

# 10 things you need to know..

## THE ORGANIC LAW ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION

Today, 9 December, marks International Anti Corruption Day. The day was established in 2003 by the United Nations General Assembly in an effort to highlight the devastating effects of corruption on economic development and political stability. On Thursday 12 November 2020, Parliament passed the Organic Law on the Independent Commission Against Corruption (ICAC). While the Act is yet to be certified and published in the National Gazette, this vote signifies an important step in our nation's anti-corruption efforts. Here are ten things you need to know about the ICAC.

### 1. What is the Independent Commission Against Corruption (ICAC)?

The ICAC is the recently enacted Constitutional Office which will focus on addressing corruption in Papua New Guinea across all levels of society.

### 2. Who appoints the ICAC Commissioners?

The Governor General appoints the Commissioner and the two Deputy Commissioners in accordance with the Appointments Committee.

The Appointments Committee comprise of:

- i. the Prime Minister (Chairperson)
- ii. the Opposition Leader
- iii. the Chief Justice
- iv. the Chairman of the Public Services Commission
- v. the Chairperson of the Papua New Guinea Council of Churches.

### 3. Who will provide oversight to the ICAC?

The Appointments Committee will appoint a 5-member Oversight Committee who are of good standing and high integrity with experience in an anti-corruption agency, integrity agency or a law enforcement agency. The role of the Oversight Committee is to provide recommendations on the operations, staffing, financial and other resource requirements of the Commission and provides an annual report to the Speaker of Parliament. The Oversight Committee does not interfere with the functions of the Commission in dealing with a person or agency alleged with corrupt conduct.

### 4. Does the function of the ICAC overlap with other existing Constitutional offices?



**ICAC and the Ombudsman Commission:** ICAC investigates complaints of public officials or other individuals with corrupt conduct, while the Ombudsman Commission investigates only Leaders specified under the Leadership Code.

**ICAC and the Police:** ICAC has the same duties and powers of Police to arrest. Working in partnership with the Police will ensure the efficiency of investigation and

arrest while also maintaining independence and integrity.

**ICAC and the Office of the Public Prosecutor:** ICAC can prosecute offences relating to corrupt conduct but with written consent from the Public Prosecutor as the mandated office to carry out the prosecution function of the State.

### 5. Will the existing constitutional offices be undermined by ICAC?

The Commissioner of Police, the Public Prosecutor, the Chief Magistrate or a member of the Ombudsman Commission are not under a duty to report to the ICAC any matter that concerns corrupt conduct unless the conduct concerns members of their agency.

### 6. What crimes will ICAC address?

ICAC deals with any person, whether a public official or not, who is involved in corrupt conduct by:

- i. Dishonestly exercising official functions
- ii. Abusing official functions
- iii. Exercising official functions in a way that is not impartial
- iv. Misusing information or material acquired in the course of official functions or
- v. Obstructing, interfering with or perverting the course of justice.



### 7. Is there a penalty for false and misleading claims to ICAC?

Yes. It is an offence if someone gives evidence or states anything that is false and misleading to the ICAC. The prescribed penalty is either a fine not exceeding K15,000 or imprisonment for a term not exceeding 3 years, or both.

### 8. How independent is the ICAC?

ICAC's decisions regarding its priorities and whether or not to investigate or prosecute a person is not subject to any authority. This independence will be further strengthened as ICAC will have control over its staffing and operations.

### 9. How does establishing ICAC benefit Papua New Guinea?

Establishing an ICAC bolsters PNG's international reputation and demonstrate that leadership is being taken on issues of governance. The ICAC gives assurance to foreign investors and bilateral partners that PNG is a reliable jurisdiction. Domestically, an ICAC will increase internal revenue collection by reducing the risk of misappropriation of public funds.

### 10. Can ICAC prosecute corrupt conduct committed abroad?

Yes, given the conduct:

- i. is connected to another corruption conduct that occurs in Papua New Guinea
- ii. is committed by a PNG citizen
- iii. affects a citizen or The State
- iv. occurs in or on a flag carrier vessel of Papua New Guinea
- v. concerns property or funds that are located in PNG or are moved out of or into PNG.

This table shows the differences between the core mandate of the ICAC and the Ombudsman Commission (according to the OLOC 1991 and Twenty Years of the Papua New Guinea Constitution by Regan AJ et al...)

OMBUDSMAN COMMISSION	ICAC
<b>PRIMARY FUNCTION</b>	
Investigation of alleged wrong conduct and defective administration by governmental bodies.	Preventing and reducing corrupt conduct; undertaking research, recommend systems, strategies, practices and policies.
Investigation of alleged discriminatory practises, by any one person.	Investigation and prosecution of corrupt conduct
Investigation of alleged misconduct in office under the Leadership Code.	Powers and duties to arrest a person of corrupt conduct.
<b>SECONDARY FUNCTION</b>	
Power to make special reference to the Supreme Court on questions of constitutional interpretation	Cooperation with Agencies and Bodies.
Power to enforce the Basic Rights	Exchange of Information
Power to advise (jointly with the National Executive Council) the Queen and Head of State, to consent to the Governor-General holding another office or position or engaging in another calling.	Referral of matters to a relevant agency or accept the referral of a matter relating to alleged corrupt conduct.
Power to administer the Organic Laws regulating political parties, political donations and protection of elections from outside or hidden influences.	Establish or participate in committee and taskforces with relevant agencies.
Power given to Chief Ombudsman to participate in judicial appointments etc, by virtue of membership of the Judicial and Legal Service Commission.	Facilitate administrative arrangements and agreements for cooperation with other agencies, exchange of information and referral of matters.

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