



**Majlis Peguam
Bar Council Malaysia**

www.malaysianbar.org.my

15 Leboh Pasar Besar
50050 Kuala Lumpur, Malaysia
Tel : +603-2050 2050
Fax : +603-2026 1313, 2034 2825, 2072 5818
Email : council@malaysianbar.org.my

Ruj kami : BC/PA/I/38/2019 (BC/CEN/O/10)

Tarikh: 11hb November 2019

YB Tuan Ramkarpal Singh A/L Karpal Singh
Pengerusi Jawatankuasa Pilihan Khas
Menimbang Rang Undang-Undang
Suruhanjaya Bebas Salah Laku Polis (IPCMC) 2019
Parlimen Malaysia, Bangunan Parlimen
Jalan Parlimen
50680 Kuala Lumpur

PERSENDIRIAN & SULIT

Serahan Tangan

YB Tuan

Memorandum Rang Undang-Undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019

Dengan hormatnya kami merujuk kepada perkara di atas.

2. Kami lampirkan sesalinan memorandum mengandungi cadangan pindaan kepada Rang Undang-Undang Suruhanjaya Bebas Aduan Salah Laku Polis 2019 untuk perhatian dan tindakan lanjut pihak YB Tuan. Kami telah merujuk kepada draf pertama Rang Undang-Undang Suruhanjaya Bebas Aduan Salah Laku Polis yang telah diberikan kepada Majlis Peguam pada 27 Februari 2019.

3. Kami amat berbesar hati ingin memohon untuk bermesyuarat bersama YB Tuan untuk membincangkan cadangan-cadangan berkaitan Rang Undang-Undang Suruhanjaya Bebas Salah Laku Polis (IPCMC) 2019.

3. Pegawai kami, Cik Malathi Mohan di talian 03-2050 2150 atau emel Malathi@malaysianbar.org.my akan menghubungi pejabat YB Tuan bagi menetapkan tarikh mesyuarat seperti yang dipohon.



**Navigating the Present
Exploring the Future**

12-14 August 2020 Kuala Lumpur
imlc2020@malaysianbar.org.my



4. Kami berharap pihak YB Tuan akan meneliti dan mempertimbangkan cadangan pindaan dan permohonan mesyuarat kami. Segala perhatian dan kerjasama daripada YB Tuan amatlah kami hargai.

Sekian, terima kasih.

Yang benar



Dato' Abdul Fareed Abdul Gafoor
Yang Dipertua
Badan Peguam Malaysia

Lamp.

\\10.10.1.188\Practitioner's Affairs\Committees (new)\Task Force on IPCMC\General Correspondences2019\1106-letter to YB Tuan Ramkarpal

**BAR COUNCIL OF MALAYSIA MEMORANDUM ON INDEPENDENT
POLICE COMPLAINTS OF MISCONDUCT COMMISSION BILL 2019.**

PART I

1. Intitulment of Bill

1. That the intitulment of the Bill be reverted to the Original intitulment – Independent Police Complaints and Misconduct Commission.

2. Clause 2 of the Bill – Interpretation.

1. Definition of the 2005 Bill be incorporated.

“police complaint” means any complaint against the force or any police officers received from any source.

PART II

3. Clause 4 – Functions of the Commission.

1. Definition of the 2005 Bill – (Clause 12 (1)(a)) to be incorporated.

Clause 12 (1) (a) – “to receive complaints made by the public against the Force and to inquire into these complaints and in particular to detect, investigate and prevent police corruption and other serious misconduct;

4. Clause 6 of Bill – Members of Commission

1. To reinstate the provisions of the previous Bill pertaining to the Select Committee; or
2. To refer to Parliamentary Select Committee on Appointments.

5. Clause 7,8,9 of Bill – Terms of Office

1. Clause 7(4) – Revocation should be for “cause” and with a set procedure for removal.

6. Clause 12 – Disclosure of Interest

1. Reference should be to any “proceeding or hearing” – not limited to “discussion on a misconduct.”

7. Clause 13 – Delegation of functions and powers of Commission

1. Reference of delegation to any member of the police force (Clause 13(c) should be deleted).
2. The delegation should include the “Secretary or officers of the Commission”.
3. Consequential amendment to Clause 13(2) based on the above.

