

**PARLIAMENT OF NEW SOUTH WALES**

**COMMITTEE ON THE ICAC**

**REPORT  
ON -**

**Inquiry into a Proposal for the  
Televising of Public Hearings of the  
Independent Commission Against Corruption**

**JUNE 1990**

**PARLIAMENT OF NEW SOUTH WALES**

**FIRST REPORT OF THE  
COMMITTEE ON THE ICAC**

*E N T I T L E D*

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**REPORT OF AN INQUIRY INTO A PROPOSAL FOR THE  
TELEVISIONING OF PUBLIC HEARINGS OF THE  
INDEPENDENT COMMISSION AGAINST CORRUPTION**

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*JUNE 1990*

*Together with Minutes of Proceedings*

# **COMMITTEE MEMBERSHIP AND STAFF**

## **MEMBERS**

*Mr M J Kerr, MP (Chairman)*  
*The Hon D J Gay, MLC (Vice-Chairman)*  
*Mr J E Hatton, MP*  
*Ms S C Nori, MP*  
*Mr A A Tink, MP*  
*Mr J H Turner, MP*  
*Mr P F P Whelan, MP*  
*The Hon R D Dyer, MLC*  
*The Hon S B Mutch, MLC*

## **STAFF**

*Mr L E Gönye, Clerk to the Committee*  
*Mr D M Blunt, Project Officer*  
*Ms G C Penrose, Assistant Committee Officer*

## ***CHAIRMAN'S FOREWORD***

Having considered the submissions received and having conducted two public hearings on this issue, the Parliamentary Committee on the ICAC was faced with a number of unresolved issues relating to the proposal to video-tape ICAC hearings for use in television news items. The possible effects of a television camera upon participants in hearings, the possible deterrent effect of television coverage upon witnesses coming forward with evidence and the media "scrum" on the footpath are matters about which there remain unanswered questions. The Committee could conduct numerous hearings and call for a great deal more evidence before these issues are adequately resolved. However, it is clear that these are essentially side issues.

What has become clear to the Committee is the fact that this proposal can not be examined in isolation. If ICAC hearings were to be televised the implications for electronic media coverage of the justice system would be enormous. It is also clear to the Committee that such an important issue as electronic media coverage of our judicial and quasi judicial institutions needs to be approached in a thorough manner, rather than haphazardly.

Rather than continue this inquiry indefinitely in order to resolve each of the side issues which have emerged, the Committee has taken the view that it would be far more useful for it to table this report, presenting its findings and recommendations, with a view to seeing this important issue dealt with effectively, in an overall rather than ad hoc manner.



Malcolm J Kerr MP  
Chairman

## ***EXECUTIVE SUMMARY***

The Committee recognises that television coverage of ICAC hearings is a present day reality. What is being proposed is for a camera to be placed inside the hearing room, so that visual images of witnesses giving evidence can be used in news items. The television networks assert that this is a small step and one which would make news items about the ICAC more interesting and more accurate.

The Committee is convinced, however, that what is being proposed is a major step or even a quantum leap. For one thing, the implications of allowing a camera into ICAC hearings would be enormous in terms of pressure for courts and other commissions to be televised. The Committee is convinced that, if change is to occur in this area, the ICAC is not the most appropriate starting point. The inquisitorial nature of ICAC hearings, the absence of the rules of evidence, and most importantly the fact that witnesses may be compelled to give evidence against their will, put the ICAC in a unique position.

Visual images are tremendously powerful and visual images of a witness giving evidence before the ICAC have the potential to be extremely prejudicial. Furthermore, what may be a "balanced and fair report" of an ICAC hearing may, because of the special powers of the ICAC, be a report of evidence totally inadmissible at a subsequent trial. The sensational nature of and wide publicity given to many ICAC hearings may prejudice a potential jury and a witness's right to a fair trial. It is recognised that the potential for such prejudicial publicity already exists with present news coverage. However, the Committee believes the addition of visual images of a witness giving evidence would greatly increase the risk. Consequently, the Committee is convinced that the public interest must be determined in favour of ensuring the right of ICAC witnesses to a fair trial at any future proceedings arising out of an ICAC investigation. The Committee therefore recommends that ICAC hearings not be televised.

However, the Committee recognises that powerful arguments have been put forward in relation to televising the courts. The British Bar Report, "Televising the Courts", recommended strongly in favour of allowing cameras into the courts. In view of that report and the responsible manner in which the television networks have approached this inquiry, the Committee believes the time has come for a thorough examination of means of improving media coverage of court proceedings in NSW.

# **COMMITTEE MEMBERSHIP AND STAFF**

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# - 1- INTRODUCTION

## 1.1 *Background*

1.1.1 The Independent Commission Against Corruption commenced operations on 19 March 1989 and the Commission's first public hearing began in May (concerning allegations about Waverley Municipal Council). On 22 February 1989, almost a full month before the Commission commenced operations, the Nine network submitted a proposal to the Commission for the video taping and televising of public hearings.

1.1.2 The Parliamentary Joint Committee on the ICAC held its first meeting on 4 May 1989. The functions of the Parliamentary Committee are set out in s.64(1) of the Independent Commission Against Corruption Act 1988. These functions include:

(a) to monitor and to review the exercise by the Commission of its functions; and

(b) to report to both Houses of Parliament with such comments as it thinks fit, on any matter appertaining to the Commission or connected with the exercise of its functions to which, in the opinion of the Joint Committee, the attention of Parliament should be directed.

1.1.3 At its meeting on 17 October 1989, following discussions with the Commissioner of the ICAC, Ian Temby QC, the Committee formally resolved to give consideration to the question of televising public hearings of the Commission. In a media release issued on that date the Committee Chairman said that the Committee would be examining "the desirability of, and if necessary any subsequent guidelines for, televising the public hearings of the ICAC."

## 1.2 *Conduct of the Inquiry*

1.2.1 Advertisements appeared in the Sydney metropolitan newspapers on 4 November 1989 calling for submissions from individuals and organisations with an interest in this issue.



The advertisement stated that the Committee would be examining the implications of, and any guidelines for, televising public hearings. Following a meeting of the Parliamentary Committee on 30 November 1989 the Chairman subsequently wrote to a number of interest groups inviting them to make submissions. These groups included:

- ◇ Australian Journalists Association (NSW Branch);
- ◇ Australian Press Council;
- ◇ NSW Bar Association;
- ◇ NSW Council for Civil Liberties;
- ◇ Law Society of NSW; and
- ◇ Public Interest Advocacy Centre.

1.2.2 In response to these invitations and the newspaper advertisements, submissions were received from:

- ◇ Professor Henry Mayer, Visiting Professor (Sociology), University of NSW, 7 November 1989;
- ◇ Geoffrey Roberson, President, Law Society of NSW, 4 December 1989;
- ◇ Murray Tobias, Vice President, NSW Bar Association, 7 February 1990, and
- ◇ Ian Ramsay, Lecturer in Law, University of NSW, 26 February 1990.

Further brief submissions in support of the original Nine Network proposal were later received from:

- ◇ Peter Munckton, National Editor, ABC TV News, 21 March 1990;
- ◇ Felicity Moffatt, Legal Reporter, ATN 7, 30 March 1990;
- ◇ Daniel Blyde, Legal Reporter, ABC TV News, 4 April 1990.
- ◇ Tony Katsigiannis, President Free Speech Committee, 24 April 1990.

Ian Ramsay subsequently supplied the Committee with some supplementary material on 3 April 1990.

1.2.3 The Committee held two public hearings in relation to this inquiry. For the first hearing on Monday 26 March 1990, each of those individuals and organisations who had made original submissions were invited to appear, however, Professor Mayer was unavailable. Those who appeared were:

- ◇ Paul White, Legal Reporter, TCN Nine;
- ◇ Geoffrey Roberson, President, Law Society of NSW;
- ◇ Ian Ramsay, Lecturer in Law, University of NSW; and
- ◇ Barry O'Keefe, President, NSW Bar Association.

Ian Cook, TV News Director, TCN Nine, was also invited to make a brief statement and answered questions at this hearing and Daniel Blyde, Legal Reporter, ABC TV News, made a brief unsworn statement.

1.2.4 A second public hearing was held on Friday 30 March 1990, with the Commissioner of the Independent Commission Against Corruption, Ian Temby. Mr Temby had an ICAC issues paper included in his evidence, made a statement and answered questions from the Committee.

1.2.5 At the public hearing on Monday 26 March 1990, Mr White presented the Committee with copies of a Report of a Working Party of the Public Affairs Committee of the General Council of the Bar entitled "Televising the Courts". The Committee sought the comments of the Law Society of NSW and the NSW Bar Association on this report. These comments were received on 26 April 1990.

1.2.6 The Committee deliberated on this matter on 27 April 1990. As a result of those deliberations the Committee sought and subsequently received some further material. The NSW Council for Civil Liberties was contacted and the Committee received a letter dated 2 May 1990 setting out the Council's views. The Committee also received a letter from the Hon A R Moffitt, dated 1 May 1990, including comments in relation to this inquiry. On 10 May the Committee received a briefing from officers of the Attorney General's Department on the application of television related technology in the NSW Courts and the general issue of television coverage of the courts.

## **- 2- EVIDENCE: SUBMISSIONS AND HEARINGS**

### **2.1 *Paul White, Legal Reporter, TCN Nine***

- 2.1.1 The proposal for the video-taping and televising of ICAC public hearings was set out in a submission to the ICAC from TCN Nine's Legal Reporter, Paul White. The proposal was for the video recording of public hearings of the ICAC so that the recordings would be available for use by the five television networks in their news reports and also by the Commission itself in conjunction with daily transcripts.
- 2.1.2 The submission began by setting forward the precedents for this sort of television access including the present practice with regard to Federal Parliament. More significance was placed on the precedent set by the recent Senate inquiry into Drugs in Sport. In this inquiry the concurrent recording of both sound and vision was permitted and the evidence of witnesses was televised in news reports. The submission asserted that the quality of news reporting was markedly improved by this concession.
- 2.1.3 One of the major benefits of this proposal was claimed to be an end to the scramble on the footpath before and after hearings as television crews assail witnesses, lawyers and anyone else who might be involved in the hearings. As cameras would actually record the evidence of witnesses and perhaps other participants in the hearings the need for television crews to film anyone entering the hearing room would be obviated.
- 2.1.4 It was also suggested that this proposal would mean an end to the practice of re-enactments of hearings. If appropriate arrangements were made the media may be able to monitor the proceedings of hearings from another room (ie. the media room in the ICAC premises). This would minimise the noise and disruption caused by reporters frequently entering and leaving the hearing room to file copy. It was also suggested that the televising of public hearings would result in greater viewer interest in, and understanding of, the proceedings.

- 2.1.5 Recent improvements in technology meant that one or two cameras permanently set up in the hearing room could function without the need for additional television lights provided the hearing room was properly lit. In the case of witnesses whose identities were suppressed, blanking of faces using computer generated graphics was stated to be a simple matter which could be carried out on the orders of the Commissioner.
- 2.1.6 If the use of both sound and visual recordings was considered to be inappropriate, the cameras could be used for vision only. Although less desirable from the network's point of view, it would enable them to obtain pictures of the Commissioner, lawyers and witnesses, and would still obviate the need for the scramble on the footpath. On the subject of cost, the submission stated that "the networks would come to an agreement for the provision of cameras and recording facilities in consultation with ICAC staff."
- 2.1.7 When he appeared before the Committee on 26 March 1990, Mr White presented a further submission. This submission began by restating the purpose of the proposal, to videotape ICAC hearings for use in news programs rather than live televising of those hearings. It stated that video-recording would make no difference to editorial judgements made by journalists - that with or without cameras in the hearing room, the same witnesses would be shown, in the same reports.
- 2.1.8 Mr White presented a video-tape of a TCN Nine news item of evidence given to the Senate inquiry into Drugs in Sport in February 1989. A second item was presented showing how that hearing would have been reported if cameras had not been allowed into the Senate hearing. It was submitted that the item where cameras had been allowed in was clearer and easier to understand.
- 2.1.9 Mr White presented the Committee with copies of a Report of a Working Party of the Public Affairs Committee of the General Council of the Bar entitled "Televising the Courts", which strongly supported the televising of court proceedings in Britain. He quoted from this report, concerning the importance of television as a source of information and the educative function it could fulfil.
- 2.1.10 He then discussed the criticisms of the proposal contained in the other submissions received by the Committee. In relation to the Law Society's concerns, it was suggested that ICAC hearings are already conducted in the "full glare of publicity" and that the level of publicity would not be changed. On the question of danger to witnesses, it was pointed out that cameras within the hearing room would be under the Commission's control, unlike cameras on the footpath.
- 2.1.11 On the subject of the effects of a camera on witnesses, Mr White referred to the conclusion of the British Bar report that any effects would be negligible. In relation to possible posturing by lawyers, it was pointed out that the Commissioner would be in a position to deal with this situation. On the question of hearsay evidence, reference was

made to recent statements by Assistant Commissioner Roden, rejecting criticism of the ICAC in this regard.

