

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

**Response to issues raised at the Bills Committee meetings
held on 29 January 2008 (1), 6 March 2008 (2) and 28 March 2008 (1)**

Purpose

This note provides information in response to a number of issues raised by the Bills Committee at its meetings held on 29 January, 6 March and 28 March 2008.

Delegation of the Independent Police Complaints Council (IPCC)'s powers

To provide a comparison between the IPCC Bill and the Personal Data (Privacy) Ordinance (Cap. 486) in respect of the power to delegate some of the functions of the IPCC or the Privacy Commissioner for Personal Data to technical and professional persons engaged by it or him; to reconsider adding a provision similar to that in Cap. 486 to provide for the IPCC to delegate some of its functions to a technical or professional person whose service is engaged by IPCC under clause 5(3)

2. Section 9(1) of the Personal Data (Privacy) Ordinance (Cap. 486) provides that the Privacy Commissioner for Personal Data (PCPD) “may engage, other than by way of employment, such technical and professional persons”. Section 10 of Cap. 486 stipulates that unless otherwise specified, PCPD “may delegate in writing any of his functions or powers under this Ordinance to any prescribed officer subject to such terms and conditions, if any, as he thinks fit and specified in the delegation”. Section 2 of Cap. 486 defines “prescribed officer” as including a technical or professional person engaged by PCPD under section 9(1). Notwithstanding the above-mentioned statutory provisions, PCPD has not hitherto delegated any of his functions to the technical or professional persons he engages. (A list of prescribed officers to whom PCPD has delegated his powers and functions under Cap. 486 is set out in the gazette notice at [Annex A.](#))

3. For the IPCC Bill, clause 5(2) provides that the IPCC “may appoint, on terms determined by the Council, such other employees as the Council requires to assist it in performing its functions”, while clause 5(3) provides that the IPCC “may engage any person for his technical or professional services in such manner and on such terms as it thinks fit”. Clause 25(1) in Schedule 1 stipulates that the IPCC “may delegate in writing any of its functions under this Ordinance to a committee, a member of the Council, the Secretary, the Legal Adviser or any other employees of the Council”. The bill does not provide for delegation of the IPCC’s functions to any person engaged by the Council for his technical or professional services under clause 5(3).

4. The arrangement proposed for the statutory IPCC is similar to that for some other statutory bodies which handle complaints made by members of the public such as The Ombudsman, the Equal Opportunities Commission and the Consumer Council. While these three statutory bodies may engage the services of technical or professional persons to assist them in performing their statutory functions or to advise them on matters relating to the performance of their statutory functions, their governing Ordinances do not empower them to delegate their functions to the technical or professional persons they engage.

5. We appreciate that the IPCC may need to engage persons other than its employees to provide technical or professional services, but do not envisage that this would require the IPCC to delegate any of its functions to such persons. For example, the IPCC may need to engage a public relations firm to help promote public awareness of the IPCC’s role¹. While the public relations firm may draw up publicity programmes for the IPCC’s consideration and implement the programmes upon the IPCC’s endorsement, the function of promoting public awareness of the role of the IPCC still rests with the IPCC. As such, we do not consider it necessary or indeed appropriate to provide that the statutory IPCC may delegate its functions to external technical and professional persons who are not employees of the statutory IPCC.

¹ One of the IPCC’s functions under clause 7(1)(e) is “to promote public awareness of the role of the Council”.

Communication between the Police and the community

To reconsider establishing a platform for communication between the Police and vulnerable groups on a regular basis

6. The Police Force attaches importance to engaging the community in carrying out its duties to maintain Hong Kong as a safe city, and has made considerable efforts to seek contributions from the public and various stakeholders in enhancing mutual communication and understanding. Engaging the community is one of the Force's strategic directions, with a number of high-level projects underway to examine how to build on the many community-oriented policing initiatives that are in operation. At the level of individual police divisions and districts, numerous forums have been established for communication with various groups with different interests and concerns. The Police meet with groups representing non-ethnic Chinese, youth associations, professional bodies, mutual aid committees, incorporated owners and trade bodies, etc from time to time. Such engagement can be ad hoc or structured. The frequency depends on the specific issues to be discussed. The above-mentioned arrangements have been operating effectively with positive feedback, and cater for the needs of different stakeholders. They should continue and the Police will engage individual groups with different concerns as and when the need arises.

Long title

To consider deleting “to provide for the appointment of observers in relation to reportable complaints” and adding “reviewing” after “monitoring” in the long title of the Bill

7. The long title gives a general indication of the contents of the bill. As the provisions on the Observers Scheme constitute a substantial part of the IPCC Bill (i.e. clauses 31 to 35 and Schedule 2), it is appropriate to make reference to this aspect in the long title. We therefore suggest retaining “to provide for the appointment of observers in relation to reportable complaints” in the long title.

8. The long title is not meant to repeat the various aspects of the functions of the IPCC as stipulated in the Bill. Clause 7(1) of the Bill provides, inter alia, that the functions of the IPCC are “to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner [of Police] ...” and “to review anything submitted to it by the Commissioner pursuant to this Ordinance”. Such review functions of the IPCC are part and parcel of its general function of “observing and monitoring the handling and investigation of reportable complaints” as mentioned in the long title. In other words, the existing long title has aptly and sufficiently covered the IPCC’s review power as well as its other powers specified in various clauses of the Bill which enable it to carry out its general function of observing and monitoring the handling and investigation of reportable complaints.

Membership of the IPCC

To consider deleting the provision for appointing persons to act as appointed members under clause 4 of Schedule 1 to the Bill and amending the definition of “appointed member” in clause 2(1)

9. We understand that the governing Ordinances of many existing statutory bodies contain provisions on the appointment of acting or temporary members. Examples are -

- (a) the Consumer Council (see section 6(4) of the Consumer Council Ordinance (Cap. 216));
- (b) the Hong Kong Arts Development Council (see section 3 of the Schedule to the Hong Kong Arts Development Council Ordinance (Cap. 472));
- (c) the Airport Authority (see section 12(1) of the Airport Authority Ordinance (Cap. 483));
- (d) the Legal Aid Services Council (see section 5(6) of the Legal Aid Services Council Ordinance (Cap. 489));

- (e) the Financial Reporting Council (see section 3(2) of Schedule 2 to the Financial Reporting Council Ordinance (Cap. 588));
- (f) the Hong Kong Trade Development Council (see section 11(2)(c) of the Hong Kong Trade Development Council Ordinance (Cap. 1114));
- (g) the Hong Kong Productivity Council (see section 9(6) of the Hong Kong Productivity Council Ordinance (Cap. 1116));
and
- (h) the Hong Kong Council for Accreditation of Academic and Vocational Qualifications (see section 3 of Schedule 2 to the Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 1150)).

Extracts of the above-mentioned provisions are at Annex B.

10. To cater for the possible needs to appoint an acting IPCC member as set out in clause 4 of Schedule 1 to the Bill (i.e. an IPCC member may be precluded by illness, absence from Hong Kong or any other cause from performing his functions, or the office of an IPCC member is vacant pending a new appointment or reappointment), we suggest retaining the clause in question and keeping the definition of “appointed member” in clause 2(1) as currently worded.

Complaints made by mentally incapacitated persons

To explain how the Police determine whether a person is “mentally incapacitated”, including whether there is any requirement for documentary proof

11. Clause 2(1) of the Bill defines “mentally incapacitated person” as “a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136)”. As defined in section 2 of Cap. 136, a “mentally disordered person” means “a person suffering from mental disorder” and a “mentally handicapped person”

means “a person who is or appears to be mentally handicapped”. “Mental disorder” is also defined in section 2 of Cap. 136 to mean (a) mental illness; (b) a state of arrested or incomplete development of mind which amounts to a significant impairment of intelligence and social functioning which is associated with abnormally aggressive or seriously irresponsible conduct on the part of the person concerned; (c) psychopathic disorder; or (d) any other disorder or disability of mind which does not amount to mental handicap. “Mental handicap” as defined in section 2 of Cap. 136 means “sub-average general intellectual functioning with deficiencies in adaptive behaviour, and ‘mentally handicapped’ should be construed accordingly”. Cap. 136 does not stipulate any requirement for documentary proof in defining the above-mentioned terms.

12. Clause 14 of the Bill provides that if a complainant is a mentally incapacitated person, his relative or guardian (as defined in section 2(1) of Cap. 136) may make the complaint on behalf of the complainant. The Police will judge whether a complainant is a mentally incapacitated person in accordance with the definitions set out in paragraph 11 above. It is for the complainant’s representative to substantiate that he is a relative or guardian of the complainant so that his complaint made on behalf of the complainant will be treated as a reportable complaint in accordance with clause 14.

