

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

Views of The Ombudsman

- (a) whether the Secretariat of the Independent Police Complaints Council (“IPCC”)
should be included under Part I of Schedule 1 to The Ombudsman Ordinance
(“the Ordinance”)

The Ombudsman Ordinance is applicable to all Government departments and 18 statutory bodies listed in Schedule 1. The latter share the following common features:

- substantially funded by General Revenue or statutory fees or charges;
- perform administrative functions, and are not solely advisory, adjudicative or appellate in nature;
- interface with or impact on the public in the course of discharging their functions.

A scrutiny of the Draft IPCC Bill suggests that upon enactment of the Bill, the incorporated IPCC will meet all the above criteria. IPCC will be funded by General Revenue and its work will have impact on the public, particularly those whose complaints and requests for review fall within IPCC’s scope of responsibility.

Furthermore, under clause 7 of the Bill, the incorporated IPCC will perform administrative functions such as to monitor and review the handling of reportable

complaints by the police, 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 the Commissioner or the Chief Executive. Such acts will have a significant impact on the public.

The Ombudsman sees no objection in principle to bringing the incorporated IPCC with her purview, but the decision is ultimately one of policy. In this regard, it may be relevant to note that in some overseas jurisdictions, Ombudsmen's involvement in overseeing police complaints can be more direct. In Australia, the Commonwealth Ombudsman and a couple of State Ombudsmen (e.g. New South Wales and Northern Territory) have statutory authority to investigate complaints, while the Ombudsman for Victoria has been appointed to head a separate Office of Police Integrity.

- (b) the proposal in clause 44 of the Bill to repeal the IPCC Secretariat in Part II of Schedule 1 to the Ordinance

The Ombudsman sees no need to remove the IPCC Secretariat from Part II of Schedule 1 to The Ombudsman Ordinance. ICAC, similarly a statutory body, has been and is still included in Part II for the purpose of the Code on Access to Information ("the Code").

Organisations listed in Part II of Schedule 1 are not subject to The Ombudsman's general jurisdiction in respect of complaints of maladministration, but are subject to scrutiny **only** in respect of complaint relating to the Code.

Government's position is that the Code applies only to Government departments; since the incorporated IPCC and its Secretariat will not be part of Government, the Code should cease to apply to them.

While there is logic in Government's position, the Ombudsman considers that the matter can be seen in a wider context. ICAC, a statutory body, has been subject to the Code since the latter's inception in 1996; and this has worked well in practice.

The Ombudsman, therefore, sees no reason why the incorporated IPCC and its Secretariat could not be treated in the same way as the ICAC.

On a point of technicality, if the incorporated IPCC is included in Part I of Schedule 1 to The Ombudsman Ordinance, reference to the IPCC Secretariat in Part II of Schedule 1 to the Ordinance would be superfluous.

Office of The Ombudsman

16 June 2008