

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

**Response to issues raised at the Bills Committee meetings
held on 28 March 2008 (2), 15 April 2008 (2),
24 April 2008 (1) and 8 May 2008**

Purpose

This note provides information in response to a number of issues raised by the Bills Committee at its meetings held on 28 March, 15 April, 24 April and 8 May 2008.

Name of the Independent Police Complaints Council (IPCC)

To consider amending the Chinese version of “Independent Police Complaints Council” in the Bill along the lines of “監察投訴警方獨立委員會” or “監察警方處理投訴獨立委員會” or other appropriate formulations and to consider amending the English version correspondingly

2. We have consulted the IPCC on Members’ suggestion. The IPCC prefers to adopt the name “獨立監察警方處理投訴委員會” so as to reflect its role in monitoring the Police’s handling and investigation of complaints against members of the police force. The IPCC considers that its existing English name can be retained.

Secretary and Legal Adviser of the IPCC

To consider determining the pay point of the Secretary and Legal Adviser and advise the Bills Committee accordingly

3. Clause 5(1) of the Bill provides that the IPCC must appoint a Secretary and a Legal Adviser on terms approved by the Chief Executive (CE) on the advice of the IPCC. In other words, the CE needs to take

into account the IPCC's advice in approving the terms of employment of the IPCC Secretary and the IPCC Legal Adviser. This ensures that the IPCC's views and considerations will be taken into account and provides for flexibility in determining the appropriate terms of employment of the IPCC Secretary and the IPCC Legal Adviser in the light of the prevailing circumstances.

4. On the approval of the then Finance Committee (FC) of the Legislative Council (LegCo) in 1985 (see the paper for the then FC at the Annex), the existing post of the IPCC Secretary was ranked at Administrative Officer Staff Grade C (Directorate Pay Scale Point 2, i.e. with a monthly salary of \$115,450 to \$122,600 with effect from 1 April 2007). In its submission of 16 May 2008 to the Bills Committee, the IPCC suggested that the Secretary to the statutory IPCC should be ranked at the Directorate Pay Scale Point 3. We are considering, in consultation with the IPCC, the justification for the proposed upgrading in accordance with the established mechanism.

To consider amending the Chinese version of "Secretary" as "秘書長"

5. In its submission of 16 May 2008 to the Bills Committee, the IPCC suggested that the Secretary to the statutory IPCC should be retitled as "Executive Director" and should be a member of the statutory IPCC.

6. As mentioned in paragraph 4 above, with the approval of the then LegCo FC, the existing post of the IPCC Secretary was created to head the IPCC Secretariat to service the IPCC. The IPCC Secretary is responsible to the IPCC chairman and members for the overall administration of the IPCC Secretariat and for providing the IPCC with effective support in monitoring the Police's handling of complaints against members of the police force. Specifically, the IPCC Secretary performs the following duties, under the direction of the IPCC -

- (a) overall examination of the handling by the Complaints Against Police Office of complaints by the public and vetting investigations into such complaints;

- (b) formulation of policies and recommendations regarding matters to do with complaints against the Police, and the handling of and investigation into such complaints;
- (c) liaison and consultation with the senior management of the Police and other departments concerned;
- (d) administration of the IPCC Secretariat; and
- (e) controlling officer of the IPCC Secretariat Head of Expenditure.

7. As the main functions of the existing IPCC Secretary are to provide administrative service and support to the IPCC and to execute the directions of the IPCC, and the Secretary to the statutory IPCC is expected to continue to carry out similar functions as an employee of the IPCC, we do not envisage any practical needs to appoint the Secretary as a member of the statutory IPCC.

8. On the Chinese title of the IPCC Secretary, we are agreeable to the Bills Committee's suggestion of amending it as “秘書長” (with the English title to be amended as “Secretary-General”), which appropriately reflects the nature of the duties of the post. In this connection, we note that the executive heads providing similar administrative support to many existing statutory or advisory bodies carry the title of “Secretary-General”. Examples are the Secretary General to the Hong Kong Examinations and Assessment Authority, the Secretary General of the Legislative Council Secretariat and the Secretary General to the Joint Secretariat for the Advisory Bodies on Civil Service and Judicial Salaries and Conditions of Service.