- 2.1.12 The concerns of the NSW Bar Association in relation to McCarthyism were rejected as an unhelpful generalisation. Professor Mayer's comments about appearances were countered by the suggestion that a witnesses own presentation would be fairer than a reporter's portrayal.
- 2.1.13 A technician from TCN Nine then demonstrated the type of camera to be used. It was pointed out that this camera would be mounted on a wall and operated by remote control. No additional lighting would be required. The cost (estimated at \$163,849.00) would be shared by the television networks. It was suggested that an on/off switch could be installed on the Commissioner's bench, so that he could exercise fingertip control over what was recorded. If coverage was approved by the Committee, detailed guidelines would need to be worked out. It was suggested that two cameras would be preferable - one focused on the witness and another with a wide angle lens. It was also suggested that radio networks could easily have access to the material recorded.
- 2.1.14 Much of the Committee's questioning of Mr White focussed on the incidence of the media "scrum" on the footpath and his suggestion that this proposal would see an end to this practice. Mr White suggested that in commercial terms, the television networks would be disinclined to keep camera crews stationed on the footpath all day, if pictures were available from a camera inside. From a journalistic point of view, the need for footage from the footpath would also be minimised. However, it was conceded by Mr White that there was no way of guaranteeing that this proposal would mean an end to the media "scrum".
- 2.1.15 Both the Chairman and Mr Dyer questioned Mr White on the implications of the proposal for media access to Court proceedings and the justice system generally and the reasons why this proposal had first been put forward in relation to the ICAC rather than the Courts. Despite stating that this proposal stood on its own, Mr White acknowledged that the main reason the proposal was advanced in relation to the ICAC was because it was a new body with no firmly entrenched views.

## 2.2 *Ian Cook, News Director TCN Nine*

- 2.2.1 Following Mr White's appearance Ian Cook sought and was granted permission to be heard by the Committee. He had approached the Chairman on the grounds that from a management point of view he may be able to usefully elaborate on some of the points made by Mr White. Mr Cook began by stating that the reason the TV networks put forward this proposal in relation to the ICAC was the "public interest factor" and the clear importance of publicity of corrupt conduct to the success of the ICAC. Mr Cook answered some questions on the logistics of the proposal and emphasised that the

proposal involved making the video-tape available for use in news programs only.

2.2.2 On the question of the media "scrum" on the footpath he said the TV networks recognised the "unseemly nature" of the present practice. However, they would be reluctant to give away a legal right to take footage on a public street. Mr Cook did say the television networks would be prepared to discuss guidelines or other steps which might improve this situation, but only if there was something in return. In answer to the question from the Chairman, "You are reluctant to forego any unseemly behaviour unless you get something in return?", Mr Cook replied, "You are putting words into a witness's mouth but that is a pretty fair statement."

### 2.3 *Supporting Submissions*

2.3.1 Around the time of the Committee's public hearings, three brief submissions were received from representatives of other television networks in support of Paul White's submission. The first of these was from Peter Munckton, National Editor of ABC TV News. He suggested that placing a camera in the hearing room would "facilitate accurate reporting and enable witnesses to give evidence with greater dignity." The second of these submissions, from Felicity Moffatt, Legal Reporter, ATN 7, urged the Committee not to focus on the "media scrum", and argued that a camera in the hearing room would help the public better understand the workings of the ICAC. The third of these submissions was from Daniel Blyde, Legal Reporter, ABC TV News. He argued that 99% of the perceived problems with the proposal (including the appearance of witnesses, selective publication of evidence and the publication of hearsay evidence) already existed with present television coverage of ICAC hearings.

2.3.2 A further submission in support of Paul White's proposal was received from Tony Katsigiannis, President of the Free Speech Committee, dated 24 April 1990. Mr Katsigiannis emphasised the "principle of open justice" and suggested that this principle had not "kept pace with technological advances". He stated that because only a small number of the public could be present at hearings, it made "good sense" to televise the proceedings "for the benefit of those who are unable to attend." He concluded by stating that the televising of ICAC hearings would promote the administration of justice by ensuring greater community awareness of corruption.

### 2.4 *Ian Ramsay, Lecturer In Law, University of NSW*

2.4.1 Mr Ramsay has had an interest in this area since the early 1980's when he prepared an Issues Paper for the New South Wales Law Reform Commission which looked at the question of televising court proceedings. The thrust of his submission was that the arguments in favour of televising ICAC public hearings outweighed the risks and that a controlled experimental program should be undertaken.

- 2.4.2 Mr Ramsay stated that the issues which have been canvassed in relation to the televising of court proceedings are "essentially the same for the question whether the proceedings of commissions should be televised." He pointed out that where experimental programs had been conducted in the US, they had invariably been judged to be successful and television coverage of court proceedings had subsequently been allowed on a permanent basis.
- 2.4.3 Mr Ramsay affirmed the importance of the Commission holding hearings in public, with representatives of the media present. He argued that public proceedings operate as "a protection against the exercise of arbitrary power and maintain public confidence in the integrity of the Commission". He described media coverage of public hearings as an essential element in ensuring the fairness and impartiality of those hearings. He suggested that,

"If the access of the media to Commission proceedings is to be effective and meaningful, account must be taken of changing technology and changing media practices. It is a matter of recognising that a vitally important part of media reporting is television coverage."

He also suggested that television coverage would assist the ICAC in its educative role.

- 2.4.4 Mr Ramsay then dealt with some of the arguments put forward against television coverage of courts and commissions. In response to claims that television cameras would disrupt proceedings, he said that overseas experience had demonstrated that available technology enabled television equipment to be unobtrusive. Concerning arguments that television coverage would focus on the sensational and present a distorted view, he pointed to the success of experimental programs in the US, and suggested that acceptance of the view that television coverage would be sensational would require an assumption that "the media in Australia is less responsible than its United States counterpart." Finally, in relation to the possible adverse effects upon witnesses, he asserted that this could be controlled by guidelines prohibiting coverage of witnesses who objected to being filmed.
- 2.4.5 Mr Ramsay recommended the establishment of an experimental program under the auspices of a small committee comprising interested individuals, including both proponents and opponents of television coverage of ICAC hearings. This committee would initially establish guidelines for the experiment. It would then monitor the actual broadcasts, with a view to ensuring that they "accurately depict the proceedings of the Commission". (During the experiment, television networks would be required to lodge tapes of broadcasts with the committee.) At the conclusion of the experiment this committee would forward the results of its evaluation to the Parliamentary Committee, which would then be in a position to decide whether or not television coverage of ICAC hearings should continue on a permanent basis.

- 2.4.6 When Mr Ramsay appeared before the Committee he made a statement elaborating on his submission. He began by making reference to a recent television program screened on the ABC which dealt with a New York murder trial. He quoted the judge in that case as concluding that the presence of a television camera in the court room had served the public interest. He then reiterated a number of points made in his submission including the importance of television as a news medium, the US experience, the educative role that television could play, and his response to criticisms of the proposal.
- 2.4.7 A number of Committee members questioned Mr Ramsay about his proposed experimental program. In addition to the logistics of the program, attention was focused on the possible prejudicial effects of publicity upon those witnesses involved. Whilst Mr Ramsay insisted that an experimental program with strict guidelines would be better than simply allowing open slather coverage, he did admit that "people are going to be guinea-pigs" in any experiment.
- 2.4.8 Ms Nori asked a number of questions about the deterrent effect of television coverage discouraging people coming forward with corruption allegations. Mr Ramsay responded that there was already a likelihood of print media publicity and that television coverage of ICAC hearings could actually lead to more people coming forward with evidence.
- 2.4.9 Mr Ramsay was then asked whether any experiments or studies had been conducted to determine the prejudicial effects upon witnesses of television coverage. He replied that, whilst this appeared to be a worthwhile suggestion, he was not aware of any such studies.
- 2.4.10 Mr Ramsay made reference in an answer to the Iran/Contra hearings in the US. The Chairman subsequently questioned him about the significance of Oliver North having worn his military uniform while giving evidence. Mr Ramsay conceded that this would have had an impact on public perception of Oliver North's evidence and that it may have been a relevant consideration for some viewers.
- 2.4.11 Mr Ramsay wrote to the Committee on 3 April 1990 with some supplementary information. He enclosed an extract from a recent working paper of the Canadian Law Reform Commission which recommended an experiment with electronic media coverage of criminal trials in Canada. He also indicated that the Canadian Bar Association had recommended a two year experiment of televising Court proceedings in Canada.

## 2.5 *Professor Henry Mayer*

- 2.5.1 The first submission received in response to the newspaper advertisements was from Professor Henry Mayer, Professor Emiratus (Political Theory) University of Sydney, Visiting Professor (Sociology) University of New South Wales, and Visiting Professor (Mass Communications) Macquarie University. Professor Mayer was firmly opposed to the proposal to allow televising of public hearings of the Commission.



- 2.5.2 Professor Mayer's position was based upon his views of the television medium itself. He argued that television was "a very poor provider of accurate information" and that televising hearings would therefore detract from, rather than contribute towards, a factual or rational understanding of the work of the ICAC. He was most concerned that people appearing before the ICAC would increasingly be judged by the public on the basis of superficial appearances. Furthermore, he suggested that the large number of details and issues to be resolved in determining procedures for television coverage of hearings would be prohibitive in terms of both time and cost.
- 2.5.3 Unfortunately, Professor Mayer was not available to participate in the public hearings of the Committee.
- 2.6 *Law Society of NSW*
- 2.6.1 The second submission received was from Geoffrey Roberson, President of the Law Society of New South Wales. This submission was also firmly opposed to the proposal for the televising of public hearings of the ICAC and was based upon consideration of this issue by the Criminal Law Committee of the Law Society. The submission set forth a number of reasons for the Law Society's opposition.
- 2.6.2 Firstly, it was argued that television coverage of public hearings would discourage many people from disclosing vital information about corrupt practices in the fear that their evidence would be taken in the "full glare of publicity."
- 2.6.3 Secondly, it was stated that the proposal would be unfair to persons under investigation, as "viewers tend to accept that people must be associated with some wrongdoing simply because they are under investigation." Innocent people could from time to time be put under investigation by the ICAC. "The damage to their reputation and embarrassment to their families will be harsh and disproportionate to the benefit which exposure of the proceedings on television will reap." Furthermore, it was stated that hearsay evidence was given at hearings and that the Commission merely explored the strength of allegations which were made. In these circumstances the prejudicial affect of television coverage (on innocent third parties about whom allegations are made) would be overwhelming.
- 2.6.4 Thirdly, the effect upon witnesses was discussed. It was suggested that witnesses coming forward with information on corrupt practices would be readily identified by the televising of those hearings and that this may result in them being "subjected to unnecessary and unwanted attention if not positive danger." Furthermore, witnesses may either be inhibited from giving proper evidence by result of shyness or at the other extreme take to posturing before the television cameras. There was also the danger of posturing by counsel appearing before the Commission.

