



## SUHAKAM RECOMMENDATIONS

### INDEPENDENT POLICE COMPLAINTS OF MISCONDUCT COMMISSION (IPCMC) BILL 2019

NO.	ISSUE	SECTION	PROPOSED AMENDMENT(S)	COMMENTS
1.	Potential Overlap and Conflict of functions and powers between the Police Force Commission and IPCMC under Article 140 Federal Constitution	Preamble	An Act to provide for the establishment of the Independent Police Complaints of Misconduct Commission and to provide for its functions and powers, matters relating to complaints of misconduct, investigation of misconduct, proceedings to deal with misconduct, etc., and for related matters <b><u>pursuant to the proviso in Clause 140(1) Federal Constitution.</u></b> <sup>1</sup>	<p>1.1 The objectives of this Act as first stated in the Preamble should make clear that this Act and the IPCMC shall operate and be construed as pursuant to the proviso in <u>Clause 140(1) Federal Constitution</u>.</p> <p>1.2 Clause 140(1) allows exercise of disciplinary control over all members of the police by an authority other than the Police Force Commission if such authority is established by law. Any law passed to establish and govern such authority shall not be deemed inconsistent with Part X Federal Constitution.</p>

<sup>1</sup> **Clause 140(1) Federal Constitution:**

140. (1) There shall be a Police Force Commission whose jurisdiction shall extend to all persons who are members of the police force and which, subject to the provisions of any existing law, shall be responsible for the appointment, confirmation, emplacement on the permanent or pensionable establishment, promotion, transfer and exercise of disciplinary control over members of the police force:

Provided that Parliament may by law provide for the exercise of such disciplinary control over all or any of the members of the police force in such manner and by such authority as may be provided in that law, and in that event, if the authority is other than the Commission, the disciplinary control exercisable by such authority shall not be exercised by the Commission; and no provision of such law shall be invalid on the ground of inconsistency with any provision of this Part.

2.	Change of Short Title and name of the Commission	1(1), 3(1), and wherever applicable	<p>1. (1) This Act may be cited as the Independent Police Complaints <del>of</del> <b>and</b> Misconduct Commission Act 2019. [...]</p> <p>3. (1) The Independent Police Complaints <del>of</del> <b>and</b> Misconduct Commission is established. [...]</p>	The Commission should have the sole discretion to receive all complaints and consequently decide whether each complaint amounts to misconduct.
2.	Investigating and dealing with complaints of misconduct not a clear function of the IPCMC	4	<p>[...] (b) to protect the interest of the public by <b>investigating into and</b> dealing with <b>complaints of</b> misconduct of any member of the police force; [...]</p>	IPCMC functions and powers should be spelled out more clearly here considering the proposed powers in Part IV and V of the Bill.
3.	IPCMC Members appointed on recommendation of Prime Minister and without selection criteria	6	<p>(1) The Yang di-Pertuan Agong shall, on the advice of the <b>Parliament through public consultation and transparent process.</b> [...]</p>	<p>a. The appointment of IPCMC members is still not fully independent from the Executive as the Yang DiPertuan Agong (YDPA) appoints on the recommendation of the Prime Minister.</p> <p>b. Nowhere in the Bill specifically requires that IPCMC members shall reflect plurality of Malaysian society and expertise, as recommended under <u>Principle 1</u></p>

			<p><b><u>(3) Members of the Commission shall be appointed among persons of [state selection criteria for IPCMC Members]</u></b></p> <p><b><u>(4) Members of the Commission appointed shall be representative of plural Malaysian society.</u></b></p>	<p><u>(Composition and Guarantees of Independence) Paris Principles relating to the Status of National Institutions (“Paris Principles”).</u></p> <p>c. A fair, transparent and merit-based appointment process for IPCMC members is also necessary to ensure its independence and capability to carry out its functions,<sup>2</sup> especially since it is also tasked with police corruption and required to be so under <u>Article 36 UN Convention against Corruption (UNCAC).</u><sup>3</sup> (Malaysia has been a State party to UNCAC since 2008).</p>
4.	Unclear circumstances and procedure for removal of IPCMC Members	7	<p>[...]</p> <p>(4) The appointment of a member of the Commission may at any time be revoked by the Yang di-Pertuan Agong, <b><u>on the advice of the Parliament.</u></b></p>	<p>a. <u>Paris Principle 3 (Composition and Guarantees of Independence)</u> states that stability of mandate is essential to the independence of a national institution, and that any process to renew the mandate of members should also guarantee pluralist representation.</p>

<sup>2</sup> United Nations Office for Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity* (2011) (“UNODC Handbook”), 49-50

<sup>3</sup> **Article 36 UNCAC**

Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks.

