COMMONWEALTH OF AUSTRALIA

Proof Committee Hansard

JOINT STANDING COMMITTEE ON TREATIES

Reference: Extradition law, policy and practice

MONDAY, 26 MARCH 2001

CANBERRA

CONDITIONS OF DISTRIBUTION

This is an uncorrected proof of evidence taken before the committee. It is made available under the condition that it is recognised as such.

BY AUTHORITY OF THE PARLIAMENT

[PROOF COPY]

INTERNET

The Proof and Official Hansard transcripts of Senate committee hearings, some House of Representatives committee hearings and some joint committee hearings are available on the Internet. Some House of Representatives committees and some joint committees make available only Official Hansard transcripts.

The Internet address is: **http://www.aph.gov.au/hansard**

To search the parliamentary database, go to: **http://search.aph.gov.au**

JOINT COMMITTEE ON TREATIES

Monday, 26 March 2001

Members: Mr Andrew Thomson *(Chair)*, Senators Bartlett, Coonan, Cooney, Ludwig, Mason, Schacht and Tchen and Mr Adams, Mr Baird, Mr Bartlett, Mr Byrne, Mrs Elson, Mr Hardgrave, Mrs De-Anne Kelly and Mr Wilkie

Senators and members in attendance: Senators Cooney, Ludwig and Tchen and Mr Adams, Mr Hardgrave and Mr Thomson

Terms of reference for the inquiry:

The Committee will conduct an inquiry into extradition law, policy and practice in Australia.

The Committee will consider whether the current arrangements strike the best balance between ensuring that alleged criminals are brought to justice and that Australian citizens are protected from false accusations.

WITNESSES

AUGHTERSON, Professor Edmund Paul (Private capacity) 89

CHAIKIN, Dr David Anthony (Private capacity)...98

Committee met at 10.06 a.m.

AUGHTERSON, Professor Edmund Paul (Private capacity)

CHAIR—I declare open this hearing of the Joint Standing Committee on Treaties. I welcome witnesses to this fourth hearing of our inquiry into extradition law. We have undertaken a number of hearings to hear different views on Australia's current extradition arrangements in order to help us in determining whether those arrangements really do strike the best balance between ensuring that alleged criminals are brought to justice and also ensuring that Australian citizens are protected from false accusations made against them abroad.

Resolved (on motion by **Senator Tchen**):

That the following submissions be received as evidence to the committee's inquiry into extradition law, policy and practice and be authorised for publication: submissions nos 20, 21 and 21.1 from respectively Professor Ivan Shearer, Dr David Chaikin and again Mr David Chaikin.

CHAIR—I welcome Professor Ned Aughterson who is appearing before the committee by videoconference from Darwin. I have to advise you formally that these are legal proceedings of parliament as if they were taking place in either the House of Representatives or the Senate. Hence they warrant the same respect, and the giving of false or misleading evidence is a very serious matter. Would you like to make some introductory remarks and then we will proceed to questions from the committee members.

Prof. Aughterson—Perhaps if I can make a brief opening remark to this effect: in my view, a useful starting point is to remind ourselves that extradition treaties and arrangements are concerned not only to expedite the return of persons from one country to another but also to protect the rights of citizens and individuals. One can perhaps be forgiven for thinking that, more recently in this country, the concern has been for facilitating extradition rather than protecting individual rights. The abolition of the general requirement to establish a prima facie case is an example of that trend.

That particular step, of course, was taken to placate civil law states which are said to have difficulty with the concept of the prima facie case. While it is understandable that Australia should wish to facilitate treaty arrangements with those countries, unfortunately there does not appear to have been a parallel concern to introduce the counteracting safeguards that exist in many of those countries. Those protections include non-extradition of nationals and a stricter approach to the principle of double criminality. In my view, it is inappropriate to discard a longstanding protection of individual rights in this country on the basis that it is not recognised by certain of our treaty partners but at the same time not introduce the alternative protections that do exist in those countries. In my view, the balance needs to be redressed either by reintroducing the requirement of a prima facie case or by introducing similar or alternative protections to those enjoyed in civil law states. Thank you.

CHAIR—We have your written submission which we have read carefully, so we will turn to some questions.

Senator TCHEN—Professor Aughterson, I am not sure whether you support or you are against the extradition of Australian citizens as a matter of principle. We have earlier received a

submission from Professor Shearer who argued that there should be no discrimination between nationals and non-nationals. Can you elaborate on why you believe your approach can be justified?

Prof. Aughterson—The approach can be justified in the sense that there is a requirement to provide some protection, in particular for citizens. In the past, a protection existed by virtue of the requirement of the establishment of a prima facie case. Now that that has been discarded I think it is appropriate to find other protections, and one such protection is the non-extradition of nationals. The virtue of that approach is that it is consistent with practice in other countries. Most civil law states refuse to extradite their own nationals. Extradition, to a large extent, is based on the principle of reciprocity, so by taking that step we are acting in uniformity or consistently with our treaty partners.

Senator TCHEN—Professor Aughterson, it is fair to say that one of the concerns committee members have is the apparent inequality in different countries treating their nationals differently. I am not a lawyer but I understand that some countries do not allow extradition of their nationals because their legal system allows extraterritorial judicial control of their citizens, whereas in Australia, generally speaking, people are only liable for criminal acts which they commit in Australia and not while they are overseas, although I notice that is slowly changing as well. Can you explain how that argument can be overcome?

Prof. Aughterson—Perhaps there are two ways of looking at that. I agree that, if one is not to extradite one’s own citizens, there needs to be some process here to prosecute them in this country. In international law it is accepted that nationality is a basis for jurisdiction, and it so happens that civil law states have adopted that practice. There is nothing in principle that stops Australia, in my view, from taking the same approach. It would require some legislative change; it would require steps to expand the operation of our criminal laws so that they do cover the conduct of citizens while they are abroad. But there is nothing in theory or principle that stops that step being taken. So one approach is to take the same approaches as the civil law states and enable the prosecution of Australian citizens for conduct abroad.

Another possible approach, if that is not favoured, is to allow extradition but on condition that the persons concerned are returned to this country for sentencing and punishment. That provides some protection, including protection against what we may consider by our standards to be draconian punishments that are meted out in some countries.

Senator TCHEN—Thank you, Professor. That is a good point. I also refer to some of the information you supplied in your submission—thank you for the details of it—and particularly to your tables showing extradition from Australia by requesting country from 1980 through to 2000. Just looking at this, I notice that the United States accounts for some 40 per cent of extraditions from Australia. Can you tell me whether we have a reciprocal arrangement with the United States?