- 2.6.5 When Geoffrey Roberson appeared before the Committee he began by commenting on the question of the media "scrum" on the footpath. He stated that the Law Society would be opposed to any surrender of legal rights to do away with the "scrum". He then went on to emphasise the distinctions between the ICAC and the justice system, particularly the fact that those appearing before the ICAC have not been charged. In answer to a later question from Mr Tink, he also noted concerns about publicity which could be given to answers given under objection, not admissible in subsequent proceedings, and the difficulties this could cause in terms of empanelling an unbiased jury.
- 2.6.6 He noted the Law Society's support for Professor Mayer's submission in relation to appearances and the likelihood of unfair damage to reputations. On the question of accountability, Mr Roberson suggested that the fact that hearings were often held in public made the ICAC accountable and that television coverage would not add to that accountability. He suggested that some witnesses, "the rich and powerful in our community", could manipulate television to their advantage in ICAC hearings.
- 2.6.7 In answer to a question from Mr Tink, Mr Roberson indicated that the Law Society would be prepared to provide the Committee with a response to the British Bar Report, "Televising the Courts". This response was received on 26 April.
- 2.6.8 On the implications of the proposal for televising ICAC hearings for the justice system, Mr Roberson described the proposal as "a foot-in-the-door technique." He said the Law Society would see the televising of court proceedings as undesirable because of the community's perception of people appearing as guilty. He also said that televising could lead to pressure for ICAC hearings to be held in private and he agreed that the question of delays and costs as a result of appeals against televising would need to be considered.
- 2.6.9 In answer to a question from Mr Whelan, Mr Roberson stated that he felt the ICAC already had a more than adequate program of public relations in place and that the ICAC did not need television coverage such as that proposed in the TCN Nine submission.
- 2.6.10 It should also be noted that Mr Roberson wrote a letter to the Editor of the Sydney Morning Herald in response to a Herald article on this inquiry on 30 March 1990. In that letter he focussed on the differences between the ICAC and the Courts, playing down other issues such as the effects of publicity and the nature of television news items.
- 2.6.11 The response to the British Bar Report, "Televising the Courts", received on 26 April 1990, indicated that there had not been time for the Council of the Law Society to consider the matter. However, the President, Mr Roberson, was prepared to offer a number of comments. He said he was impressed by the report's "forthright exposition of the issues involved", particularly the material on the question, "why televise". He said that the arguments in support of televising were "impressive" and "might be considered favourably".

2.6.12 However, Mr Roberson made it clear that the Law Society maintained its position against televising ICAC hearings. In setting out the reasons for this position, Mr Roberson emphasised the differences between ICAC hearings and Court proceedings and the unique powers of the ICAC. He also mentioned the fact that the ICAC has so far had only a "short life" and suggested that "our experience with the Independent Commission Against Corruption should extend considerably further before any decision is made about televising its proceedings". He concluded by stating that

"any introduction of televising of proceedings might commence with proceedings in a court of law rather than proceedings before a unique tribunal with investigative powers as is the Independent Commission Against Corruption."

## 2.7 *NSW Bar Association*

2.7.1 The third submission received was from the New South Wales Bar Association. This submission took the form of a copy of a letter from the President of the Bar Association to Commissioner Temby dated 8 March 1989 commenting on the proposal for television coverage of hearings and also a covering letter from the present Vice-President to the Clerk to the Committee dated 7 February 1990.

2.7.2 The letter of 8 March 1989 firmly stated the Bar Association's strong opposition to television coverage of Commission hearings. The letter made reference to television coverage of the McCarthy Senate Committee hearings which "initially helped McCarthy and assisted his campaign against communists and communism but... later discredited him and his methods". Whilst it was not suggested that the Commission would use such methods for its own purposes it was stated that media editing of camera footage could produce a similar result.

2.7.3 It was suggested that television coverage of the Commission's work would sensationalise its activities and that great damage could be done to individuals who may later be cleared by the Commission itself or by the courts. Such television coverage could destroy public confidence in the Commission and would greatly increase the pressure for the Commission to hold hearings in private.

2.7.4 The letter of 7 February 1990 affirmed the Bar Association's opposition to the televising of ICAC hearings. It was stated that it was desirable that ICAC hearings be conducted publicly as far as possible and that it was important that the Commission maintain complete control over its procedures in order to protect the interests of witnesses etc. Television coverage could produce a "tendentious portrayal" of the Commission's hearings to the detriment of individuals appearing and ultimately to the Commission itself.

- 2.7.5 The President of the Bar Association, Barry O'Keefe QC, appeared before the Committee on 26 March 1990. He began by pointing out that members of the media were not so much representatives of the public, as suggested in one submission, as representatives of commercial organisations whose function was to make a profit. Television networks were therefore constrained by their pursuit of ratings which, he claimed, led to sensationalism. He later elaborated on this, explaining that the limited time available for each news item made it very difficult for a "grab" to be placed in its proper context.
- 2.7.6 Mr O'Keefe then outlined his views on the deterrent effect of television coverage. He referred to the diffidence which many people already have about coming forward with evidence or reporting crimes. He later restated this as one of the dangers of television coverage of ICAC hearings if court proceedings were subsequently televised.
- 2.7.7 Mr O'Keefe expressed grave concerns about the suggestions in the TCN Nine proposal that the identity of witnesses whose names were suppressed could be protected by the use of computer graphics. He suggested this would encourage people "to guess who that is with the black blot on his or her face" and said he found the idea "quite abhorrent."
- 2.7.8 On the question of an experiment, he suggested that it may be misleading, as the proponents would most likely be on their best behaviour during the experiment and may act in a very different manner afterwards. Furthermore, once an experiment was begun, the prospects of reversing the decision would be limited.
- 2.7.9 Mr O'Keefe then described the possible effects of television coverage in terms of theatrics. He made reference to the performances of Oliver North and John Poindexter before the Iran/Contra hearings, which he described as "stage-managed for television". He asserted that television cameras would encourage counsel and perhaps even future Commissioners, to act up and engage in theatrics. He also made the point that witnesses in the witness box would be "utterly defenceless" before the cameras, whereas witnesses presently can sometimes take steps to ensure that they are not filmed by avoiding the "scrum" on the footpath.
- 2.7.10 On the implications of television coverage of ICAC hearings, Mr O'Keefe stated that the precedential value would be very high. If court proceedings were then televised as a result "that would mean a very fundamental change in the way witnesses perceive themselves in trials and other court proceedings." In answer to a question by Mr Whelan, he stated that if the ICAC was bound by the rules of evidence the Bar Association would still be opposed to television coverage but probably less strongly. Finally, he undertook to provide the Committee with a written response to the British Bar Report, "Televising the Courts".
- 2.7.11 Mr O'Keefe's comments on this report were received on 26 April 1990. At the outset he pointed out that the report was not one of or to the General Council of the Bar but rather

a report by a Working Party to the Public Affairs Committee. He further pointed out that it was clear that "the view of the different Bars in England was not as favourable to the proposal as the Committee, indeed there was some firm opposition from these sources."

- 2.7.12 Mr O'Keefe rejected the major argument put forward in favour of televising, that it would enhance confidence in the legal system and suggested that it may actually achieve the opposite. He also rejected the proposition that television news items were designed or intended to be educational. Furthermore, he rejected the assertion that most people in the community had a poor understanding of how the Courts operate. On the question of dignity, Mr O'Keefe suggested that the experience of television and church services was one of disruption.
- 2.7.13 On the response of the report to arguments against televising, Mr O'Keefe suggested that much of the material presented was anecdotal and unclear. The report acknowledged that participants would be "moderately" aware of the presence of television cameras, argued that the distracting effect would only be "slight", and suggested that there was no "significant" difference between appearing on television and being named in print. The danger of some participants acting more flamboyantly for television was characterised as "slight" and it was stated that televising would not "substantially" increase the ordeal for the defendant. In each of these instances, Mr O'Keefe suggested that the terms used were imprecise and the arguments used to reject the criticisms of televising were inadequate.
- 2.7.14 Mr O'Keefe concluded that the report was "a weak document with no official status."

"Its conclusions consist of a series of value judgements, a number of which are either inadequately based or not supported at all by the material, if any, quoted in support. Having read the document it is my submission that, if that is the basis of the case in favour of televising ICAC proceedings, a good case has not been made out.

## 2.8 *Ian Temby, Commissioner, ICAC*

- 2.8.1 When the Commissioner of the ICAC, Ian Temby, appeared before the Committee on 30 March he began by having an Issues Paper, prepared within the ICAC in mid 1989, included in his evidence. This paper identified key issues and options for action.
- 2.8.2 Under the heading Legal Aspects, the paper stated that the Commission had authority to decide whether proceedings could be video taped and if so, in what manner. A television station publishing any part of the video tape of ICAC proceedings, would need to have regard to any order or directions of the Commission, the applicable provisions of the ICAC Act, the Laws of Defamation and generally, its licence conditions and the provisions of the Broadcasting and Television Act. Consideration would have to be given to the ownership of the copyright to the video tape and the need for any associated licensing

arrangements.

2.8.3 Possible benefits of allowing proceedings to be televised were listed as:

- ◇ better quality of reporting of public hearings through television, which is the medium by which most members of the community get their information;
- ◇ assistance in educating the public about corruption; and
- ◇ an end to the scramble on the footpath with all the derogation from dignity that flows from that practice.

2.8.4 Arguments against the proposal were listed as:

- ◇ the effect upon witnesses and other participants, some of whom may "freeze" or alternatively "play up";
- ◇ prospective witnesses might be less inclined to come forward;
- ◇ allegations of McCarthyism;
- ◇ delays resulting from arguments put and determinations made regarding taping and the use of tapes;
- ◇ physical disruption to the conduct of hearings (although it is generally recognised that available technology would minimise such disruption); and
- ◇ the potential wider public exposure of participants at hearings, particularly witnesses. (However, it was suggested that because witnesses were being required to take part in public hearings they were no longer private citizens but participants in a public process and as such the right to privacy was not an issue).

2.8.5 The question of whether participants other than witnesses should be video taped was then addressed. If witnesses were to be video taped there may be no argument in principle why other participants should not be. However, the object of the proposal "was not to make a star out of either the person presiding or counsel. Some lawyers (including presiding officers) could not be relied upon to resist the temptation to act up for the camera."

2.8.6 Turning to matters of detail or implementation it was suggested that one recording should be taken and copies distributed to the various networks as appropriate. This raised the question of whether the recording should be performed by the Commission or a representative of the media and the related questions of who should provide the

equipment and who should bear the cost.

- 2.8.7 The issue of private hearings was then discussed and it was suggested that if proceedings were being taped the Commission would need to make orders in relation to such video taping when a hearing moved from being public to being held in camera. On the subject of cost the paper suggested that, because the object of the proposal was to improve the level of reporting by the television networks, the networks should bear the cost of its implementation.
- 2.8.8 Possibilities for implementing the proposal were then discussed. Depending on cost, it was suggested that a trial may be used with a proper system of evaluating its impact. A possible package for agreement with television networks was then put forward including the following aspects:
- ◇ a single camera trained upon the witness only;
  - ◇ the product to be shared between the various channels;
  - ◇ the material received to be used only in standard news broadcasts (ie. not as the basis of specials or mini-series);
  - ◇ witnesses not to be waylaid or otherwise harassed (ie. no scrambles on the footpath); and
  - ◇ the presiding officer to retain an overriding discretion to direct that certain parts not be used (eg. if a witness broke down and cried through nervousness it would seem unfair to allow film of this to be used).
- 2.8.9 Lastly the paper addressed some of the possible implications of the proposal. Permission for radio stations to have access to a sound recording of proceedings would obviously need to be addressed. The access of organisations other than participating television networks to the video tape would need to be looked at, although this question may be answered by resolving the earlier issues of the use of the tape, costs and copyright. The "floodgate" argument would also need to be carefully considered in terms of what pressure allowing ICAC hearings to be televised may place on other institutions (including quasi-judicial bodies, the courts and Parliaments) to be televised.
- 2.8.10 Mr Temby then made an opening statement about the inquiry. He indicated that the ICAC had two reasons for referring this matter to the Parliamentary Committee for consideration. Firstly the difficulty of this issue and the balance of arguments for and against, and secondly, the position of MPs to represent the public interest and bring that to bear on this issue.