			<p>(5) <u>All members of the Commission shall hold their office full-time.</u></p> <p>(6) <u>Pursuant to subsection (4), the Parliamentary Select Committee may recommend that the appointment of a member of the Commission be revoked if one of the circumstances causing him to vacate his office under section 9 arises.</u></p>	<p>b. However, the Bill is currently silent as to the circumstances and the procedure through which the appointment of a member may be revoked by YDPA, especially as such revocation may occur at any time under subsection 7(4).</p> <p>c. Although appointment of IPCMC members is renewable for up to two terms, the Bill is also silent as to the guarantee of diversity upon such renewal and any mechanism for replacement of a member upon vacation of office.</p>
		9	<p>[...]</p> <p><u>(j) if he is found to hold concurrent employment or any appointment with remuneration, actively engages in any commercial enterprise, or is appointed to a board of directors or in any other capacity to an organisation that would come into conflict with</u></p>	

			<p><u>membership of the Commission.</u></p> <p>(2) <u>Upon any vacation of office of a member of the Commission pursuant to subsection (1), a new member of the Commission shall be appointed for the remaining term of the vacating member within 30 days from the date of vacation office.</u></p> <p>(3) <u>Any replacement member of the Commission shall be appointed based on the same criteria; through the same public process as stated in section 6; and continue to be representative of plural society.</u></p>	
5.	Delegation of IPCMC powers to members of the police force	13	(1) The Commission may delegate its functions and powers—	a. Delegation of powers to the police may raise issues of conflict of interest since the IPCMC's functions under Section 4 include dealing with police misconduct and exercising

		<p>(a) to any member of the Commission; <u>or</u>  (b) to any committee; <del>or</del>  <del>(c) to any member of the police force.</del></p> <p>(2) A member of the Commission, <u>or</u> a committee <del>or a member of the police force</del> delegated with such functions and powers under subsection (1) shall be bound to observe and have regard to all conditions and restrictions imposed by the Commission and all requirements, procedures and matters specified by the Commission, relating to such delegation.</p> <p>[...]</p> <p><b><u>(5) Any member of the Commission or of committee delegated with any power or function under this Section shall be disclose his interest in accordance with section 12 or subsection 16(4).</u></b></p>	<p>disciplinary control over all members of the police force.</p> <p>b. Nothing in the Bill requires those with delegated powers to disclose any interest in relation to police officers under IPCMC investigation.</p>
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6.	IPCMC officers appointed among seconded enforcement agency and Judicial and Legal Service officers	16	<p>(1) There shall be appointed such number of officers of the Commission as may be necessary to assist the Commission in discharging its functions and exercising its powers effectively and efficiently and for the purpose of carrying into effect the provisions of this Act.</p> <p><del>(2) The Commission may appoint any officers from any government agency on secondment basis to be its investigators.</del></p> <p><del>(3) The Commission may appoint such number of legal officers as may be necessary who shall be seconded from amongst officers of the Judicial and Legal Service or appointed from amongst advocates and solicitors to assist the Commission.</del></p> <p>(4) [...]</p>	<p>a. Officers appointed to the IPCMC may include seconded public servants from government agencies who will act as investigators and legal officers.</p> <p>b. This may raise issues of conflict of interest and affect the independence of the IPCMC from the Government considering <u>Clause 134(2) Federal Constitution</u>, even though seconded officers are required to disclose any interest concerning police officer(s) under IPCMC investigation.</p> <p>c. Safeguards should also be in place to ensure that IPCMC officers have or could gain the necessary training, including on gender mainstreaming, so that they could independently and capably carry out their tasks.</p> <p>d. In this regard, <u>Paris Principle 2 (Composition and Guarantees of Independence)</u> recommends that a national institution shall have the infrastructure to discharge its mandate including adequate funding and its own staff to ensure its independence from the Government and autonomy.</p> <p>e. Additionally, <u>UNODC Handbook</u> recommends that staff of independent police oversight</p>
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				bodies should be appointed through a merits-based fair and transparent process to ensure its independence. Newly established oversight bodies challenged with recruitment of experienced investigators should independently hire police officers from different jurisdiction or regions, or retired police officers. <sup>4</sup>
7.	Payment of allowance of IPCMC Committee members to be determined by Prime Minister	18	[...]  (6) A member of a committee shall be paid such allowances as the <del>Prime Minister</del> <b>Parliament</b> may determine.	a. Similarly, to ensure the IPCMC's independence from the Executive, the committee(s) members' allowances should be determined by the IPCMC or YDPA through the Parliament, not the Prime Minister.  b. This comes as subsections 18(1)-(3) also provide that the committee(s) shall be established by the IPCMC and may be chaired by an IPCMC Member and be comprised of IPCMC officers.
8.	Exceptions for misconduct and complaints arising from Police Regulations and Standing Orders pursuant to sections 96 and 97 Police Act.	22	(1) The Commission may receive or deal with complaints against any member of the police force referred to it, on the following misconduct:	a. Firstly, the exception on these grounds under subsection 22(2) may conflict and overlap with subsection 22(1) since the Police Regulations and the Standing Orders could be reasonably deemed as "rules and standard of procedure of the police".

