCC to allocate certain tasks to appropriate persons who are responsible to IPCC, so as to facilitate in discharging its statutory duties; and
* 7	JJJ Association LC Paper Nos. CB(2)499/07-08(05) CB(2)530/07-08(01)		
8	Hong Kong Unison Limited LC Paper No. CB(2)550/07-08(01)	To appoint a certain number of ethnic minority representatives to IPCC.	(f) The Administration does not consider it necessary to appoint full-time IPCC members. Mandating appointment of full-time IPCC members will unnecessarily shrink the pool of possible candidates.
9	Hong Kong Christian Institute LC Paper No. CB(2)550/07-08(02)	To establish an independent IPCC with "independent" members only. To appoint non-government representatives to IPCC, who should be accountable to the public.	

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<p>Clause 7 - Functions of Council</p>			
<p>* 1</p>	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) Clause 7(1)(b) should be amended to allow IPCC to give recommendations on CP's action taken or to be taken in connection with any reportable complaint which may not be covered by clause 7(1)(a) or (c);</p> <p>(b) Consequentially, clause 24 should be amended to cover CP's other action in connection with any reportable complaint; and</p> <p>(c) IPCC maintains in its further submission that clause 7(1)(b) should be amended, as advice on service quality improvements may not necessarily arise from a fault or deficiency in Police practise or procedures as captured by clause 7(1)(c).</p>	<p>(a)The Administration has advised in LC Paper Nos. CB(2)829/07-08(01) and CB(2)1689/07-08(01) that clauses 7(1)(a), 7(1)(b), 7(1)(c), 24 and 25(b) in combination should be sufficient to meet IPCC's concerns; and</p> <p>(b)The Administration envisages that if the IPCC has any recommendation on service quality improvements of the Police, an existing police practice or procedure "short of what is needed" will in practice be identified. Clause 7(1)(c) should therefore be able to serve the purpose of empowering the IPCC to make recommendations on how the Police's service quality can be improved.</p>

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* 3	Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)	IPCC should be given power to investigate into complaints against the Police, in light of the international trend of police forces subjecting themselves to oversight by independent police complaint mechanisms with investigative powers.	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(02) that -</p> <p>(a) The suggestion of empowering IPCC to investigate complaints has the following shortcomings -</p> <p>(i) IPCC does not have investigative powers similar to those available to the Police (e.g. the search and seizure powers) or the necessary expertise and knowledge for investigating complaints which often involve allegations of breaches of Police discipline or procedures or of criminal law. This would adversely affect the quality of IPCC's investigations;</p> <p>(ii) IPCC would need to have its own investigation team, in addition to the investigation complement in CAPO. This would result in an overlapping of resource requirement and duplication of efforts. The cost-effectiveness of the suggestion is in doubt;</p>
* 4	Action for REACH OUT LC Paper No. CB(2)499/07-08(03)	To provide IPCC with investigative power and the necessary financial and manpower resource to conduct independent investigation.	
* 5	Civil Human Rights Front LC Paper No. CB(2)499/07-08(04)	To provide IPCC with investigative power, and for IPCC to conduct independent investigation and open inquiry of very serious cases.	
* 6	Zi Teng LC Paper Nos. CB(2)473/07-08(01) CB(2)530/07-08(01) CB(2)531/07-08(01)	To provide IPCC with investigative power.	
* 7	JJJ Association LC Paper Nos. CB(2)499/07-08(05) CB(2)530/07-08(01)		

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8	Hong Kong Unison Limited LC Paper No. CB(2)550/07-08(01)	To provide IPCC with investigative power.	<p>(iii) Empowering IPCC to investigate complaints lodged with CAPO would confuse IPCC's role as an oversight body. The arrangement might create two different sets of findings and results in respect of a complaint, and hence cause confusion. In contrast, under the established practice, IPCC and CAPO will seek to reach a consensus on the classification of a reportable complaint through discussions; and</p> <p>(b) The existing two-tier Police complaints system has been operating effectively and smoothly. The Administration considers it appropriate to maintain the current arrangement under which CAPO investigates the complaints it receives and IPCC reviews and monitors CAPO's investigations. The system as codified in the Bill is appropriate and proportionate to its objective of ensuring that public complaints against members of the Police Force are handled fairly and impartially.</p>
9	Hong Kong Christian Institute LC Paper No. CB(2)550/07-08(02)	To provide IPCC with power to investigate and collect evidence.	