- 2.8.11 Mr Temby stated that if the proposal was to be approved, there should be a general rule to this effect, rather than making each hearing subject to a separate application, as each decision whether or not to allow televising would become news worthy and could involve the ICAC in the "broad political process." If a trial program was to take place, this should be of "decent" duration, 18 months or two years. Any decision about televising should also be applied to radio.
- 2.8.12 Reference was then made to the submission from the NSW Bar Association. Mr Temby sought to place this submission, particularly the letter of 8 March 1989, in its proper context, by tabling the letter to which this replied. He then stated that he felt the reply from the Bar Association was not helpful but rather "gratuitous advice".
- 2.8.13 Mr Temby then presented a video recording of a witness giving evidence during the driver licence hearing. This recording was made and shown to the Committee with the witness's consent. The recording was an example of the very short recordings which the ICAC proposed to make of each witness in order to aid recollection when reports are written. Having presented this video recording, he said that if the proposal was approved filming should not be subject to the consent of witnesses as this would be impractical. However, there should be a right to make representations about whether footage should be used.
- 2.8.14 Mr Temby then made reference to the British Bar Report, "Televising the Courts", describing it as an "impressive document". He said it was interesting to note that the "ultimate argument underpinning the recommendation for televising (was) that of better informing the public", in light of the ICAC's statutory educative responsibilities. He emphasised that he would not wish to see hearings turned into a circus by television and noted that the report had found that this had not occurred in the United States.
- 2.8.15 On logistics, Mr Temby suggested that one camera should be focussed on the witness box and that some pan shots should be allowed. However he said he had no desire to see his face on television "with any look of incredulity that the evidence might produce". He stated that footage should only be available for use in news programs.
- 2.8.16 He then discussed some of the arguments against the proposal. These included the effect upon witnesses and the possible deterrent effect upon potential witnesses. He suggested that he feared that people "habituated to the hearing room context" could "play up" to the cameras. He concluded by stating that the ICAC was looking to the Parliamentary Committee for considered guidance, but that the final decision should rest with the ICAC.
- 2.8.17 In answer to a question from the Chairman concerning the precedential effect of televising ICAC hearings, Mr Temby said,

"...if the Committee knew that some part of the justice system was about to do something, we would have no desire to go first. I have no reason to think that something will happen elsewhere, and the question is what should



happen in the public interest in our area. I have no desire to go first, and the breaking of new ground does have its attendant dangers, I suppose, but I have no reason to think that anything is going to happen in the justice system at any particular time in the future."

However, he expressed the view that he had no reason to believe any action was going to take place in relation to electronic media coverage of the justice system in the foreseeable future.

- 2.8.18 Mr Dyer pursued this issue, asking whether the ICAC, surrounded by some controversy as it had been, wanted to "add an unwanted further overlay of controversy" in the form of television coverage. Mr Temby replied that he saw the ICAC becoming accepted as "part of the customary furniture upon the decks of the ship of the state". He said that if televising was to go ahead it would need to begin with a non-contentious hearing.
- 2.8.19 In answer to a question from Mr Gay concerning the definition of news programs and current affairs programs which would have access to footage, Mr Temby said that guidelines could be established, perhaps setting out timeslots during which footage could be used. In answer to another question from Mr Gay, he said that televising could lead to more suppression orders being made.
- 2.8.20 When questioned about the deterrent effect of television on witnesses coming forward, Mr Temby said that this question was largely a matter of "guesswork". However, he added that from the US experience of experimental programs of cameras in the courts, it could be assumed that the effect was minimal - if there had been a great deterrent effect televising would not have been allowed to continue.
- 2.8.21 When questioned about the Bar Association's comments that witnesses in ICAC hearings were not charged, Mr Temby suggested that these concerns had been overstated. He said that many witnesses in courts were there under duress, and that many were not charged. On the question of publicity prejudicing future trials, he suggested that the likely delays between ICAC hearings and trials meant this was unlikely to be a problem.
- 2.8.22 Mr Temby stated that exposure was important to the proper functioning of the ICAC. He said it was exposure that was effective, suggesting that corrupt practices in relation to driver licences were probably at a minimum during the public hearings into that matter. However, he added that,

"By exposure I do not mean the public shaming of individuals - some sort of contemporary equivalent of putting them in the stocks. If this proposal amounted to that, I would be against it, and to the extent that there is a danger that it does, it is a negative factor."

- 2.8.23 Mr Temby said the ICAC would be able to handle applications concerning television coverage and was not concerned about possible delays which may result. Finally, he agreed with a proposition from Mr Tink that the main issue in the inquiry was the nature of the visual images which would accompany television news items.
- 2.8.24 It should also be noted that in answer to a question from Mr Turner, Mr Temby clarified his intentions concerning the final decision on this issue. He stated that he thought legislation was unnecessary and therefore undesirable, that the decision should therefore be made by the ICAC and that the presiding officer at a hearing should retain an over-riding discretion. Furthermore, he added, "it would be unfortunate if a proposal such as this were forced upon an ultimately reluctant Commission".

## 2.9 *NSW Council for Civil Liberties*

- 2.9.1 Following its initial deliberations on this issue, the Committee contacted the NSW Council for Civil Liberties to seek its views. A brief letter, dated 2 May 1990, was subsequently received. The letter read as follows:

"At the January 1990 meeting of the Council for Civil Liberties Committee the following resolution was passed:

The Council for Civil Liberties opposes the televising of ICAC proceedings as it would expose persons involved to too much defamation of character and may jeopardise a fair trial if charges are later laid.

The Council considered the competing interests of the above concerns and the interest of freedom to publish (since proceedings are already published in other media forms, why not by television) but resolved that the above interests outweighed all others."

## 2.10 *The Hon A R Moffitt*

- 2.10.1 The Committee then received a letter, dated 1 May 1990, from the Hon A R Moffitt, enclosing his comments on the issue. Justice Moffitt is now retired. During 1973-1974 he conducted a Royal Commission into "Allegations of Organised Crime in Clubs", the first Royal Commission into organised crime in Australia. Justice Moffitt was firmly opposed to the televising of ICAC hearings. His views, like those of Professor Mayer, were largely based upon the nature of the television medium. A number of points were made in this regard. Firstly, he pointed out that "humans usually overestimate their ability to know from seeing, so the visual may be deceptive." This was particularly dangerous when viewers saw only the images that someone else had selected.
- 2.10.2 Secondly, Justice Moffitt emphasised the time limitations involved in television news items and the fact that complex matters may be reduced to a very short item, consisting of a

series of short "grabs". Justice Moffitt then described the way in which political speeches, campaigns, and demonstrations had been moulded by the needs of television to contain "some sort of pithy line" suitable for a "grab". Furthermore, news programs were increasingly focussing on entertaining items.

2.10.3 Justice Moffitt went on to say that visual images were likely to have a lasting impact. Further,

"What is wrong or bad is nearly always more newsworthy than what is good...It is more newsworthy to publish allegations of scandalous conduct against a public figure than to publish the later more lengthy explanations or proofs of innocence. Time pressures are incompatible with publicity on a later day of such necessarily longer or exculpatory or explanatory material."

He concluded that because of these characteristics, television was not a suitable medium to inform the public about the workings of judicial and semi-judicial institutions.

2.10.4 Justice Moffitt also raised the issue of the use of library footage. He cited a number of examples of the way media figures are often given "tags" such as "X, described as the bagman at the Fitzgerald inquiry", based upon one witness's description of X or perhaps some hearsay evidence about X. In the same way, television news items often re-use library footage of a figure. Justice Moffitt expressed concern about the possible re-use of library footage of witnesses at ICAC hearings in future news items, with a caption such as "Z, before the ICAC". Such footage and labels could be used quite unfairly to denigrate a person. In this regard he cited a recent item involving the selected use of footage of Ronald Reagan giving evidence at the Poindexter trial. This item itself now provided library footage which would be available for use as a damaging visual "tag" for Ronald Regan.

2.10.5 Finally, Justice Moffitt warned that selective excerpts of ICAC proceedings could be used by "powerful interested, disgruntled or disaffected persons" to create a false image of the Commission, such as a McCarthy type picture. The target could be the ICAC generally or the Commissioner himself. Justice Moffitt stated that such attacks on inquiries or Commissioners were not unknown. If the ICAC was subject to such an attack through the television medium it would be difficult to counter and the fight against corruption could be damaged.

## 2.11 *Attorney General's Department*

2.11.1 On 10 May 1990 the Committee received a briefing from Mr Tim Keady, General Manger, Court Services Division, Attorney General's Department. (Mr Gary Finnegan and Ms Kerrie Palmer, from the Attorney General's Department were also in attendance.)

Mr Keady answered questions in relation to television coverage of court proceedings.

2.11.2 Mr Keady said that judicial officers had the discretion to allow court proceedings to be televised but that there were no general moves towards allowing televising at this stage. He said that major problems could be expected if televising was imposed upon the court system. However, he indicated that there were no technological barriers, and said that the technology involved was in fact "mundane". In answer to a question from the Chairman he agreed that a suitable mechanism for this issue to be addressed would be through the appointment of a working party involving representatives from the various interests.

2.11.3 Mr Keady was also asked about the incidence of contempt of court, in terms of television reporting. He indicated that there were significant grounds for concern and that there was evidence that there was an almost deliberate push on the boundaries by the media recently. He cited examples when the media appeared to have made calculated decisions to take risks despite warnings about the consequences.

3.1 *Unanswered Questions*

- 3.1.1 At the outset it must be pointed out that there are a number of questions about the proposal which have been raised during this inquiry and which remain largely unanswered. Whilst these unanswered questions have not been critical in the formulation by the Committee of its recommendations these issues require further attention, particularly in the context of recommendation 4.2 (page 32).

3.2 *Effect on Participants*

- 3.2.1 One of the arguments put forward against the proposal was the likely effect of television cameras upon participants in the hearings. The Law Society submission stated that,

"Those giving evidence before the Commission may either be inhibited from giving proper evidence by reason of shyness or at the other extreme take to posturing and exaggerating the evidence in order to create an impression. In either case the effect of the evidence is nullified. There is also the danger of posturing by Counsel appearing before the Commission."

This point was also listed in the ICAC Issues Paper tabled by Mr Temby on 30 March as an argument against the proposal. Mr Ramsay, a proponent of a controlled experimental program, also acknowledged that this was "perhaps the most significant objection to the televising of Commission proceedings."

"...it may be suggested that some witnesses will be nervous in the presence of television cameras and the Commissioner may find it difficult to decide whether the lack of composure by a witness is attributable to the television cameras or the examination by Counsel assisting the Commission."

- 3.2.2 Mr Ramsay did make reference to a number of US studies which suggested that the effect of television cameras upon witnesses was negligible. Mr White referred the Committee to the British Bar Report, "Televising the Courts", which found that concern about the effect of television coverage upon witnesses was largely overstated. The report quoted from the Supreme Court of Florida's analysis of an experimental program.

"Courtrooms were intimidating long before the advent of electronic media...the single addition of the camera in the courtroom...should not increase tension significantly."

Mr White suggested that a television camera would not make witnesses more nervous than they would be already under questioning from a packed Bar table.

- 3.2.3 The concern here is not only with witnesses, though. Mr Temby stated before the Committee,

"My fear is that you may see some playing up to the camera by people who are more habituated to the hearing room context."

Mr White suggested that any posturing by Counsel could be dealt with swiftly by the presiding officer at the hearing. He said that fears of posturing had "more to do with traditional jealousy and rivalry at the Bar than any concern about damage to principles of natural justice."

- 3.2.4 Despite these responses, the possible effect of television cameras on participants is such an important issue that more empirical evidence is required in order for the concerns which exist to be effectively addressed.