Prof. Aughterson—I do not know whether that was my table that you are referring to, Senator.

Senator TCHEN—I am sorry, it probably is not. It is actually a table supplied by the Attorney-General’s Department.

Prof. Aughterson—But, accepting that, I am not sure what your question was.

Senator TCHEN—The table shows the number of extraditions from Australia by requesting country between 1980 to 2000. Reading the table, the number of extraditions from Australia to the United States is some 61 persons—61 requests granted—and the other nations added together looks to be of the order of 80, which means that more people are extradited from Australia to the United States than to any other country. I was wondering whether the United States is regarded as a common law country or as a statutory law country.

Prof. Aughterson—The United States by and large is considered to be a common law country. I am not familiar with the details of laws—

Senator TCHEN—No, I probably should put the question to the department when they come before us again. Thank you very much.

Mr HARDGRAVE—Professor Aughterson, with regard to how practical it is for Australia to prosecute its own nationals for crimes committed overseas, what is your view? Yes, we have the rapid growth in technology with videoconferencing—we are using it right now. Do you think those particular improvements are enough to overcome what really are some great practical difficulties of actually gathering and assessing sufficient evidence in complex cases, particularly if the time frame of those cases and those allegations is very long?

Prof. Aughterson—Yes, I do not doubt that there are difficulties. Today in Australia in criminal trials it does arise from time to time that evidence is taken by video. It is not suggesting that it is the ideal. I think in this situation it is a question of which is the preferable approach to take. For that reason, it might be that there is some merit in the idea of allowing extradition but, as I said before, on condition that the person be returned.

Mr HARDGRAVE—Do you have a view on the sorts of judgments that should be exercised in those sorts of circumstances about how Australian a particular alleged offender is? A person may have been born here but lived all of their life overseas. They potentially carry Australian citizenship with them wherever they go; they have committed a series of crimes after living overseas for 25 years. Does that really make them Australian in comparison with somebody who has been here five years, taken an oath of citizenship, signed statutory declarations that they are a of good character and all those sorts of things before they have been accepted as a migrant here? Who is more Australian? How do we judge those sorts of circumstances?

Prof. Aughterson—Perhaps the judgment can be made on the basis of citizenship. I do not think it is appropriate to differentiate between those classes, if you like, of citizens. Unfortunately, I think it is one of the truisms of law that there are areas on the peripheries where the result is not always satisfactory. I do not know how one ever avoids that. Again, what one is looking for here is a solution to a problem. Perhaps the answer is that there is no absolute, perfect solution.

Mr HARDGRAVE—Given that there is no absolute, perfect solution, are we perhaps better off drawing a line in the sand, as we have done with at least one piece of legislation—the child sex crimes act which has been passed here—which says to anybody leaving this country that if you commit a crime in relation to this particular range of offences we will deal with you here

when you come back, or indeed make sure that you do come back and deal with you here accordingly? Are we better off enacting a series of those sorts of penalties or legislative measures and basically letting all who leave this country know these are the circumstances in which they do travel offshore?

Prof. Aughterson—Yes, I think there is some merit in that approach. The world is changing. I do not know whether Australia as a nation can turn a blind eye to what its citizens do overseas, whether they be corporations or individuals. The conduct reflects on Australia and I think it is appropriate that Australia has an interest in what occurs.

Mr HARDGRAVE—Fair enough. There is one last slightly curly question that I would not mind asking; I apologise for asking these sorts of questions of you, particularly through technology which means that we cannot look eye to eye with each other or discuss it over a cup of tea afterwards. The one question I was left wondering about relates to our standards versus the nations where offences may take place. In other words, in some countries drinking drink alcohol in a public place or drinking alcohol at all may be deemed to be an offence. An Australian arguably could be arrested for that and charged, or whatever. I know that is a menial crime, but, if we are to stand in judgment of Australians travelling abroad, which standards do you think should prevail—those of our country or those of the country to which the Australian has travelled?

Prof. Aughterson—If we are talking in terms of extradition or prosecution of Australian citizens in this country, extradition law, to a large extent, caters for that through the principle of double criminality. We do not extradite anyone from this country if the conduct in relation to which the prosecution is based in the other state is not an offence in this country. So, in those circumstances, by treaty and by international practice we are not obliged to extradite. Similarly, if the person were in this country, for the same reasons we would not be obliged to prosecute.

Mr HARDGRAVE—So, in other words, we are not under any pressure to put on our books literally the laws of every other country right around the world?

Prof. Aughterson—No, indeed. That is accepted practice in international extradition.

Mr HARDGRAVE—Thank you.

Senator COONEY—One of the reasons—which I think you mentioned before—that people give for saying we should have a no evidence approach to extradition is that the civil law countries really do not understand the common law, in effect. In your experience, would that be so? It seems extraordinary that people so like you, learned in the law, would not have an appreciation, for example, of how the civil law worked. I would have thought it unusual that people, say, from Europe, with a civil law experience, would not have a good idea of how the common law worked. Do you have any comments about that?

Prof. Aughterson—I think to some extent the idea is overstated. I do not know whether it is so much not understanding the concept. It is just that the sort of documentation that is called upon is not the documentation they would normally have in readiness. But, of course, always there is the potential to educate people or prosecutors in those countries as to what is required by us.

Senator COONEY—Moving on from the point you raised before that we are now part of an international system, I wondered whether this whole idea of extradition as it is now practised can cope with that in any event. Do you have any thoughts about that? Should there be a new way of looking to the regulation of criminal conduct around the world, other than simply sending people back on the say so of a requesting country?

Prof. Aughterson—That is a difficult question.

Senator COONEY—Perhaps I can explain a bit more: what seems to be happening is that we have had the well-worn system of extradition and we are now saying that that is not working as efficiently and as quickly as we had hoped and that we will take out protections that used to be there but that are now a bit clumsy because they slow the whole system down. It seems that, if we are going to get to that point, extradition becomes a bit of a trap rather than some sort of guardian.

Prof. Aughterson—I think that is certainly the case. It goes back to the question of what the objective is, whether the objective is purely to extradite or to protect. There will always be difficulties. Even within Australia there is the need from time to time to return people from one state to another. In the past it was not an automatic process; it is becoming a bit more of an automatic process these days.

Senator COONEY—Thanks very much.