Functions of the IPCC

To explain whether the respective references to “function” in the Bill refer to the power or duty of the IPCC and consider substituting the term “function” with “power” or “duty” as appropriate

13. Clause 2(1) of the Bill defines “function” as including a power and a duty to put it beyond doubt that where the context so requires, the term “function” also embraces the meaning of a power and a duty. Statutory functions generally embrace the relevant powers and duties pertaining to the functions. This definition is an established drafting shorthand that has been used in the legislation in Hong Kong and other jurisdictions. Examples of local and overseas legislation adopting this definition are at Annex C.

14. References to “function” in the Bill are marked up at Annex D. Broadly speaking, the references refer to the statutory functions of the IPCC in general or the functions of the observers. In the context of the provisions concerned, the term “function” as so defined is appropriately used to indicate in general terms that the IPCC or the observers also have the relevant powers and duties pertaining to the specified functions. The term “function” should therefore be retained.

15. Where a specific power or duty of the IPCC or the IPCC observers is referred to, this is so specified in the Bill. For example, clause 29 and 30 provide for the IPCC’s powers to change fees, hold property, enter into contracts and borrow money, etc.

Security Bureau
April 2008

G.N. 4155

PERSONAL DATA (PRIVACY) ORDINANCE (Chapter 486)

Pursuant to section 10(1) of the Personal Data (Privacy) Ordinance, Chapter 486 ('the Ordinance'), I have delegated the following functions and powers conferred on me by Part VII of the Ordinance to the officers specified below in the Office of the Privacy Commissioner for Personal Data.

<i>Powers</i>	<i>Section in the Ordinance</i>	<i>Officers to be delegated with powers</i>
Exercising discretion to inspect any personal data system	s. 36(a) and s. 36(b)	Deputy Privacy Commissioner
Carrying out an inspection of any personal data system pursuant to the decision to inspect	s. 36(a) and s. 36(b)	Senior Personal Data Officer and above
Carrying out an investigation of an act or practice giving rise to a complaint	s. 38(i)	Personal Data Officer and above
Exercising discretion to carry out an investigation of an act or practice when no complaint has been received	s. 38(ii)	Deputy Privacy Commissioner
Carrying out an investigation of an act or practice when no complaint has been received pursuant to the decision to investigate	s. 38(ii)	Personal Data Officer and above
Exercising discretion not to carry out or continue with an investigation and informing complainant of such decision	s. 39(1), s. 39(2) and s. 39(3)	Deputy Privacy Commissioner
Exercising discretion to carry out or continue with an investigation initiated by a complaint notwithstanding that it has been withdrawn by the complainant	s. 40	Deputy Privacy Commissioner
Informing relevant data user of carrying out an inspection or investigation	s. 41(1)	Deputy Privacy Commissioner
Exercising power of entry on premises for the purposes of an inspection or investigation and informing the relevant data user of the same	s. 42(1), s. 42(2), s. 42(3) and s. 42(5)	Deputy Privacy Commissioner
Entry on premises to carry out an inspection or investigation pursuant to the decision to enter premises and to produce the warrant, if any	s. 42(1), s. 42(2) and s. 42(10)	Senior Personal Data Officer and above
To be furnished with information, documents or things and make inquiries for the purposes of an investigation	s. 43(1)(a)	Personal Data Officer and above
Determining whether a hearing shall be conducted for the purposes of an investigation and if so whether it should be carried out in private; and conducting of a hearing for the purposes of an investigation and other ancillary matters affecting conduct of proceedings	s. 43(1)(b), s. 43(2), s. 43(3), s. 43(4) and s. 43(5)	Deputy Privacy Commissioner
Exercising discretion to summon any person who is able to give any information for the purposes of an investigation	s. 44(1)	Deputy Privacy Commissioner
Examining a person summoned by the Commissioner for the purposes of an investigation and requiring such a person to furnish information and produce any document or things which may be in his possession or control	s. 44(1)	Senior Personal Data Officer and above

<i>Powers</i>	<i>Section in the Ordinance</i>	<i>Officers to be delegated with powers</i>
Administering an oath for the purposes of an examination under section 44(1)	s. 44(7)	Deputy Privacy Commissioner/Chief Legal Counsel
Informing a relevant data user of the result and other matters, as provided for, of an inspection or investigation	s. 47(1) and s. 47(2)	Deputy Privacy Commissioner
Informing a complainant of the result and other related matters, as provided for, of an investigation initiated by the relevant complainant	s. 47(3)	Deputy Privacy Commissioner
Exercising discretion in deciding all matters in relation to enforcement notice and service of the notice	s. 50	Deputy Privacy Commissioner

The above delegations will take effect from 2 July 2004, whereupon all previous delegations published in the *Gazette* shall be revoked.

2 July 2004

Raymond TANG *Privacy Commissioner for Personal Data*

Examples of statutory bodies of which the governing Ordinances provide for appointment of acting or temporary members

(A) Consumer Council

Section 6 of the Consumer Council Ordinance (Cap. 216) provides that –

“(1) The Council shall consist of the following members-

- (a) a Chairman who shall be appointed by the Chief Executive for a term not exceeding 2 years;
- (b) a Vice-Chairman who shall be appointed by the Chief Executive for a term not exceeding 2 years; and
- (c) not more than 20 other persons each of whom shall be appointed by the Chief Executive for a term not exceeding 2 years.

(4) Where the Chairman, Vice-Chairman or any other member appointed under subsection (1)(c) is precluded by temporary incapacity or other cause from exercising his functions as such for any period the Chief Executive may appoint another person to act in place of the Chairman, Vice-Chairman or other member during such period with all such rights, powers, duties or liabilities as if he had been appointed under subsection (1).”

(B) Hong Kong Arts Development Council

Section 3 of Schedule to the Hong Kong Arts Development Council Ordinance (Cap. 472) provides that -

“If for any period-

- (a) the Chairman, due to absence from Hong Kong or for any other reason, is unable to act as Chairman; or
- (b) the Vice-chairman or a member is precluded by temporary incapacity or any other reason from performing his functions as Vice-chairman or a member, as the case may be,

the Chief Executive may appoint another person to act in the place of the

Chairman, the Vice-chairman or a member, as the case may be, for that period.”

(C) Airport Authority

Section 12(1) of the Airport Authority Ordinance (Cap. 483) provides that -

“Where the Chief Executive is satisfied that the Chairman or any other member of the Authority is unable, because of temporary incapacity or some other cause, to act as a member of the Authority, the Chief Executive may appoint another person so to act, during a period specified in the appointment, in place of the member whose inability caused the appointment to be made.”

(D) Legal Aid Services Council

Section 5(6) of the Legal Aid Services Council Ordinance (Cap. 489) provides that -

“If an appointed member is absent from Hong Kong or is unable to act, the Chief Executive may appoint another person to act as a temporary member.”

(E) Financial Reporting Council

Section 3(2) of Schedule 2 to the Financial Reporting Council Ordinance (Cap. 588) provides that -

“If, because of absence from Hong Kong or any other reason, an appointed member of the Council, other than the Chairman, is unable to perform the functions of his office as member, the Chief Executive may, subject to subsection (3), appoint another person to be a temporary member in his place during his absence or incapacity.”

(F) Hong Kong Trade Development Council

Section 11 of the Hong Kong Trade Development Council Ordinance (Cap. 1114) provides that -

“(1) The Council shall consist of the following members-

...

(d) 6 members appointed by name by the Chief Executive.

(2) Where, for any period, any of the members of the Council specified ... under paragraph (c) or (d) of that subsection is, by reason of absence from Hong Kong or illness, unable to exercise the powers or perform the duties of his office as a member of the Council, then-

...

(c) in the case of a member appointed ... under paragraph (d) of that subsection, the Chief Executive may appoint another person to be a temporary member of the Council in place of that member during such period.”

(G) Hong Kong Productivity Council

Section 9(6) of the Hong Kong Productivity Council Ordinance (Cap. 1116) provides that -

“If any member other than the Chairman is absent from Hong Kong, or is for any other reason unable to exercise the powers or perform the duties of his office as a member of the Council, the Chief Executive may appoint another person to be a temporary member of the Council during the absence or incapacity of that member.”

(H) Hong Kong Council for Accreditation of Academic and Vocational Qualifications

Section 3 of Schedule 2 to the Hong Kong Council for Accreditation of Academic and Vocational Qualifications Ordinance (Cap. 1150) provides that -

“If-

- (a) the Chairman, due to absence from Hong Kong or for any other reason, is unable to act as Chairman for any period; or
- (b) a member, due to absence from Hong Kong or for any other reason, is unable to act as a member for any period,

the Chief Executive may appoint another person to act in the place of the Chairman or such member as the case may be for that period.”

