

投訴警方獨立監察委員會

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INDEPENDENT POLICE COMPLAINTS COUNCIL

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Press Release

IPCC To Exchange Views on IPCC Bill At LegCo

The Chairman of the Independent Police Complaints Council (IPCC), Mr Ronny Wong Fook-hum, and a number of IPCC Members will attend the meeting of the Legislative Council Bills Committee on IPCC Bill to be held this Thursday, 13 December 2007, to exchange views on the Bill and related issues.

The Council presents a written submission to the Bills Committee, setting out the IPCC's views on the Bill, the mode of operation of the proposed statutory IPCC to be established under the Bill, and the level of honorarium for IPCC Members.

The IPCC understands that the Administration's current policy intention of the Bill is to provide a statutory basis for and to enhance public confidence in the present police complaints system. On the basis of this understanding, the IPCC tenders several comments on the Bill, with an aim to ensuring that the future statutory IPCC has clear powers to discharge its functions -

The Bill

(a) Full access to information, including relevant legal advice obtained by the Police (Clause 20)

The IPCC insists on full and unrestricted access to information pertaining to any complaint investigation which is made available to Complaints Against Police Office (CAPO) in its investigation. Such complete access to information should be provided for by an explicit provision in the Bill.

In the matter of the relationship between the IPCC and the Commissioner of Police (CP) on police complaint investigations, the IPCC does not accept that legal professional privilege (LPP) should be invoked to allow the CP to withhold relevant information from the IPCC. The IPCC firmly believes that it should be given full and unrestricted access to information pertaining to complaint investigations to enable it to be satisfied that CAPO has undertaken full and impartial investigations of complaint allegations. It would be undesirable for the integrity of the police complaints system for the CP to have discretion to waive his LPP and let the IPCC see the information as he deems fit. To do so would be perceived as conferring on the CP the advantage of being selective in his disclosure to the IPCC and this would not be conducive in nurturing public confidence in the police complaints system.

(b) Adequate response from the CP to IPCC's recommendations and opinions

The IPCC's effectiveness and the public's trust in the police complaints system rests to a considerable extent on whether the CP gives adequate response to the

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IPCC's recommendations and opinions. The IPCC considers that there are uncertainties or unclarity in some provisions of the Bill which may give latitude to the CP in not complying with the IPCC's requirements. For example, **Clause 27** provides that the CP must comply with any requirement made by the IPCC unless he is satisfied that compliance would likely prejudice the security of Hong Kong or the investigation of any crime. The IPCC is concerned that the term "any crime" is unnecessarily wide.

(c) IPCC's ability to effect full disclosure in case of disagreement with the CP (Clause 37)

In case of substantial disagreement between the IPCC and the CP over the handling and classification of a reportable complaint (RC), the IPCC's principal recourse is either to make a report to the CE under Clause 28, or to make public the unresolved issue for public scrutiny. An express provision is thus of paramount importance to ensure that the IPCC may effect full disclosure of all facts in relation to the RC, the findings and classifications of CAPO's investigations, and the reason for any IPCC disagreement with the Police on the disciplinary action to be taken.

(d) Report to CE (Clause 28)

Clause 28 provides that the IPCC may make reports to the CE as it thinks necessary. It is silent on any response from the CE. Instead of relying on the normal practice that the CE would respond to the statutory body submitting a report to him, it is considered that Clause 28 should be amended to provide for a response from the CE to the IPCC's report made to him.

(e) Commencement of the Ordinance (Clause 1)

Before the Ordinance is brought into operation, the IPCC considers it important for the transitional arrangements to be clearly settled with the Administration, in particular those relating to the Secretariat to be hived off from the Government.

Structure and Mode of Operation of the Proposed Statutory IPCC

In view of the future structure as set out in the Bill, the IPCC would like to make the following observations on the proposed statutory IPCC for the Bills Committee's consideration -

- (i) despite the addition of administrative responsibilities, the statutory IPCC should remain focused on the core business of monitoring and reviewing police complaint investigations. The full-time Secretariat should continue to help Members to examine all complaint investigation reports in detail;
- (ii) to shoulder the additional responsibilities in administration, the number and spread of expertise of Members may have to increase;
- (iii) the relationship between the future Chairman, IPCC and the future Secretary, IPCC will have to be clearly defined; and

- (iv) the future ranking of the Secretary, IPCC and the future staffing level of the Secretariat will have to be examined further given that the future Secretariat will have added responsibilities in recruitment, personnel management, accounting and payroll, stores and procurement, etc, in that it ceases to enjoy the administrative support services of a Government department.

Financial Provision

In establishing the statutory IPCC with a Secretariat delinked from the Government, the IPCC considers that the annual allocation for the future IPCC would have to be adjusted upwards to take into account those costs which are not presently included for the IPCC Secretariat as a Government department, such as staff on-costs and the costs of support services provided by other Government departments, including the rents and management fees for the office premises.

The statutory IPCC may also require an additional allocation to cover one-off requirements to meet specific expenses in the delinking exercise, such as the costs for the procurement of an accounting system, a leave record system as well as the purchase of a permanent office premises and related fitting-out work, if this is considered necessary by the statutory IPCC.

Honorarium for IPCC Members

IPCC members now spend considerable time and effort in examining police complaint investigation reports. They will in future also have to spend time and effort in overseeing the administration of the Secretariat as well. While Members' efforts and contribution ought to be recognized, the IPCC considers that such recognition needs not come in the form of a high level of honorarium which may in fact act against the independence of the IPCC. Members are generally content with a symbolic honorarium at the present level.

Conclusion

The IPCC wishes to emphasize that the effectiveness and accountability of the statutory IPCC rest, to a considerable extent, on its powers and functions being clearly expressed in the Bill. In this connection, the IPCC would urge the Bills Committee to take into account the views expressed by the Council, and to pass an IPCC Bill which best serves the interest of the public in Hong Kong.

Independent Police Complaints Council 10 December 2007

Note

Written submission on IPCC Bill from the IPCC is available on LegCo's website (www.legco.gov.hk)