

《投訴警方獨立監察委員會條例草案》委員會

對在二零零八年三月二十八日(2)、
二零零八年四月十五日(2)、二零零八年四月二十四日(1)及
二零零八年五月八日法案委員會會議
所提事項的回應

目的

本文件為回應法案委員會在二零零八年三月二十八日、四月十五日、四月二十四日及五月八日會議上提出的多項事宜，提供資料。

投訴警方獨立監察委員會（警監會）的名稱

考慮按“監察投訴警方獨立委員會”或“監察警方處理投訴獨立委員會”的意思，或其他適當的擬定方式，修改條例草案所訂“投訴警方獨立監察委員會”的中文本，並考慮對英文本作出相應修改

2. 我們已就委員的建議徵詢警監會的意見。警監會認為採用“獨立監察警方處理投訴委員會”這個名稱較適宜，以反映該會監察警方處理和調查對警隊成員的投訴的職責。警監會認為，該會現有的英文名稱可予保留。

警監會秘書及法律顧問

考慮釐定秘書及法律顧問的支薪點，並相應告知法案委員會有關的安排

3. 條例草案第 5(1)條訂明，警監會必須按行政長官參照警監會意見後批准的條件，委任一名秘書及一名法律顧問。換言之，行政長官在批准警監會秘書及警監會法律顧問的聘用條款時，需考慮警監會的意見。這確保顧及警監會的意見和考慮，並可因應當時的情況，靈活釐定警監會秘書及警監會法律顧問的適當聘用條款。

4. 一九八五年，當時的立法局財務委員會通過把現有警監會秘書長一職的職級，定為首長級丙級政務官（首長級薪級第 2 點；自二零零七年四月一日起，月薪淨額為 115,450 元至 122,600 元）（當年的財務委員會文件載於附件）。警監會在二零零八年五月十六日提交法案委員會的意見書中，建議應把法定警監會秘書的職級定為首長級薪級表第 3 點。我們現正按既定機制，考慮有關提高該職位的職級的建議的理據，並在過程中諮詢警監會。

考慮把 “Secretary” 的中文本修改為 “秘書長”

5. 警監會在二零零八年五月十六日提交法案委員會的意見書中，建議法定警監會秘書應改稱為“行政總監”，並應成為法定警監會成員。

6. 正如上文第 4 段所述，現有警監會秘書長一職經當時的立法局財務委員會批准設立，負責掌管警監會秘書處，為警監會提供服務。警監會秘書長就警監會秘書處的整體行政工作，以及向警監會提供有效支援，以監察警方處理對警隊成員的投訴，向警監會主席和委員負責。具體而言，警監會秘書長會根據警監會的指示，執行以下職務——

- (a) 整體審視投訴警察課如何處理市民的投訴，以及對該等投訴展開的調查；
- (b) 就有關投訴警察，以及處理和調查該等投訴等事宜，制訂政策和建議；
- (c) 與警方和其他有關部門的高層管理人員聯絡和進行磋商；
- (d) 處理警監會秘書處的行政工作；以及
- (e) 作為警監會秘書處開支總目的管制人員。

7. 現有警監會秘書長的主要職能，是向警監會提供行政服務和支援，以及執行警監會的指示；而預期法定警監會秘書將會以警監會僱員的身分，繼續執行類似職能。因此我們認為並無任何實際需要委任該秘書出任法定警監會成員。

8. 關於警監會秘書一職的中文稱謂，法案委員會建議將之修改為“秘書長”。我們同意該建議（英文稱謂將修改為“Secretary-General”），以適當地反映該職位的職責性質。就此，我們留意到，現時在不少法定或諮詢組織下提供相若行政支援的行政首長，職稱均為“秘書長”。例如香港考試及評核局秘書長、立法會秘書處秘書長，以及公務及司法人員薪俸及服務條件諮詢委員會聯合秘書處秘書長。

警監會的成員組合

考慮容許非政府機構提名人選，以供行政長官委任為警監會成員；考慮在條例草案訂明部分警監會成員須來自某些特定界別，並規定獲委任為警監會成員的立法會議員，須由立法會議員互選產生；考慮在條例草案訂明，須委任若干數目的具有管理經驗或專業知識的人士為警監會成員

9. 正如我們在立法會 CB(2)810/07-08(01)號文件解釋，警監會成員是以個人身分獲委任。在作出委任時，我們會按照用人唯才的原則，並考慮到警監會的職能和工作性質，以及個別人士的操守、能力、經驗、專長及對公共服務的承擔。我們在委任法定警監會的成員時，會繼續秉持這原則。為使警監會能有效履行職能，我們在委任警監會成員時，亦會考慮有關人士的背景，以確保警監會的成員組合均稱，以及避免出現任何實際出現或被視為存有的利益衝突。在委任過程中，我們會審慎考慮所有適合的人選，包括自薦及向當局建議的人選。基於以上所述，我們認為毋需在條例草案訂明警監會成員應來自某些指定界別。