**Examples of local and overseas legislation defining “function”
to include a power and a duty**

Hong Kong

<u>Provision</u>	<u>Title of statute</u>	<u>Year of enactment</u>
s. 54A	Interpretation and General Clauses Ordinance (Cap. 1)	1975
s. 2	Banking Ordinance (Cap. 155)	1986
s. 53A	Insurance Companies Ordinance (Cap. 41)	1988
s. 2	Factories and Industrial Undertakings Ordinance (Cap. 59)	1997
s. 5A	Exchange Fund Ordinance (Cap. 66)	1992
s. 43	Buildings Ordinance (Cap. 123)	1994
s. 2	Deposit Protection Scheme Ordinance (Cap. 581)	2004
s. 2	Financial Reporting Council Ordinance (Cap. 588)	2006
s. 2	Tsing Sha Control Area Ordinance (Cap. 594)	2007

Other jurisdictions

<u>Provision</u>	<u>Title of statute</u>	<u>Year of enactment</u>
s. 8	Ministers of the Crown (Transfer of Functions) Act 1946 (England)	1946
s. 98	Control of Pollution Act 1974 (England)	1974
s. 2	Electricity and Gas Inspection Act 1985 (Canada)	1985
s. 579	Education Act 1994 (England)	1994
s. 58	Goods Vehicle (Licensing of Operators) Act 1995 (England)	1995
s. 2	Air Navigation and Transport (Amendment) Act 1998 (Ireland)	1998
Part 2 of the Sch.	Interpretation Act 2005 (Ireland)	2005

就“職能”的提述

C790

《投訴警方獨立監察委員會條例草案》

本條例草案

旨在

使現存的投訴警方獨立監察委員會成立為法團；為該委員會在觀察和監察警務處處長處理和調查須具報投訴方面的職能訂定條文；為該委員會的關乎其事務和運作的權力訂定條文；為就須具報投訴委任觀察員一事訂定條文；以及為相關事宜訂定條文。

由立法會制定。

第 1 部

導言

1. 簡稱

本條例可引稱為《投訴警方獨立監察委員會條例》。

2. 釋義

(1) 在本條例中，除文意另有所指外——
“分類”(classification)指經調查後由處長將須具報投訴作以下分類——

References to “Function”

INDEPENDENT POLICE COMPLAINTS COUNCIL BILL

C791

A BILL

To

Incorporate the existing Independent Police Complaints Council; to provide for the Council's functions of observing and monitoring the handling and investigation of reportable complaints by the Commissioner of Police; to provide for the Council's powers relating to its affairs and operation; to provide for the appointment of observers in relation to reportable complaints; and to provide for connected matters.

Enacted by the Legislative Council,

PART I

PRELIMINARY

1. Short title

This Ordinance may be cited as the Independent Police Complaints Council Ordinance.

2. Interpretation

(1) In this Ordinance, unless the context otherwise requires—
“appointed member” (委任成員) means a member of the Council referred to in section 4(1)(c), and includes a person appointed under section 4 of Schedule 1 to act as an appointed member;

Annex D
附件 D

- (a) 簡便方式解決；
- (b) 獲證明屬實；
- (c) 無法證實；
- (d) 投訴撤回；或
- (e) 經警監會及處長同意的其他類別；

“主席”(Chairman)指第4(1)(a)條提述的警監會主席，並包括根據附表1第4條獲委任而署任主席的人；

“投訴人”(complainant)指作出某投訴或覆核要求的人，如某人代另一人作出投訴或覆核要求，則指由該人代為作出該投訴或覆核要求的該另一人；

“委任成員”(appointed member)指第4(1)(c)條提述的警監會成員，並包括根據附表1第4條獲委任而署任委任成員的人；

“委員會”(committee)包括警監會根據附表1第13條設立的任何專責委員會或小組；

“法律顧問”(Legal Adviser)指根據第5(1)條獲委任的警監會法律顧問；

“秘書”(Secretary)指根據第5(1)條獲委任的警監會秘書；

“副主席”(Vice-Chairman)指第4(1)(b)條提述的警監會副主席，並包括根據附表1第4條獲委任而署任副主席的人；

“處長”(Commissioner)指警務處處長；

“須具報投訴”(reportable complaint)指按照第3部第1分部必須歸類為須具報投訴的投訴；

“無須具報投訴”(non-reportable complaint)指按照第3部第1分部必須歸類為無須具報投訴的投訴；

“精神上無行為能力的人”(mentally incapacitated person)指《精神健康條例》(第136章)所指的患有精神紊亂或屬弱智的人；

“職能”(function)包括權力及責任；

“覆核要求”(request for review)指第12條提述的要求覆核某須具報投訴的分類的覆核要求；

“歸類”(categorization)指由處長將某投訴歸類為——

- (a) 須具報投訴；或
- (b) 無須具報投訴；

“警方行為”(police conduct)指第10(a)條提述的行為、常規或程序；

“categorization”(歸類) means the categorization by the Commissioner of a complaint as—

- (a) a reportable complaint; or
- (b) a non-reportable complaint;

“Chairman”(主席) means the Chairman of the Council referred to in section 4(1)(a), and includes a person appointed under section 4 of Schedule 1 to act as the Chairman;

“classification”(分類) means the classification after investigation by the Commissioner of a reportable complaint as one that is—

- (a) for informal resolution;
- (b) substantiated;
- (c) unsubstantiated;
- (d) withdrawn; or
- (e) of such other description as agreed between the Council and the Commissioner;

“Commissioner”(處長) means the Commissioner of Police;

“committee”(委員會) includes any panel or sub-group established by the Council under section 13 of Schedule 1;

“complainant”(投訴人) means a person who makes a complaint or a request for review or, where the complaint or request for review is made on behalf of another person, the person on whose behalf the complaint or request for review is made;

“Council”(警監會) means the body corporate incorporated by section 3 and known by the names referred to in section 3(1)(b);

“function”(職能) includes a power and a duty;

“Legal Adviser”(法律顧問) means the Legal Adviser to the Council appointed under section 5(1);

“member of the police force”(警隊成員) includes a public officer attached to the police force;

“mentally incapacitated person”(精神上無行為能力的人) means a person who is mentally disordered or mentally handicapped within the meaning of the Mental Health Ordinance (Cap. 136);

“non-reportable complaint”(無須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a non-reportable complaint;

“observer”(觀察員) means a person appointed to be an observer under section 31;

“police conduct”(警方行為) means the conduct, practice or procedure referred to in section 10(a);

“police force”(警隊) means the Hong Kong Police Force or the Hong Kong Auxiliary Police Force established under the Hong Kong Auxiliary Police Force Ordinance (Cap. 233);

“警隊” (police force) 指香港警務處或根據《香港輔助警隊條例》(第 233 章) 設立的香港輔助警察隊；

“警隊成員” (member of the police force) 包括派駐警隊工作的公職人員；

“警監會” (Council) 指由第 3 條成立為法團並以第 3(1)(b) 條提述的名稱為名的法人團體；

“觀察員” (observer) 指根據第 31 條獲委任為觀察員的人。

(2) 在本條例中，凡提述執行職能之處，均包括行使權力及履行責任。

第 2 部

投訴警方獨立監察委員會成立為法團

3. 警監會成立為法團

- (1) 在緊接本條例生效前存在的投訴警方獨立監察委員會——
 - (a) 現成立為法人團體；並
 - (b) 繼續以“投訴警方獨立監察委員會”為其中文名稱及以“Independent Police Complaints Council”為其英文名稱。
- (2) 警監會屬永久延續，並可以其中文名稱或英文名稱起訴和被起訴。
- (3) 警監會不是政府的僱員或代理人，亦不享有政府的地位、豁免權或特權。

4. 警監會的成員

- (1) 警監會由以下成員組成——
 - (a) 由行政長官委任的主席一名；
 - (b) 由行政長官委任的副主席 3 名；及
 - (c) 由行政長官委任的其他成員 8 名或以上。
- (2) 現屬政府公務員或曾屬警隊成員的人，不具備根據第 (1) 款獲委任的資格。

“reportable complaint” (須具報投訴) means a complaint that must be categorized, in accordance with Division 1 of Part 3, as a reportable complaint;

“request for review” (覆核要求) means a request for reviewing the classification of a reportable complaint referred to in section 12;

“Secretary” (秘書) means the Secretary to the Council appointed under section 5(1);

“Vice-Chairman” (副主席) means a Vice-Chairman of the Council referred to in section 4(1)(b), and includes a person appointed under section 4 of Schedule 1 to act as a Vice-Chairman.

(2) In this Ordinance, a reference to the performance of a function includes the exercise of a power and the discharge of a duty.

PART 2

INCORPORATION OF INDEPENDENT POLICE COMPLAINTS COUNCIL

3. Incorporation of Council

(1) The Independent Police Complaints Council existing immediately before the commencement of this Ordinance—

(a) is hereby incorporated as a body corporate; and

(b) continues to be known in the English language as “Independent Police Complaints Council” and in the Chinese language as “投訴警方獨立監察委員會”。

(2) The Council has perpetual succession and may sue and be sued in its English or Chinese name.