Senator LUDWIG—In your alternative approaches at point 4 on page 5 of your submission, in the last sentence of the first paragraph, you state:

> Presently, in this country, the balance is tipped towards the former.

I have read your submission. In your conclusion you state at point 5 on page 6:

> It is suggested there is need to redress the present imbalance ...

What do you say are the key imbalances that tip it towards the former? If you put it in a nutshell, what do you say about the number of issues that then add to the scale of injustice?

Prof. Aughterson—As the law presently exists, I think there is very little protection for anybody being sent out of this country. They can be sent overseas in circumstances where there is no or little evidence of any offence committed on their part. The other protections that do exist, such as that the political offence exception, will not often arise and, even where it does arise, it is difficult to establish. The one protection that did exist was the establishment of the prima facie case. It was not, by any means, an absolute protection, but it did give some protection to an individual, particularly a citizen.

Senator LUDWIG—Is it then fair to say that what tips the balance is that in your view there is a lack of sufficient protection to protect Australian nationals from being extradited to countries? Is that your proposition?

Prof. Aughterson—Yes, it is.

Senator LUDWIG—Thank you.

Mr ADAMS—I understand that before the prima facie argument was taken away and the present regime was put in place, there were several cases in which people from overseas coming to Australia were accused of certain crimes in the white collar area, then the case was lost to abstract them from Australia. Would I be right in perceiving that?

Prof. Aughterson—There were cases, but I do not have the figures as to how many such cases there were. Obviously the department would be in a better position to answer that. I am not sure where that leads. Does that indicate that those people were not returned because it was clear that there was no case against them?

Mr ADAMS—Possibly. There must have been a reason why we altered what we had in place at one time. You have not been able to give me an answer as to why that was so; you may not know, that is fair enough. That is what I was trying to establish. I believe there were some cases where countries overseas tried to abstract people back but just could not achieve that under our law.

Prof. Aughterson—It appears that the reason was that a number of the civil law states said that they had difficulty coming to terms with the concept of a prima facie case. Indeed, it has been suggested that a number of these countries were reluctant to enter into extradition treaties with Australia because of that requirement, so it was in the interests of executing treaties with those countries that Australia decided to abolish the requirement.

Mr ADAMS—Thank you very much.

Senator LUDWIG—I want to come back to the proposition that I put to you. As I understand it, you say the balance is tipped towards the former because of the lack of protection to Australian nationals. I then want to explore whether there are cases you can point me to that I may read which highlight where the evidence might be to say that an Australian national is not being adequately protected by Australian law.

Prof. Aughterson—I am not quite sure what you mean by that. Are you asking whether there has been any case where a judicial officer has commented on the lack of protection?

Senator LUDWIG—If that exists, that would be interesting to read as well, or cases that may demonstrate that an Australian national has not been adequately protected or there has been a decision by the Attorney-General that you might be able to point to and say that an Australian national has not been adequately protected. Of course, your proposition then really requires evidence to say that this is the case. I was curious where the evidence might be so that I can go and have a look at it and judge for myself as to whether or not it is tipped in favour of the Australian national.

Prof. Aughterson—I do not know whether one would ever be able to find that, for the reason that because there is no requirement to produce a prima facie case, one would never know whether or not there were a difficulty. The only one that I think I can point to where there may be some suggestion is the case of Holt. I do not have the citation for it. That was a case where the person was extradited to America and, on return to the United States, the person was

acquitted because of lack of evidence. So had there been an examination of the evidence in Australia in that case, the same conclusion might have been reached.

There is another case I can refer to from a couple of years ago, not involving a citizen of Australia but where there was extradition to South Africa. Under the original application, there was a requirement to produce a prima facie case. The application was lost. The prima facie case was not established, because the documentation was not held to be adequate. Subsequently, the Commonwealth changed the extradition arrangements with South Africa, and abolished the requirement of a prima facie case. A second application was brought against that same person and the magistrate found that he was eligible for surrender.

Senator LUDWIG—I will see if I can find those. But perhaps you could help me with the difficulty that I have: how do I test your proposition—otherwise I end up in a no evidence rule myself to be able to come to a conclusive view about your proposition—other than what you assert? That is fine. I do not make any criticism. Is it a matter that on balance you say that you have come to that view? What I am trying to do is test how you have come to that view and whether there is any evidence that supports your view.

Prof. Aughterson—I think it is a question of risk. If an application is brought by another state, Australia has no way of knowing whether or not there is a case against that person and Australia has no way of knowing how strong the case is against that person. So the person must be sent back to that foreign state in order for that issue to be assessed. It is true that it would be very difficult to produce empirical evidence to prove the point, simply because the evidence is not produced before an Australian court and therefore there is no way of knowing whether or not the person is being sent, perhaps unnecessarily, back to the other state—unless, of course, when they go back, as in Holt's case, the court finds that there was no case to answer.

Senator LUDWIG—Thank you very much.

CHAIR—Can you comment on the cases of corporations where, for example, there is a crime on the statute book in Australia—more likely in one of the state jurisdictions—for environmental damage caused by a corporation and in other jurisdictions overseas with which we may have an extradition treaty. If a similar offence is on their books too, punishable by more than one year's imprisonment and so forth, how is the issue of criminal responsibility dealt with by common law in the case of a corporation as opposed to civil law?

Prof. Aughterson—Are we presupposing that the directors of the company are back in Australia and that extradition is sought?

CHAIR—Yes.

Prof. Aughterson—In that case, I do not see any real difference from any other common offence. If the conduct in question is an offence in this country, it matters not that the offence might have different descriptives or is framed differently. If the conduct in question offends legislation in this country and constitutes an offence, then there is no difficulty with extradition.

CHAIR—In the case where a corporation is fairly large and has a number of levels of management, if in the case of damage caused to the environment you have a choice of managers

at those levels up to the chief executive officer, how generally does the criminal law treat responsibility for acts done by a corporation where there may be, if you like, instructions from above to do it?

Prof. Aughterson—As I understand it, there is provision in some legislation for the liability of directors—it is not an area I am overly familiar with. There is provision, as I understand it, in some legislation for directors and others to accept responsibility for the acts of the company. But it is not something that I am overly familiar with.

CHAIR—I appreciate that. It may be more likely in the future with larger and larger corporations and with more of these crimes finding their way onto the statute books that, hypothetically speaking, the director of a company in Australia may have extradition proceedings brought against him or her for something done by the company in another jurisdiction and, in the case of the no evidence rule, it may be a fairly questionable act.