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<sup>4</sup> Above n 1

		<p>[...]</p> <p>(c) any act or inaction which is unreasonable, unjust, oppressive or <b>improperly</b> discriminatory;</p> <p><del>(2) Notwithstanding subsection (1), misconduct shall not include any act regulated under sections 96 and 97 of the Police Act 1967 [Act 344].</del></p> <p><u>(2) An act or omission may amount to a misconduct and a lawful ground of complaint to the Commission under subsection 22(1) if the act or omission is committed by a subordinate police officer pursuant to an order or within knowledge of a superior police officer.</u></p> <p><u>(3) For the purposes of subsection 22(2), the complaint shall be lodged against and dealt with by the Commission in respect of the</u></p>	<p>b. Secondly, excluding the scope of misconduct on these grounds from IPCMC's powers may also interfere with the IPCMC's independence because the Standing Orders are issued by the Inspector-General of Police (IGP). The IGP and the exercise of his powers under any law including in issuing the Standing Orders should not be excluded from IPCMC scrutiny.</p> <p>c. Meanwhile, although the Police Regulations are made through auspices of the YDPA, <u>Article 40 Federal Constitution</u> provides that the YDPA shall always exercise his functions under the constitution and federal law on the advice of the Cabinet or a Minister. This means that the Executive still holds a significant level of influence in the making of the Police Regulations.</p> <p>d. On this point, <u>UNODC Handbook</u> states that the independence of the police oversight body means that it should have complete discretion in the exercise of its functions, and not subject to direction or control of a minister or any other party.</p> <p>e. Any discriminatory act amounting to misconduct should be defined by the law, not merely by impropriety.</p>
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9.	Accountability of the superior officer for misconduct arising from subordinate officer(s) acting on instructions or within knowledge of the superior officer		<b><u>subordinate and superior police officers.</u></b>	Pursuant to the <u>UNODC Handbook</u> , an effective review process by the police oversight body must address and hold superior officers responsible if they know or should have known that their subordinates are resorting, or have resorted, to misconduct especially concerning excessive or unlawful use of force and firearms, and the superior officers did not take all measures in their power to prevent, suppress or report such use. <sup>5</sup>
10.	Composition of Complaints Committee	23	The Commission shall establish a Complaints Committee which <b><u>shall be chaired by a Member of the Commission and</u></b> shall consist of such number of officers of the Commission.	<p>a. Considering the role of the Complaints Committee under subsection 24(3), the Complaints Committee should involve and be led by IPCMC Member(s).</p> <p>b. IPCMC Members would be more qualified and have the necessary expertise to organise the complaints based on the criteria set in section 25 and to determine the complaints for the stated purposes of subsection 28(2).</p>
11.	IPCCM cannot deal with and must refer complaints involving offences under Malaysian Anti-Corruption Commission Act 2009 and criminal offences under other laws to other relevant authorities	25	The classification of complaints shall be as follows: (a) where the complaint involves any offence under Part IV of the Malaysian Anti-Corruption Act 2009 [Act 694], the complaint <b><u>shall may</u></b>	<p>a. <u>Paragraph 2 (Competence and Responsibilities) Paris Principles</u> states that national institutions should be given as broad a mandate as possible.</p> <p>b. Also, <u>Paragraph (a) (Methods of Operation) Paris Principles</u> provides that the national</p>