**考慮把警監會主席每屆任期延長至一段較長期間的建議，
例如三年**

10. 現行條例草案附表 1 第 1 條訂明，主席、副主席及法定警監會成員的委任任期不得超過兩年，並有資格再獲委任一段或多於一段任期，但再獲委任的每一段任期均不得超過兩年。考慮到委員的意見，我們建議修訂這項條文，訂明主席獲委任或再獲委任的任期，不得超過三年。

警監會的財政撥款

**考慮把批撥予法定警監會的周年財政撥款歸入行政署長的
營運開支封套**

11. 我們與警監會討論法定警監會的行政安排時，建議保留現有的警監會開支總目（總目 121），開列批撥予法定警監會的財政撥款，以表明其運作獨立。

12. 我們向警監會解釋，按照政府營運開支封套的撥款安排，各開支總目的營運開支是透過所屬政策局局長（封套持有人）的營運開支封套分配。由於保安局是政府當局與法定警監會之間的主要聯絡點，因此，在營運開支封套制度下，批撥予法定警監會的財政撥款，透過保安局局長的封套作出分配。這純粹是一項會計安排。保安局局長不會更改或調整中央批撥予法定警監會的財政撥款。

13. 適用於申訴專員公署的會計安排基本上與上文所述者相同。由於政務司司長辦公室轄下的行政署（行政署）是政府當局與申訴專員之間的主要聯絡點，因此，批撥予申訴專員的財政撥款透過行政署長的營運開支封套作出分配。

14. 關於把批撥予法定警監會的財政撥款，歸入行政署長的營運開支封套的建議，我們曾諮詢行政署。行政署表示，上文第 12 段所述安排恰當，應予保留。

享有法律專業保密權的資料

重新考慮警監會的建議，在條例草案加入明訂條文，讓警監會全面和不受限制地取覽有關調查投訴的資料，特別是和投訴的分類有關，分別就事實及關於事實的結論提出的法律意見

15. 警監會在二零零八年五月十六日提交法案委員會的意見書中，提出第 20(2)條新條文，內容如下 —

“儘管有任何享有法律專業保密權的聲稱，處長須為了履行本條例第 7(1)(a)至(c)條所載警監會職能的目的，向警監會提供處長與其專業顧問之間的所有來往文件，但以有關文件關乎任何須具報投訴的處理或調查為限。”

擬議新增條文會全面廢止警務處處長（處長）享有法律專業保密權的權利。

16. 正如我們在立法會 CB(2)829/07-08(1)號文件和 CB(2)1689/07-08(01)號文件所述，根據普通法享有法律專業保密權的資料予以保障（即保障個人享有私下徵詢律師意見的權利）這一點，應予維護。我們過往多番強調，法律專業保密權是香港法律制度的基石，《基本法》亦已訂明及保障法律專業保密權。現時擬訂的條例草案容許警務處處長可按個別情況，考慮放棄其法律專業保密權的權利。警監會會獲提供與須匯報投訴相關的充足資料，讓其履行監察警方處理投訴的職能。基於上文所述，我們不接納警監會就第 20(2)條建議的新條文。

第 7 條 — 警監會的職能

檢討條例草案第 7(1)(a)條中“方式”一詞

17. “方式”一詞的字典涵義，基本上是指某事完成或進行的方式，或者是行動模式或程序。因此，在第 7(1)(a)條納入“方式”一詞，可詳細說明警監會監察警方處理和調查須匯報投訴的範圍。簡言之，該條文訂明，警監會獲

賦權監察警方在處理或調查須匯報投訴時是如何完成或進行的。這反映警監會現有的監察職能。考慮到委員的意見（這些意見實質上與第 7(1)(a)條的涵蓋範圍一致），我們建議從第 7(1)(a)條刪除“方式”一詞，並適當地修訂該條文的前半部分。條文的涵蓋範圍保持不變，即警監會的職能為觀察、監察和覆檢警方處理和調查須匯報投訴。

第 13 條 — 歸類為“須知會投訴”的投訴

考慮把條例草案第 13 條和第 2(1)條中“須知會投訴”的定義合併

18. 第 13 條是處理須知會投訴的歸類的實質條文，該條文強制性指示警務處處長在指定情況下（即投訴沒有基於第 9 條而被豁出，並且沒有根據第 10 條被歸類為“須匯報投訴”），須把投訴歸類為“須知會投訴”。這條文應保留為獨立條文，以清楚訂明“須知會投訴”所涵蓋的範圍。第 2 條在本質上是釋義條文。在第 2 條中，“須知會投訴”（取代現有的“無須具報投訴”）的定義屬描述性質，以表示“須知會投訴”是根據第 13 條作出該歸類投訴。