PART III

8. Clause 14 (1)

1. The Secretary be designated as the Chief Operating Officer instead of Chief Executive Officer.

9. Clause 16 – Officers

1. Clause 16(2) of Bill to be amended to include the words “including” from any government agency....

10. Clause 18 of Bill – Committees

1. Clause 18(6)

Payment of allowances for a member of the Committee should be determined by the Commission – Reference to the Prime Minister should be replaced with Commission.

11. Clause 19 (1) Authority Card

To include the Secretary – in addition to Chairman.

PART IV

12. Clause 22 of Bill – Scope of Misconduct

1. To include the matters stated in the **Previous Draft Bill** namely: -

- (i) Clause 24 (1) (a) act of inaction by police officer which is contrary to any written law whether or not the act constitutes a criminal offence under the written law, rules and procedures laid down by law or by the appropriate authority;
- (ii) Clause 24 (1) (b) any act or inaction of a police officer which, in the opinion of the Commission is unreasonable, unjust, oppressive or discriminatory, committed on improper motives, irrelevant grounds or consideration;
- (iii) Clause 24 (1) (c) any act or inaction of a police officer of which grounds should have been given but were not given; or
- (iv) Clause 24 (1) (d) any act or inaction of a police officer which is based on mistake of law or fact;
- (v) Clause 24 (1) (e) the commission of any criminal offence by a police officer disclosed during the course of investigation of any misconduct under the Act;
- (vi) Clause 24 (1) (f) possession of unexplained properties as stated in the Clause 58 of the Act.

2. To reinstate matters stated in **Previous Draft Bill** (Clause 24(2)) namely: -

- (i) Clause 24(2) (a) the act or inaction also involves persons who are not a police officer;
- (ii) Clause 24(2) (b) the act or inaction occurs while the police officer was not on official duty; or
- (iii) Clause 24(2) (c) it occurs within or outside Malaysia.

3. Clause 22(2) – This clause should be deleted totally.

If this Clause is not removed, then IPCMC will have no power to investigate any complaints.

4. Inspector General’s Standing Order

The Inspector General’s Standing Orders (IGSO) should be made public; as the same is still classified under the Official Secrets Act 1972.

13. Clause 23 – Complaints Committee

1. The Complaints Committee should be headed by a Commissioner.

14. Clause 25 – Classification of Complaints.

1. The provision relating to MACC and/or Head of Department to report its action and findings to the Commission should be reinstated.
2. The “relevant authority” should be defined.
3. The authority and power of the Commission to continue investigation for the matters within Clause 22 should not be precluded; despite reference to MACC or the Relevant Authority.
4. Clause 25(d)(iv) should be deleted as disciplinary action would still lie against the Police Officer.
5. The recommendations of the Complaints Committee under Clause 25(d) should be “may” and not “shall”.
6. Clause 44 of the **Previous Draft Bill** that provided power to the Commission to commence, continue or discontinue or complete any investigation despite any proceedings before any Court should be reinstated.

Part V

15. 1. The provisions as stated in the Previous Draft Bill be reinstated namely: -

- (a) Clause 33 – Power of the Commission relating to investigation.
- (b) Clause 34 – Power to enter premises including lock up, detention center etc.
- (c) Clause 37 – Power to Examine, Search and Seize.
- (d) Clause 40 – Power to Intercept Communication.
- (e) Clause 43 – Power of Commission to direct the Royal Malaysian Police to investigate any complaint received by the Commission.

2. Powers that are available to EAIC under Part V Sections 39,40 and 41 of the EAIC Act are omitted from this Bill.

16. Clause 28(2)(b) and (d) – Findings of Investigation.

1. Kindly refer to comments under Clause 25 – (Item No: 14 hereinabove)
2. (i) Pursuant to Clause 28(2)(d) the Complaints Committee is entitled to record a finding of no misconduct.
 - (ii) Provisions should be inserted therein which provides, amongst others, that: -
 - (a) any findings made by the Complaints Committee shall require the validation or endorsement of the Commission; and
 - (b) in the event that the Commission is not satisfied with the findings made by the Complaints Committee, the Commission shall be entitled to instruct a re-investigation to be conducted by its officers or a Taskforce established in pursuant to Clause 29, as the Commission deems fit and proper.