(3) The Council is neither a servant nor an agent of the Government and does not enjoy any status, immunity or privilege of the Government.

4. Membership of Council

(1) The Council consists of the following members—

(a) a Chairman appointed by the Chief Executive;

(b) 3 Vice-Chairmen appointed by the Chief Executive; and

(c) not less than 8 other members appointed by the Chief Executive.

(2) A person who is a civil servant of the Government, or who was a member of the police force, is not eligible for appointment under subsection (1).

5. 秘書、法律顧問及其他僱員的委任

- (1) 警監會必須按行政長官在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。
- (2) 警監會可按它決定的條件，委任為協助它執行其職能所需的其他僱員。
- (3) 警監會可按它認為合適的方式及條件，聘用任何人提供技術或專業服務。

6. 附表 1 適用於警監會

附表 1 就以下事宜具有效力：警監會成員、警監會的處事程序、委員會、財務事宜及警監會簽立文件，以及警監會其他雜項事宜。

第 3 部

警監會的職能

7. 警監會的職能

- (1) 警監會的職能是——
 - (a) 觀察、監察和覆檢處長處理或調查須具報投訴的方式，並（如警監會認為適當）就須具報投訴的處理或調查，向處長或行政長官或兼向上述兩者作出建議；
 - (b) 監察處長已經或將會在與須具報投訴有關連的情況下對任何警隊成員採取的行動，並（如警監會認為適當）向處長或行政長官提供或兼向上述兩者提供它對該行動的意見；
 - (c) 在警隊採納的常規或程序中，找出已經或可能會引致須具報投訴的缺失或不足之處，並（如警監會認為適當）就該等常規或程序，向處長或行政長官或兼向上述兩者作出建議；
 - (d) 覆檢處長依據本條例向它呈交的任何事項；
 - (e) 加強公眾對警監會的角色之認識；及

5. Appointment of Secretary, Legal Adviser and other employees

- (1) The Council must appoint a Secretary and a Legal Adviser on terms approved by the Chief Executive on the advice of the Council.
- (2) The Council may appoint, on terms determined by the Council, such other employees as the Council requires to assist it in performing its functions.
- (3) The Council may engage any person for his technical or professional services in such manner and on such terms as it thinks fit.

6. Schedule I applicable to Council

Schedule 1 has effect with respect to the members, proceedings, committees and finances of, and the execution of documents by, and other miscellaneous matters of, the Council.

PART 3

FUNCTIONS OF COUNCIL

7. Functions of Council

- (1) The functions of the Council are—
 - (a) to observe, monitor and review the manner in which reportable complaints are handled or investigated by the Commissioner, and to make recommendations (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of the handling or investigation of reportable complaints;
 - (b) to monitor actions taken or to be taken in respect of any member of the police force by the Commissioner in connection with reportable complaints, and to advise (as the Council considers appropriate) the Commissioner or the Chief Executive or both of them of its opinion on such actions;
 - (c) 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 (as the Council considers appropriate) to the Commissioner or the Chief Executive or both of them in respect of such practice or procedure;
 - (d) to review anything submitted to it by the Commissioner pursuant to this Ordinance;
 - (e) to promote public awareness of the role of the Council; and

- (1) (在不限制上文的一般性的原則下) 由或根據本條例或其他條例授予它的任何職能。
- (2) 警監會可作出為執行它在本條例下的職能而合理地需要作出，或附帶於或有助於執行該等職能的所有事情。

第 1 分部——關於處長將投訴歸類的職能

8. 處長須呈交投訴列表

- (1) 處長必須按他與警監會議定的相隔期間及方式，向警監會呈交——
- 一份須具報投訴列表；及
 - 一份無須具報投訴列表。
- (2) 根據第 (1)(a) 款呈交的列表，必須包括處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有須具報投訴的扼要描述。
- (3) 根據第 (1)(b) 款呈交的列表，必須包括——
- 處長在上一份如此呈交的列表所涵蓋的期間完結之後接獲的所有無須具報投訴的扼要描述；
 - 將該等投訴歸類為無須具報投訴的理由；及
 - 就儘管藉第 11(a) 條而屬無須具報投訴的投訴而言，處長認為該投訴並不屬性質嚴重的理由。

9. 不予歸類的投訴

在編製第 8(1)(a) 或 (b) 條所指的列表時，處長不得考慮以下投訴——

- 某人以他本人身為警隊成員的公務身分作出的投訴；
- 由發出傳票而產生，並且與警方行為無關的投訴；
- 由根據任何成文法則發出施加定額罰款通知書而產生，並且與警方行為無關的投訴；或

- (1) (without limiting the generality of the foregoing) any function conferred on it by or under this or any other Ordinance.
- (2) The Council may do all such things that are reasonably necessary for, or incidental or conducive to, the performance of its functions under this Ordinance.

Division 1—Functions relating to Commissioner's Categorization of Complaints

8. Commissioner to submit lists of complaints

- (1) The Commissioner must submit to the Council at such intervals, and in such manner, as the Commissioner and the Council may agree—
- a list of reportable complaints; and
 - a list of non-reportable complaints.
- (2) A list submitted under subsection (1)(a) must include a brief description of all reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted.
- (3) A list submitted under subsection (1)(b) must include—
- a brief description of all non-reportable complaints that the Commissioner has received since the end of the period covered by the last list so submitted;
 - the reasons for categorizing the complaints as non-reportable complaints; and
 - in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the reason for the Commissioner's opinion that the complaint is not of a serious nature.

9. Complaints not to be categorized

In compiling a list under section 8(1)(a) or (b), the Commissioner must not take into account any complaint that—

- a person makes in his official capacity as a member of the police force;
- arises from the issue of a summons and does not relate to police conduct;
- arises from the issue of any notice for the imposition of a fixed penalty under any enactment and does not relate to police conduct; or

- (d) 某人依據任何其他條例授予他的權能而有權調查的投訴，但如該投訴與警方行為有關而該調查權力並不遍及至可調查該警方行為，則屬例外。

10. 歸類為須具報投訴的投訴

在符合第 9、11 及 12 條的規定下，如處長接獲的投訴——

(a) 關乎——

- (i) 某警隊成員在當值或執行職務或其意是執行職務時的行為；
- (ii) 某警隊成員在休班並表明他是警隊成員的情況下行為；或
- (iii) 警隊採納的任何常規或程序；

(b) 屬處長認為並非瑣屑無聊或無理取鬧而且是真誠地作出的；

(c) 由受到該警方行為直接影響的投訴人作出，或由某人代該投訴人作出；

(d) 由妥為表露身分並向處長提供本身的聯絡方法的人作出（不論是由他本人作出或代投訴人作出）；及

(e) 在某人代投訴人作出投訴的情況下屬按照第 14 條作出，

則該投訴必須歸類為須具報投訴。

11. 逾期投訴須屬性質嚴重方可歸類為須具報投訴

任何投訴除非符合以下說明，否則不可歸類為須具報投訴——

(a) 該投訴在以下期間內向處長作出——

(i) 自導致該投訴的事件發生的日期起計的 24 個月；或

(ii) 如在第 (i) 節提述的期間內，關乎該投訴所針對的本項的法律程序，已在任何法庭、裁判法院或法定審裁處展開，則為自該等法律程序獲最終裁定作出之日起計的 12 個月，

兩者以較後屆滿者為準；或

- (d) a person is empowered to investigate pursuant to any function conferred on the person by any other Ordinance, except where the complaint relates to police conduct and the power of investigation does not extend to the investigation of that police conduct.

10. Complaints categorized as reportable complaints

Subject to sections 9, 11 and 12, a complaint received by the Commissioner must be categorized as a reportable complaint if the complaint—

(a) relates to—

(i) the conduct of a member of the police force while on duty or in the execution or purported execution of his duties;

(ii) the conduct of a member of the police force who identified himself as such a member while off duty; or

(iii) any practice or procedure adopted by the police force;

(b) in the opinion of the Commissioner, is not vexatious or frivolous and is made in good faith;

(c) is made by or on behalf of a complainant directly affected by the police conduct;

(d) is made by a person (whether on his own behalf or on behalf of a complainant) who has properly identified himself and provided the Commissioner with a means of contacting him; and

(e) (if made by a person on behalf of a complainant) is made in accordance with section 14.