<sup>5</sup> UNODC Handbook, 24-25

			<p>be referred to the Malaysian Anti-Corruption Commission;</p> <p>(b) where the complaint involves any criminal offence under any other written law, the complaint <del>shall</del> <u>may</u> be referred to the <del>relevant authority</del> <u>Public Prosecutor</u>;</p> <p>(c) where the complaint involves any misconduct mentioned in section 22, the complaint shall be referred to any officer of the Commission for investigation; and</p> <p>(d) where— [...] the Complaints Committee <del>shall</del> <u>may</u> recommend to the Commission to reject the complaint.</p>	<p>institution shall be given the freedom to consider any question within its competence without referral to a higher authority.</p> <p>c. Therefore, the IPCMC should not be restricted and should have full discretion in considering all complaints and determining the next course of action for each complaint.</p> <p>d. “Relevant authority” under para 25(b) should clearly refer to the Public Prosecutor.</p>
12.	Complaints of misconduct against IGP are exempted from IPCMC scrutiny but instead subject to Special Disciplinary Board and regulations pursuant to Article 132 Federal Constitution	31(4)	<p>[...]</p> <p><del>(4) — Notwithstanding subsection (3), where the complaint of misconduct is against the Inspector General</del></p>	<p>a. <u>Article 132 Federal Constitution</u> only enables regulations to be made by federal law in respect of qualifications for appointment and conditions of service of persons in public service other than the state public service.</p>

			<p><del>of Police, the Chief Secretary to the Government Commission shall establish a Special Disciplinary Board to hear the such complaint and the proceedings, before the Special Disciplinary Board shall be conducted in accordance with regulations made under Article 132 of the Federal Constitution.</del></p>	<p>b. Therefore, any regulations to be enacted in relation to the IGP and the Special Disciplinary Board pursuant to this proposed section would not be <i>ultra vires</i> Article 132 Federal Constitution because the regulations would be concerning his professional ethics, conduct and discipline.</p> <p>c. In any event, complaints of misconduct against IGP in the exercise of his official powers should not be exempted from IPCMC scrutiny. The IGP should be made equal before this law, as provided under <u>Article 8(1) Federal Constitution</u>.</p>
13.	Definition of any act of contempt against IPCMC Member includes any act of disrespect, threat or insult at any time or place against an IPCMC Member, or any act that would otherwise amount to contempt if the IPCMC was a court of law	35(2)	<p>[...]</p> <p>(2) For the purpose of this section, an “act of contempt” means—</p> <p><del>(a) any act of disrespect or any insult or any threat to any member of the Commission at any time and place on account of him proceeding in his capacity as a member of the Commission; or</del></p>	<p>a. It remains unclear under this subsection as to the authority and the standard by which such an “act of contempt” would be determined.</p> <p>b. Proposed wording is also so wide that its exercise could easily interfere with freedom of speech as protected under <u>Article 10 Federal Constitution</u>. Therefore, the language of this subsection would require qualification in order to protect the rights of all parties.</p> <p>c. Incidentally, <u>Article 19 ICCPR</u> provides to the effect that exercise of the right to freedom of expression shall only be limited by law and to</p>