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<p>Clause 8 - Commissioner to submit lists of complaints</p>			
<p>* 1</p>	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) IPCC should be given full and unrestricted access to information or material relating to a non-reportable complaint for the purposes of determining if the complaint should be re-categorised as a reportable complaint where necessary. Complete access to such information should be provided for by an explicit provision in the Bill (similar to clause 20(1)); and</p> <p>(b) IPCC has advised in its further submission that the requirement for the Police to provide additional information about non-reportable complaints as and when required by IPCC should be stipulated in the Bill.</p>	<p>The Administration has advised in LC Paper Nos. CB(2)829/07-08(01) and CB(2)1689/07-08(01) that a specific provision similar to clause 20(1) for the purpose of IPCC's consideration of re-categorisation of non-reportable complaints is not necessary. The Administration consider that clauses 7(1)(f), 7(2) and 15(3) should sufficiently empower IPCC to require CAPO to provide relevant information on non-reportable complaints to facilitate IPCC in discharging its function of monitoring the categorisation of non-reportable complaints.</p>

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<p>Clause 14 - Making complaint or request for review on behalf of complainant</p>			
<p>2</p>	<p>Hong Kong Bar Association LC Paper No. CB(2)649/07-08(01)</p>	<p>It queries whether it is necessary or appropriate to restrict the categories of persons who may make a complaint on behalf of a complainant to those set out in clause 14.</p>	<p>The Administration has advised in Annex D to LC Paper No. CB(2)810/07-08(01) that clause 14 of the Bill already enables representatives to make complaints on behalf of complainants under a variety of circumstances. Clause 14(1)(c) allows a representative to make a complaint on behalf of a complainant if he/she has a written authorisation from the complainant. The Administration believes that this arrangement has provided for sufficient flexibility to enable a third party to make a complaint on behalf of an aggrieved person.</p>
<p>Clause 15 - Reconsideration of categorization by Commissioner</p>			
<p>2</p>	<p>Hong Kong Bar Association LC Paper No. CB(2)649/07-08(01)</p>	<p>To empower IPCC to require CP to investigate a complaint he has categorised as non-reportable.</p>	<p>The Administration has advised in Annex D to LC Paper No. CB(2)810/07-08(01) that IPCC will be adequately empowered under clauses 7(2), 8, 15 and 28 to monitor whether the Police's categorisation of non-reportable complaints is appropriate and to take necessary action.</p>

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<p>Clause 16 - Commissioner to submit investigation reports on reportable complaints</p>			
<p>* 1</p>	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) There should be a provision requiring CP to submit amended investigation reports and supplementary investigation reports; and</p> <p>(b) IPCC advised in its further submission that it has no strong views on the Administration's contention that clauses, 25(b), 12(1) and 16 have already provided for the submission of amended investigation reports and supplementary investigation reports. However, there should be a sub-clause under clause 20 requiring CP to submit a report to IPCC on any reportable complaint. The IPCC sees merit in reinstating this general provision so that it would cover other reports on reportable complaints, e.g. CAPO's Criminal and Disciplinary Checklist which includes summaries of follow-up actions taken against officers in reportable complaints and is a regular agenda item for the Joint IPCC/CAPO Meeting.</p>	<p>The Administration has advised in LC Paper No. CB(2)1689/07-08(01) that it proposes to make additional provisions under clauses 16 and 18 to expressly provide for the Police's submission of amended investigation report and supplementary investigation report to IPCC.</p>