Composition of the IPCC

To consider allowing non-government organizations to nominate candidates for appointment to IPCC by the CE; to consider specifying in the Bill that some IPCC members should come from certain specific sectors and providing that the LegCo Members to be appointed to IPCC should be elected from among LegCo Members; to consider specifying in the Bill that a certain number of persons with management experience or expertise should be appointed as IPCC members

9. As we have explained in LC Paper No. CB(2)810/07-08(01), appointments to the IPCC are made on an *ad personam* basis. In making such appointments, we are guided by the principle of selecting the best person for the job, having regard to the functions and nature of business of the IPCC, and an individual's integrity, ability, experience, expertise and commitment to public service. We shall continue to observe this principle in making appointments to the statutory IPCC. To facilitate the IPCC's effective discharge of its functions, in considering appointments to the IPCC, we shall also have regard to potential candidates' background to ensure a balanced composition of the IPCC, and to avoid any real or perceived conflict of interest. During the appointment process, we shall give careful considerations to all potentially suitable candidates, including self-nominated candidates and any candidates put forward to the Administration on recommendation. With the foregoing, we do not see a need to stipulate in the Bill the specific sectors from which IPCC members should be drawn.

To consider the suggestion of extending each term of appointment of the Chairman of IPCC to a longer period of time, say three years

10. The existing clause 1 in Schedule 1 to the Bill provides that the Chairman, Vice-Chairman and members of the statutory IPCC are to be appointed for a term not exceeding two years and are eligible for reappointment for a further term or terms not exceeding two years each. Taking account of Members' comments, we propose to amend this clause to provide for a term of appointment or re-appointment not exceeding three years for the Chairman.

Financial allocation to the IPCC

To consider subsuming the annual financial allocation to the statutory IPCC under the operating expenditure envelope of the Director of Administration

11. In discussing with the IPCC the administrative arrangements for the statutory IPCC, we have suggested that the existing head of expenditure (Head 121) for the IPCC be retained to set out the financial provision available to the statutory IPCC, so as to underline the independence of its operation.

12. We have explained to the IPCC that under the Government's operating expenditure (OPEX) envelope approach, the operating expenditure for such head of expenditure is allocated through the OPEX envelope of the respective Director of Bureau as the envelope-holder. Thus, for the financial provision for allocation to the statutory IPCC, the OPEX envelope system requires the provision to be channelled through the envelope of the Secretary for Security (S for S) since Security Bureau will act as the primary point of contact between the Administration and the statutory IPCC. This is by nature a matter of accounting practice. S for S will not vary or adjust the financial provision allocated by the centre to the statutory IPCC.

13. The accounting practice applicable to The Ombudsman is essentially the same. The financial provision for allocation to The Ombudsman is provided to The Ombudsman through the OPEX envelope of the Director of Administration as the Administration Wing of the Chief Secretary for Administration's Office (the Administration Wing) acts as the primary point of contact between the Administration and The Ombudsman.

14. We have consulted the Administration Wing on the suggestion of subsuming the financial allocation to the statutory IPCC under the OPEX envelope of the Director of Administration. The Administration Wing has advised that the arrangement as set out in paragraph 12 above is appropriate and should be maintained.

Information subject to the legal professional privilege

To reconsider the 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, in particular legal advice on facts and legal advice on conclusions regarding the facts, which were relevant to the classification of complaints

15. In its submission of 16 May 2008 to the Bills Committee, the IPCC put forward a new clause 20(2) as follows -

“Notwithstanding any claim of legal professional privilege, the Commissioner shall provide the Council for the purposes of performing the Council’s functions under sections 7(1)(a) to (c) of this Ordinance with all documents between the Commissioner and his professional adviser in so far as the same are relevant to the handling or investigation of any reportable complaint.”

The proposed new clause amounts to a general abrogation of the Commissioner of Police (CP)’s right to the legal professional privilege (LPP).

16. As we have set out in LC paper No. CB(2)829/07-08(01) and CB(2)1689/07-08(01), the protection of information subject to LPP under the common law, i.e. an individual’s right to consult his lawyer in confidence, should be preserved. As we have previously emphasized, LPP is the cornerstone of our legal system, and is enshrined and safeguarded in the Basic Law. The Bill as currently drawn up permits CP to consider waiving his right to LPP on a case-by-case basis. IPCC will be provided with sufficient and relevant information pertaining to the reportable complaint concerned for it to perform its function of monitoring the handling of police complaints. In the light of the foregoing, we do not consider the IPCC’s proposed new clause 20(2) acceptable.