I have just one other matter. This committee is also holding an inquiry into a proposed International Criminal Court under what they call the Rome statute, which is the instrument that gives rise to it. We have not yet specifically had evidence regarding the extradition proceedings under that statute. If you would like to contribute to that inquiry, bringing your expertise on extradition to bear, by examining the provisions of that Rome statute on extradition and writing something for us, we would be very grateful.

Prof. Aughterson—I would be very happy to do that.

CHAIR—It appears to go a little further than the sorts of things that we have misgivings about here, in that there seems to be no grounds for the refusal of a 'request for surrender', as they call it, under that statute. But I would appreciate your expert opinion. There is one further question from Senator Cooney.

Senator COONEY—Just on that point, how does the United Kingdom get on in Europe now that they have the European Union going and you have the connection between the 'mother' of common law and the civil communities over there? How does that all work out?

Prof. Aughterson—As I understand it, the United Kingdom is taking steps to conform, as far as extradition arrangements are concerned, with continental European countries. But I do not know whether you are asking more than that.

Senator COONEY—I was just asking whether they had any trouble carrying on as part of Europe, given the fact that the United Kingdom is a common law country and I think most of Europe, if not all, is a civil law area.

Prof. Aughterson—I do not know that the problems are insurmountable in this area. It has to be kept in mind that the basic principles of extradition law are uniform around the world. It is really only in matters of detail that differences arise.

Senator COONEY—Thanks.

CHAIR—Thanks very kindly, Professor, for taking the time this morning to appear before us. If there is an opportunity in the future in some other inquiry, we would welcome you back again. Thank you.

Prof. Aughterson—Thank you very much.

[10.43 a.m.]

CHAIKIN, Dr David Anthony (Private capacity)

CHAIR—Welcome. I have to advise you that these are legal proceedings of parliament. Although we do not require evidence under oath, you must treat it as if it were taking place in either house of the parliament and hence the giving of any false or misleading evidence is a very serious matter. Would you like to make an opening statement and then we will have some questions.

Dr Chaikin—In making my statement, I wish to address some of the questions that have already been raised by members of the committee. In 1985, when Australia removed the prima facie case requirement from the Extradition (Foreign States) Amendment Act, the background was that there was a series of extradition failures, although the quantity was not documented at that time. The main problem was that civil law countries, when trying to meet the prima facie evidence requirement, have very radical, different evidentiary rules than we do. They are very liberal. We had—certainly then, although it has been liberalised—very strict hearsay rules and, in the context particularly of white-collar crime cases, this proved to be a major difficulty. So it was actually the rules of evidence that were required.

For example, in the case of our relationship with the United States where we have a probable cause requirement, we allow all the hearsay evidence in. So there was a way of actually dealing with the perceived problem at that time. But it was decided to get rid of the prima facie case standard. What was offered in return—this was publicly presented by the Attorney-General and by the civil servants at that time—was that there would be a counterbalance, an increase in the human rights safeguards, by virtue of a new model extradition treaty. The one presently used for extradition negotiations, which the Attorney-General's Department has submitted, has 15 safeguards. However, that was an illusion. The reason was that, by taking away the prima facie evidence requirement, we essentially took something away from the jurisdictions of the courts, because it was the courts that were going to decide whether that standard would apply.

What happened was that with these human rights standards which have been promulgated, and the United Nations have taken them into their model treaties, the decision maker in respect of most of those human rights safeguards was not to be the courts, the magistrates or the judiciary but the Attorney-General. That is where I would say there was a radical allocation of power, because in both areas the courts were not going to decide—as being constitutionally an impartial organ; I think that is the language that Professor Shearer used—but they were going to go to the executive and, in practice, on the advice of the Attorney-General advised by public servants who would they themselves decide what the balance would be in respect of all those safeguards. They would be balanced against Australia's interests in law enforcement and so forth. In practice that is very difficult—certainly from my point of view as a person practising in this field. It is not that the Attorney-General or a minister cannot be trusted but only in the most extreme cases would he be prepared to refuse extradition or in cases where it was required by law. That was a shift in power, and that continues to be the problem today. There are numerous other examples where one can examine where there has been that shift of power.

The second question is: why do civil law countries have problems besides hearsay? I give an example in my submission of a case that in fact I recently appeared in. In many cases, civil law

countries start extradition very early on in the piece. They do not wait to collect all the material. You may ask: why is it that they cannot even establish a standard like prima facie if we had changed the rules of admissibility? It is because they start the extradition process very early. What they want is the person back to question them, and that is the civil law system where you are questioned by the investigatory magistrate. Indeed, in the case that I provide in the submission, the magistrate threw out a case of an extradition request from Argentina because it was essentially for the purpose of questioning.

The third aspect that I want to mention is that the Attorney-General’s Department and the DPP state that the prima facie standard and probable cause standard does not in practice really protect human rights. Senator Ludwig asked the question as to what the evidence is that such a standard would protect human rights as compared with not having it. I detail cases in my submission where the probable cause standard did protect the human rights of the defendant. In the case of Stanton, where there was no requirement to produce prima facie evidence or probable cause but the Philippine government prepares their cases on that basis, Mr Justice Spender essentially screamed out, ‘This is a case of great injustice’—he used those words—and he said to the Attorney-General, ‘Look at this case. Why are you extraditing this person?’

In the case of Reiner Jacobi, a matter that I have been involved in for many years, it took him 10 years—and winning, by the way, extraditions in Hong Kong and Australia—before it was finally determined that there was no case. It was not an acquittal; there was no case that should have been brought in the first place. Delay in one sense does favour the guilty, but it can favour the innocent as well. I do not want to exaggerate that but, certainly in his case, that has proved the outcome.

Of course, we face major difficulties. Can we go back 15 years in time? There was an error. I myself did not appreciate it back in 1985 and 1986 but, in my view, there was an error. We went too far. We wanted to enter into all these treaties. There was the extradition public relations fiasco of Trimboli. There was a whole series of reasons at that time why we went that course but, in my view, it was a mistake. It is going to be increasingly a more important mistake when in the future, for example, we may have to enter into extradition relations with countries such as the People’s Republic of China—I talking about 10 or 20 years ahead. What we are offering now is one model essentially. You do not have to produce any evidence. We are not going to be able to negotiate with China unless we offer exactly the same that we have been offering all these other countries, including all the European civil law countries which have rule of law and a great tradition. We have put ourselves in a straitjacket with our model treaty, which we promulgate throughout the world as something that is good and beautiful.