			<p><del>(b) any act other than that provided in paragraph (a) that, if the Commission were a court of law having power to commit for contempt, would be contempt of that court. — amounting to contempt as defined by law and determined by the courts.</del></p>	<p>the extent necessary and proportionate to fulfil the legitimate aims of public order, public health and public morality.</p> <p>d. Meanwhile, <u>Article 8 Code of Conduct for Law Enforcement Officials</u> adopted through General Assembly Resolution 34/169 requires law enforcement officials to respect the law and, to the best of their capability, prevent and oppose any violations of the law.</p>
14.	No specific requirement for police or relevant authority to show cause for refusal to comply with IPCMC recommendations made in exercise of advisory functions	37	<p>(1) The Commission may <del>compile and supply make recommendations to</del> the police force or any relevant authority <del>with such statistical information or any other general information which the Commission considers should be brought to the attention of the police force or relevant authority</del> in connection with the functions of the Commission under section 4 and powers under section 5 <u>including</u> to enable the police force or relevant authority to carry out their functions under any written law.</p>	<p>a. The Bill is silent as to the procedural mechanisms to ensure that the police or governmental authority in receipt of the IPCMC’s advice, recommendations and policies under subsections 4(c)-(d) and 5(2a-e) complies, or otherwise show cause to the IPCMC why it cannot comply, within reasonable time.</p> <p>b. The current section 37 only enables the IPCMC to ‘supply information’ to the police or relevant authority, and to request from the police or relevant authority to supply information to the IPCMC in order to discharge its functions and exercise its powers under sections 4 and 5.</p> <p>c. The IPCMC should be enabled to request for and compel disclosure of statistical and other</p>

		<p>[...]</p> <p>(3) <u>Upon the Commission making the recommendation pursuant to subsection (1),</u> the police force or any relevant authority shall inform the Commission of such action taken arising from the <del>supply of information</del> <u>recommendation(s) made</u> by the Commission under subsection (1) within fourteen days from the date of receipt of such <del>information</del> <u>recommendation</u> from the Commission.</p> <p>(4) <u>If the Commission makes any request for information from the police force or any relevant authority under subsection (2), the police force or any relevant authority shall provide the Commission with the</u></p>	<p>relevant information from civil society and public to assist the IPCMC in exercising its advisory functions and powers, as recommended by UNODC Handbook.<sup>6</sup></p> <p>d. IPCMC should provide the public with easily accessible information on its recommendations and hearings through its website, as recommended per UNODC Handbook.<sup>7</sup></p>
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<sup>6</sup> UNODC Handbook, 69

<sup>7</sup> Ibid

			<p><u>information requested the Commission under subsection (1) within fourteen days from the date of receipt of such request for information by the Commission, failing which [state sanction for failure or refusal to provide information to Commission]</u></p> <p>(5) <u>The Commission shall cause all recommendations under subsection (1) to be made easily accessible to the public.</u></p>	
15.	Protection from liability should include protection from liability under other laws relating to disclosure of information	38	<p>[...]</p> <p>(6) <u>All provisions relating to secrecy under any other laws of Malaysia shall not apply to disclosure of any information or production of any document or other thing before the Commission</u></p>	Complainants and witnesses should also be protected from legal consequences arising from other laws when lodging complaints or producing evidence before the Commission, as guaranteed under <u>Article 8(1) Federal Constitution</u> .

			<b><u>pursuant to any provision of this Act.</u></b>	
16.	Limited scope of cases and accountability that require (immediate) referral to IPCMC	47	The police force shall refer to the Commission any incident which has resulted in <b><u>destruction of property,</u></b> grievous hurt or death to any person under the detention or custody of the police force, <b><u>or from any use of force by the police force, within 24 hours from the time of incident.</u></b>	<p>a. In this regard, the <u>Basic Principles on the Use of Force and Firearms by Law Enforcement Officials</u><sup>8</sup> provides that an effective review process would not only look into cases where the police use of force and firearms not only cause death or serious injury, but also other “grave consequences” as soon as these cases are promptly reported.</p> <p>b. These “grave consequences” may include violation of other rights such as destruction of public or private property, as protected under <u>Article 13 Federal Constitution.</u></p>
17.	No timeframe for police to refer cases of custodial death or injury to the IPCMC			As <u>UNODC Handbook</u> recommends that police oversight bodies should maintain detailed data on police abuses, <sup>9</sup> police referral to the IPCMC on potential police negligence or abuse concerning custodial deaths and injuries should be timely and immediate so that appropriate and effective action can be taken.
18.	Prime Minister has power to amend Schedule by way of gazette	49	<del>The Prime Minister may by order published in the</del>	As Schedules are an integral part of the primary Act under <u>section 15 Interpretation Acts 1948 and 1957,</u> any amendment to the Schedule of this IPCMC Act