Clause 7 – Functions of the IPCC

To review clause 7(1)(a) in relation to the word “manner”

17. The dictionary meaning of the word “manner” is primarily the way in which something is done or takes place, or a mode of action or procedure. Therefore, with the inclusion of the word “manner”, clause 7(1)(a) spells out in detailed terms the parameters within which the IPCC conducts its monitoring of the Police’s handling and investigation of reportable complaints. In simple words, it sets out that the IPCC is empowered to monitor the way in which the Police’s handling or investigation of reportable complaints is done or takes place. It reflects the existing monitoring function of the IPCC. Taking account of Members’ comments (which in essence are consistent with the present formulation of clause 7(1)(a)), we have no objection to deleting “manner” from clause 7(1)(a) and revise its first part accordingly. The scope remains the same, that is, the function of the IPCC is to observe, monitor and review the handling and investigation of reportable complaints by the Police.

Clause 13 – Complaints categorized as “notifiable complaints”

To consider consolidating clause 13 and the definition of “notifiable complaint” in clause 2(1)

18. Clause 13 is the substantive provision dealing with the categorization of notifiable complaints. It is a mandatory direction to CP to categorize a complaint as a “notifiable complaint” under specified circumstances (i.e. where the complaint is not excluded under clause 9 and is not categorized as a “reportable complaint” under clause 10). It should be retained as a separate provision to clearly spell out the scope of “notifiable complaints”. Clause 2 is, by nature, an interpretation clause. The definition of “notifiable complaints” (replacing the existing “non-reportable complaint”) in clause 2 is descriptive to refer to the fact that a “notifiable complaint” is categorized in accordance with clause 13.

Litigation against the existing IPCC

To consider adding a provision in the Bill to specify expressly that clause 38 would not affect the respective rights of the IPCC and other parties that existed before the incorporation of IPCC in relation to litigation between IPCC and other parties

19. Clause 40(1) of the Bill provides that “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”. By virtue of this clause, the validity of any litigation instituted against the existing IPCC will not be affected by its establishment as a statutory body. Clause 40(2) further provides that “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”. It follows that any litigation instituted against the existing IPCC, if it has not yet been concluded, can be continued as being made against the statutory IPCC. Taking Members’ comments into consideration, we propose adding a provision under clause 40 to expressly deal with any legal claims made by or against the existing IPCC that exist immediately before the commencement of the Bill to the effect that their validity would not be affected.

Security Bureau
June 2008

EC 1985-86

ITEM

ESTABLISHMENT SUB-COMMITTEE OF FINANCE COMMITTEE

NEW HEAD - POLICE COMPLAINTS COMMITTEE

HEAD 92 - LEGAL DEPARTMENT

Subhead 001 Salaries

Members are invited to recommend to Finance Committee -

(a) the creation of the following posts for the new Head - Police Complaints Committee -

1 Administrative Officer Staff Grade C
(D2) (\$34,500)

1 Chief Executive Officer
(MPS 48-51 : \$22,560-\$25,605)

4 Senior Executive Officers
(MPS 38-47 : \$14,330-\$21,555)

4 Executive Officers I
(MPS 32-37 : \$10,785-\$13,565)

1 Executive Officer II
(MPS 20-31 : \$6,165-\$10,315)

1 Personal Secretary
(MPS 19-24 : \$5,870-\$7,470)

1 Stenographer
(MPS 6-18 : \$2,650-\$5,580)

3 Typists
(MPS 3-13 : \$2,305-\$4,155)

1 Clerical Officer I
(MPS 19-24 : \$5,870-\$7,470)

1 Clerical Officer II
(MPS 5-18 : \$2,505-\$5,580)

1 Confidential Assistant
(MPS 11-20 : \$3,595-\$6,165)

1 Office Assistant
(MPS 1-8 : \$2,110-\$2,985)

to enable the establishment of a secretariat to service the Police Complaints Committee;

- (b) the creation of the following post for the Legal Department -

1 Senior Crown Counsel (MPS 48-51 : \$22,560-\$25,605)

to serve as legal adviser to the Police Complaints Committee; and

- (c) an increase in the limit placed on the total notional annual mid-point salary (NAMS) value of all non-directorate posts in the permanent establishment of Head 92 Legal Department from \$63,059,000 by \$272,000 to \$63,331,000 in order to provide for the creation of one Senior Crown Counsel post.

The additional notional annual salary cost of these proposals at MID-POINT is -

	\$	<u>No. of posts</u>
New permanent posts for -		
(a) Police Complaints Committee	2,741,280	20
(b) Legal Department	295,080	1
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Additional cost	3,036,360	21
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No provision has been included in the 1985-86 Estimates to meet the cost of the proposals estimated at \$759,000. If approved, supplementary provision will be sought from Finance Committee and will be met by deleting an equivalent amount under Head 106 Miscellaneous Services Subhead 251 Additional commitments.