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2	Hong Kong Bar Association LC Paper No. CB(2)649/07-08(01)	The sole discretion on the part of CP to classify complaints may be abused to divert attention of IPCC away from deserving complaints simply by classifying them as "customer service issues" suitable "for informal resolution", since, with such a classification, the IPCC will not read in the investigation report any summary of the investigation and any finding of facts in relation to the complaint and the supporting evidence; IPCC will most probably read only brief reasons for the classification. The Administration and the Police need to assure the Legislative Council and the public that the apparently more expeditious and cheaper method of informal resolution is properly utilised. Clause 16(3) should be deleted.	The Administration has advised in Annex D to LC Paper No. CB(2)810/07-08(01) that clause 16(3) provides that clause 16(2)(a) and (b) does not apply to an investigation report on an informal resolution case as CAPO deals with such cases through conciliation with the complainants without conducting a full investigation. Notwithstanding this, the Police are required to submit reports on these cases to IPCC so that IPCC can monitor the manner in which CAPO handles these cases and take necessary follow-up actions.
Clause 17 - Commissioner to submit interim investigation reports on reportable complaints			
* 1	Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02)	(a) Clause 17(4) should be amended to cover matters other than the progress and reasons for the prolonged investigation that IPCC may wish to give its observations, e.g. the non-reportable complaint categorisation of an allegation;	The Administration has advised in LC Paper No. CB(2)829/07-08(01) that it does not consider it necessary to amend clause 17(4) to cover categorisation of non-reportable complaints.

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	<p style="text-align: center;">and</p> <p>(b) IPCC has advised in its further submission that it does not insist on amending clause 17(3) and (4) to cover the non-reportable complaint categorisation of an allegation.</p>		
<p>Clause 18 - Council may advise Commissioner of its opinion or recommendation on investigation report</p>			
<p>* 3</p>	<p>Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)</p>	<p>(a) Clarification should be made as to how active IPCC should be in making recommendations;</p> <p>(b) IPCC should have the power to demand an oral or written report containing the most recent available information in relation to a case dated back as far as possible whenever IPCC considers appropriate;</p> <p>(c) IPCC should be allowed to make recommendations relating to any practice or procedure, or any investigation regardless of whether the investigation has ever been started, currently in progress, or has been completed;</p>	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(02) that -</p> <p>(a) Information submitted by the Police under clause 16 should enable IPCC to have a comprehensive overview of whether the Police has handled a complaint fairly and impartially. Clause 17 provides that an interim investigation report submitted by the Police to IPCC must explain the progress of the investigation and the reasons for not being able to complete the investigation within a six-month period or such shorter period agreed between IPCC and the Police;</p> <p>(b) Clause 7(1)(a) and 7(1)(d) and 7(2) already</p>

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		<p>(d) IPCC should be allowed to make recommendations to CP verbally and record them in writing as soon as practicable afterwards; and</p> <p>(e) A statutory time limit of three months should be imposed for informing the complainants and the victim's family of the decision. If the time limit cannot be met, an explanation should be given to IPCC and letters informing the delay with the explanations should be issued.</p>	<p>enable IPCC to make recommendations at any stage of the investigation of a reportable complaint, so long as IPCC considers it necessary to do so in discharging its statutory functions; and</p> <p>(c) There are other provisions in the Bill, including clauses 17(1), 17(3), 17(4), 23, 32 and 34, which provide sufficient powers and flexibility for IPCC to closely monitor the Police's handling of complaints and to make recommendations in a timely manner. The IPCC Serious Complaints Committee also monitors the Police's handling of selected serious complaint vigorously. IPCC is also free to make its requests and recommendations orally.</p>

