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JOINT STANDING COMMITTEE ON ELECTORAL MATTERS

Reference: Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008

FRIDAY, 26 SEPTEMBER 2008

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JOINT STANDING
COMMITTEE ON ELECTORAL MATTERS

Friday, 26 September 2008

Members: Mr Melham (*Chair*), Mr Morrison (*Deputy Chair*), Senators Birmingham, Bob Brown, Carol Brown, Hutchins and Ronaldson and Mr Danby, Mr Bruce Scott and Mr Sullivan

Members in attendance: Mr Melham, Mr Morrison, Mr Bruce Scott and Mr Sullivan

Terms of reference for the inquiry:

To inquire into and report on:

Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008

WITNESSES

DACEY, Mr Paul, Acting Electoral Commissioner, Australian Electoral Commission 1

EDGMAN, Mr Brad, Director, Funding and Disclosure, Australian Electoral Commission 1

**KALOKERINOS, Mr John, Acting Assistant Secretary, Legislative Review Branch, Department
of Finance and Deregulation 1**

PIRANI, Mr Paul, Chief Legal Officer, Australian Electoral Commission..... 1

Committee met at 9.13 am

DACEY, Mr Paul, Acting Electoral Commissioner, Australian Electoral Commission

EDGMAN, Mr Brad, Director, Funding and Disclosure, Australian Electoral Commission

PIRANI, Mr Paul, Chief Legal Officer, Australian Electoral Commission

KALOKERINOS, Mr John, Acting Assistant Secretary, Legislative Review Branch, Department of Finance and Deregulation

CHAIR (Mr Melham)—I declare open this public hearing of the Joint Standing Committee on Electoral Matters inquiry into the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008. At today's hearing we will hear from representatives of the Department of Finance and Deregulation and the Australian Electoral Commission, the agencies closely associated with this bill. All of the major political parties were invited to give their perspectives on this bill at this hearing, but all declined this opportunity. I would especially like to welcome Mr Paul Dacey, the Acting Electoral Commissioner, who is leading the agency in the short term following the appointment of Mr Ian Campbell as Secretary of the Department of Veterans' Affairs. I want to say at this stage of the proceedings that the committee and I appreciate the way in which Mr Campbell conducted himself as head of the Australian Electoral Commission and his interaction with his committee. We found him to be civil, courteous and cooperative with the committee, and I am not surprised that he has been appointed Secretary of the Department of Veterans' Affairs. It is an appointment that he well deserves. And it is good to see you, Mr Dacey, acting as Electoral Commissioner. We go back a long way.

Mr Dacey—Thank you, Mr Melham.

CHAIR—You have been a great contributor to the Australian Electoral Commission. I propose to examine the bill by looking at the major issues that it addresses at four separate stages: public funding; changes to disclosure thresholds and associated administrative processes; overseas and anonymous donations; and offences, penalties and compliance. We anticipate that two members of the committee will be with us via teleconference: the deputy chair, Scott Morrison, and Mr Danby. We have received a submission from the Democratic Audit of Australia following Monday's public hearing. Is it the wish of the committee to accept the document as a submission to the inquiry into the Commonwealth Electoral Amendment (Political Donations and Other Measures) Bill 2008 and authorise it for publication?

Mr MORRISON—So moved.

CHAIR—There being no objection, it is resolved. It might be useful if we conduct the hearing under the four headings I just mentioned—I anticipate that committee members may differ on some of those and not on others. We will start with public funding and I invite Mr Dacey to make an opening statement.

[9.18 am]

Public Funding

Mr Dacey—As we all know, the bill builds on many of the elements that are in the existing Commonwealth Electoral Act and contains measures to address the urgent electoral reforms identified by the government in the area of funding and disclosure laws. The bill ties the entitlement to receive election funding to the actual electoral expenditure that is incurred, with only the lesser amount being payable. The scope of what can be claimed as election expenditure to attract a payment of election funding is not new. It is the same as the current definition of electoral expenditure contained in section 308(1) of the Commonwealth Electoral Act and which applies to the disclosure obligations contained in sections 309 to 314 of the same act. One of the major changes in the bill relates to the period for the lodging of returns, which is eight weeks, and the length of time that returns cover, which is now six months. The eight-week period replaces the existing 15-, 16- and 20-week periods that currently apply to different participants in the electoral process.