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BACKGROUND

The UMELCO Police Group (UPG), a non-statutory body appointed by the Governor, currently monitors the handling, by the ~~Complaints Against Police Office~~ (CAPO), of complaints made against the police by the public. The Chairman and members of the UPG are drawn from Executive Council and Legislative Council. The Attorney General is a co-opted member. The UPG is served by the UMELCO office but, because of competing priorities, the support provided to the UPG is now considered inadequate.

2. On average, 350 complaints against the police are registered each month with CAPO. Of these, about 120 complaints (35% of the total) are initially assessed by CAPO as 'minor and trivial' and are assigned for investigation to the police formation immediately concerned. All other complaints, apart from the very few complaints alleging the most serious crimes and others relating to complicated commercial offences which are normally investigated by the specialist police formation concerned, are investigated by CAPO itself. CAPO monitors the investigation of all complaints irrespective of whichever formation conducts the investigation and all complaints are reported to the UPG.

PROBLEMS ENCOUNTERED

3. In its first full year of operation in 1978, CAPO sent the UPG reports on 2 264 complaints. In 1984, the number was 4 389. This increase in workload has resulted in a twofold problem. Firstly, there is a danger of the monitoring role of the UPG becoming superficial. All CAPO investigation files are available for inspection by the UPG; however, in the vast majority of cases, the UPG can realistically do no more than consider the report of the investigation prepared by CAPO whose work the UPG is to monitor. Secondly, UPG members themselves find it increasingly difficult to devote enough time to the large number of cases requiring their attention each month.

RECOMMENDATION OF A WORKING PARTY

4. A Working Party was established in October 1984 to examine these problems and it recommended that a secretariat should be established to service the UPG. The main objectives of creating the secretariat would be -

- (a) to introduce a more detailed and independent method of monitoring the handling of complaints by CAPO; and
- (b) to reduce the workload directly falling to UPG members.

The proposal to establish a secretariat to service the UPG was however held in abeyance pending the outcome of a review of the constitution of the UPG conducted in early 1985. The future of the UPG was discussed with UMELCO Members and consideration was given to extending the membership of UPG to appointees outside UMELCO. They supported the dissolution of the UPG and the formation of a new committee to be appointed by the Governor from among Justices of the Peace and the establishment of a secretariat to service this new committee. These proposals were endorsed by Executive Council on 5 November 1985. As appointments to the present UPG will expire on 31 December 1985, it is intended that the new committee, which will be called the Police Complaints Committee (PCC), should be formed on 1 January 1986 to take over the responsibility for monitoring the handling of complaints by CAPO from that date. The Secretariat to service the new committee should therefore be established before then.

STAFFING OF THE SECRETARIAT

5. It is considered appropriate that the PCC Secretariat be headed by a directorate level officer who, as the Secretary to PCC, will be responsible to the Chairman and members for the overall administration of the Secretariat and for providing the PCC with effective support in monitoring the handling of complaints against the police by CAPO. The Secretary for the Civil Service has advised that the range of duties and responsibilities, as detailed in Appendix I, of this officer who will be the controlling officer of an Agency, are appropriate to the Administrative Officer Staff Grade C (D2) rank.

6. As regards supporting staff, it is considered that the Secretary of the PCC Secretariat will need to be assisted by 1 Chief Executive Officer, 1 Senior Crown Counsel (to be seconded from the Legal Department), 4 Senior Executive Officers, 4 Executive Officers I, 1 Executive Officer II, 1 Personal Secretary, 1 Stenographer, 3 Typists, 1 Clerical Officer I, 1 Clerical Officer II, 1 Confidential Assistant and 1 Office Assistant. An organisation chart of the Secretariat is at Appendix II.

7. The Chief Executive Officer is required to deputise for the Secretary of the PCC and to generally assist him in the administration of the Secretariat. The Senior Crown Counsel will provide such legal advice as may be required on the examination of CAPO's investigation reports. This post however will be created under the establishment of the Legal Department and the incumbent will be seconded to the PCC. The four Senior Executive Officers, each supported by one Executive Officer I, will head the monitoring teams. Their work will comprise vetting CAPO investigations and findings, and preparing reports and recommendations for consideration by the PCC. The Executive Officer II (Administration) will be responsible for all aspects of internal accounting, office services and the daily administration of the Secretariat. The duties and responsibilities of the above mentioned posts are detailed in Appendices III to VII to this paper. The remaining supporting staff are necessary for the effective discharge of the functions and responsibilities of the Secretariat as a whole.