11. Related complaints may be categorized as reportable complaints only if serious in nature

A complaint may not be categorized as a reportable complaint unless—

(a) the complaint is made to the Commissioner—

(i) within a period of 24 months from the date of the incident giving rise to the complaint; or

(ii) where proceedings relating to the subject matter of the complaint have been commenced in any court, magistracy or statutory tribunal within the period referred to in subparagraph (i), within a period of 12 months from the date of the final determination of such proceedings,

whichever expires later; or

- (a) 在投訴或覆核要求(視屬何情況而定)作出時,該投訴人未滿 16 歲,而有關代表是他的父母或監護人;
- (b) 該投訴人是精神上無行為能力的人,或因死亡或疾病而不能夠親自作出投訴或覆核要求(視屬何情況而定),而有關代表是——
- (i) 該投訴人的親屬;或
 - (ii) 該投訴人的監護人(《精神健康條例》(第 136 章)第 2(1)條所界定者);或
- (c) 有關代表獲該投訴人書面授權代該投訴人作出投訴或覆核要求(視屬何情況而定)。
- (2) 就第(1)(b)款而言,“親屬”(relative)指——
- (a) 配偶、子女、父母、祖父母或外祖父母、孫、孫女、外孫或外孫女;或
 - (b) 兄弟、姊妹、伯父母、叔父母、舅父母、姑丈或姑母、姨丈或姨母,或該等人的後裔。
- (3) 為第(1)(b)及(2)款的目的而推究關係時——
- (a) 受領養人須視為其領養人的子女;
 - (b) 因婚姻而產生的關係須視為血親關係,半血親關係須視為全血親關係,而任何人的繼子女須視為該人的子女;及
 - (c) 非婚生子女須視為其母親及據稱的父親的婚生子女。

15. 處長重新考慮切類

- (1) 警監會如認為根據第 8 條包括在無須具報投訴列表上的某投訴應歸類為須具報投訴,可向處長提供其意見,而處長必須——
- (a) 顧及上述意見;及
 - (b) 重新考慮該投訴的歸類。
- (2) 處長必須在完成第(1)款所指的重新考慮後,在切實可行範圍內,盡快知會警監會他重新考慮的所得結果。
- (3) 為執行第(1)款所指的警監會的職能,警監會可要求處長提供支持以下事項的解釋——
- (a) 將某投訴歸類為無須具報投訴;及

- (a) the complainant is below the age of 16 years at the time when the complaint or request for review (as the case may be) is made and the representative is his parent or guardian;
- (b) the complainant is a mentally incapacitated person or is unable to make the complaint or request for review (as the case may be) himself due to death or illness, and the representative is—
- (i) a relative of the complainant; or
 - (ii) a guardian (as defined in section 2(1) of the Mental Health Ordinance (Cap. 136)) of the complainant; or
- (c) the representative has written authorization from the complainant to make the complaint or request for review (as the case may be) on behalf of the complainant.
- (2) For the purposes of subsection (1)(b), “relative” (親屬) means—
- (a) a spouse, child, parent, grandparent or grandchild; or
 - (b) a person who is, or is the issue of, a brother, sister, uncle or aunt.
- (3) In deducing any relationship for the purposes of subsections (1)(b) and (2)—
- (a) an adopted person is treated as the child of the person or persons by whom he was adopted;
 - (b) any relationship by affinity is treated as a relationship by consanguinity, any relationship of the half blood as a relationship of the whole blood, and the step-child of a person as the child of that person; and
 - (c) an illegitimate child is treated as a legitimate child of his mother and reputed father.

15. Reconsideration of categorization by Commissioner

- (1) If the Council considers that a complaint included in the list of non-reportable complaints under section 8 should be categorized as a reportable complaint, it may advise the Commissioner of its opinion, and the Commissioner must—
- (a) have regard to such opinion; and
 - (b) reconsider the categorization of the complaint.
- (2) The Commissioner must, as soon as practicable after the completion of his reconsideration under subsection (1), inform the Council of the outcome of his reconsideration.
- (3) For the purpose of performing the Council's function under subsection (1), the Council may require the Commissioner to provide explanations to support—
- (a) the categorization of a complaint as a non-reportable complaint; and

- (b) 就僅憑第 11(a) 條而屬無須具報投訴的投訴而言，處長認為該投訴並不屬性質嚴重。

第 2 分部——關於須具報投訴的調查報告或
中期調查報告的範圍

16. 處長須呈交須具報投訴的調查報告

- (1) 處長必須在完成其須具報投訴的調查後，在切實可行範圍內，盡快向警監會呈交調查報告。
- (2) 除第 (3) 款另有規定外，根據第 (1) 款呈交的調查報告必須載有——
- 有關調查的摘要；
 - 就有關投訴所作的對事實的裁斷，及支持該裁斷的證據；
 - 有關投訴的分類，及作該分類的理由；
 - 一項敘述，述明處長已經或將會在與有關投訴有關連的情況下採取的行動；及
 - 處長認為需要的其他資料。
- (3) 第 (2)(a) 及 (b) 款不適用於被分類為屬簡便方式解決的須具報投訴的調查報告。

17. 處長須呈交須具報投訴的中期
調查報告

- (1) 如某須具報投訴的調查未能在以下期間內完成——
- 自接獲有關投訴的日期起計的 6 個月；或
 - 警監會與處長議定的較短期間，
- 處長必須在該 6 個月或該較短期間屆滿後，在切實可行範圍內，盡快向警監會呈交中期調查報告。
- (2) 在有關調查完成之前，處長必須在以下期間屆滿後，向警監會呈交進一步的中期調查報告——
- 每段接續的為期 6 個月的期間；或

- (b) in relation to a complaint that is a non-reportable complaint only by virtue of section 11(a), the Commissioner's opinion that the complaint is not of a serious nature.

Division 2—~~Functions~~ relating to Investigation or Interim
Investigation Reports on Reportable Complaints

16. Commissioner to submit investigation
reports on reportable complaints

- (1) The Commissioner must, as soon as practicable after completing the investigation of a reportable complaint, submit to the Council an investigation report.
- (2) Subject to subsection (3), an investigation report submitted under subsection (1) must contain—
- a summary of the investigation;
 - a finding of facts in relation to the complaint and the evidence in support of the finding;
 - the classification of the complaint, and the reasons for the classification;
 - an account of the action taken or to be taken by the Commissioner in connection with the complaint; and
 - such other information as the Commissioner thinks necessary.
- (3) Subsection (2)(a) and (b) does not apply to an investigation report on a reportable complaint classified as one that is for informal resolution.

17. Commissioner to submit interim investigation
reports on reportable complaints

- (1) If the investigation of a reportable complaint is not completed within—
- 6 months from the date of receipt of the complaint; or
 - such shorter period as the Commissioner and the Council may agree,
- then, the Commissioner must, as soon as practicable after the expiry of those 6 months or that shorter period, submit to the Council an interim investigation report.
- (2) Until the completion of the investigation, the Commissioner must submit to the Council further interim investigation reports after the expiry of every successive period of—
- 6 months; or

- (4) 本條所指的會面必須以非公開形式進行。
- (5) 在不抵觸第(7)款的條文下，警監會可決定誰人可在會面時在場。
- (6) 除非律師或大律師是根據本條接受會見的人，否則他在會面中，沒有向警監會發言的權利。
- (7) 如任何根據本條接受會見的人（“該人”）未滿16歲，或如警監會知道該人屬精神上無行為能力的人，則該人必須在以下的人在場時接受會見——
- 他的父母或監護人；
 - 某名在該人的福利方面具有利害關係，並且被警監會認為適合在會面時在場的成年人；或
 - 警監會在任何特定個案中決定的其他人。
- (8) 警監會必須就根據本條進行的每次會面保存紀錄，而該紀錄不得用於根據本條例執行警監會的職能以外的任何目的。
- (9) 就第(8)款而言，任何為第37條所容許的目的而作的資料披露，均不視為使用有關紀錄。

第3分部——關於須具報投訴的其他職能等

20. 警監會可要求處長提供關於須具報投訴的資料等

- (1) 警監會可要求處長——
- 提供關於某須具報投訴的任何資料或材料，包括自警隊成員就某須具報投訴而會見的人錄取的書面陳述，以及有關會面的任何錄影紀錄；及
 - 澄清關於某須具報投訴的任何事實或差異。
- (2) 在本條中，“錄影紀錄”(video recording)指以任何媒介記錄的紀錄，並包括附連的聲軌，而該紀錄可藉任何方法產生移動的影像。

- (4) An interview under this section must be conducted in private.
- (5) Subject to subsection (7), the Council may decide who may be present at an interview.
- (6) A solicitor or counsel does not have a right of audience before the Council at an interview unless he is the person who is interviewed under this section.
- (7) Where a person who is interviewed under this section (“that person”) is below the age of 16 years, or is known to the Council to be a mentally incapacitated person, that person must be interviewed in the presence of—
- his parent or guardian;
 - an adult who has an interest in the welfare of that person and is, in the opinion of the Council, an appropriate person to be present at the interview; or
 - such other person as the Council may decide in any particular case.
- (8) The Council must keep a record of every interview under this section, and such record must not be used for any purpose other than for performing the Council’s functions under this Ordinance.
- (9) For the purposes of subsection (8), disclosure of information for any purpose that is allowed under section 37 is not to be regarded as use of the record.