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* 3	Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)	IPCC should have the power to refer a case to the Secretary for Justice or the Director of Public Prosecutions with recommendations.	The Administration has advised in LC Paper No. CB(2)829/07-08(02) that clause 37(2)(b) allows the disclosure of information relating to a complaint, if it is for the purpose of reporting evidence of any crime to such authority (including ICAC and DoJ) and as they consider appropriate.
* 6	Zi Teng LC Paper Nos. CB(2)473/07-08(01) CB(2)530/07-08(01) CB(2)531/07-08(01)	IPCC should be empowered to refer cases to the Independent Commission Against Corruption (ICAC) and the Department of Justice (DoJ).	
* 7	JJJ Association LC Paper Nos. CB(2)499/07-08(05) CB(2)530/07-08(01)		
Clause 19 - Council may conduct interview			
* 3	Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)	(a) IPCC should be allowed to interview any person at any time it considers appropriate before or after the investigation report has been submitted; and (b) If an interviewee prefers an interview to be conducted in public, then the interview	The Administration has advised in LC paper No. CB(2)829/07-08(02) that - (a) Under clause 19, IPCC may interview witnesses, including complainants, complainees, pathologists, government chemists and independent witnesses, to

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	<p>should be conducted in public to enhance the credibility and transparency of the interviews.</p>	<p>clarify matters. Witnesses attend interviews entirely on a voluntary basis and will not be compelled to disclose self-incriminating information; and</p>
<p>* 6 Zi Teng LC Paper Nos. CB(2)473/07-08(01) CB(2)530/07-08(01) CB(2)531/07-08(01)</p> <p>* 7 JJJ Association LC Paper Nos. CB(2)499/07-08(05) CB(2)530/07-08(01)</p>	<p>IPCC should be empowered to interview witnesses and that no part of the interview should be used to incriminate the witness.</p>	<p>(b) Interviewing of witnesses is only one of the means through which IPCC monitors whether the Police has handled complaints fairly and impartially. IPCC conducts open sessions regularly and publishes annual reports. If an interview conducted by IPCC provides essential information for IPCC to consider whether the Police has handled a complaint fairly and impartially, IPCC may, subject to clause 37, make reference to the interview record in the open sessions and annual reports to publicise the relevant details.</p>

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<p>Clause 20 - Council may require Commissioner to provide information etc. relating to reportable complaints</p>		
<p>* 1</p>	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) IPCC should be given full and unrestricted access to information pertaining to any complaint investigation, including legal advice, which is made available to CAPO in its investigation. Such complete access to information should be provided for by an explicit provision in the Bill; and</p> <p>(b) IPCC maintains in its further submission that an express provision allowing IPCC full and unrestricted access to information pertaining to complaints investigation, including legal advice, is definitely necessary.</p>
<p>The Administration has advised in LC Paper Nos. CB(2)829/07-08(01) and CB(2)1689/07-08(01) that the Bill enables IPCC to have wide access to such information. The Administration considers that the well-established principle of legal professional privilege (LPP) under the common law should be preserved. The Bill permits the Police to consider waiving its right to LPP on a case-by-case basis in ensuring that IPCC is provided with sufficient relevant information pertaining to the reportable complaints concerned for performing its function of monitoring and reviewing the handling of Police complaints. CP will not deliberately withhold information from IPCC to the advantage of the Police. <i>(The Administration has been requested at the meeting on 24 April 2008 to reconsider IPCC's suggestion of incorporating an express provision in the Bill to provide IPCC with full and unrestricted access to information pertaining to complaints investigation, including legal advice on facts and the classification of complaints but not</i></p>		