17. Clause 29(3) – Taskforce

1. This Clause should be deleted – as it limits the powers under the Criminal Procedure Code to only matters stated in Clause 47 of the Bill.
2. Clause 33 of the **Previous Draft Bill** should be reinstated; wherein the powers pursuant to the Criminal Procedure Code is given to the Commissioners and Officers of IPCMC in addition to the powers under the IPCMC Act.

Clause 33 of the **Previous Draft Bill** states as follows:-

Power of Commission relating to investigation

33. Commissioner and officer of the Commission shall have all powers of investigation as contained in the Criminal Procedure Code [Act 593] and such powers shall be in addition to the powers conferred under this Act.

Part VI

18. Clause 31 – Disciplinary Authority

1. Clause 31 (2) – The Commission **shall** exercise disciplinary control and not **may** exercise disciplinary control.
2. Clause 31(4) should be deleted.

19. Clause 32 (1) to be amended as read follows;

1. The Disciplinary Board may, upon considering the findings under Section 28 ~~and~~ **or** upon completion of an investigation under Section 30, conduct proceedings to deal with a misconduct

*The word “**and**” to be replaced with “**or**”.

20. The provisions in the Previous Draft Bill should be reinstated namely: -

1. Clause 45 - General Powers relating to Hearing.
2. Clause 46 - Power to hold a Hearing.
3. Clause 47 - Public and Closed Hearings.
4. Clause 48 – Power to Summon Witnesses and take Evidence.
5. Clause 49 – Right of Interested Person.
6. Clause 50 – Legal Representation.
7. Clause 51 – Examination of Witnesses.
8. Clause 52 – Privilege Documents.
9. Clause 53 – Arrest of Witnesses.
10. Clause 54 – Conditional Release of Witness.
11. Clause 55 – Protection of Witnesses and Persons assisting Commission.
12. Clause 56 – Attendance of Prisoner before Commission.

PART VII

21. Clause 35 – Contempt

1. The provisions relating to contempt should be limited to “threat” and not “disrespect “or “insult”.

PART VIII

22. Clause 47 – Responsibility to refer cases if grievous hurt or death in custody

1. The Clause should be expanded to include any death or grievous hurt arising from any police operations.
2. The provisions in Clause 57 (2), (3) and (4) of the **Previous Draft Bill** should be reinstated; which states as follows: -
 - (2) The complaint under subsection (1)(a) or (b) shall be referred to the Commission without delay and in any event not later than the end of day following the day on which it first becomes clear to the Royal Malaysia Police that the complaint is one to which that sub-section (a) or (b) applies
 - (3) Notwithstanding section 25, the Commission may commence an investigation immediately into the complaint of misconduct which falls under sub-section (1)
 - (4) Any person in-charge of management or administration of the lockup where the grievous injury or death is alleged to have occurred or any person in-charge or having control over the person who suffered grievous injury or death while in his custody, fail to comply with subsection (1), the person shall be liable for disciplinary action.

23. Clause 50 – Regulations

1. The power to make regulations should be vested in the Commission.

24. Repeal and Dissolution – Clause 51.

1. That the **Enforcement Agency Integrity Commission (EAIC)** be not dissolved until the **Ombudsman's** office is established.

Other Matters

25. Matters that have been not been included from Previous Draft Bill; that should be included in the current Bill.

1. Clause 58 – Possession of unexplained property.
2. Clause 59 – Obstruction of investigations, search, execution of official duty of Commissioner and offices of Commission.
3. Clause 60 – Giving of false information
4. Clause 61 – Impersonation of Officer.

**BAR COUNCIL OF MALAYSIA
25 September, 2019**

Note : Reference to Previous Draft Bill is the First Draft of the IPCMC Bill that was forwarded to the Bar Council on the 27/2/2019 by GIACC.