

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

**Response to issues raised at the Bills Committee meeting
held on 18 October 2007**

Purpose

This paper provides information in response to a number of issues raised by the Bills Committee at its meeting held on 18 October 2007.

The Independent Police Complaints Council (IPCC)'s power

To advise whether the power of the proposed statutory IPCC to require the Commissioner of Police (CP) to provide information or materials relating to complaints and to clarify facts or discrepancies is subject to any restrictions or exceptions

2. The Bill provides for the necessary powers for the IPCC to monitor and review the handling and investigation by CP of reportable complaints lodged by members of the public against a member of the police force. For example, clause 15 stipulates that the IPCC may require CP to provide explanations to support the categorization of a complaint as a non-reportable complaint, and in relation to a belated complaint categorized as a non-reportable complaint, CP's opinion that the complaint is not of a serious nature. Clause 20 empowers the IPCC to require CP to provide any information or material relating to a reportable complaint, and to clarify any fact or discrepancy relating to a reportable complaint. Clause 21 provides that the IPCC may require CP to investigate (whether or not there has been any previous investigation) a reportable complaint. Clause 24 provides that the IPCC may require CP to provide an explanation in relation to any action taken in respect of a member of the police force by CP in connection with any reportable complaint. Clause 25 specifies that the IPCC may require CP to compile and submit to the IPCC statistics of the types of conduct of members of the police force that have led to reportable complaints, and to submit to

the IPCC a report on any action taken or to be taken by CP in respect of the IPCC's recommendation made under Clause 7(1)(a) or (c). Clause 27 stipulates that CP must comply with any requirement made by the IPCC under the Bill unless he is satisfied that the compliance with the requirement would be likely to prejudice the security of Hong Kong or the investigation of any crime.

The IPCC Secretariat

To provide a comparison between the existing IPCC Secretariat and the Secretariat of the proposed statutory IPCC in terms of the categories and number of staff, whether all such staff are seconded from the civil service and whether such staff are accountable to the proposed statutory IPCC; to provide information on the manpower resources for the proposed statutory IPCC; and to provide a comparison of the financial resources available to the existing IPCC Secretariat and the Secretariat of the proposed statutory IPCC

The existing IPCC Secretariat

3. The existing IPCC Secretariat was established upon the approval of the Finance Committee of the then Legislative Council (LegCo) in 1985. To underline the IPCC's independence, the IPCC Secretariat functions as an independent Government department. The Secretariat is headed by the IPCC Secretary, ranked at Administrative Officer Staff Grade C, who is responsible to the IPCC chairman and members for the overall administration of the Secretariat and for providing the IPCC with effective support in monitoring the handling of complaints against the Police by the Complaints Against Police Office (CAPO). It currently comprises 23 civil servants and 5 staff employed on non-civil service contract (NCSC) terms (see Annex A for the composition of the IPCC Secretariat). The financial provision for the IPCC Secretariat for the 2007-08 financial year, as set out in the Appropriation Ordinance 2007 approved by LegCo in April 2007 under Head 121, is \$13,557,000.

The Secretariat of the statutory IPCC

4. To further enhance the IPCC's independence, clause 5 of the Bill

empowers the statutory IPCC to appoint its own staff, including a Secretary, a Legal Adviser and such other employees as it requires to assist it in performing its functions, and to engage any person for his technical or professional services. Clause 18 in Schedule 1 to the Bill specifies that the resources of the IPCC consist of all money paid by the Government to the IPCC and appropriated for that purpose by LegCo. In this regard, we have reassured the IPCC of our commitment to ensuring that the statutory IPCC will continue to be provided with appropriate support and resources under the new regime.

5. The IPCC will consider its future administrative arrangements (including the manpower arrangement for its Secretariat and other requisite administrative support) when it becomes a statutory body, having regard to the powers and functions as well as the mode of operation of the IPCC as provided for in the IPCC Bill. In this connection, the IPCC will take account of the ongoing discussions in the Bills Committee, especially discussions that will impact on the future operation of the IPCC, in drawing up the proposed arrangements. This process involves detailed consideration of a wide variety of issues (e.g. whether civil servants currently staffing the existing IPCC Secretariat will return to the Administration in phases based on a migration programme to be worked out with the Administration, whether supporting services currently provided by relevant Government bureaux/departments will in future be procured from the private sector, etc). The Administration will continue to liaise with the IPCC on this subject to help ensure the provision of effective support and appropriate resources to the IPCC under the new regime. We envisage that the IPCC will be provided with no less than the current level of financial resources on becoming a statutory body. Any requests for additional resources will be subject to the established resource bidding procedures in the normal manner.