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		<p><i>including legal advice on the steps to be taken by the Police)</i></p>
<p>* 3 Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)</p>	<p>IPCC's power to require CP to provide any information and material relating to a reportable complaint should be extended to any information and material relating to any complaint and any aspects of the Police Force.</p>	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(02) that IPCC will have access under the Bill to adequate information on both reportable complaints and non-reportable complaints as well as sufficient means to discharge its monitoring and review functions.</p>
<p style="text-align: center;">Clause 22 - Council may require Commissioner to inform complainant of classification of reportable complaints</p>		
<p>* 1 Independent Police Complaints Council LC Paper No. CB(2)563/07-08(01)</p>	<p>Clause 22 should be amended to oblige CP to inform the complainant of any other matters relating to the Police's operation raised by the complainant in a complaint, in addition to the classification and the reasons for the classification.</p>	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(01) that upon completion of the investigation of a reportable complaint and IPCC's endorsement of the investigation report, CAPO will issue a full reply to the complainant which will also address, as a matter of practice, other enquiries or suggestions made by the complainant in addition to the complaint. The Administration does not consider it appropriate to cover other enquiries and suggestions not related to matters within the purview of IPCC in the Bill.</p>

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* 6	Zi Teng LC Paper Nos. CB(2)473/07-08(01) CB(2)530/07-08(01) CB(2)531/07-08(01)	To enhance transparency, a complainant should be informed of the progress, content and results of investigation.	The Administration has advised in LC Paper No. CB(2)1689/07-08(01) that taking into consideration the Bills Committee's comments, it proposes to amend clause 22 to the effect that CP must inform a complainant or his representative of the classification of his complaint and the reason for the classification, and that the clause does not apply to cases where the complainant or his representative has indicated to CP that he does not wish to be so informed. This reflects the existing practice. IPCC supports the proposed amendment.
* 7	JJJ Association LC Paper Nos. CB(2)499/07-08(05) CB(2)530/07-08(01)		
Clause 26 - Council may require Commissioner to consult Council on orders and manuals relating to handling or investigation of reportable complaints			
2	Hong Kong Bar Association LC Paper No. CB(2)649/07-08(01)	The scope of clause 26 should be expanded to require CP to consult IPCC on any significant amendment proposed to be made to the Police General Orders, the Headquarters Orders, the Hong Kong Police Force Procedures Manual, and any other orders or manuals of the Police Force that has anything to do with contact with members of the public, including suspects and arrested persons.	The Administration has advised in Annex D to LC Paper No. CB(2)810/07-08(01) that clause 7(1)(c) of the Bill empowers IPCC 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 to CP or the Chief Executive (CE) or both of them in respect of such practice or procedure. Such recommendations may be made at the initiative

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		of IPCC without reference to any investigation report submitted by CAPO.	
Clause 27 - Commissioner to comply with requirements of Council			
* 1	Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)	(a) The phrase "or the investigation of any crime" should be deleted or amended along the line of "or the investigation of indictable offences" or setting a time limit for CP not to comply with IPCC's requirements; and (b) IPCC had advised in its further submission that the suggestion of replacing "any crime" with "an indictable offence" and/or setting a time limit for CP not to comply with IPCC's requirements subject to reviews is pursuable and reasonable.	The Administration has advised in LC Paper No. CB(2)1689/07-08(01) that it proposes to revise clause 27 to provide that CP must comply with any requirement made by IPCC under the Bill unless the Secretary for Security certifies that compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime, and that a certificate signed by the Secretary for Security certifying such matters is conclusive evidence as to the matters so certified. The Administration also advises that IPCC supports the proposed amendment and further suggests that the certificate to be issued by the Secretary for Security should stipulate a validity period upon the expiry of which the Secretary for Security should review the matter to see if the Police could resume complying with IPCC's requirements. The Administration does not consider such a stipulation necessary as it envisages that in practice, where CP's

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			compliance with IPCC's requirement is critical to IPCC's consideration of the case in question, the matter would naturally be under regular review so that IPCC's examination of the case could be completed at the earliest opportunity.
Clause 28 - Report to Chief Executive			
* 1	Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)	(a) Clause 28 should be amended to provide for a response from CE to IPCC's report made to him; and (b) IPCC maintains in its further submission that stipulation of the requirement would be in the interest of its discharging of its functions under the Ordinance.	(a) The Administration has advised in LC Paper No. CB(2)829/07-08(01) that it is an established practice that CE or his authorised officer will respond to the statutory body submitting the report. The Administration considers it not necessary to make an express provision for this in the Bill; and (b) The Administration has advised in LC Paper No. CB(2)1689/07-08(01) that a number of existing Ordinances establishing statutory bodies provide that the statutory bodies may make reports to CE, but do not contain express provisions that CE must respond to the reports. IPCC has no further comments on their issue.