PROPOSAL

8. The PCC Secretariat is to be operational by 1 January 1986. The immediate creation of posts of one Administrative Officer Staff Grade C (D2), one Chief Executive Officer, 4 Senior Executive Officers, 4 Executive Officers I, one Executive Officer II, one Personal Secretary, one Stenographer, 3 Typists, one Clerical Officer I, one Clerical Officer II, one Confidential Assistant, and one Office Assistant for the Police Complaints Committee, and also one post of Senior Crown Counsel for the Legal Department is proposed.

9. The Solicitor General, as Controlling Officer of Head 92 Legal Department, has delegated authority to create and delete non-directorate posts within a total NAMS value of \$63,059,000. This NAMS value has been fully utilised. As the proposed creation of one post of Senior Crown Counsel to service the Police Complaints Committee will require an additional NAMS value of \$272,000, it is therefore also proposed that the NAMS value of the Legal Department should be further increased from \$63,059,000 by \$272,000 to \$63,331,000.

RECOMMENDATIONS OF THE STANDING COMMITTEE ON DIRECTORATE
SALARIES AND CONDITIONS OF SERVICE

10.

FINANCE BRANCH

CR L/M 305/85

November 1985

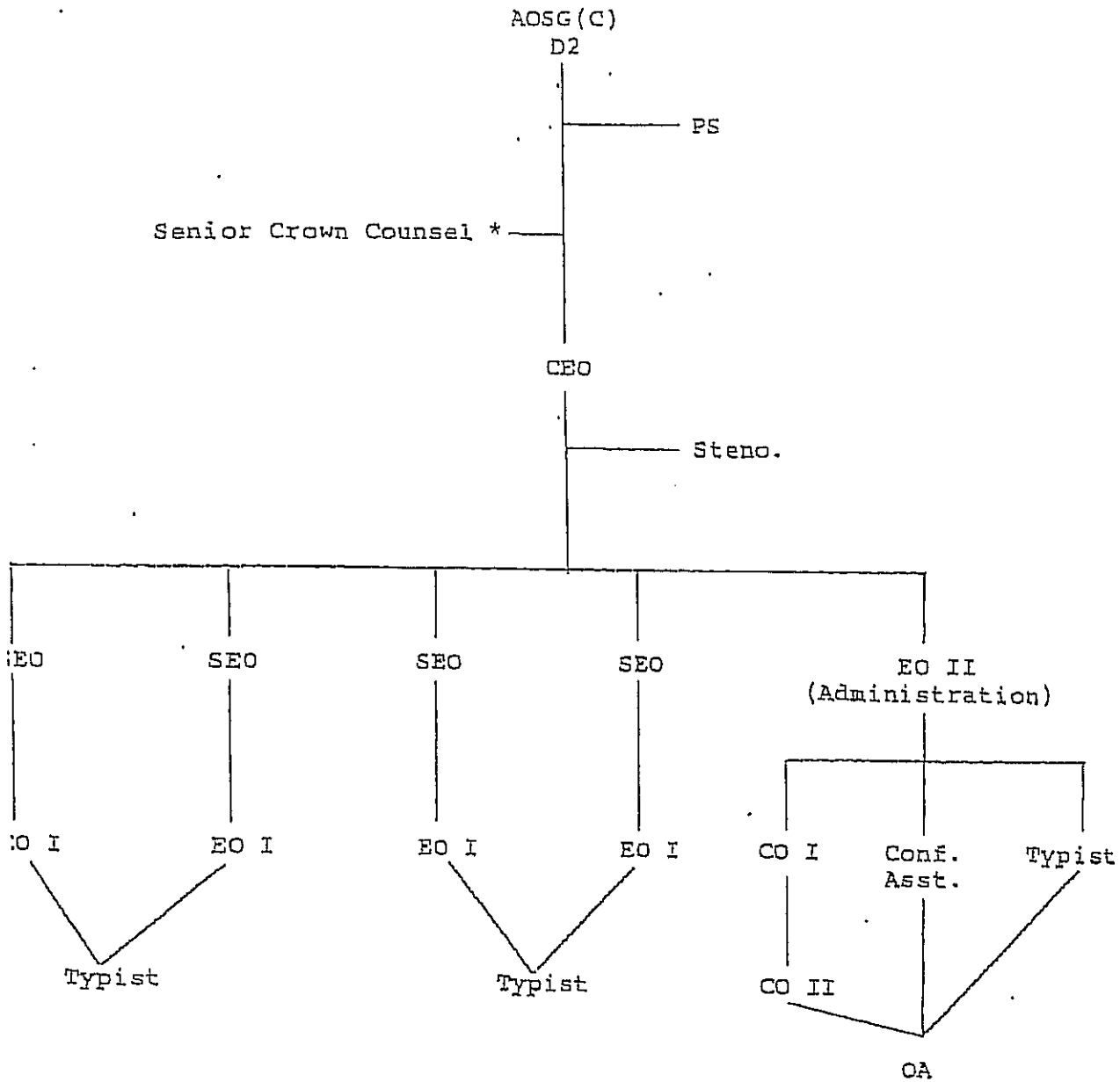
Job Description of the
Administrative Officer Staff Grade C (D2)