就現有警監會的訴訟

考慮在條例草案增訂條文，明確訂明第 38 條並不影響在警監會成立為法團之前，警監會及其他各方在關乎警監會與其他各方之間的訴訟中分別享有的權利

19. 條例草案第 40(1)條訂明，“本條例的制定，不影響在生效日期前由前警監會作出，或就它或代它作出的任何事情的有效性”。憑藉這條文，任何針對現有警監會的訴訟的法律效力，不會因警監會成為法定機構而受影響。第 40(2)條進一步訂明，“在生效日期前依據前警監會的職能或在與該職能有關連的情況下，由前警監會作出或就它或代它作出的任何事情，自該日期起，須在猶如該事情是由警監會作出或就它或代它作出一樣的情況下，具有效力”。因此，任何對現有警監會的訴訟如尚未結束，可針

對法定警監會繼續進行。經考慮議員的意見後，我們建議在第 40 條增訂條文，明確處理在條例草案生效前由現有警監會提出或對現有警監會的任何法律申索，表明這些申索的有效性不會受影響。

保安局
二零零八年六月

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
	<hr/>	<hr/>
Additional cost	3,036,360	21
	<hr/>	<hr/>

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

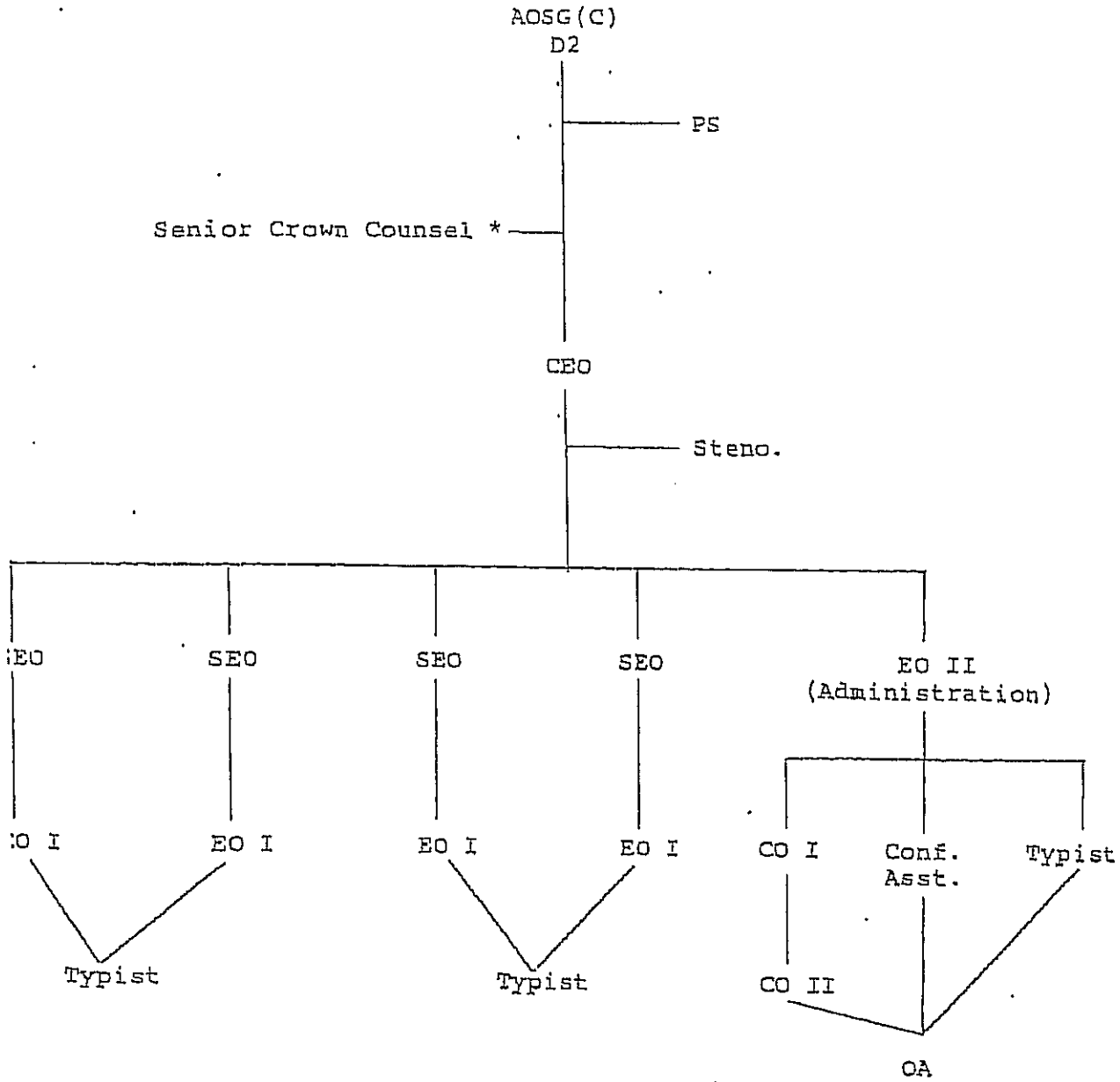
Job Description of the
Administrative Officer Staff Grade C (D2)

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.