<p style="text-align: center;">Organisation</p> <p>LC Paper No. of Written submission</p>	<p style="text-align: center;">Comments</p>	<p style="text-align: center;">Remarks</p>
<p>Clause 31 - Appointment of observers</p>		
<p>2</p>	<p>Hong Kong Bar Association LC Paper No. CB(2)649/07-08(01)</p>	<p>To empower IPCC to appoint observers.</p>
<p>The Administration has advised in Annex D to LC paper No. CB(2)810/07-08(01) that the Secretary for Security appoints suitable candidates from a wide spectrum of sectors as observers, having regard to their integrity, ability, experience and commitment to public service, so as to provide effective assistance to IPCC. In making the appointments, the Secretary for Security will take into account IPCC's opinions and views.</p>		
<p>* 3</p>	<p>Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)</p>	<p>Persons closely connected to the Police Force, family members of Police officers and persons with related substantial business transactions should not be appointed as observers. A certain number of observers should come from non-government organisations campaigning for criminal justice or civil liberty. A number of observers should be appointed on a full-time employment basis.</p>
<p>The Administration has advised in LC Paper No. CB(2)829/07-08(02) that -</p> <p>(a) Appointments of observers are made on an <i>ad personam</i> basis. In making such appointments, the Administration will continue to observe the principle of selecting the best person for the job, having regard to the functions and nature of business of IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service;</p>		

Organisation		Comments	Remarks
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			<p>(b) The intent of clause 31(2) is to avoid any conflict of interest and ensure that all observers will maintain an objective and balanced view in considering whether the Police handle public complaints against members of the Police Force in a fair and just manner; and</p> <p>(c) The Administration does not consider it appropriate to appoint observers on a full-time basis.</p>
Clause 37 - Duty to keep confidence			
* 1	<p>Independent Police Complaints Council LC Paper Nos. CB(2)563/07-08(01) CB(2)1281/07-08(02) CB(2)1689/07-08(01)</p>	<p>(a) In case of any disagreement between IPCC and CP over the handling and classification of a reportable complaint, IPCC should be allowed to disclose CP's explanations for not accepting IPCC's advice regarding the findings and classifications of CAPO's investigations, and the reason for any IPCC disagreement with the Police on the disciplinary action to be taken;</p> <p>(b) IPCC has advised in its further submission</p>	<p>(a) The Administration has advised in LC paper No. CB(2)829/07-08(01) that Clause 37 as currently drafted already permits IPCC to disclose "protected information" to such persons as IPCC considers appropriate, as long as the disclosure is necessary for the performance of IPCC's functions under the Bill. The Bill does not prohibit IPCC from making public the Police's explanations and the reasons for any disagreement of IPCC with the Police on the disciplinary action to be taken, if IPCC considers that the</p>