Division 3—Other functions relating to Reportable Complaints etc.

20. Council may require Commissioner to provide information etc. relating to reportable complaints

- (1) The Council may require the Commissioner—
- to provide any information or material relating to a reportable complaint, including any written statement taken from a person interviewed by a member of the police force in respect of a reportable complaint, and any video recording of the interview; and
 - to clarify any fact or discrepancy relating to a reportable complaint.
- (2) In this section, “video recording” (錄影紀錄) means a recording, on any medium, from which a moving image may by any means be produced and includes the accompanying sound-track.

第4分部——警監會的關乎其事務的權力

29. 警監會可收取費用

警監會可就提供警監會文件或刊物的文本或摘錄，收取費用。

30. 警監會可持有財產、訂立合約及借入款項

為施行本條例，警監會可——

- (a) 取得、持有及處置動產或不動產；
- (b) 訂立合約或其他協議；及
- (c) 在財政司司長的批准下，以提供保證的方式或按其他條件借入款項。

第4部

觀察員計劃

31. 觀察員的委任

(1) 在符合第(2)款的規定下，保安局局長可委任他認為合適的人為觀察員。

(2) 任何人如——

- (a) 現屬政府公務員、秘書、法律顧問或警監會任何其他僱員；或
- (b) 曾屬警隊成員；

即不具備獲委任為觀察員的資格。

32. 觀察員的職能

觀察員的職能是協助警監會按照本部的條文觀察處長處理或調查須具報投訴的方式。

33. 附表2適用於觀察員

附表2就觀察員具有效力。

Division 4—Council's Powers relating to its Affairs

29. Council may charge fees

The Council may charge fees for providing copies of, or extracts from, documents or publications of the Council.

30. Council may hold property, enter into contracts and borrow money

For the purposes of this Ordinance, the Council may—

- (a) acquire, hold and dispose of movable or immovable property;
- (b) enter into contracts or other agreements; and
- (c) with the approval of the Financial Secretary, borrow money on security or other conditions.

PART 4

OBSERVERS SCHEME

31. Appointment of observers

(1) Subject to subsection (2), the Secretary for Security may appoint such person as he thinks fit to be an observer.

(2) A person—

- (a) who is a civil servant of the Government, the Secretary, the Legal Adviser or any other employee of the Council; or
- (b) who was a member of the police force,

is not eligible to be appointed as an observer.

32. Function of observers

The function of an observer is to assist the Council to observe, in accordance with the provisions of this Part, the manner in which the Commissioner handles or investigates reportable complaints.

33. Schedule 2 applicable to observers

Schedule 2 has effect with respect to observers.

(d) 關乎觀察員根據本部條文執行職能的運作事宜或安排。

第 5 部

保密及對警監會及其成員等的保障

36. 第 5 部的釋義

在本部中——

“受保護資料”(protected information)指任何指明人士在執行他在本條例下的職能的過程中實際知悉的、關乎任何投訴的事宜；

“指明人士”(specified person)指——

- (a) 警監會；
- (b) 警監會成員；
- (c) 秘書、法律顧問或警監會任何其他僱員；
- (d) 警監會聘用的提供技術或專業服務的人；
- (e) 觀察員；或
- (f) 曾在任何時間具備(b)、(c)、(d)及(e)段描述的身分的人。

37. 保密責任

- (1) 除在第(2)款所訂的情況下，指明人士不得披露任何受保護資料。
- (2) 如指明人士披露任何受保護資料是為以下目的而屬必需的——
 - (a) 為執行他在本條例下的職能；
 - (b) 為向他認為適當的有關當局報告關於任何罪行的證據；
 - (c) 為遵從關乎任何刑事或民事法律程序或紀律處分程序的——
 - (i) 法庭的命令；或
 - (ii) 某項成文法則或任何其他法律所訂的規定，或根據某項成文法則或任何其他法律而作出的規定；或

(d) any operational matter or arrangement that relates to the performance of the functions of observers under the provisions of this Part.

PART 5

CONFIDENTIALITY AND PROTECTION OF COUNCIL AND ITS MEMBERS, ETC.

36. Interpretation of Part 5

In this Part—

“protected information” (受保護資料) means matters relating to any complaint that come to a specified person's actual knowledge in the performance of his functions under this Ordinance;

“specified person” (指明人士) means—

- (a) the Council;
- (b) a member of the Council;
- (c) the Secretary, the Legal Adviser or any other employee of the Council;
- (d) a person engaged by the Council for his technical or professional services;
- (e) an observer; or
- (f) a person who at any time had any of the identities described in paragraphs (b), (c), (d) and (e).

37. Duty to keep confidence

(1) Except in the circumstances provided for in subsection (2), a specified person must not disclose any protected information.

(2) Subsection (1) does not prevent a specified person from disclosing any protected information if the disclosure is necessary—

- (a) for the performance of his functions under this Ordinance;
- (b) for the purpose of reporting evidence of any crime to such authority as he considers appropriate;
- (c) for the purpose of complying with—
 - (i) an order of a court; or
 - (ii) a requirement in or made under an enactment or any other law,
 in relation to any criminal, civil or disciplinary proceedings; or

(d) 為遵從根據《個人資料(私隱)條例》(第486章)第18條提出的查閱資料要求。

則第(1)款並不阻止有關指明人士披露該受保護資料。

(3) 除第(4)款另有規定外，第(2)(a)款並不授權披露以下的人的身分——

- (a) 任何投訴人；
- (b) 行為屬某投訴的對象的警隊成員；或
- (c) 協助或曾協助處長處理或調查某投訴的人。

(4) 如第(3)(a)、(b)或(c)款提述的身分是向以下人士披露的，該項披露可依據第(2)(a)款作出——

- (a) 第36條中“指明人士”的定義的(a)、(b)、(c)、(d)或(e)段所指的指明人士；
- (b) 有關投訴人；
- (c) 處長；
- (d) 協助或曾協助處長處理或調查某投訴的人；或
- (e) 依據第19條接受警監會會見的人。

38. 對警監會及其成員等的保障

(1) 如某指明人士在執行或其意是執行在本條例下的職能時，真誠地作出或沒有作出任何作為，則該指明人士不會因該作為或不作為，而須在民事法律程序中負上法律責任。

(2) 就非法律而言，如指明人士——

- (a) 在任何書面或其他形式的通訊、報告或陳述中；並
- (b) 為執行他在本條例下的職能，

而就某投訴作出任何評論或發表任何事宜，則該項評論或發表享有絕對特權。

(3) 第(1)或(2)款給予的保障，並不適用於第36條中“指明人士”的定義的(d)段所指的指明人士。

第6部

過渡及保留條文

39. 第6部的釋義

在本部中——

(d) for the purpose of complying with a data access request made under section 18 of the Personal Data (Privacy) Ordinance (Cap. 486).

(3) Subject to subsection (4), subsection (2)(a) does not authorize the disclosure of the identity of—

- (a) any complainant;
- (b) any member of the police force whose conduct is the subject of a complaint; or
- (c) any person who assists or has assisted the Commissioner in the handling or investigation of a complaint.

(4) A disclosure of any identity referred to in subsection (3)(a), (b) or (c) may be made pursuant to subsection (2)(a) if the disclosure is made to—

- (a) a specified person within the meaning of paragraph (a), (b), (c), (d) or (e) of the definition of “specified person” in section 36;
- (b) the complainant;
- (c) the Commissioner;
- (d) a person who assists or has assisted the Commissioner in the handling or investigation of a complaint; or
- (e) a person interviewed by the Council pursuant to section 19.

38. Protection of Council and its members, etc.

(1) Any act done, or omitted to be done, by a specified person in good faith in the performance or purported performance of a function under this Ordinance will not render the specified person liable to any civil proceedings.

(2) For the purposes of the law of defamation, if a specified person makes any comment or publishes any matter in relation to a complaint—

- (a) in any communication, report or statement, in writing or otherwise; and
- (b) for the performance of his functions under this Ordinance,

that comment or publication is absolutely privileged.

(3) The protection given by subsection (1) or (2) does not apply to a specified person within the meaning of paragraph (d) of the definition of “specified person” in section 36.