I think it is a mistake and I have suggested in my recommendations a way of trying to deal with that. I do not think as a matter of general principle there should be a rule that prevents Australia extraditing its nationals, because justice is best served where crime is tried at the place, but justice is also served by a prima facie evidence requirement. I have tried to come up with some solution which is a compromise so that we are able to require the foreign country to put more than an indictment, a warrant for arrest, by providing some basic supporting documents, and then lay one’s hands on the minister if there is some perceived injustice in that person returning to the foreign country. It is naive to believe that there are not abuses by prosecutors in regard to extradition that happen quite frequently. Whether we are able to detect it or not is another matter. Other countries are not like Australia in respect of the practice of the

prosecutors, the police and the rule of law. In my view, we should introduce some greater element of protection.

I suggest some other recommendations which essentially go to the question of reallocation of power between the executive and the judiciary or magistracy. Quite frankly, if I were the legal adviser for a defendant, I could not put my trust in the Attorney-General to protect all my human rights because he has to balance that against other considerations. If the United States government wants somebody back, it would be a very brave Attorney-General or minister who would reject that extradition, except for the most powerful reasons, because normally he would not be in the position to get the material to make such a decision. Those are my general comments.

CHAIR—Thank you.

Senator COONEY—Thanks for the history of how this provision came about. As you say, it came about at a time when, to some extent, the legislators were experimenting and hoping that this would solve the problem. One thing about the period of 15 years is that it has given us some idea of how it has worked out. Is there any other jurisdiction that relies on the executive to in effect run the extradition system, or do most countries have a judicial basis to their extradition system?

Dr Chaikin—There are some countries where there is no judicial hearing and it is a decision purely in the hands of the executive. Certainly, most common law countries have a judicial hearing and then the executive has the final say—the executive not being able to override the decision of the magistrate or the courts but being able to say no even if the courts say yes in the limited jurisdiction that they have.

Senator COONEY—I suppose where the executive does it, within Australia or elsewhere, there would have to be some research into the issue in any event. I take it the Attorney-General would get briefings on the matter when he or she comes to decide whether or not to extradite a person?

Dr Chaikin—Yes, that is the case. One of the assumptions that have been made is that the executive is in a better position to make these types of decisions. That is why, for example, in the Extradition Act it is the Attorney-General who decides whether a person should be sent back and whether a torture ground is established or not; it is not the magistrate. In my view, that is misconceived and certainly, in my experience, the person who is most likely to be able to gather that information is some aggressive defence lawyer who is looking for the material to put up to the Attorney-General.

You mentioned whether the Attorney-General was fully informed. I could mention just one case alone, the Jacobi case, whereby the United States government sought to extradite Mr Jacobi from Hong Kong on a trumped-up charge of drug trafficking—that is my language. Without going into details as to how that came about, the Hong Kong court, in fact probably for the first time in extradition history, threw out that charge on a prima facie case basis relying on an examination of three affidavits of one individual. Subsequently, the United States sought the extradition of Mr Jacobi from Australia, and what happened was that there was now only one affidavit. The Hong Kong judge had said, ‘These affidavits are inconsistent. I could go through

the details with you in so many ways that I cannot rely upon this person's evidence.' It was the only evidence. But they got rid of those inconsistencies by just producing one affidavit and the defendant was not able to introduce the inconsistent affidavits in the Australian extradition hearing. To what extent the Attorney-General was advised on the background of that case or not I do not know, but the impression I got was that he was not. The problem again is that if the United States ask us for extradition—and not just the United States—it is a very brave Attorney-General who will say at the beginning of the process, 'I want more information about things that are not strictly within the treaty.'

Senator COONEY—As you say, it is a considerable problem for somebody who is facing extradition to get the material he or she needs and to have counsel test all that material. There is no way that can be done, is there, when it is the Attorney-General deciding, because I suppose the Attorney-General brings it up through the department? There is no way of testing that.

Dr Chaikin—Let us take the case of Todhunter that I discuss in my submission: the investigative officer in the United States interviewed a number of people in England and in Europe and summarised their evidence. He did not get sworn statements. He then gave an affidavit, including his summary of what he said they said. We obtained affidavits from two of those gentlemen, which essentially said that that investigative officer had lied in a number of respects. What do you do with that? You cannot put that before the Australian courts, because that would contravene section 19(5). Do you put that up to the Attorney-General? We did not put it up to the Attorney-General because the Attorney-General's answer—certainly if I were his adviser—would be, 'You go back and fight that in the United States because I have a conflict of evidence. I am not going to decide that.'

This raises an even more fundamental question. When people talk about fugitives, the implicit assumption is that they have flown from justice: they were in the jurisdiction, they committed the crime and they ran away. In the case of all three individuals that I mentioned here, none of them fit within that situation. The word 'fugitive' is very pejorative. There is an underlying assumption that seems to creep in—certainly even in the DPP submission—of: why should you be fighting this in any event and why don't you go back to the other jurisdiction and fight the case? In my submission, there are very good reasons why you do not do that, particularly if you are innocent. Of course, if you have committed it, you are going to do it.

Senator COONEY—Do you have any idea of the cost to a person of having to go overseas and fight a case and get back? I take it that it would be a considerable sum of money. I asked somebody else who paid the person's fare back when he or she was acquitted, and they did not know but presumed that it was the extraditing country. I wonder who picks up the tab for the defence of an accusation.

Dr Chaikin—The defence does, unless they get some sort of order for costs in that jurisdiction. Once you go back, it is very expensive in some of these jurisdictions, particularly in the United States where the defendant has to pay all the costs. Really what we are doing is leaving a defendant at the mercy of the minister in circumstances where the minister in most cases will say, 'Go back and fight it there, not here.' Quite frankly, I do not think that is good enough for Australian nationals today.

Senator COONEY—Thanks.

Senator LUDWIG—There are two parts to your evidence, are there not? The first relates to the history of the no evidence rule and the second is really the implementation of that—that is, the model treaties. You then say, as I understand it—and perhaps you did not go this far,—that there should not be one model treaty; there should be a menu of treaties depending on the circumstances that the Attorney-General may meet. Is that one of the propositions that you are putting to us?