### 3.3 *Deterrent Against Witnesses Coming Forward*

- 3.3.1 This concern was put most succinctly in the submission from the Law Society.

"The purpose of ICAC is to try and eradicate corruption from the public sector. Its success will depend on information received from persons who have knowledge of any corrupt practices. If television coverage of public hearings is permitted many persons will be discouraged from disclosing vital information in the fear that their evidence will be taken in the full glare of publicity."

This point was also listed in the ICAC Issues Paper as an argument against the proposal.

3.3.2 Mr White responded to this point by stating that ICAC hearings were already conducted in the full glare of publicity.

"When we report evidence at the ICAC we film all witnesses as they enter or leave the building. They are often exposed to several cameras at once, a far more frightening experience than one or two cameras set in the hearing room."

3.3.3 However, Mr O'Keefe asserted that cameras in the hearing room would mean that witnesses would be defenceless, "as it were tied and bound looking directly at the camera", whereas at present witnesses who did not want to be photographed could be "fairly effective in ensuring that they are not, without going to absurd lengths."

3.3.4 Ms Nori questioned each witness in turn on this issue, particularly focussing on the qualitative difference between television and print media coverage. It must be said that no satisfactory answer was received. Mr Temby said, "we think that is largely guesswork, and I am reluctant to guess." No-one seems to know exactly what the effect of television coverage may be in terms of discouraging people from coming forward.

#### 3.4 *Media Scrum*

3.4.1 One of the major benefits of the proposal as set out in Mr White's original submission was claimed to be an end to the media "scrum" on the footpath. This was also listed as a benefit in the ICAC Issues Paper.

3.4.2 This issue was pursued by a number of Committee members with Mr White at the hearing on 26 March 1990. Mr White stated that it was very expensive for the television networks to maintain television crews outside the ICAC hearings all day. Market forces would demand an end to this practice if the television networks were able to obtain the necessary footage from a camera in the hearing room. When pressed on this point, however, he conceded that in certain circumstances, such as when a newsworthy witness appeared, there would probably still be a small media contingent on the footpath to seek comments. As Mr Dyer put it, the "scrum" may no longer exist but "a few front row forwards" would remain on the footpath outside the hearings. In short, there was no way of guaranteeing an end to the "scrum", although it would be reduced in size and frequency.

3.4.3 Mr Cook told the Committee that the television networks recognised the "unseemly nature" of the "scrum" and the unsatisfactory situation which existed at present. He stated that, although they would be reluctant to give up any legal right to film on the footpath, the television networks would be prepared to work out guidelines in return for leaving a camera inside the hearing. In answer to a question from the Chairman, "You are reluctant to forego any unseemly behaviour unless you get something in return?", Mr Cook said, "You are putting words into a witness's mouth, but that is a pretty fair statement." It

should also be noted that Mr Roberson said that the Law Society would not agree to the surrendering of any legal rights to do away with the media "scrum".

- 3.4.4 Whilst the Committee recognises that the media "scrum" is a side issue to this inquiry, it is a concern that the termination of this practice, previously put forward as a major benefit of the proposal, cannot be guaranteed if the proposal goes ahead. However, the fact that representatives of the television networks have acknowledged the media "scrum" to be an unseemly practice and have made clear their desire for change suggests that further discussions on this issue could be productive.

### 3.5 *Essential Issues*

- 3.5.1 The Committee recognises that the questions listed above, whilst requiring further attention, are not central to the inquiry. The issues which are seen by the Committee to be critical in considering this proposal are set out below.

### 3.6 *Style vs Substance*

- 3.6.1 The major concern raised in the submission from Professor Mayer related to television's tendency to focus on appearances.

"People constantly draw conclusions as to reputations, trust, honesty and innocence or guilt from people's appearances, modes of dress, gestures and so on. ...Given that such things as camera angles, or 5 o'clock shadows may make a big difference to viewers reactions, the amount of judgments based on visual features is bound to increase ...Television would increase irrationality, increase the popular judgments based on superficialities and appearances, their looks or tone of voice."

These concerns were also raised by Justice Moffitt. He indicated that because people overestimate their ability to know from seeing, the visual may be deceptive. He also stated that the time limits upon television news items made it an unsuitable medium to convey information concerning complex quasi judicial proceedings.

Mr White's response to this concern was that witnesses already appear on camera entering or leaving hearings, and that a witness's own denial of impropriety on vision and sound would be fairer than a reporter's interpretation or restatement.

- 3.6.2 This issue was discussed at the hearing on 26 March 1990. Mr Ramsay made reference in an answer to the Iran/Contra hearings which he had observed on television whilst in the United States. The Chairman asked whether he thought the fact that Oliver North wore his uniform when televised giving evidence had any impact. Mr Ramsay acknowledged



that for a number of people it would have made a difference to the way they viewed his evidence. Mr O'Keefe picked up on this point and made reference to the differences in presentation at those hearings by Oliver North and John Poindexter. He suggested that what viewers saw was "very much stage-managed for the televising of those hearings."

3.6.3 Mr Tink suggested that the power of the visual television image during the Iran/Contra hearings could perhaps be tested by these questions:

- ◇ who can remember what Fawn Hall looked like?
- ◇ who can remember anything Fawn Hall said in evidence?

Similarly, he referred to the 1960 Kennedy/Nixon debate where those listening to radio gave the debate to Nixon and those watching television gave it to Kennedy.

3.6.4 The Iran/Contra hearings served to demonstrate the importance that appearances could take on in influencing viewers perceptions of evidence presented at a televised hearing. As Professor Mayer pointed out, a focus upon appearances, even if not consciously encouraged by the television networks, is absolutely antithetical to a rational understanding of such a complex matter as ICAC hearings.

3.6.5 Mr Hatton also expressed concerns about the impact of visual images. He said they were crucial in forming public perceptions. Whilst he emphasised that such images could have a powerful deterrent effect against corruption, he said that there was a tension between allowing a camera into ICAC hearings and the editing of sworn evidence which would follow. (See paragraph 3.9.3 below.)

### 3.7 *Implications*

3.7.1 If ICAC hearings were to be televised the implications would be enormous in terms of pressure for the televising of Court proceedings and other Commissions. Mr O'Keefe told the Committee,

"I think the precedential value or force of that would be very high. It would be said 'What is good enough for this is surely good enough for the other', I think that may well be a very difficult argument to rebut."

Mr Roberson said he thought "it would have a flow-on effect," and he described it as "a foot-in-the-door technique." Whilst this comment may be a little unfair to Mr White, who asserted that this proposal stood on its own, it is clear that there would be significant consequences. No one could deny that proposition.

3.8 *The ICAC: Distinguishing Features*

3.8.1 Throughout the inquiry proponents of the proposal sought to emphasise that arguments put forward in other countries concerning televising the courts were readily applicable to the question of televising ICAC hearings. Mr White drew the Committee's attention to the British Bar Report, "Televising the Courts", referred to above. Mr Ramsay pointed to the US experience of televised court proceedings and the experimental programs conducted in a number of states.

3.8.2 Other witnesses, however, sought to emphasise the differences between ICAC hearings and court proceedings. This point was put most succinctly in the letter to the Editor of the Sydney Morning Herald from Mr Roberson, referred to above.

"Overseas experiences in televising trials are not a reliable guide to the issues facing the Commission. In a trial, the rules of evidence are observed, the defendant knows in advance the charges which are laid and is prepared to meet them. The Commission operates in an inquisitorial manner; it is not bound by the rules of evidence and may compel persons to give evidence of an incriminating nature."

3.8.3 When he appeared before the Committee Mr Temby made the point that he felt these points had been over-stated. He said that many witnesses appearing at criminal trials were there reluctantly "and many find it most distressing." Few of these were charged and they "range from bitter, sworn enemies of the accused through to his nearest and dearest." Mr Temby also rejected claims that the ICAC receives a lot of hearsay evidence.

"There is little hearsay evidence received by the Commission. There is a certain amount of hearsay evidence received by the courts, and any impression to the contrary is incorrect, and there is not a lot to choose between us and the courts."

However, there may be some people who have been the subject of hearsay evidence at the Commission who may challenge Mr Temby's statement.

3.8.4 The most important distinguishing feature of the ICAC relates to the power to compel the answering of questions at a hearing. The recent Report on Witnesses prepared for the Committee by the ICAC recognised this to be probably the Commission's "most controversial power". Under s 37(2) of the ICAC Act a witness "is not excused from answering any question or producing any document or other thing on the ground that the answer or production may incriminate or tend to incriminate the witness." This is totally the reverse of the situation which applies in the justice system. The Report on Witnesses stated that,

"The justification for this power is that the over-riding purpose of the Commission is discovering and disclosing what has happened, rather than producing a brief for prosecution....The alternative to having such a power is to have an organisation less capable of carrying out its functions."

3.8.5 It is noted that these answers may be given under objection under s 38 and therefore be inadmissible as evidence in any subsequent proceedings. Mr Tink raised the question on 26 March of the effect of publicity given to such evidence, particularly in terms of making it difficult to empanel an unbiased jury in any proceedings arising from such hearings. The Committee is most concerned about this issue.

Put another way, what may be a "balanced and fair report" of an ICAC hearing may be a report of evidence totally inadmissible in a subsequent trial and the sensational nature of and wide publicity given to many ICAC hearings may well prejudice a potential jury accordingly.

3.8.6 By contrast, these problems would not be nearly as marked in the televising of witnesses giving evidence at a trial. Specifically and at the worst, a jury would be hearing a witness giving evidence contemporaneously with that evidence being televised. Moreover, an accused could exercise his right to remain silent if he chose to do so. Given the British Bar Report's recommendation that trials should be televised, the question of televising the NSW Court system should be examined in detail. However it does not follow that the report's recommendations in relation to trials should necessarily be extended to investigative and inquisitorial bodies such as the ICAC.

3.8.7 As Mr Tink put to the Committee, the public interest should, on balance, be determined in favour of ensuring that any subsequent trial of an ICAC witness is not prejudiced by any earlier televised visual images of that witness giving evidence to the ICAC. The public interest should not be determined in favour of any perceived extra educative value of such televised ICAC images at the expense of placing an ICAC witness's subsequent rights at a Court hearing in jeopardy. In that regard, it should not be forgotten that as things now stand, television is on an equal footing with the print media in terms of being able to publish fair and balanced extracts of the text of ICAC witnesses' evidence and can add appropriate voice overs.

3.8.8 This concern, about the effect of television coverage upon a witness's rights to a fair trial in any subsequent proceedings, was persuasive in determining the view of the NSW Council for Civil Liberties in opposing the televising of ICAC hearings.

### 3.9 *Prejudicial Publicity*

3.9.1 When Mr White appeared before the Committee he emphasised that under this proposal editorial judgements would remain unchanged. He pointed to the fact that ICAC hearings

were already subject to television news coverage and would continue to be whether or not this proposal was approved. All that would change would be the pictures used in the stories - the actual words would be the same.

- 3.9.2 Committee members questioned this proposition. Mr Turner suggested that the body language of witnesses in the hearing room might make better television than the evidence presented and that this would influence editorial decisions. Furthermore, when it became clear that an end to the "scrum" on the footpath could not be guaranteed, other members suggested that this proposal would result in the television networks having access to a wider range of available footage, which would also influence editorial decisions.
- 3.9.3 Mr Hatton pointed out that the editing of video-tape of a witness giving sworn evidence could prejudice the witness. The combination of visual images of a witness giving sworn evidence and on camera use of the text of that evidence could be particularly prejudicial. Justice Moffitt suggested that the proposal would also provide the television networks with a wider range of library footage to which to attach damaging "tags" such as "X, before the ICAC", for use in future news items.
- 3.9.4 Regardless of the question of how editorial judgements would be effected by this proposal, concern exists about the editorial decisions which are being made at the moment. This was expressed most succinctly by Mr Mutch during the public hearing on Monday 26 March.