PART 6

TRANSITIONAL AND SAVING PROVISIONS

39. Interpretation of Part 6

In this Part—

“生效日期” (commencement date) 指本條例的生效日期；

“前警監會” (former Council) 指在緊接生效日期前存在的投訴警方獨立監察委員會；

“前觀察員” (former observer) 指屬在緊接生效日期前存在的名為“投訴警方獨立監察委員會觀察員計劃”的計劃下的觀察員的人。

40. 前警監會作出的事情的延續

(1) 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期。

(2) 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。

(3) 在緊接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，而須由前警監會作出並正由它或正就它或正代它作出的任何事情，自該日期起，在符合本條例的範圍內，可由警監會繼續作出或就它或代它繼續作出。

41. 委任的延續

(1) 在符合第(2)款的規定下，任何人如在緊接生效日期前——

(a) 擔任前警監會主席、副主席或任何其他成員的職位；或

(b) 擔任前觀察員，

自該日期起，即繼續擔任警監會主席、副主席、該其他成員或觀察員（視屬何情況而定），猶如他是根據本條例獲委任一樣。

(2) 第(1)款所指的人繼續擔任有關職位的時間，猶如在他先前的委任下的剩餘任期，但該人有資格根據附表1第1(b)條或附表2第1(b)條（視屬何情況而定）再獲委任。

(3) 如任何人在緊接生效日期前是前警監會的人員（包括秘書及法律顧問），則該人自該日期起，按在緊接該日期前適用於該人的相同條款及條件，繼續為警監會的人員。

“commencement date” (生效日期) means the date of commencement of this Ordinance;

“former Council” (前警監會) means the Independent Police Complaints Council existing immediately before the commencement date;

“former observer” (前觀察員) means a person who was an observer under the scheme known as the Independent Police Complaints Council observers scheme existing immediately before the commencement date.

40. Continuance of things done by former Council

(1) 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.

(2) 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.

(3) Anything that, immediately before the commencement date, is required to be done and is in the process of being done by, in relation to or on behalf of the former Council pursuant to or in connection with its functions may, as from that date, be continued by, in relation to or on behalf of the Council to the extent that it is consistent with this Ordinance.

41. Continuance of appointment

(1) Subject to subsection (2), a person who, immediately before the commencement date—

(a) holds an appointment as the Chairman, a Vice-Chairman or any other member of the former Council; or

(b) is a former observer,

continues to be, as from that date, the Chairman, a Vice-Chairman or such other member of the Council or an observer (as the case may be) as if he were appointed under this Ordinance.

(2) The person in subsection (1) continues to hold his appointment only for the unexpired term under his previous appointment, but is eligible for reappointment under section 1(b) of Schedule 1 or section 1(b) of Schedule 2 (as the case may be).

(3) A person who, immediately before the commencement date, is an officer (including the Secretary and the Legal Adviser) of the former Council continues to be, as from that date, such officer of the Council on the same terms and conditions as those applicable to that person immediately before that date.

附表 1

[第 2、6 及 41 條]

關於警監會成員、警監會的處事程序、委員會、
財務事宜及警監會成立文件，以及
警監會其他雜項事宜的條文

警監會成員

1. 主席、副主席及委任成員的任期

主席、副主席或委任成員 (根據第 4 條獲委任的人除外)——

- (a) 的委任任期不得超過 2 年；並
- (b) 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 2 年。

2. 主席、副主席及委任成員的辭職

- (1) 主席、副主席或委任成員可藉給予行政長官書面通知，辭去職位。
- (2) 第 (1) 款所指的辭職，在行政長官接獲有關通知的日期當日或該通知指明的日期 (兩者以較後者為準) 生效。

3. 主席、副主席及委任成員的免任

行政長官如信納主席、某副主席或委任成員因永久喪失行為能力或其他充分因由，而不能夠或不適合執行其職能，則行政長官可藉書面通知將主席、該副主席或委任成員 (視屬何情況而定) 免任。

4. 署理委任

行政長官可在以下情況下，委任任何人署理主席、副主席或委任成員——

SCHEDULE 1

[ss. 2, 6 & 41]

PROVISIONS WITH RESPECT TO MEMBERS, PROCEEDINGS, COMMITTEES AND
FINANCES OF, AND EXECUTION OF DOCUMENTS BY, AND OTHER
MISCELLANEOUS MATTERS OF, COUNCIL

Members of Council

1. Term of office of Chairman, Vice-Chairmen
and appointed members

The Chairman, a Vice-Chairman or an appointed member (other than a person appointed under section 4)——

- (a) is to be appointed for a term not exceeding 2 years; and
- (b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of Chairman, Vice-Chairmen and
appointed members

(1) The Chairman, a Vice-Chairman or an appointed member may resign from office by giving notice in writing to the Chief Executive.

(2) The resignation under subsection (1) takes effect on the date the Chief Executive receives the notice or the date specified in the notice (whichever is the later).

3. Removal of Chairman, Vice-Chairmen and
appointed members

The Chief Executive may by notice in writing remove the Chairman, a Vice-Chairman or an appointed member from office if the Chief Executive is satisfied that the Chairman, Vice-Chairman or appointed member (as the case may be) is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.

4. Acting appointment

The Chief Executive may appoint any person to act as the Chairman, a Vice-Chairman or an appointed member if——

- (a) 主席、有關副主席或委任成員(視屬何情況而定)因疾病、不在香港或其他因由而不能執行其職能;或
- (b) 主席、有關副主席或委任成員(視屬何情況而定)的職位懸空,有待新的委任或再度委任。

5. 向主席、副主席及委任成員支付費用及津貼

警監會可向主席、副主席及委任成員支付行政長官所決定的費用及津貼。

警監會簽立文件

6. 警監會的印章及文件

- (1) 警監會須有法團印章。
- (2) 法團印章在有警監會決議的授權下,方可蓋在文件上。
- (3) 以法團印章蓋印,須由獲警監會授權(不論是為此而作出一般授權或特別授權)的任何2名警監會成員簽署認證。
- (4) 如任何文件看來是加蓋法團印章而妥為簽立的,則除非相反證明成立,否則該文件須視為妥為簽立。
- (5) 如任何合約或文書在由自然人訂立或簽立的情況下,是無須加蓋印章以訂立或簽立的,則該合約或文書可由獲警監會為此而作出一般授權或特別授權的警監會任何成員、秘書、法律顧問或警監會任何其他僱員,代警監會訂立或簽立。

警監會的處事程序

7. 警監會會議

- (1) 警監會須為執行其職能的目的,舉行所需次數的會議。
- (2) 主席可指定警監會會議舉行的時間及地點。

- (a) the Chairman, Vice-Chairman or appointed member (as the case may be) is precluded by illness, absence from Hong Kong or any other cause from performing his functions; or
- (b) the office of the Chairman, Vice-Chairman or appointed member (as the case may be) is vacant pending a new appointment or reappointment.

5. Fees and allowances to Chairman, Vice-Chairmen and appointed members

The Council may pay the Chairman, Vice-Chairmen and appointed members such fees and allowances as the Chief Executive may determine.

Execution of documents by Council

6. Seal and documents of Council

- (1) The Council is to have a common seal.
- (2) The common seal may be affixed to a document only if authorized by a resolution of the Council.
- (3) The affixing of the common seal is to be authenticated by the signatures of any 2 members of the Council authorized by the Council, either generally or specially in that behalf.
- (4) A document purporting to be duly executed under the common seal is to be regarded as having been duly executed unless the contrary is proved.
- (5) Any contract or instrument which, if entered into or executed by a natural person, would not be required to be entered into or executed under seal, may be entered into or executed on behalf of the Council by any of its members, the Secretary, the Legal Adviser or any other employee of the Council generally or specially authorized by the Council in that behalf.

Proceedings of Council

7. Council meetings

- (1) The Council is to meet as often as is necessary for the purpose of performing its functions.
- (2) The Chairman may appoint the time and place for the Council to meet.

12. 警監會可決定本身的程序

在本條例其他條文的規限下，警監會可決定本身的程序，包括在主席缺勤時，誰可指定警監會會議舉行的時間及地點。

警監會的委員會

13. 設立委員會

警監會可設立委員會、專責委員會或小組，以協助警監會執行它在本條例下的任何職能。

14. 披露利害關係

委員會成員如於在或會在委員會會議上討論的事宜中有利害關係，必須在會議上或會議前，披露該利害關係的性質。

15. 委員會主席

- (1) 委員會主席必須從該委員會成員之中選出。
- (2) 委員會主席必須主持委員會的任何會議。
- (3) 如委員會主席缺席或不主持會議，則會議必須由從出席的委員會成員之中選出的一名委員會成員主持。

16. 在委員會會議上決定事宜

- (1) 任何有待在委員會會議上決定的事宜，必須由出席會議和就該事宜投票的委員會成員，以過半數票決定。
- (2) 如票數相等，則主持有關會議的人除本身原有的一票外，有權投決定票。
- (3) 除第(5)款另有規定外，任何可在委員會會議上作出的事情，可藉向委員會所有成員傳閱文件的方式作出，而無須舉行會議。

12. Council may determine its own procedure

Subject to the other provisions of this Ordinance, the Council may determine its own procedure, including who may appoint the time and place for the Council to meet in the absence of the Chairman.

Committees of Council

13. Establishment of committees

The Council may establish committees, panels or sub-groups to assist the Council in the performance of any of its functions under this Ordinance.

14. Disclosure of interest

If a member of a committee has an interest in a matter being discussed or to be discussed at a meeting of the committee, he must disclose the nature of his interest at or before the meeting.