<sup>8</sup> As adopted through General Assembly Resolution 51/59

<sup>9</sup> Ibid

			<del>Gazette, amend the Schedule.</del>	must be done through parliamentary legislative due process.
19.	Prime Minister has power to make regulations	50	(1) The <del>Prime Minister</del> <b>Commission</b> may make regulations for the purpose of carrying out or giving effect to the provisions of this Act. [...]	To consistently ensure its independence, the IPCMC should have full power and control to make regulations concerning the conduct and exercise of its functions and powers.
20.	Automatic repeal of the Enforcement Agency Integrity Commission (EAIC) Act 2009 upon passing of this IPCMC Act	51-58	<b>Delete ALL sections</b>	<ul style="list-style-type: none"> <li>a. SUHAKAM is concerned with the dissolution of the EAIC without an immediate replacement external mechanism to deal with complaints and misconduct against other enforcement agents.</li> <li>b. Section 58 of the Bill currently only provides for internal mechanism to deal with such complaints, i.e. the disciplinary authority of the respective agencies.</li> <li>c. Therefore, EAIC should continue to function as the external mechanism to deal with complaints and misconduct against other enforcement agents.</li> </ul>
		59	The following matters in so far as they relate to the misconduct of members of the Royal Malaysia Police shall, on the coming into operation of this Act, be dealt with under the <del>repealed Act as if the repealed Act had not been repealed,</del> <b>Enforcement Agency Integrity Commission Act 2009 [Act 700]</b> by the Commission and shall be	

			<p>completed within six months from the date of coming into operation of this Act:</p> <p>(a) any pending complaints under section 23 of <del>the repealed</del> Act <u>700</u>;</p> <p>(b) any pending investigations under section 25, subsection 27(4) and section 28 of <del>the repealed</del> Act <u>700</u>;</p> <p>(c) any pending findings of the Complaints Committee under section 26 of <del>the repealed</del> Act <u>700</u> and findings of the Commission under section 30 of <del>the repealed</del> Act <u>700</u>; or</p> <p>(d) any pending hearing under section 37 of <del>the repealed</del> Act <u>700</u>.</p>	
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**SUHAKAM COMMENTARY AND RECOMMENDATIONS**  
**AMENDMENT IN COMMITTEE INDEPENDENT POLICE COMPLAINTS AND MISCONDUCT**  
**(IPCC) BILL 2019**

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This is SUHAKAM's response to the Amendment in Committee to the IPCC Bill 2019. Unless otherwise varied herein, this Commentary should be read in furtherance of SUHAKAM Submission concerning the Blue Paper Bill prepared and submitted to the Minister at the Prime Minister's Department (Legal Affairs) on 22 August 2019.

**1. Preliminary: Change of Name to Independent Commission for Police Conduct**

SUHAKAM agrees with the positive framing of the name of the Commission so long as it does not substantially nor adversely affect the function and powers of the Commission to deal with complaints of police misconduct and to exercise disciplinary control over members of the police, in line with the proviso to Article 140(1) Federal Constitution.

**2. New Clause 6(2): Criteria for appointment of Commission Members**

2.1 SUHAKAM reiterates its position that the provision should be clear enough to ensure that membership of the Commission reflects diversity of Malaysian society and the appointment process is fair, transparent and merit based.<sup>1</sup>

2.2 Accordingly, the requirement for selection of candidates for the Commission's membership should also include integrity, discipline and direct relevant work experience in police accountability.

**3. Clause 13(1) and (2): Delegation of Commission Powers to the Police**

3.1 Despite the additional reference to officers of the Commission to whom the Commission's powers may be delegated, SUHAKAM is concerned that the Commission's powers may still be delegated to members of the police force.

3.2 SUHAKAM reiterates its position that any delegation of the Commission's powers to the police would raise issues of conflict of interest in terms of the Commission's

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<sup>1</sup> United Nations Office for Drugs and Crime (UNODC), *Handbook on Police Accountability, Oversight and Integrity* (2011) ("UNODC Handbook"), 49-50; UN Convention against Corruption, art 36

stated functions. Therefore, all references to the members of police force in this Clause should be deleted.