Honorarium

To provide information on the honorarium for members and observers of the existing IPCC and that of the proposed statutory IPCC

6. The Administration adopts the basic principle that the service of non-official members of Government advisory boards and committees is

voluntary and, as a general rule, un-remunerated. However, at the same time, no individual should suffer a pecuniary embarrassment through public service nor should the Government be obtaining the services of highly qualified, professional persons "on the cheap". Based on these principles, IPCC members and observers are paid honorarium to cover travel, out-of-pocket and related expenses incurred by them in connection with their duties, taking into account the frequency of meetings, interviews and observations conducted. The rates of honorarium are regularly revised with reference to the movement of the Consumer Price Index (C). The current rates of honorarium for IPCC members and observers are as follows -

	<u>Rates of honorarium</u>
IPCC Chairman	\$3,330 per month
IPCC Vice-chairman	\$2,070 per month
IPCC Member	\$1,800 per month
IPCC Lay Observer	\$180 per attendance

7. We expect to continue to pay honorarium to members and observers of the statutory IPCC based on the afore-mentioned principles.

Number of observations made by existing IPCC observers

To provide information on the number of observations made by existing IPCC observers in a year

8. According to the IPCC Secretariat, IPCC observers (including IPCC members and lay observers) made 317 observations in 2006. This is comparable to figures in previous years.

Workload of IPCC members

To provide information on the workload of IPCC member, including the time spent on the management of the IPCC Secretariat, the monthly average number of cases studied by an existing IPCC member and the time spent on studying such cases

9. The IPCC has a Management Committee, chaired by an IPCC vice-chairman and comprising the IPCC Chairman, the IPCC Secretary and 4 other IPCC members, to oversee the administration of the Secretariat. The Secretariat reports on important management and administrative matters to the Management Committee.

10. IPCC members are divided into three sub-groups to examine the complaint cases submitted by CAPO. Each sub-group comprises a vice-chairman and four to five members. The vice-chairman examines all cases, while the members study all the serious cases (e.g. cases involving allegations of assaults resulting in serious injuries and cases of wide public interest) and share other cases evenly. The IPCC Chairman examines all serious cases and any other cases submitted by the IPCC Secretary and/or any vice-chairman or member. The majority of the cases are cleared by circulation of paper. Complicated cases involving policy implications or which cannot be resolved by correspondence between the IPCC Secretariat and CAPO are discussed at the bi-monthly joint IPCC/CAPO meetings chaired by the IPCC Chairman. Based on the figures in 2006, each IPCC member on average examined 151 complaint cases, and six in-house meetings were held for all IPCC members to discuss cases of concern and related issues. The actual time spent on studying the cases depends on the complexity of the cases, and varies from member to member.

11. The IPCC members, in examining the complaint cases, are supported by a full-time Secretariat. There is also a pool of 70 observers who assist the IPCC in carrying out its duties by observing interviews and collection of evidence carried out by CAPO. We consider the existing size of the IPCC appropriate. The Chief Executive will consider appointing more members to the IPCC if such a need arises in future.

Complaints Against Police Office (CAPO)

To provide statistics on cases handled by CAPO, including reportable and non-reportable complaints, and the IPCC in the previous year; information on the manpower of CAPO; and information on the mechanism for the handling of complaints by CAPO, in particular where a complaint involves crime elements

12. In 2006, CAPO received 2 542 reportable complaints and 1 311 non-reportable complaints. In the same year, 2 283 reportable complaints (comprising complaints received in 2006 and in previous years), upon completion of their investigations, were submitted to the IPCC for endorsement. CAPO regularly submits a list of non-reportable complaints to the IPCC for reference. The list includes a brief description of the complaints and the reasons for categorizing them as non-reportable complaints. In 2006, CAPO submitted 1 287 non-reportable complaints to the IPCC for reference. In 2006, the IPCC processed 2 114 reportable complaints, among which 1 828 complaints were submitted by CAPO in the same year while 286 were submitted by CAPO in previous years.