15. Chairman of committee

- (1) The chairman of a committee must be elected from amongst its members.
- (2) The chairman of a committee must preside at a meeting of the committee.
- (3) If the chairman of a committee is absent or vacates the chair, a member of the committee elected from amongst the members of the committee present must preside at the meeting.

16. Determination of matters at committee meetings

- (1) A matter for determination at a meeting of a committee must be decided by a majority of the votes of the members of the committee present and voting on that matter.
- (2) If there is an equality of votes, the person presiding at the meeting has a casting vote in addition to his original vote.
- (3) Subject to subsection (5), anything that may be done at a meeting of a committee may be done by circulation of papers to all members of the committee without a meeting.

- (a) 於本條例的生效日期開始而於隨後一年的 3 月 31 日完結的期間；及
(b) 於其後每年至 3 月 31 日完結的 12 個月期間。

21. 警監會須備存妥善的帳目

- (1) 警監會必須就其財務往來，備存妥善的帳目。
(2) 警監會必須在其任何財政年度完結後，在切實可行範圍內，盡快擬備——
(a) 一份該財政年度的帳目報表，其中須載有收支結算表及現金流轉表；及
(b) 一份顯示在該財政年度完結時警監會財務狀況的資產負債表。

22. 審計帳目報表

- (1) 警監會必須委任一名根據《專業會計師條例》(第 50 章)註冊，並持有該條例所指的執業證書的人，擔任它的核數師。
(2) 有關核數師必須在警監會的任何財政年度完結後，在切實可行範圍內，盡快——
(a) 審計警監會為該財政年度擬備的帳目及帳目報表；及
(b) 就該帳目報表向警監會呈交報告。

23. 警監會的年報

- (1) 警監會必須在其任何財政年度完結後，在切實可行範圍內盡快，並無論如何須在 6 個月內，或在行政長官容許的較長限期內，向行政長官呈交——
(a) 關於警監會在那財政年度根據本條例執行其職能的報告；
(b) 警監會為該財政年度而擬備的帳目報表的文本；及
(c) 有關核數師根據第 22(2) 條就警監會擬備的帳目報表而向警監會呈交的報告的文本。
(2) 警監會必須在接獲行政長官對它向立法會提交第 (1) 款提及的文件的批准後，安排在切實可行範圍內，盡快將該等文件提交立法會會議省覽。

- (a) the period beginning on the date of commencement of this Ordinance and ending on 31 March in the next following year; and
(b) the period of 12 months ending on 31 March in each subsequent year.

21. Council to keep proper accounts

- (1) The Council must keep proper accounts of its financial transactions.
(2) As soon as practicable after the end of a financial year of the Council, the Council must prepare—
(a) a statement of accounts for that financial year containing an income and expenditure account and a cash flow statement; and
(b) a balance sheet showing the financial position of the Council as at the end of that financial year.

22. Audit of statement of accounts

- (1) The Council must appoint as its auditor a person who is registered under the Professional Accountants Ordinance (Cap. 50) and holds a practising certificate within the meaning of that Ordinance.
(2) As soon as practicable after the end of a financial year of the Council, the auditor must—
(a) audit the accounts and the statement of accounts prepared by the Council for that financial year; and
(b) submit to the Council a report on the statement of accounts.

23. Annual reports of Council

- (1) As soon as practicable and in any case not later than 6 months after the end of a financial year of the Council, or such further period as the Chief Executive may allow, the Council must submit to the Chief Executive—
(a) a report on the performance of the Council's functions under this Ordinance during that financial year;
(b) a copy of the statement of accounts prepared by the Council for that financial year; and
(c) a copy of the auditor's report on the statement of accounts prepared by the Council that is submitted to the Council under section 22(2).
(2) The Council must cause the documents referred to in subsection (1) to be tabled in the Legislative Council as soon as practicable after receiving the Chief Executive's approval for tabling.

24. 審計署署長的審核

- (1) 審計署署長可就警監會的任何財政年度，對警監會在執行其職能時使用其資源是否合乎經濟原則及講求效率及效驗的情況，進行審核。
- (2) 審計署署長——
 - (a) 有權在所有合理時間，取覽他為根據本條進行審核的目的而合理地要求的由警監會保管或控制的所有紀錄、簿冊、憑單、文件、現金、收據、印花、證券、物料及任何其他財產；及
 - (b) 有權向持有該等文件或材料的人，或向須為該等文件或材料負責的人，要求提供他認為為上述目的而合理地需要的資料及解釋。
- (3) 審計署署長可向立法會主席報告他根據本條進行的審核的結果。
- (4) 第(1)款並不使審計署署長有權質疑警監會的政策目標是否可取。

雜項事宜

25. 轉授權能

- (1) 警監會可用書面形式，將它在本條例下的任何職能轉授予某委員會、某警監會成員、秘書、法律顧問或警監會任何其他僱員，但第(6)款所指明的職能不得如此轉授。
- (2) 本條所指的轉授可屬一般轉授或有限制的轉授，並可受條件規限。
- (3) 警監會可在任何時間修訂或撤銷根據本條作出的轉授。
- (4) 根據本條獲警監會轉授權能的人，在沒有相反證據的情況下，須推定為按照有關轉授條款行事。
- (5) 儘管轉授權能已作出，已轉授的職能仍可由警監會執行。
- (6) 第(1)款所指的警監會不可轉授的職能是——
 - (a) 根據該款作出轉授的權力；

24. Director of Audit's examination

- (1) The Director of Audit may, in respect of any financial year of the Council, conduct an examination into the economy, efficiency and effectiveness with which the Council has expended its resources in performing its functions.
- (2) The Director of Audit—
 - (a) has a right of access at all reasonable times to all such records, books, vouchers, documents, cash, receipts, stamps, securities, stores and any other property in the custody or under the control of the Council as he may reasonably require for the purpose of conducting an examination under this section; and
 - (b) is entitled to require from any person who holds or is accountable for any such document or materials such information and explanation as he considers reasonably necessary for that purpose.
- (3) The Director of Audit may report to the President of the Legislative Council the results of an examination conducted by him under this section.
- (4) Subsection (1) does not entitle the Director of Audit to question the merits of the policy objectives of the Council.

Miscellaneous matters

25. Delegation of functions

- (1) The Council may delegate in writing any of its functions under this Ordinance to a committee, a member of the Council, the Secretary, the Legal Adviser or any other employee of the Council, but a function specified in subsection (6) may not be so delegated.
- (2) A delegation under this section may be general or limited and may be subject to conditions.
- (3) The Council may, at any time, amend or revoke a delegation made under this section.
- (4) A delegate of the Council under this section is presumed to be acting in accordance with the terms of the relevant delegation in the absence of evidence to the contrary.
- (5) A delegated function may be performed by the Council despite the delegation.
- (6) The functions that the Council may not delegate under subsection (1) are—
 - (a) the power to delegate under that subsection;

- (b) 根據第 23(1) 條向行政長官呈交年報、報目報表及核數師報告的責任；
及
(c) 根據本條例第 28 條向行政長官作出報告的權力。

26. 豁免徵稅

警監會獲豁免而無須繳交《稅務條例》(第 112 章) 下的徵稅。

附表 2

[第 33 及 41 條]

關於觀察員的條文

1. 觀察員的任期

觀察員——

- (a) 的委任任期不得超過 2 年；並
(b) 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 2 年。

2. 觀察員的辭職

- (1) 觀察員可藉給予保安局局長書面通知，辭去職位。
(2) 第 (1) 款所指的辭職，在保安局局長接獲有關通知的日期當日或該通知指明的日期 (兩者以較後者為準) 生效。

3. 觀察員的免任

保安局局長如信納某觀察員因永久喪失行為能力或其他充分理由，而不能夠或不適合執行其職能，可藉書面通知將該觀察員免任。

- (b) the duty to submit an annual report, statement of accounts and auditor's report to the Chief Executive under section 23(1); and
(c) the power to make a report to the Chief Executive under section 28 of this Ordinance.

26. Exemption from taxation

The Council is exempt from taxation under the Inland Revenue Ordinance (Cap. 112).

SCHEDULE 2

[ss. 33 & 41]

PROVISIONS WITH RESPECT TO OBSERVERS

1. Term of office of observers

An observer—

- (a) is to be appointed for a term not exceeding 2 years; and
(b) is eligible for reappointment for a further term or terms not exceeding 2 years each.

2. Resignation of observers

(1) An observer may resign from office by giving notice in writing to the Secretary for Security.

(2) The resignation under subsection (1) takes effect on the date the Secretary for Security receives the notice or the date specified in the notice (whichever is the later).

3. Removal of observers

The Secretary for Security may by notice in writing remove an observer from office if the Secretary for Security is satisfied that the observer is unable or unfit to perform his functions due to permanent incapacity or other sufficient cause.