"Everyone is frightened that the controls are not strong enough at present with the print media, and that people are producing print media reports that are not balanced and accurate, and the Commission is not following up well enough to ensure that people are not prejudiced. I think the big fear is that the magnification effect of television would ensure that people who did not receive a balanced report would be more prejudiced than at present."

- 3.9.5 A number of Committee members sought to pursue this issue during the hearings. Mr Turner asked Mr Ramsay whether he was aware of any experiments or studies which had been conducted to determine the prejudicial effects of television coverage upon witnesses. Mr Ramsay replied that, whilst this appeared to be a worthwhile suggestion, he was not aware of any such studies. This issue is also closely related to the question of the qualitative difference between television and print media coverage, pursued by Ms Nori with reference to the deterrent effect of television upon potential witnesses. As mentioned in paragraph 3.3.4 no satisfactory answer was received to this question.
- 3.9.6 As the quote from Mr Mutch in paragraph 3.9.3 indicates, Committee members have concerns about the present practice with regard to media reporting of ICAC hearings. Other members raised this issue with Mr Temby on 30 March 1990 and he indicated that

he also had concerns about current reporting practices, particularly the reporting of closing submissions to the Commission. In these circumstances, the Committee thinks that a cautious approach would be most prudent - waiting to see concerns about present reporting practices resolved before taking action to widen the opportunities for television coverage, the effects of which are not able to be easily predicted.

3.9.7 Furthermore, the Committee noted the concerns expressed by a senior representative of the Attorney General's Department at a briefing with the Committee, about recent media practice with regard to contempt of court. The Committee is most concerned by his suggestion that the media are tending to take more risks in this area, deliberately pushing the boundaries despite warnings about the consequences of publishing certain material. The consequences could be disturbing if such an attitude was adopted towards the televising of ICAC hearings.

### 3.10 *Justice System*

3.10.1 The Committee is of the view that, considering the precedential implications of this proposal, the distinguishing features of ICAC hearings and the unresolved controversy over present practices with regard to media reporting of the ICAC, it would not be appropriate to allow the ICAC to be televised, at least not before a thorough examination of ways of improving electronic media coverage of the justice system.

3.10.2 It is clear that the reason this proposal has been put forward in relation to the ICAC has little to do with the nature of the Commission. The following question and answer from 26 March 1990 provide a useful insight.

"MR DYER: To put the question another way, why is it that the first substantial initiative in this area is coming via the ICAC rather than through the general courts, where there are often quite sensational and highly interesting trials occurring?"

MR WHITE: The ICAC is a new body, and rather than taking on something that has an entrenched view in terms of 'No, we have never done it before so we simply cannot start now', the ICAC was a better starting point."

3.10.3 The Committee is of the view that the ICAC, is not a proper starting point for such an important step as has been proposed. Rather, because of the unique position of the ICAC, any application of televising to its hearings should follow after careful consideration of this question in relation to the justice system, where the rules of evidence have been established and tested over a long period of time and where there are a range of safeguards which could protect participants from any possible adverse effects of television coverage. This approach was advocated by the President of the Law Society in his

comments on the British Bar Report.

3.10.4 At the hearing on 30 March the Chairman asked Mr Temby if, considering the likely precedential effects of this proposal, it would be worth while "looking at ways of improving electronic media coverage of the justice system before relating it to the Commission's work". Mr Temby's response, in part, was as follows,

"...if the Committee knew that some part of the justice system was about to do something, we would have no desire to go first...I have no desire to go first, and the breaking of new ground does have its attendant dangers...."

3.10.5 However, although he said he had no desire to be setting precedents in this area, Mr Temby firmly stated that he had no reason to believe that any action was about to take place in relation to the justice system "at any particular time in the future." The Committee recognises that until now there has been no evidence of the justice system even considering this issue. It was clear when the Committee received its briefing from officers of the Attorney General's Department that there were not only no plans to move towards televising at present, but that there would be some reluctance to move in this area. This may be due to a number of factors. Firstly, no general application of this nature or quality has been put forward by the television networks in the past. Secondly, when the issue has been raised, such as when a NSW Law Reform Commission Issues Paper was released in 1984<sup>1</sup>, neither the media or the wider community showed much interest in the issue. Thirdly, the televising of court proceedings has been seen as an American phenomenon, with little relevance to Australia.

3.10.6 This is no longer an issue which can be ignored in Australia. The British Bar Report, "Televising the Courts", demonstrates that television coverage of court proceedings is not just a function of American culture. The President of the Law Society, in his comments on this report, acknowledged that lawyers had to "grapple with the opportunities which technology provides" to enable the community to gain a better appreciation of the workings of the justice system. He indicated that the arguments put forward in the British Bar Report in support of televising court proceedings were "impressive" and "might be considered favourably". Furthermore, the responsible manner in which the television networks have approached this inquiry suggests they are ready to discuss this matter with a united and thoughtful voice.

3.10.7 The Committee is therefore of the view that the time has come for a broad examination of means by which electronic media coverage of NSW court proceedings can be improved. The Committee believes that if change is to take place it is important this examination involve those interests both outside as well as inside the justice system. Representatives of

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<sup>1</sup> New South Wales Law Reform Commission, Proceedings of Courts and Commissions: Television Filming, Sound Recording and Public Broadcasting, Sketches and Photographs, Issues Paper, March 1984

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the electronic media should be involved, as should professional bodies representing the legal profession.

## - 4 - *RECOMMENDATIONS*

- 4.1 That ICAC hearings not be televised.
- 4.2 In view of the recent report of a Working Party of the Public Affairs Committee of the General Council of the (British) Bar entitled "Televising the Courts", and also in view of the united and responsible manner in which the television networks have approached this inquiry, that the Attorney General appoint a working party to report on means of improving electronic media coverage of court proceedings in NSW. This working party should be chaired by an appointee of the Attorney General and include representatives of the NSW Bar Association, the Law Society of NSW and the electronic media.



# ***APPENDIX ONE***

## **Chapter 6 of *"Televising the Courts"***

**Report of a Working Party of the  
Public Affairs Committee of the  
General Council of the (British) Bar**

APPENDIX

TELEVISIONING THE COURTS

Report of a Working Party

of

The Public Affairs Committee of  
The General Council of the Bar

May 1989

## CHAPTER 6 - OUR CONCLUSIONS

6.1 Our conclusion at the end of our enquiry is that the law should be amended to permit the televising of the courts on an experimental basis. This is not a novel suggestion: it follows in the well worn steps of the legal bodies of several countries who similarly have carried out their own independent enquiry. We should stress that this is the unanimous view of our Working Party and it is one which will not be shared by all of our colleagues.

It follows that we do not believe that the absolute ban on photography in all our courts, as contained in Section 41 of the Criminal Justice Act 1925, is today justified. In particular, it takes no account of the enormous technological development over the last sixty years which would now permit television coverage in a manner which would not be intrusive.

The need to ensure fairness and justice in our courts must at all times remain paramount, but - whilst stressing the need for caution in this whole area - we feel that neither of those supreme interests would be imperilled if televising was subject to strict rules of coverage and to the supervisory discretion of the trial judge to exclude the camera whenever it was necessary in the interests of justice to do so.

We began with few reservations about televising appellate proceedings but with considerable reservations about the televising of criminal trials, especially during their currency. We have ended with no reservations about recommending an experimental programme in both our trial and appellate courts. Such risks as there may be in televising a current trial can, we believe, be effectively removed or controlled by the rules of coverage and the trial judge's discretion and they are not a justification for banning the camera altogether. Moreover, the law of contempt and the existing legal restrictions on court reporting would apply equally to the broadcasters as to the printed media.

We believe that there would be a significant advantage in televising court proceedings, namely that it would enhance the public's understanding of, and confidence in, our legal system, the judiciary and the decisions of our courts. Television is the single most important source of information for 70% of our adult population. Television would provide greater public access to the courts and would permit personal observation, as opposed to secondhand reports in the printed media and to television reporters speaking to camera and recounting what happened that day in the court building behind them. Given the non-intrusive technology and the ability to control all anticipated risks, we can see no legitimate reason in 1989 in

continuing to exclude the major source of news for the great majority of the population. Televising would fulfil an educative and informative function.

We have found that the objections to televising are based largely on fears which, in practice, are revealed to be unfounded, and in part upon an emotive reaction to television which does not do justice to the skill and responsible attitude of the broadcasters. There is, for example, nothing intrinsically impossible or even difficult about achieving a fair and balanced televised court report. (Indeed, we have seen them being edited and compiled in the United States.) Of course, there is always the possibility of an unrepresentative report, but that is true of the printed media as well and is no legitimate reason for excluding the camera. We have felt that the objections of some people to televising have, to a considerable degree, arisen from their concern at the way in which sections of the printed media have reported cases, and from their belief that the situation might be exacerbated if access were extended to the visual media, rather than from any real consideration of the issues concerning televising.

We are aware that in parts of our Report we have relied heavily on the American experience. We do not, however, believe that any such cultural difference as may exist between our two countries makes such reliance unsafe or renders that experience valueless. We say that firstly because we are concerned primarily with the behavioural response of participants in trials and we would expect that to approximate between one country and another; secondly, because the American experience has been mirrored in other countries.

We believe that the time has now come for careful and controlled experimentation.

## 6.2 Radio and Still Photography

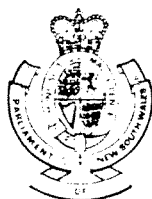
We were not expressly asked to look at either radio broadcasting or still photography in the courts. We were, however, asked by various representatives of the media to consider them. For example, both the Press Association and the Guild of British Newspaper Editors were anxious that the issue of still photography be considered.

We agree that the issue of televising the courts ideally ought not to be viewed in isolation and that there is a strong case for now thoroughly reviewing the whole issue of court reporting generally. Our own view is that radio should accompany the camera into the court and that the arguments are nearly the same. We think, however, that the arguments are different with regard to still photography and

would require separate and careful consideration: we have not examined them in sufficient depth. We are aware that still cameras are available with silent shutters and that rules of coverage could be applied to the still photographer (eg pooling and the necessity to remain in a fixed position) in the same way as to the television cameraman. We can see that it would be difficult to exclude the still photographer if the television camera was given access, but we feel that it is an issue which should be carefully considered by the Advisory Committee whose setting-up we recommend below.

***APPENDIX TWO***

**Minutes of Proceedings  
of the Committee**

**PARLIAMENT OF NEW SOUTH WALES****MINUTES OF PROCEEDINGS****OF THE COMMITTEE ON THE INDEPENDENT COMMISSION AGAINST CORRUPTION****THURSDAY 4 MAY 1989****AT PARLIAMENT HOUSE, SYDNEY AT 3.00 PM****MEMBERS PRESENT****Legislative Council**

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

**Legislative Assembly**

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Tink  
Mr Turner  
Mr Whelan

Messrs Cooksley (Clerk of the Legislative Assembly) and Gönye (Clerk-Assistant (Procedure)) were also in attendance.

Mr Cooksley opened the meeting by informing Members of the provisions of the Independent Commission Against Corruption Act 1988 relating to the constitution, procedures, functions and powers of the Committee.

Mr Cooksley then read the following entries in the Minutes and the Proceedings of the Legislative Council and the Votes and Proceedings of the Legislative Assembly:

Entry No.9, Minutes of Proceedings No.38 of Wednesday, 5 April 1989;  
Entry No.7, Votes and Proceedings No.38 of Thursday, 6 April 1989.

Mr Cooksley informed the Committee that Section 67 (1) of the Act provides that there shall be a Chairman and Vice-Chairman of the Committee, who shall be elected by and from members of the Committee.

Mr Cooksley then called for nominations for the office of Chairman.

Meeting of the Committee on the ICAC  
4 May 1989

Resolved on the motion of Mr Mutch, seconded by Mr Tink:

That Mr Kerr be elected Chairman of the Committee on the Independent Commission Against Corruption.

Mr Cooksley then called for nominations for the office of Vice-Chairman.

Resolved on the motion of Mr Turner, seconded by Mr Mutch:

That Mr Gay be elected Vice-Chairman of the Committee on the Independent Commission Against Corruption.