Dr Chaikin—In terms of the model treaty, it was devised with the best of intentions, but essentially we sold ourselves short and gave everything, if you like, to the other foreign country. One of the reasons we entered into the no evidence rule was also to be able to get new extradition arrangements with other countries, which would make it easier for us. We have no difficulty establishing probable cause or prima facie standard. We would never even seek anybody’s extradition unless that basic investigative legal work had been done. It is not a problem for us. The problem with the model treaty is that we have essentially disclosed our hand to the world and put ourselves into a straitjacket. But all countries when negotiating extradition arrangements with Australia would examine what we had done with other jurisdictions and they would obviously ask, ‘Why are we being treated differently?’ if that is the case. But with the model treaty we really just disclosed our hand straight up front.

Senator LUDWIG—Perhaps I did not explain myself well in my question. Is not the natural corollary of that then to have a menu of treaties—in other words, different models, or different horses for different courses? But does that not lead us into the difficulty that, although our hand may not be shown, it will be shown over time as we enter into different arrangements with different countries, depending on what we say the circumstances are that we confront? Does that not lead us into the difficulty where in the future China, for argument sake, then says, ‘You have a range of treaties in which you seem to have ranked countries. We want the top one.’ We then end up by default back at the model treaty that we tried to get away from by using a menu and having a range of model treaties to suit the circumstances. Do we not then just travel back to the same place again?

Dr Chaikin—Not really because what we would do—if this proposal were introduced about non-extradition of nationals unless they established some sort of prima facie or probable cause—is inform our neighbours, our treaty partners, that that is how we are going to deal with nationality, because at the moment we can refuse extradition on the grounds of nationality. We are not adding anything new; we are just changing our practice and we are doing this through a legislative amendment. We would not even have to necessarily amend the model extradition treaty for that matter.

Senator LUDWIG—All right. If we were to take that line and you then said, for argument’s sake, ‘We will have a range of countries. We will amend our Extradition Act and then we will extradite nationals or not extradite nationals,’ do we not then get into an argument about whether we have discriminated against some countries or others on the basis of our perception of what they are or are not in terms of their civil jurisdiction or their criminal courts or some other political decision or view of their democracy?

Dr Chaikin— I have not thought about all the consequences of the change of law that I am suggesting, it is true. It may be that there may be some countries that fall within that category. I am trying to think of an example—

Senator LUDWIG—I did not want to go there because, as soon as you start talking about an example, you are then really naming a country. Could we use it as country A, B or C where we have signed a number of extradition treaties with a range of countries? There is some view that we should not have signed all of those. But, be that as it may, we have. There are other views that say some of those countries have different political systems—and I think you go to it in your submission—and different mechanisms such as different factions and different groups that might have influence. Therefore, it may not work as well as our country might expect the extradition process to work or as well as our civil justice system works. We think ours is one of the best, but I suspect other countries might have a similar view about ours as against theirs. So you then get this ranking or view about another country. If we overlay that with a view about whether we would extradite a national to that country, be it A, B or C, we are then making a judgment from our own perspective about what we think their political system is—notwithstanding we have already signed an extradition or a model treaty with them. So we have ranked them equally by signing an extradition treaty based on a model with every other country but then we still rank them by deciding that in respect of country A we do not extradite, that we do in respect of country B allow a national to be extradited and that in C we reserve our judgment.

Dr Chaikin—But the suggestion is that we change the law so that, in the case of all Australian nationals, they would have to satisfy one of two requirements in terms of extradition. So there could be no perceived discrimination against that, and that would apply to common law countries or civil law countries—we would apply it to both. So there would not be any ranking because the law would be quite clear that you could not extradite an Australian national unless you had a prima facie or probable cause test that was satisfied.

For those countries in which we do not have a prima facie requirement in the extradition treaty but have a nationality clause—and that is virtually every extradition treaty that we have—we solve the problem, if you like, through the back door. We say that under our treaty we have absolute discretion as to whether we extradite nationals. What we are saying is that, from henceforth as required by law, we will only do that unless the prima facie standard modified by some evidentiary rule or the probable cause test is satisfied.

Senator LUDWIG—Yes, but then do we not come back full circle to where we were in 1988 and say, in terms of countries that find it difficult to satisfy the prima facie case or in some cases the probable cause, that we will not extradite our nationals to those countries? That is the proposition that is being put to us. A range of witnesses has put to us quite forcefully that civil law countries have a difficulty in satisfying either of those two requirements. There is an argument that that is not the case. But there is very little evidence, unfortunately, that has been put to the committee that says it is not the case. So on face value, without evidence, there appears to be some truth in what they say.

Dr Chaikin—Let me give you some evidence: the United States has had the probable cause requirement for over 150 years, and civil law countries are extraditing people from the United States all the time. Indeed, this question of whether the civil law countries can extradite people on probable cause or prima facie case requirement—

Senator LUDWIG—Should I read your text?

Dr Chaikin—No, it is not my text. It is a book entitled *The Indictment of a Dictator: the Extradition and Trial of Marcos Jiminez* by Judith Elwell, which concerned the extradition request from Venezuela for its former president. If you read this book, you find the Venezuelan government had no difficulty at all collecting depositions in a form admissible in the United States.

Senator LUDWIG—In other words, you are saying that where there is a will there is a way.

Dr Chaikin—They can easily do it. It is not that great a difficulty. What has happened is with the type of material that is allowed in. They do not go and properly investigate. What I call 'properly investigate' is where you actually get some sworn evidence. Civil law countries tend to allow the police officer to interview a person, and what the person says is the evidence. Just like the US agent, he gets what the witness says—I cannot prove that that company is owned by the defendant; I will get him to say it in the statement—and that is what actually happened in the Todhunter case.

I do not accept the proposition which is put by the DPP and Attorney-General's Department as to the great difficulties that they face with extradition for civil law countries. White-collar crime cases, I should add, are problematical everywhere—in this jurisdiction just as much as in others—so it is deeper than the extradition question. But, certainly, if they wish to get somebody back, they find a way: they can go and collect the evidence; they can collect the material. I am thinking about one of the cases I have been involved in where the extradition should not have been sought: they want the person back to question them as part of the investigative process; they do not have their case.

Senator LUDWIG—I read that. It was very helpful.

Dr Chaikin—I do not accept that that is an insurmountable problem at all. I would even put it highly. I do note that the DPP and the Attorney-General's Department have given no empirical evidence on how the probable cause requirement has been satisfied.

Senator LUDWIG—No, I was going to come back to them on that one.

Dr Chaikin—So they can satisfy that standard. It is not that difficult. Indeed, the DPP puts the argument, 'Well, a prima facie case standard is not that difficult to meet anyway.'

