

# Ministerial Statement on the Draft Organic Law on the Independent Commission Against Corruption<sup>1</sup>

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This is the third time I present the proposed Organic Law on the establishment of the Independent Commission Against Corruption (ICAC) for the National Parliament's consideration. When Parliament previously considered the proposed law (on 3 June 2020), a number of comments were made. They included concerns that:

- ICAC must have a high-quality case management system, like that of other countries with an ICAC;
- ICAC staff must have integrity and be remunerated well;
- there must be careful selection of people who will run ICAC;
- the *Criminal Code Act* should be amended in order to introduce more severe penalties;
- ICAC must have the power to investigate unexplained wealth;
- ICAC must not affect traditional obligations like giving of gifts, death and marriage ceremonies; and
- qualified foreigners from Commonwealth countries should be brought into the country to head the ICAC.

In response to those commentaries, I must state that ICAC, once established, will have a case management system. The proposed Organic Law on ICAC establishes an Appointments Committee tasked to lead the appointment of the Commissioner and two Deputy Commissioners. In order to ensure the highest integrity and capability of the persons appointed to ICAC, these positions must be required to be advertised and the Appointments Committee must follow a merit-based selection process. This will be essential in order to ensure the highest integrity and capability of the persons appointed to ICAC.

ICAC Members are to be Constitutional Office-Holders. Their salaries, allowances and benefits are to be determined by the Salaries and Remuneration Commission, pursuant to the *Constitution* s216A and the *Salaries and Remuneration Commission Act 1988*. In order to maintain its independence ICAC will set its own terms and conditions for its staff, and these will be gazetted in order to ensure accountability to the public. Members and staff of ICAC must abide by a Code of Conduct, and have a duty to report to higher authority when suspected of corrupt conduct – with reports concerning a Member or staff to be made to the Commissioner, and a report concerning a Commissioner to be made to the Appointments Committee.

Unexplained wealth was among the concerns included in the initial policy proposal and reflected in the original drafting instructions. However, based on legal advice from the Office of the State Solicitor, this provision was removed as it was deemed to be unconstitutional. Strict procedures apply to receiving complaints and assessing them. The proposed Organic Law on ICAC allows foreigners to apply for the positions of Commissioner and Deputy Commissioner, as well as staff of the Service (including investigators and prosecutors) and consultants.

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<sup>1</sup> This paper is not a transcript but an edited version of the Justice Minister and Attorney General's speech for the Third Reading for the ICAC Bill in Parliament in the November 2020 Session of Parliament.

As previously directed by the National Parliament, the Parliamentary Committee on Constitutional Laws convened another public consultation on the proposed Organic Law on ICAC. Written and verbal comments were received from only seven members of the public. These comments can be summarized into three categories. The first category demonstrates lack of understanding of the proposed Organic Law on ICAC: the issues raised concerned the independence, roles, powers and functions of ICAC, and were already sufficiently covered by the proposed Organic Law. The second category are comments on procedural matters that will be catered for in the ICAC Regulations that are being developed to come into operation after the proposed Organic Law on ICAC is passed. They concern issues relating to staff of ICAC and codes of conduct. The third and final category of comments relates to issues that will be addressed only after the ICAC is established and the provisions of the Organic Law are fully implemented and tested.

In determining ICAC's jurisdiction, the definitions of the terms 'public official' and 'corrupt conduct' in the proposed Organic Law are key to clearly defining the type of conduct ICAC is empowered to investigate and prosecute or prevent from occurring. These definitions ensure that, when compared to other existing anti-corruption bodies, such as the Ombudsman Commission, the Office of the Public Prosecutor and the Royal Papua New Guinea Constabulary, ICAC's jurisdiction is clearly demarcated. While the Ombudsman Commission deals only with specified leaders, including Ministers and Members of Parliament, ICAC's jurisdiction is much wider: it covers all public servants throughout the country at all levels (not just leaders) as well as persons in the private sector who are direct beneficiaries of public funds through service contracts and might cause public sector corruption. For example, if a voter is causing a Member of Parliament to apply public sector assets dishonestly for personal interests, under the "corrupt conduct" definition that person can also be charged.