Mr Cooksley then informed the Committee that Mr Gönye would be the Clerk pro tempore to the Committee.

Mr Cooksley further informed the Committee that Section 71 (b) of the Act provides for the proposal for the appointment of the Committee to be deemed to have originated in the Legislative Assembly. Mr Cooksley also informed the Committee that according to the practice of this Parliament, the operations of a Committee are governed by the standing rules and orders and the practice of the House in which the Committee originated.

Resolved on the motion of Mr Whelan, seconded by Mr Hatton:

That arrangements for the calling of witnesses and visits of inspection be left in the hands of the Chairman and the Clerk to the Committee.

Resolved on the motion of Mr Hatton, seconded by Mr Kerr:

That, unless otherwise ordered, parties appearing before the Committee shall not be represented by any member of the legal profession.

Resolved on the motion of Mr Kerr, seconded by Mr Turner:

That, unless otherwise ordered, the press and public (including witnesses after examination) be admitted to the sittings of the Committee.



Meeting of the Committee on the ICAC  
4 May 1989

Resolved on the motion of Mr Dyer, seconded by Mr Gay:

That persons having special knowledge of the matters under consideration by the Committee may be invited to assist the Committee.

Resolved on the motion of Mr Mutch, seconded by Mr Turner:

That press statements concerning the Committee be made only by the Chairman after approval in principle by the Committee or after consultation with Committee members.

Resolved on the motion of Mr Kerr, seconded by Mr Dyer:

That, unless otherwise ordered, transcripts of evidence taken by the Committee be not made available to any person, body or organisation: provided that witnesses previously examined shall be given a copy of their evidence; and that any evidence taken in camera or treated as confidential shall be checked by the witness in the presence of the Clerk to the Committee or an Officer of that Committee.

Resolved on the motion of Mr Turner, seconded by Mr Gay:

That the Chairman and the Clerk to the Committee be empowered to negotiate with the Presiding Officers for the provisions of funds to meet expenses in connection with travel, accommodation, advertising, operating and approved incidental expenses of the Committee.

Resolved on the motion of Mr Hatton, seconded by Mr Dyer:

That the Clerk be empowered to advertise and/or write to interested parties requesting written submissions.

Resolved on the motion of Mr Kerr, seconded by Mr Turner:

That upon the calling of a division or quorum in either House during a meeting of the Committee, the proceedings of the Committee shall be suspended until the Committee again has a quorum.

Meeting of the Committee on the ICAC  
4 May 1989

Resolved on the motion of Mr Hatton, seconded by Mr Gay:

That the Chairman and the Clerk make arrangements for visits of inspection by the Committee as a whole and that individual members wishing to depart from these arrangements be required to make their own arrangements.

Mr Cooksley then called upon the Chairman to take the Chair. Whereupon Mr Kerr took the Chair and made his acknowledgments to the Committee.

The Chairman raised the issue of televising the proceedings of the Commission with a view to the Committee reporting on the question.

The Committee deliberated.

Resolved on the motion of Ms Nori, seconded by Mr Turner:

- (1) That the Committee obtain a copy of the Channel 9 submission to the Commission that the proceedings of the Commission be televised.
- (2) That the Committee seek -
  - (a) the Commissioner's views on general media coverage of Commission proceedings;
  - (b) guidelines for filming in other Parliaments; and
  - (c) other relevant information from interested parties.

The Committee then deliberated about general administrative and financial arrangements.

The Committee adjourned at 3.47 pm sine die.

THURSDAY 12 SEPTEMBER 1989

AT PARLIAMENT HOUSE, SYDNEY AT 2.30 PM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Kerr  
Ms Nori  
Mr Tink  
Mr Turner  
Mr Whelan

An apology was received from Mr Hatton.

The Minutes of the meeting held on 4 May, 1989, as circulated, were confirmed.

The Committee deliberated about the letter from Ms T Lynch.

Resolved on the motion of Mr Dyer, seconded by Mr Turner:

- (1) That the Lynch letter be referred to the Commissioner for comment and explanation.
- (2) That the Chairman be authorised to refer all correspondence concerning complaints against the Independent Commission Against Corruption to the Commissioner.

The Committee then deliberated about general administrative and financial arrangements.

The Chairman was to write to the Presiding Officers about the financial arrangements.

The Committee further deliberated about the televising inquiry.

The Chairman noted the release of the inaugural annual report of the ICAC.

Meeting of the Committee on the ICAC  
12 September 1989

The Committee deliberated.

Resolved on the motion of Mr Dyer, seconded by Mr Tink:

That Mr Temby be invited to the next meeting of the Committee for a briefing on the annual report and perceptions of the functions of the Independent Commission Against Corruption.

The Chairman suggested that any questions could be placed on notice for forwarding onto the Commissioner prior to the meeting.

The Committee adjourned at 3.08 p.m. sine die.

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NO 3

**TUESDAY 17 OCTOBER 1989**

**AT PARLIAMENT HOUSE, SYDNEY AT 3.30 PM**

**MEMBERS PRESENT**

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Turner  
Mr Whelan

Apologies were received from Ms Nori and Mr Tink.

The Minutes of the meeting held on 21 September, 1989, as amended, were confirmed.

The Chairman advised the Committee that the Commissioner had satisfactorily replied to the matters raised by the Lynch letter.

Meeting of the Committee on the ICAC  
17 October 1989

The Clerk to the Committee then advised the Committee about the latest financial arrangements for the Committee.

The Committee deliberated about the televising inquiry.

Resolved on the motion of Mr Dyer, seconded by Mr Hatton:

That the draft advertisement calling for submissions, as amended, be approved.

The Committee deliberated about the power over, and protection afforded to, witnesses by the Commission.

Resolved on the motion of Mr Hatton, seconded by Mr Mutch:

That the Commissioner's view be sought, in a report, upon the Commission power over, and protection afforded to, witnesses.

The Committee deliberated about the media release.

Resolved on the motion of Mr Gay, seconded by Mr Dyer:

That the media release, as amended, be approved.

By direction of the Chairman Messrs Temby, QC and Catt, Commissioner and Secretary of the Independent Commission Against Corruption respectively, were admitted.

The Committee was then briefed about aspects of the annual report and functions of the Independent Commission Against Corruption.

The Chairman, on behalf of the Committee, thanked Mr Temby for his co-operation in facilitating the briefing.

Messrs Temby, QC, and Catt then withdrew.

The Committee then deliberated further.

The Committee adjourned at 5:50 p.m. sine die.

THURSDAY 30 NOVEMBER 1989

AT PARLIAMENT HOUSE, SYDNEY AT 4.15 PM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Whelan

Apologies were received from Ms Nori, Mr Tink and Mr Turner.

The Minutes of the meeting held on 17 October, 1989, as circulated, were confirmed.

The Chairman advised the Committee about certain administrative matters.

The Chairman advised the committee about the submissions on the televising inquiry.

The Committee deliberated about the televising inquiry.

Resolved on the motion of Mr Gay, seconded by Mr Hatton:

That the Chairman write to various interest groups, including: the Australian Journalists' Association; the Australian Press Council; the Bar Association; the Council for Civil Liberties; the Law Society; and the Public Interest Advocacy Centre, inviting them to make a submission on the question of televising public hearings of the Commission.

The Committee then deliberated about Dr Trau's correspondence.

Resolved on the motion of Mr Gay, seconded by Mr Mutch:

That the Chairman write to Dr Trau advising that because of section 64(2), the Committee had no power to intervene in the substance of the matter raised by him.

Meeting of the Committee on the ICAC  
30 November 1989

The Committee further deliberated about the Commissioner's discussion paper on the protection of witnesses.

Resolved on the motion of Mr Dyer, seconded by Mr Gay:

That, subject to agreement between the Chairman and the Commissioner, the written answers to questions furnished (except the answer to question 9 relating to the Park Plaza inquiry) be released with the discussion paper on the protection of witnesses.

The Committee continued to deliberate.

Resolved on the motion of Mr Mutch, seconded by Mr Hatton:

That the Committee request from the Commissioner a photocopy of any file of press clipping of reports on ICAC inquiries compiled by the Commission.

The Committee then discussed various aspects of the functions of the Committee.

The Committee adjourned at 5:21 pm. sine die.

TUESDAY 23 JANUARY 1990

AT PARLIAMENT HOUSE, SYDNEY AT 11.00 AM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Tink  
Mr Turner

Apologies were received from Ms Nori and Mr Whelan

The Minutes of the meeting held on 30 November 1989, as circulated, were confirmed.

The Chairman introduced Mr David Blunt (Project Officer) and Miss Grace Penrose (Stenographer) to Members of the Committee.

The Committee noted the letter from the Secretary of the ICAC, dated 19 December 1989.

The Committee noted and deliberated over the letter from the Commissioner, dated 13 December 1989.

Resolved on the motion of Mr Tink, seconded by Mr Hatton:

That the Chairman reply to the Commissioner noting The Sydney Morning Herald articles of 22 and 30 December 1989 and reaffirming the Assistant Commissioner's comments of 16 November 1989.

The Committee noted and deliberated over the letter from the Commissioner, dated 22 December 1989.



Meeting of the Committee on the ICAC  
23 January 1990

Resolved on the motion of Mr Dyer, seconded by Mr Hatton:

That the Commissioner be invited to appear before a public hearing of the Committee concerning the televising inquiry and the Questions and Answers from 17 October 1989 together with any new questions on notice from Members.

The Committee continued to deliberate.

Resolved on the motion of Mr Mutch, seconded by Mr Dyer:

That the Project Officer prepare a paper on the issue of protection of witnesses and the question of contempt.

The Committee then deliberated about the future distribution of correspondence.

Resolved on the motion of Mr Mutch, seconded by Mr Dyer:

That the Chairman, generally, distribute copies of incoming correspondence to Members at each Committee meeting but that the Chairman may, at his discretion, distribute copies of correspondence to Members between meetings as the need arises.

The Committee then deliberated about a timetable for hearings on the televising inquiry.

The Committee adjourned at 12.42 pm sine die.

WEDNESDAY 28 FEBRUARY 1990

AT PARLIAMENT HOUSE, SYDNEY AT 5.00 PM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Tink  
Mr Whelan

Apologies were received from Mr Gay and Mr Turner.

The Minutes of the meeting held on 23 January 1990, as circulated, were confirmed.

The Committee noted the letter from the Commissioner of the ICAC dated 30 January 1990.

The Committee noted the letter from the Commissioner dated 13 February 1990.

The Committee noted the report on the correspondence Mr Whelan had received from Mr B Patton, and endorsed the recommendation in the report.

The Committee noted the background report and draft media release on the televising inquiry.

The Committee then deliberated over the televising inquiry.

Resolved on the motion of Mr Whelan, seconded by Mr Mutch:

That 10.00 am, Monday 26 March 1990 be tentatively set for the public hearing and those individuals and organisations which had made submissions be invited to give evidence.

The Committee then deliberated over the Report on Witnesses prepared by the Commissioner of the ICAC.

Meeting of the Committee on the ICAC  
28 February 1990

Resolved on the motion of Mr Hatton, seconded by Mr Dyer:

That the report be tabled and that the Committee further consider the report in the light of comments received upon it.

The Committee noted the media release to be issued with the report on witnesses.

The Committee noted the briefing report on press clippings and media monitoring services available to the Committee.

The Committee then deliberated over the public hearing to be held with the Commissioner, following the hearing on the televising inquiry.

The Committee adjourned at 5.31 pm sine die.

MONDAY 26 MARCH 1990

AT GOODSSELL BUILDING SYDNEY AT 1.50 PM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Tink  
Mr Turner  
Mr Whelan

The Minutes of the meeting held on 28 February 1990, as circulated, were confirmed.

The Committee deliberated.

The media and public were admitted.

The Clerk read the terms of reference of the Committee and Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Paul Francis White, journalist, was sworn and examined.  
Evidence concluded and the witness withdrew.

Ian Haig Cook, television news director, was sworn and examined.  
Evidence concluded and the witness withdrew.