Senator LUDWIG—How do you get around the criticism that in fact all you are doing is introducing—and this is my criticism, I guess—a de facto prima facie case back into the model extradition treaty? It may be viewed by the world that that is all that we are doing.

Dr Chaikin—How it is politically perceived and how we deal with our treaty partners is another problem.

Senator LUDWIG—I was just looking for your view. In effect, that is what it is. I understand it is a clever way—and I am open to criticism on that—of reintroducing the prima facie case or the probable cause, depending on which you wish to do, back into the model treaty by amending our act and requiring that hurdle to jump. The more difficult route would have been to change the treaties to make it more apparent that that is what we intend to do. By

making a post-alteration—that is, after we have signed all those treaties—to the Extradition Act, we are in effect going back and doing that anyway, are we not?

Dr Chaikin—I take your point that it could be subject to criticism. There are some people—

Senator LUDWIG—If I have that right—

Dr Chaikin—I would make the point that section 45 of the Extradition Act allows prosecution instead of extradition of certain Australian citizens. If we examine that provision that was introduced in 1988, the government tried to articulate in that provision some limitation on the extradition of nationals. Without going into details of the provision, essentially they created a new extraterritorial crime for Australian nationals in circumstances where the Attorney-General decided not to surrender the Australian national. One could consider that that is a backdoor method as well. Essentially the underlying concern of that provision was: why should we allow non-reciprocity in terms of extradition of nationals? My suggestion, although different in format, can be inserted and put on the same basis. What we are doing is limiting the extradition of nationals, which we are quite entitled to do under our treaty, because we can refuse extradition of nationals without even giving a reason.

Senator LUDWIG—I understand that and I understand the reciprocity argument as well. I must say that does trouble me in some respects where two countries—a civil law country and Australia—do not have reciprocity in respect of extraditing nationals. They can extradite our nationals, but we cannot extradite theirs because they will not allow them to go. It might be in a fraud case where the criminal penalty might be two years, which is greater than one year, so it is a major offence, although in the scheme of things it might be a minor fraud charge.

Mr ADAMS—The bottom line is that we want to make sure that people who have broken laws are brought to justice but we do not want innocent people to be wrongly dealt with. You say in your submission that police lie and that prosecutors are not really up to it and will use anything to achieve their end. Would I be wrong in saying that?

Dr Chaikin—In some places some prosecutors might be able to do that.

Mr ADAMS—Some in overseas countries. You are not talking about Australia; you are talking about overseas—

Dr Chaikin—Yes.

Mr ADAMS—And you say that we are putting ourselves in a straitjacket. But are we not just saying, 'If Australian nationals commit crimes, we are not going to defend them. We will make it as easy as possible for you to investigate them and therefore then prosecute them'? What is wrong with that in the sense that you are saying that there are innocent people, it is too easy for some countries to get their hands on Australian citizens and you have quoted some cases? But is it not really about Australia saying, 'We are an open country. We expect other countries to have fair trials and operate in a positive way.' But you are saying that that does not happen, are you not?

Dr Chaikin—What I am really saying is—

Mr ADAMS—Even in the United States, you are basically saying that, if you line up in the United States court, you are worse off there than you are in an Australian court.

Dr Chaikin—I do not want to make any generalisations. But let me say this: just because we enter into an extradition relationship does not mean we have to trust their legal system to the extent that we get rid of all the human rights safeguards and give it to the executive rather than to the courts.

Mr ADAMS—You trust the courts more than you trust the executive.

Dr Chaikin—I think there is no question that the courts are constitutionally an impartial organ which will examine the facts before them and will not take into account international relations considerations, foreign policy relations considerations or law enforcement considerations. Those are all legitimate things that the executive can take into account.

Mr ADAMS—Sure—and sometimes have to in extradition.

Dr Chaikin—In fact, they usually will. We are saying that the courts are the most suitable for determining, for example, questions such as torture and questions such as humanitarian considerations—we already do that in the case of political offences, but I am trying to widen the ambit to include a number of other important areas. When I say 'trust', the executive balances the human rights considerations with those governmental policy concerns which have nothing to do with human rights. Therefore, the courts are in a far better position, from a human rights perspective, to protect those rights.

The real question is: should we just send somebody back? Why don't we just send them back? Why do we need an indictment? Why do we need a warrant for arrest? How much do we require the other country to produce? What I am trying to put forward is the proposition that the other countries should have carried out a sufficient investigation to reach this standard.

Mr ADAMS—I accept that. The evidence we received though is that their systems are different, and it is harder for them to achieve the same evidence as we do because the structure of their investigations and everything else is different. I have only a sprinkling of knowledge of that but I understand that it is. But, in world terms, because the world is a smaller place with issues concerning globalisation, white-collar crimes, computers and e-commerce, do we not have to have a situation of international justice such that countries can nail people who are breaking laws?

Dr Chaikin—Yes, they should for people who are found guilty—

Mr ADAMS—But, if you do not get before a court, you cannot be found guilty, can you? You are arguing to stop people getting before a court; you are basically saying that that court is not a legitimate court.

Dr Chaikin—What I am putting is the proposition that there should be a better filter here. You mentioned that civil law countries have difficulties. Every time we prepare an extradition in Australia, in order to get the evidence we need to go before a magistrate, we get the witness and we produce the evidence. So we actually have to go out of our way to collect the material for

the purposes of the extradition, and the civil law countries can do the same. The investigative magistrate, if that witness did say A, B or C, could be called in and a statement could be taken; it is not that difficult. In my view, it is a greater protection to the truth as to what is happening in the investigation if that foreign country does that.

But, instead, we allow other foreign countries to extradite people from Australia in circumstances where they really have nothing at that stage and they should not be extraditing them. We are really throwing them to the mercy of the situation in the foreign country, because once you go back to the foreign country you are at a grave disadvantage. The DPP said that there was not much difference between extraditing persons from one state to another state and extraditing them from Australia to Venezuela or Argentina, for example, where we do not speak the same language, we do not have the resources and so forth. The reality is that, once you move to another jurisdiction, the defendant is at a great disadvantage and sometimes defendants have to plead guilty even though they are innocent. Certainly that is the view I took in the case of what happened with Mr Todhunter.

It depends on what is being offered and on what the circumstances are. In my view, there should be at least—because prima facie is a very low standard—some filter here. But, if we changed the evidentiary requirements—I think this is what Professor Ivan Shearer has been arguing for a long time; in fact, he was arguing this back in 1985 and 1986—and got rid of the evidentiary rules so that you allowed hearsay in and you would allowed everything in but you examined the quality of the material, then the main problem that civil law countries face would be eliminated.