13. CAPO currently has 133 staff (see Annex B for the composition of CAPO). This set-up is necessary for CAPO to effectively deal with and investigate complaints against the Police, compile investigation reports for submission to the IPCC, respond to questions from the IPCC Secretariat and the IPCC, prepare replies to complainants and complainees, compile and analyze statistics, handle public enquiries, formulate complaint prevention plans, and conduct briefings on the police complaint system for different police formations.

14. CAPO receives complaints against members of the police force from various channels (e.g. members of the public, referrals from different police formations, other government departments and Legislative Council Members, etc). On receipt of a complaint lodged by the personally aggrieved person, CAPO will examine if the complaint relates to the conduct of a member of the police force while on duty or in the execution or purported execution of his duties, the conduct of a member of the police force who identified himself as such a member while off duty, or any police practices or procedures. If so, CAPO will

categorize the complaint as a reportable complaint and will submit an investigation report after the completion of the investigation to the IPCC for examination. Complaints filed by an individual other than the personally aggrieved person will be categorized as non-reportable complaints. CAPO regularly submits a list of non-reportable complaints to the IPCC for reference.

15. For a complaint involving allegations of crime committed by a member of the police force, if it is lodged by the personally aggrieved person with CAPO, CAPO will categorize it as a reportable complaint if it fulfils the other conditions set out in paragraph 14 above. If it is lodged by an individual other than the personally aggrieved person (e.g. a person who is aware of the alleged crime or is a witness of the alleged crime), it will be categorized as a non-reportable complaint in the first instance. CAPO will look into the facts of the case and enquire if the personally aggrieved person wishes to lodge a complaint against the member of the police force in question. A complaint so lodged will be categorized as a reportable complaint and combined with that filed by the third party concerned. CAPO will submit an investigation report on the complaint after the completion of the investigation to the IPCC for examination. If the personally aggrieved person does not wish to lodge a complaint with CAPO, the complaint will continue to be categorized as a non-reportable complaint and will be included in a list of non-reportable complaints for submission to the IPCC for reference. Regardless of whether a complaint involving allegations of crime is categorized as a reportable complaint or a non-reportable complaint, all such allegations will be investigated by the relevant police formation. Prosecution will be proceeded with if there is sufficient evidence establishing the crime.

Protection of IPCC members

A comparison between the protection accorded to members of the proposed statutory IPCC under clause 38 of the Bill and that for members of other similar statutory bodies under existing Ordinances

16. We are committed to providing IPCC members with the necessary immunity to enable them to discharge their functions effectively, without fear or favour, and to ensure that complaints against

the Police are handled and investigated fairly and impartially. Clause 38 of the Bill serves this purpose and is proportionate to the nature of the functions of the IPCC. Under clause 38(1), any act done or omitted to be done, by an IPCC member in good faith in the performance or purported performance of a function under the Bill will not render him liable to any civil proceedings. Similar protection provision can be found in, for example, The Ombudsman Ordinance, the Electoral Affairs Commission Ordinance, the Consumer Council Ordinance and the Equal Opportunities Commission Ordinance. Clause 38(2) provides that for the purposes of the law of defamation, if an IPCC member makes any comment or publishes any matter in relation to a complaint in any communication, report or statement, in writing or otherwise, and for the performance of his functions under the Bill, that comment or publication is absolutely privileged. Similar protection provision can be found in The Ombudsman Ordinance and the Electoral Affairs Commission Ordinance. The relevant provisions are set out at Annex C.

17. Clause 38(3) stipulates that the protection given by clause 38(1) or (2) does not apply to persons engaged by the IPCC for their technical or professional services. As these persons are engaged to provide technical or professional services to the IPCC, they are not expected to make any comments or publications for the performance of any functions under the Bill. We, therefore, do not consider it necessary to protect them from civil liability. In practice, we envisage that such persons will normally be engaged under commercial contracts and should have taken out insurance policies to cover their liabilities under the contracts.