The Administrative Officer Staff Grade 'C' as Secretary of the Police Complaints Committee (PCC), will be responsible to the PCC for providing adequate support in monitoring the handling by the police of complaints by the public and vetting procedures and investigations into these complaints by the Complaints Against Police Office. His main duties are detailed below.

Under the direction of the PCC -

- (a) overall examination of the handling by the Complaints Against Police Office (CAPO) of complaints by the public and vetting investigations into such complaints;
- (b) formulation of policies and recommendations regarding matters to do with complaints against the police, and the handling of and investigation into such complaints;
- (c) liaison and consultation with the senior management of the Police and other departments concerned;
- (d) administration of the PCC Secretariat; and
- (e) controlling officer of the PCC Secretariat Head of Expenditure.

Proposed Organisation Chart of the
Secretariat of the Police Complaints Committee



* Post on secondment from Legal Department

Job Description of the
Chief Executive Officer

The Chief Executive Officer will be the deputy to the Secretary of the Police Complaints Committee (PCC) Secretariat. He is required to -

- (a) deputise for the Secretary of the PCC Secretariat in his absence;
- (b) assist the Secretary of the PCC Secretariat in the administration of the Secretariat including general management and personnel matters;
- (c) assist in the formulation and recommendation of policies, regarding the monitoring and examination of CAPO investigations;
- (d) supervise and scrutinise the work of the Senior Executive Officers in the examination of CAPO investigations and the preparation of review reports;
- (e) liaise with CAPO and other departments concerned; and
- (f) arrange monthly PCC meetings and act as the secretary to these meetings.

Job Description of the
Senior Executive Officers

The Senior Executive Officers are required to -

- (a) examine in detail the investigation files submitted by CAPO on all complaints;
- (b) raise with CAPO any queries on the files submitted at (a);
- (c) seek necessary legal advice on any aspects arising from the investigation reports;
- (d) prepare review reports on such investigations for the PCC members;
- (e) provide interim reports to PCC members on cases under query; and
- (f) advise CAPO whether the results of investigation are accepted by the PCC members.

Job Description of the
Executive Officers I

The Executive Officers I are required to -

- (a) obtain at weekly intervals details of all new complaints registered by CAPO;
- (b) inform PCC members of all new complaints by circulation to see if any member requests that priority be given to such complaints;
- (c) assist the Senior Executive Officers in the examination of investigation files submitted by CAPO; and
- (d) circulate on a weekly basis reports prepared by the PCC Secretariat on all complaints to PCC members.

Job Description of the
Senior Crown Counsel

The Senior Crown Counsel is responsible for advising the Secretary of the Police Complaints Committee, the Deputy Secretary and Senior Executive Officers on matters of a legal nature arising from -

- (a) the procedures of the monitoring and examination of CAPO investigations;
- (b) formulation of policies and recommendations regarding (a); and
- (c) the examination of investigation reports.

Job Description of the
Executive Officer II (Administration)

The Executive Officer II is responsible to the Chief Executive Officer in the following duties -

- (a) to maintain the smooth running and day-to-day management of the Secretariat including personnel, establishment and general office matters;
- (b) to monitor secretariat finance and prepare the 5-year Forecast and Annual Estimates;
- (c) to ensure smooth and efficient operation of the Registry;
- (d) to assist in updating plans, instructions, circulars, telephone lists and Saturday duty rosters; and
- (e) to perform such other duties as may be required.