3.3 SUHAKAM also recommends for there to be express provision that requires disclosure of interest by all persons delegated with Commission's powers especially in relation to police officers subjected or involved in complaints.

**4. Para 22(1)(c): "Improperly Discriminatory" Acts amounting to Misconduct**

SUHAKAM reiterates its position that "improperly" in paragraph 22(1)(c) should be deleted. The determination of whether any conduct is discriminatory should be based on Article 8(2) Federal Constitution.

**5. Clause 22(2): Power to Identify and Gazette Acts of "Minor Misconduct"**

Similar to provisions such as Section 98 Malaysian Aviation Commission Act, this Commission should be given the power to identify and have gazetted acts amounting to minor misconduct instead of the Prime Minister. The Commission is in the best position to identify the varying degrees of misconduct as it is in closer proximity with the police force and more familiar with their standard operation procedures than the Prime Minister.

**6. New Clauses 25(d), 31(5), 33, 34: Powers and Proceedings re Minor Misconduct**

6.1 Proviso to Article 140(1) Federal Constitution stipulates that where a law is enacted to provide for the exercise of disciplinary control over members of the police force by an authority other than the Police Force Commission, the Police Force Commission shall not exercise disciplinary control by such authority and as provided under such law.

6.2 Therefore, to ensure clear demarcation of power between the Independent Commission and members of the police force (including Heads of Department, and who may also be members of the Police Force Commission), the Independent Commission should not be allowed to delegate its powers to the members of the police to any extent.

6.3 Even if the Commission were to consult or engage Heads of Department and any other police officers in dealing with minor misconduct complaints, such consultation or engagement should only be based on independent consultancy contracts.

- 6.4 In the event of para 5.3, SUHAKAM also recommends for additional provisions to expressly require police officers to disclose potential conflict of interest in relation to parties in the complaint prior to the Commission's appointment.
- 6.5 In any event, SUHAKAM recommends for the Commission to retain power to impose all types of punishment, whether the misconduct is minor or not.
- 7. Paras 25(a),(b): Reference to MACC and other relevant authorities for complaints of misconduct also amounting to criminal offences**
- 7.1 SUHAKAM reiterates its position that the Commission should retain the power to deal with complaints of misconduct whose facts may also give rise to criminal offences under the MACC Act or any other written law.
- 7.2 Disciplinary proceedings and punishment for misconduct against a person who also faces criminal charges on the same facts would not be in violation of the double jeopardy principle under Article 7(2) Federal Constitution.<sup>2</sup> SUHAKAM thus recommends that paras 25(a) and (b) reworded accordingly.
- 8. Clause 31(4): Treatment of the Inspector-General of Police (IGP)**
- 8.1 SUHAKAM remains concerned with the effective exemption of the IGP from being subjected to the Commission's scrutiny. SUHAKAM reiterates its position that the IGP should be made equal before this law and that Article 132 Federal Constitution applies only to the extent of the IGP's qualifications of appointment and conditions of service, not in relation to his professional ethics and discipline.
- 8.2 Accordingly, SUHAKAM recommends that the creation and conduct of the Special Disciplinary Board should be made express under this Act. There should also be express provision that holds into account superior officers in relation to subordinate officers that they knew or should have known were acting in misconduct, and had reasonably failed to prevent, suppress or report the same.<sup>3</sup>
- 9. New Clause 51: Timeframe for Referral to the Commission for death in custody**  
SUHAKAM recommends for the timeframe to be further specified to within 24 hours to avoid uncertainty.

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<sup>2</sup> *Mohamed Yusoff Samadi v PP* (1975) 1 MLJ 1

<sup>3</sup> UNODC Handbook, 24-25

**10. New Clause 53: Power of the Prime Minister to amend Schedules**

SUHAKAM reiterates its position that as Schedules are deemed an integral part of the Act under Section 15 Interpretation Acts, only the Parliament has the power to amend the Schedules under this Act (not the Executive). This provision should thus be deleted altogether.

Prepared by Human Rights Commission of Malaysia

Date: 14 November 2019

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