Mr ADAMS—Thank you.

CHAIR—If you are acting for a defendant or an accused and the extradition proceedings are brought and you lose—they go through the magistrate who just certifies it—and you are in a position of having to appeal to the Attorney-General to deny or refuse the extradition, can you describe for us how you go about doing this? Do you serve documents on the Attorney-General? Is there a formal way of making sure that arguments you are putting to the Attorney-General will actually be put before him or her? Or would it be put to the minister for justice in some cases, if it was delegated? How do you do it in Australia?

Dr Chaikin—There is no procedure set out anywhere either in extradition laws or in some policy manual. The practice is that the defendant's solicitor would make a written submission with all the relevant material. There have been attempts to make oral submissions and to appear before the Attorney-General or one of the advisers. But my understanding is that—certainly this was the case when I was in the Attorney-General's Department—we would not allow that to take place. Indeed, I think there was a recent case whereby the minister refused to allow oral material so that there would be some back-and-forth argument or conversation as to this particular case. Really, it is a cold piece of documentation which you have to rely upon.

CHAIR—Secondly, if the Attorney-General then makes a formal decision under the treaty or the Extradition Act not to refuse extradition, is that then reviewable by a Federal Court or High Court judge?

Dr Chaikin—It is reviewable by prerogative writs. This was another major change that happened back in 1988. Prior to that one could seek a review of the minister's decision by relying upon the Administrative Decisions (Judicial Review) Act, and that provides many more opportunities of getting the reasons in terms of much wider grounds. As a practical matter, challenging the Attorney-General's decision on the basis of prerogative writs is so riddled with difficulties that I am not aware of any case where it has ultimately succeeded. So it is really a hollow challenge that will take place.

CHAIR—What would happen if there was obvious perceived bias? For example, if the accused were of a different political stripe to the Attorney-General and had a history of dispute, whether in parliament or in public life generally, how would you deal with a question of obvious perceived bias in the Attorney-General if he or she was going to make this decision?

Dr Chaikin—As a practical matter, that could be solved by the power being delegated to another minister. The minister for justice, for example, has been doing most of the extradition cases over this period of time rather than the Attorney-General, so there might be a way of dealing with that. Of course, if one were an adviser to the minister one would try to obviate that argument being publicly articulated or before the courts. But the problem is that—and this is when you talk about bias—the public servants who are advising the Attorney-General at the beginning of the extradition process and who are also liaising with the foreign law enforcement prosecutors are the same ones who are advising the minister for his determination at the end of the extradition process. I think Mr Justice Finn in one of his cases—I cannot recall the name—saw this as a perceived conflict of interest problem. That would cause all sorts of administrative problems, I am sure the Attorney-General's Department would argue, if you had to bring in a new team to advise the minister at the end of the day. What it does tell you is that that is an additional reason for reallocating power to the judiciary.

CHAIR—With the exercise of power by the Attorney-General under this treaty or the act, is it in your view an exercise of judicial power? If you take, for example, the various definitions cited in Re Polyukhovich of what is the Commonwealth's judicial power—the application of a set of facts to stated laws and the determination of an outcome in terms of life, liberty and property of a subject or a citizen—then how does this not infringe the limits in section 71 of the Constitution? That may be a big question to ask this morning in this way but, if you would like to consider that and render something in writing, I would be very grateful. If it goes to the heart of, in a sense, conferring judicial power on a member of the executive, then surely you start to run into problems with section 71. If no-one has taken that to appeal, then it obviously has not been determined. But if it is in the Constitution it ought to be respected.

Dr Chaikin—There is case law on that. I do not have it off the top of my head, but my recollection is that it is not a judicial power—

CHAIR—It is not?

Dr Chaikin—It is not. I would have to check that, but my understanding is the fact that the minister has to balance all these other considerations and take them into account means that it is not an exercise in judicial power. Although one would think that, if you are deciding questions of fact such as if this person returns to that country is he likely to be tortured, that would fall within some judicial power element. But let me come back to you on that with some case law.

CHAIR—We need a rigorous analysis of the nature of that decision, those grounds that are stated and whether or not it would be prejudicial to the interests of justice. I cannot quite remember exactly how they are described, but it is black-letter law and it is a set of facts if the accused's barrister or solicitor presents it to the Attorney. Senator Ludwig has a supplementary question.

Senator LUDWIG—I know we have run out of time. My memory is that it was one of those hybrids but that it predominantly falls into the administrative area because, of course, it is under the Extradition Act—it is a decision basically to extradite or not to extradite—but I certainly bow to your more considered view. I think the Attorney-General's Department also commented on it in relation to the AD(JR) Act, the prerogative writs and the problems that surround that. The question then is: is there room for the introduction of either merits review or the AD(JR) Act? I do not expect you to be able to comment on that in the short time that we have left. But if you did have a view—as a way of balancing the scales or at least trying to neutralise the position—on whether or not there would be scope for those two positions to be introduced, that would be most useful.

Dr Chaikin—I think you are right about the hybrid decision. With regard to the question of whether there should be a specific review procedure in the act in relation to the Attorney-General's decision, certainly that would be something which would allow some further scope. But I do not think it would reallocate the power sufficiently, because you would be seeking a review of the Attorney-General's decision rather than giving that decision to the magistrate. By that stage of the extradition process there is a lot of pressure for the person now to be extradited, and what you would be doing in effect is allowing the extradition process to be dragged out even further. But I will look at that.

Senator LUDWIG—And that is, of course, balanced with the time the person has spent incarcerated as well because if the matter is drawn out then they spend longer in jail waiting—

Dr Chaikin—I think that is a very important point that perhaps has not been mentioned. Virtually all fugitives, including Australian nationals, have ties; but I can think of prominent Australian citizens who, despite all their ties, would not be granted bail. It is just not good enough. Therefore, in most of these cases the people are fighting these extradition cases whilst they are in prison.

Senator LUDWIG—We do appreciate that point, yes.

CHAIR—Many thanks for the evidence this morning. If we need some further elucidation, we may extradite you from Sydney for further questioning in the future.

Dr Chaikin—That would be a pleasure.

Resolved (on motion by **Mr Adams**):

That this committee authorises publication of the proof transcript of the evidence given before it at public hearing this day.

Committee adjourned at 11.34 a.m.