Appointment of IPCC members

The Administration to consider the suggestion of empowering LegCo to nominate IPCC members

18. Appointment 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.

Subject to this principle, the Administration will give consideration to individuals who have indicated an interest in serving the IPCC in the appointment process.

Security Bureau
November 2007

Composition of the existing IPCC Secretariat

<u>Post Title</u>	<u>Rank of Officer</u>	<u>Number of Officers</u>
Secretary	Administrative Officer Staff Grade C	1
Deputy Secretary	Chief Executive Officer	1
Senior Government Counsel	Senior Government Counsel (on secondment from the Department of Justice)	1
Senior Assistant Secretary	Senior Executive Officer	4
Assistant Secretary	Executive Officer I	6
Clerical Officer	Clerical Officer	1
Personal Secretary to Secretary of IPCC	Personal Secretary I	1
Assistant Clerical Officer	Assistant Clerical Officer	4
Clerical Assistant	Clerical Assistant	2
Office Assistant	Office Assistant	2
Senior Public Relations Officer	NCSC staff	1
Assistant Information Technology Officer	NCSC staff	1
Senior Manager (Special Duty)	NCSC staff	2
Executive Assistant (Special Duty)	NCSC staff	1
	Total:	28

Composition of CAPO

<u>Rank of Officer</u>	<u>Number of Officers</u>
Senior Superintendent	1
Superintendent	4
Chief Inspector	12
Senior Inspector	23
Station Sergeant	7
Sergeant	50
Constable	1
Executive Officer I	1
Official Languages Officer II	1
Police Translator I	2
Statistical Officer I	1
Assistant Clerical Officer	5
Clerical Assistant	15
Personal Secretary II	3
Calligraphist	1
Typist	3
Supplies Assistant II	1
Workman II	2
Total:	133

Provisions similar to Clause 38 of the IPCC Bill

- (a) Provisions similar to Clause 38(1) of the IPCC Bill:
- (i) **Section 18A of The Ombudsman Ordinance (Cap. 397)** provides that “No person acting in good faith shall be personally liable for any civil liability or claim whatever in respect of any act done or omitted to be done in the performance or purported performance of any function, or the exercise or purported exercise of any power, under this Ordinance.”
 - (ii) **Section 14(1) of the Electoral Affairs Commission Ordinance (Cap. 541)** provides that “No liability shall be incurred by – (a) the Commission in respect of anything done, or omitted to be done, by it in good faith in the performance of a function or the purported performance of a function under this or any other Ordinance; or (b) any other person in respect of anything done, or omitted to be done, by him in good faith in the performance of a function or the purported performance of a function under this Ordinance.”
 - (iii) **Section 19(1) of the Consumer Council Ordinance (Cap. 216)** provides that “No member or employee of the Council or of any committee of the Council shall be personally liable for any act done or default made- (a) by the Council; or (b) by any committee of the Council, acting in good faith in the course of the operations of the Council or of the committee.”
 - (iv) **Section 68(1) of the Sex Discrimination Ordinance (Cap. 480)** provides that “No person to whom this subsection applies, acting in good faith, shall be personally liable in damages for any act done or default made in the performance or purported performance of any function, or the exercise or purported exercise of any power, imposed or conferred on the Commission under this Ordinance.” Section 68(3) of Cap. 480 provides that “The persons to whom subsection (1) applies are – (a) any member of the Commission or a committee; (b) any employee of

the Commission; (c) any councillor.”

(b) Provisions similar to Clause 38(2) of the IPCC Bill:

- (i) **Section 18 of The Ombudsman Ordinance (Cap. 397)** provides that “For the purposes of the law of defamation, absolute privilege shall be attached to the publication of any matter by the Ombudsman or his staff to any person for the purpose of an investigation under this Ordinance, or for the purposes of section 16, 16A or 17 or section 3(4)(a) of Schedule 1A.”

- (ii) **Section 14(2) of the Electoral Affairs Commission Ordinance (Cap. 541)** provides that “Without limiting the generality of subsection (1), it is declared that for the purposes of the law of defamation, any comment made under section 5(e) or the publication of any matter relating to a complaint made under section 6(3), in any communication, report or statement, in writing or otherwise, shall be absolutely privileged.”