Geoffrey Roberson, solicitor, was sworn and examined. Evidence concluded and the witness withdrew.

Ian Malcolm Ramsay, lecturer in law, was sworn and examined.  
Evidence concluded and the witness withdrew.

Meeting of the Committee on the ICAC  
26 March 1990

Barry Stanley John O'Keefe, barrister at law, was sworn and examined. Evidence concluded and the witness withdrew.

Daniel Blyde, journalist, then made an unsworn statement to the Committee. Statement concluded.

The Committee adjourned at 5.18 pm until Friday 30 March, 1990 at 9.50 am.

NO 8

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**FRIDAY, 30 MARCH 1990**

**AT PARLIAMENT HOUSE, SYDNEY AT 9.50 AM**

**MEMBERS PRESENT**

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Tink  
Mr Turner

An apology was received from Mr Whelan.

The Committee deliberated.

Resolved on the motion of Mr Hatton, seconded by Mr Gay:

That the minutes of evidence taken before the Committee on Monday, 30 March 1990 be made available to the ICAC.

The media and public were admitted.

Meeting of the Committee on the ICAC  
30 March 1990

The Clerk read the terms of reference of the Committee and Legislative Assembly Standing Order No.362 relating to the examination of witnesses.

Ian Douglas Temby, QC, Commissioner of the ICAC, was affirmed and examined.

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Ms Nori read out a letter, concerning Mr Whelan, dated 30 March 1990.

The Committee noted the letter.

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Evidence concluded and the witness withdrew.

The media and public withdrew and the Committee deliberated.

The Committee adjourned at 1.15 pm until Thursday, 5 April 1990 at 9.30 am.

THURSDAY 5 APRIL 1990

AT PARLIAMENT HOUSE, SYDNEY AT 9.30 AM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Tink  
Mr Turner  
Mr Whelan

Apologies were received from Mr Mutch and Ms Nori.

The Minutes of the meetings held on 26 March and 30 March 1990, as circulated, were confirmed.

The Committee noted the letters from: David Catt dated 21 March 1990; Gary Sturgess dated 12 March 1990; and Peter Munckton dated 27 March 1990.

Resolved on the motion of Mr Dyer, seconded by Mr Hatton:

That the Committee note the letters from The Hon Sir Adrian Solomons MLC and Geoffrey Roberson with a view to the Committee taking further action in the light of comments on the Report on Witnesses received from the NSW Bar Association and the Law Society of NSW.

The Committee noted the submissions from the ABC and Channel 7.

The Committee then deliberated over the televising inquiry.

A letter was tabled by Mr Gay regarding the functions of the Committee for consideration and comments from Members at the next meeting of the Committee.

Meeting of the Committee on the ICAC  
5 April 1990

The Committee then deliberated.

The Committee adjourned at 10.04 am until Friday 27 April 1990.

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NO 10

**FRIDAY 27 APRIL 1990**

**AT PARLIAMENT HOUSE, SYDNEY AT 10.00 AM**

**MEMBERS PRESENT**

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Tink  
Mr Whelan

Apologies were received from Mr Turner.

The Minutes of the meeting held on 5 April 1990, as circulated, were confirmed.

The Committee deferred consideration of Mr Hakim's letter dated 30 January 1990; the advice from the ICAC dated 6 April 1990; and the draft reply, until the next meeting.

The Committee noted the letters from: Tony Katsigiannis dated 24 April 1990; Geoffrey Roberson dated 26 April 1990; and Barry O'Keefe dated 26 April 1990.



Meeting of the Committee on the ICAC  
27 April 1990

Resolved on the motion of Ms Nori, seconded by Mr Hatton:

That a report be prepared on the matters arising from Mr Temby's evidence given before the Committee on 30 March 1990 in relation to the general operations of the ICAC as well as aspects of the televising issue.

The Committee then deliberated over the draft report of the televising inquiry.

The Committee then deliberated over Mr Gay's letter tabled at the meeting of 5 April 1990.

Resolved on the motion of Mr Hatton, seconded by Mr Whelan:

- 1 That a delegation of the Committee consisting of the Chairman, Mr Dyer, Mr Gay and Ms Nori be formed to discuss and design a survey of ICAC witnesses.
- 2 That the delegation be empowered to consult appropriate authorities in order to obtain a statistically sound basis to report back to the committee.

The Committee then deliberated.

The Committee adjourned at 12.26 pm until Thursday 3 May 1990 at 9.15 am.

**THURSDAY 3 MAY 1990**

**AT PARLIAMENT HOUSE, SYDNEY AT 9.15 AM**

**MEMBERS PRESENT**

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Kerr  
Mr Tink  
Mr Turner

Apologies were received from Ms Nori, Mr Hatton and Mr Whelan.

The Minutes of the meeting held on 27 April 1990, as circulated, were confirmed.

The Committee noted the letters from Mr Hakim dated 30 January 1990 and David Catt dated 6 April 1990; and Ian Ramsay dated 3 April 1990.

Resolved on the motion of Mr Dyer, seconded by Mr Tink:

That the Committee's draft reply to Mr Hakim's letter of 30 January 1990, as circulated, be accepted and forwarded to Mr Hakim.

Resolved on the motion of Mr Gay, seconded by Mr Dyer:

That the collation of the evidence of Mr Temby given before the Committee on 30 March 1990 be tabled in Parliament, together with the transcripts of the Committee's hearing on the televising inquiry on 26 March and 30 March 1990.

The Committee noted that a briefing was being arranged from an officer of the Attorney General's Department in relation to aspects of the televising inquiry.

The Committee then deliberated.

Meeting of the Committee on the ICAC  
3 May 1990

Resolved on the motion of Mr Turner, seconded by Mr Mutch:

That the Committee seek advice from Mr Temby on the informal discussions he held with the print media and that the Committee invite the members of the print media (including provincial newspaper editors) to an informal discussion.

The Committee noted that the Queensland Parliamentary Criminal Justice Committee would be visiting the NSW Parliament and would like to meet with the Committee on Thursday 24 May 1990.

The Committee then deliberated.

The Committee adjourned at 9.40 pm until Thursday 10 May 1990 at 9.15 am.

THURSDAY 10 MAY 1990

AT PARLIAMENT HOUSE, SYDNEY AT 9.00 AM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Ms Nori  
Mr Turner

Apologies were received from Mr Tink and Mr Whelan.

The Committee noted the correspondence from Ms Beverly Shurr dated 2 May 1990 (distributed on 4 May 1990); The Hon A R Moffitt, dated 1 May 1990; and the Chairman of the Queensland Parliamentary Criminal Justice Committee, dated 8 May 1990.

Mr Tim Keady, Mr Gary Finnegan, and Ms Kerrie Palmer, officers of the Attorney General's Department, provided the Committee with a briefing in relation to aspects of the televising inquiry.

The briefing concluded and the officers withdrew.

The Committee then deliberated.

The Committee adjourned at 10.05 am until Thursday 24 May 1990 at 9.15 am.

THURSDAY 24 MAY 1990

AT PARLIAMENT HOUSE, SYDNEY AT 9.15 AM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Tink

Apologies were received from Mr Mutch, Ms Nori, Mr Turner and Mr Whelan.

The Chairman welcomed members and staff of the Queensland Parliamentary Criminal Justice Committee.

The two Committees discussed their functions and operations, and other matters of mutual interest.

Discussions concluded.

The Committee adjourned at 10.25 am sine die.

**TUESDAY 5 JUNE 1990**

**AT PARLIAMENT HOUSE, SYDNEY AT 9.00 AM**

**MEMBERS PRESENT**

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Hatton  
Mr Kerr  
Mr Tink  
Mr Turner

Apologies were received from Ms Nori and Mr Whelan.

The Minutes of the meetings on 3 May, 10 May and 24 May 1990, as circulated, were confirmed.

The Committee noted the letters from Mr Temby dated 25 May and 28 May 1990.

The Committee noted that legal advice had been sought on the Rights of Witnesses questionnaire and letter.

The Committee then deliberated over the comments received on the Report on Witnesses.

Resolved on the motion of Mr Hatton, seconded by Mr Tink:

That the Committee write to Commissioner Temby requesting a further report and answers to a number of questions, as suggested in the comments received from Sir Adrian Solomons MLC and the Cabinet Office.

The Committee noted the proposed visit from the Commonwealth Joint Committee on the National Crime Authority.

The Committee noted the letter from Mr Frank Hakim dated 25 May 1990.

Meeting of the Committee on the ICAC  
5 June 1990

Resolved on the motion of Mr Dyer, seconded by Mr Turner:

That the Committee write to Mr Hakim outlining the Committee's functions and advise him to make an application to the Secretary of the Operations Review Committee if he wanted the matter to be re-opened.

A copy of the second draft Report ("Into a proposal for the Televising of Public Hearings of the Independent Commission Against Corruption"), having been transmitted to each member of the Committee, was accepted by the Committee as having been read.

The Committee proceeded to consider the second draft Report.

Proposed executive summary read and agreed to.

Executive summary, as read, inserted.

Sections 1.1 and 1.2 read and agreed to.

Sections 2.1 to 2.11 read and agreed to.

Sections 3.1 to 3.3 read and agreed to.

Section 3.4 read and omitted.

Whereupon sections previously 3.5 and 3.6, consequentially re-numbered as new sections 3.4 and 3.5.

Sections 3.4 and 3.5 read and agreed to.

Former section 3.4 proposed as new section 3.6 read and amended.

Section 3.6, as amended, agreed to.

Sections 3.7 and 3.8 read and agreed to.

Section 3.9 read and amended.

Section 3.9, as amended, agreed to.

Section 3.10 read and agreed to.

Recommendations read and agreed to.

Appendix read and agreed to.

Appendix, as read, inserted.

Resolved on the motion of Mr Dyer, seconded by Mr Hatton:

That the Committee adopt the report subject to it being circulated with the agreed amendments.

Meeting of the Committee on the ICAC  
5 June 1990

Resolved on the motion of Mr Hatton, seconded by Mr Tink:

That the Committee write to the Attorney-General requesting legal advice as to who is empowered to make the determination on the televising issue, the Committee or the Commissioner.

The Committee then deliberated on the correspondence from Dr Trau.

Resolved on the motion of Mr Dyer, seconded by Mr Gay:

That the Committee refer Dr Trau's correspondence to the ICAC for advice, particularly in terms of an explanation of the procedures adopted in relation to its obligation to consult with the Operations Review Committee before deciding whether or not to commence an investigation.

The Committee noted that a briefing will be sought with the Director of Public Prosecutions on the subject of perjury.

The Committee deliberated.

The Committee adjourned at 10.48 am until Tuesday 12 June 1990 at 11.30 am.



TUESDAY 12 JUNE 1990

AT PARLIAMENT HOUSE, SYDNEY AT 11.30 AM

MEMBERS PRESENT

Legislative Council

The Hon R D Dyer  
The Hon D J Gay  
The Hon S B Mutch

Legislative Assembly

Mr Kerr  
Mr Tink  
Mr Turner

Apologies were received from Mr Hatton, Ms Nori and Mr Whelan.

Resolved on the motion of Mr Dyer, seconded by Mr Tink:

That the second draft report, as amended and agreed to at the previous meeting, be the Report of the Committee.

The Chairman then welcomed members and staff of the Commonwealth Parliamentary Committee on the National Crime Authority.

The two Committees discussed their functions and operations, and other matters of mutual interest.

Discussions concluded.

The Committee adjourned at 12.55 am sine die.

# ***APPENDIX THREE***

## **List of Witnesses at Public Hearings**

**- LIST OF WITNESSES AT  
PUBLIC HEARINGS**

DATE OF HEARING

NAME OF WITNESS

26 March 1990

Mr P F White  
**Journalist**

Mr I H Cook  
**Television News Director**

Mr G Roberson  
**Solicitor**

Mr I Ramsay  
**Lecturer in Law**

Mr B S J O'Keefe QC  
**Barrister at law**

30 March 1990

Mr I D Temby QC  
**Commissioner of the ICAC**