The scope of the arrest power under the proposed Organic Law is limited only to indictable offences relating to corrupt conduct as defined in the draft. The power to commence and then to conduct criminal proceedings is limited to indictable offences relating to corrupt conduct. The ICAC will deal with the most serious or systemic cases of corruption and refer other issues, less serious criminal matters or disciplinary matters to other relevant agencies to take action. Another safeguard in the proposed Organic Law is that ICAC can only conduct criminal proceedings upon written consent from the Public Prosecutor. The proposed Organic Law limits the power to prosecute indictable offences relating to corrupt conduct, and requires written consent by the Public Prosecutor. The composition of the ICAC is broad and includes a Commissioner who must, at all times, have a legal qualification, and two Deputy Commissioners, the criteria for whose appointment are broad and not restricted to persons with a legal qualification. These criteria extend to persons with demonstrated experience of at least seven (7) years in fields relevant to ICAC's functions, such as accounting.

Lessons learnt from the consultations and international best practice include that, for an anti-corruption agency like the one proposed to be effective, it must:

- be independent of the executive arm of government (specifically in regard to appointments, operations, decision-making, staffing powers);
- be well-resourced, including high integrity staff;
- have strong whistleblower protections (in order to encourage public confidence to report corruption);
- have strong investigative powers;
- have a strong accountability framework; and
- co-operate effectively with other agencies.

The proposed ICAC will complement – and emphatically not duplicate - the functions of existing agencies. The establishment of the ICAC will assist in bolstering Papua New Guinea's ability to prevent, reduce, and combat corruption. It will assist in restoring institutional integrity and raise public confidence in the various Government institutions and services.

The proposed Organic Law on the ICAC will complement and strengthen the Government's broader anti-corruption efforts while assisting in implementing Papua New Guinea's international commitments to tackle corruption under the *United Nations Convention Against Corruption* (UNCAC).

It is important to bear in mind that the creation of an ICAC will not be a panacea to dealing with corruption in Papua New Guinea. It is a very important initiative to tackle corruption, but it needs to operate in conjunction with other existing institutions, like the Police Force, the Public Service Commission, the Ombudsman Commission, the Auditor-General, and the Public Prosecutor, as well as non-government organizations, such as the churches, civil society, as well as our vibrant media and the human resources both within Government and in our communities.

Preventing corruption is truly a shared responsibility. It is up to every Papua New Guinean to be united in building personal integrity and eradicating corruption. We all owe it to Papua New Guinea's future to do so.

In practice, work has already begun on three fronts in anticipation of the proposed Organic Law on ICAC being enacted into law. Firstly, the Regulation to complement the Organic Law is already being developed by officials and should be ready for approval by Government by mid-2021. Secondly, officials have developed the administrative structure of the Commission, which will be approved by the Department of Personnel Management following passage of the law. Estimates are that the Government will require at least K4 million to kickstart the ICAC. Over the next few years, this figure may increase.

The Government is committed to employing the first six professionally-qualified foreigners from Commonwealth countries to fully establish the ICAC. This is made easier by the fact that the Organic Law on ICAC allows for the employment of properly qualified and competent foreigners to help in ICAC's establishment. The Government intends to implement the ICAC within 12 months after the Organic Law is passed.

A third initiative is that Cabinet has approved the 5-Year Implementation Plan of ICAC, which covers the period 2020-2024. This strategic Plan has been endorsed by all relevant stakeholders.

Everyone is awaiting the enactment of the Organic Law.

The 5-Year strategy includes plans to review and amend other related laws in order to ensure that there is consistency between the Organic Law on ICAC and these laws. This is the next set of reforms the Government is committed to completing before the end of the term of the current Parliament. The passage of the Organic Law on ICAC is, therefore, not the end of the reform process but the beginning of legal reforms that will give confidence to our people in the way that the Government conducts its business in running the country. At this juncture, I also want to assure other elected Leaders that, if there are urgent alterations that need to be made after the passage of the Organic Law on ICAC, I will ensure that we get them done as soon as possible.

Meanwhile, I am very pleased to announce that one of our development partners, the European Union, has approved funding to support the work of ICAC in 2020 and going into 2021 and the next three years. On behalf of the Government, I want to thank the European Union, for having confidence in our Government's efforts to fight corruption through the enactment of this Organic Law.

Finally, let me reassure Members of this Honourable House that the Government, through our Prime Minister, Honourable James Marape, has responded to elected leaders' concerns, by allowing one-on-one and group discussions with Government officials in order to address and allay leaders' fears. I am confident that, with the explanations provided by the Prime Minister as well as officials, our 111 Members of Parliament can enact this law with confidence.

I, therefore, commend the Draft Organic Law to establish the Independent Commission against Corruption to this Honourable House for the third and final vote.