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	<p>that it may not be able to rely on clause 37(2)(a) to make public the Police's explanations for not accepting IPCC's advice and the reasons for any disagreement with the Police on the disciplinary action to be taken. IPCC insists on having abundantly clear provisions to allow it to make such disclosure; and</p> <p>(c) IPCC has also advised in its further submission that the Administration has not reflected in the Bill the undertaking in its letter of 26 February 2002 that IPCC will be provided with such powers of disclosure in the Bill on the clear understanding that data privacy will be given full protection.</p>	<p>disclosure is necessary for discharging its monitoring function; and</p> <p>(b) The Administration has also advised in LC Paper No. CB(2)1689/07-08(01) that in its letter of 26 February 2002 to IPCC, the Administration accepted IPCC's suggestion that the Bill should provide for IPCC to make public the explanations given by the Police for not accepting IPCC's advice regarding the findings and classifications of CAPO's investigations as well as the reasons for its disagreement with the Police on the disciplinary action to be taken against complainees. Clause 37 of the Bill as currently worded has accommodated IPCC's suggestion. <i>(The Administration has been requested at the meeting on 24 April 2008 to reconsider IPCC's suggestion of incorporating an express provision in the Bill to the effect that IPCC's power to appeal to the public on unresolved matters with the Commissioner of Police would not be subject to unnecessary restrictions or hurdles, or civil or criminal liability)</i></p>

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	<p>Clause 37(4) should cover also potential witnesses who may decline to attend an interview with IPCC in the end, CE, other relevant government departments or statutory/advisory bodies (where referral of a case is necessary if the matter is subject to other jurisdictions), and legal representatives, friends or relatives who accompany a witness to be interviewed by IPCC (provided that their presence is approved under clause 19).</p>	<p>The Administration has advised in LC paper No. CB(2)829/07-08(01) that -</p> <p>(a) Clause 37(4)(e) already permits disclosure of such personal data to a person interviewed by IPCC pursuant to clause 19. The Administration will further examine IPCC's comments in considering whether clause 37(4) should be refined; and</p> <p>(b) The Administration does not consider it necessary to expand clause 37(4) to cover other relevant government departments or statutory/advisory bodies.</p>
<p>* 3</p> <p>Hong Kong Human Rights Monitor LC Paper No. CB(2)499/07-08(02)</p>	<p>Disclosure of confidential information should be allowed when it is in the public interest or reasonable and equitable to do so. Once the classification of a case is substantiated or partially substantiated, information on the case should be fully published. If a case is not substantiated, its summary should also be published.</p>	<p>The Administration has advised in LC paper No. CB(2)829/07-08(02) that clause 37(2) provides a sufficiently wide scope for IPCC to make disclosures in justified circumstances.</p>

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<p>Clause 38 - Protection of Council and its members, etc.</p>			
<p>* 1</p>	<p>Independent Police Complaints Council</p>	<p>IPCC members should be protected from criminal liability.</p>	<p>The Administration has advised in LC Paper No. CB(2)829/07-08(01) that clause 38 provides IPCC members with the necessary immunity from civil liability for discharging their functions in good faith and is proportionate to the nature of the functions of IPCC.</p>
<p>Schedule 1, section 23 - Annual reports of Council</p>			
<p>* 5</p>	<p>Civil Human Rights Front LC Paper No. CB(2)499/07-08(04)</p>	<p>IPCC should submit all completed investigation reports to the Legislative Council (LegCo), who may make enquiries about IPCC's reports and comment on them.</p>	<p>The Administration has advised in LC Paper Nos. CB(2)829/07-08(02) and CB(2)1702/07-08(01) that section 23 of Schedule 1 to the Bill obliges IPCC to submit annual reports to the CE and cause the reports to be tabled in LegCo. The reports will cover, among others, the performance of IPCC's functions. IPCC may, therefore, mention any cases as it considers appropriate in its annual reports. LegCo may ask questions about the reports or comment on the reports.</p>

Organisation LC Paper No. of Written submission	Comments	Remarks
Schedule 1, section 25 - Delegation of functions		
* 1	Independent Police Complaints Council	To consider adding a provision similar to that in Personal Data (Privacy) Ordinance to provide for IPCC to delegate some of its functions to a technical or professional person whose service was engaged by IPCC.
		The Administration has advised in LC Paper Nos. CB(2)829/07-08(01) and CB(2)1689/07-08(02) that it does not consider it necessary or indeed appropriate to provide that IPCC may delegate its functions to external technical and professional persons who are not employees of IPCC.

* Deputations which had made oral representations to the Bills Committee