There are three related measures that are designed to enhance transparency in the existing disclosure regime. Firstly, there is establishing a reporting obligation on donors to minimise any circumvention of the disclosure obligations contained in the act by splitting donations between various branches of the same political party so that the gifts are below the disclosure threshold. Secondly, the bill includes amendments to the actual disclosure threshold itself, reducing this from the current level of \$10,900, which has applied since 1 July this year, to a flat rate of \$1,000. Thirdly, there is the banning of gifts from foreign companies and extending the current ban on anonymous gifts to associated entities and third persons. The ban on gifts from foreign companies reflects the JSCEM report into the conduct of the 2004 election and is aimed to address concerns that large overseas companies may be able to exert influence through the making of unreported donations. Extending the ban on anonymous gifts to associated entities and third parties is aimed to ensure that the source of all donations that are accepted and used in Commonwealth electoral processes are clearly identified and are subject to the requirements of the Commonwealth Electoral Act. In addition, the proposed new offence provisions and increased penalties reflect the large amount of public funding that is involved, which was almost \$50 million for the 2007 election, and the fact that the existing offence regime has not been significantly altered since 1983.

In relation to the mechanics, if introduced the new measures will result in a significant workload increase for the funding and disclosure section of the AEC. We have estimated at this stage that workload increase to be at least threefold. Information technology costings are still being negotiated with the Department of Finance and Deregulation, through the budget process, and are dependent on a number of factors including the need to have claims and returns available for public scrutiny as soon as possible and how claims and returns can be lodged by participants and received by the AEC.

I understand that in evidence from Democratic Audit of Australia earlier this week the New York City campaign finance board was put forward as a model for such an IT system. The AEC is aware of that system and could consider adopting it. However, the adoption of such a model is not just as simple as obtaining the software used by that board for use by the AEC and those with reporting obligations. What is important is the interaction with other AEC systems and secure

internet gateways to enable communications to be received by the AEC. They would all require significant development and associated costs. There could also be significant costs associated with an information program for stakeholders.

The key administrative provision as to the proposed new claims process for election funding is contained in proposed section 298A. This will enable the AEC to clearly specify the information and documents that will be required to support both interim and final claims. Supporting evidence may range, for example, from a single invoice, relating to the costs of media advertising for the major parties, to more detailed invoices from minor parties and independent candidates as attempts are made to maximise entitlements. If the bill is passed into law, the AEC will of course continue, and enhance where necessary, its current practice of conducting compliance audits to verify the amounts of expenditure that have been claimed. Thank you, Chair.

CHAIR—Mr Kalokerinos, do you have an opening statement that you wish to make?

Mr Kalokerinos—No, thank you, Chair.

CHAIR—Scott, do you want to ask some questions at this stage?

Mr MORRISON—Yes, I have a couple of questions, Chair. Firstly, one of the issues going to more frequent levels of reporting is the compliance aspect. This bill looks at introducing increased penalties and so on for a failure to disclose et cetera. One of the things that concerns me is whether we are really doing enough to ensure that the compliance task is made more simple. We do not particularly want to penalise people just because they fill out forms wrong or because there was too much to fill out and they did not have the secretariat support to do those sorts of things.

I am interested in the suggestion made by the Democratic Audit of Australia about a new body that could oversee all of these items. What I find attractive about that idea is that it would look after things not only at a federal level but at a state level as well. With the compliance burden we cannot ignore what is required at the state and indeed at a local level as well. I am interested in the views of the AEC and Finance for that matter about how you would respond to that type of a suggestion and whether you think it would assist compliance if there were a dedicated authority that looked after compliance and monitoring of these issues nationally and in cooperation with the states.

Mr Pirani—The minister has already indicated that harmonisation with state laws is one of the goals that he wishes to pursue. He actually indicated that in his media interview on 28 March and, certainly, in the green paper process, harmonisation and trying to get common sets of donations thresholds and common requirements for reporting obligations. Indeed, some of the states at the moment actually rely upon the reporting obligations under our legislation to comply with state law. So as a matter of principle the AEC would not have or see any objection in relation to that. But that is a negotiation exercise that would have to be conducted with the states, given our limited constitutional head of power for the Commonwealth Electoral Act that can only deal with donations and other matters that relate to Commonwealth electoral activities.

Mr MORRISON—Does the AEC currently have the capacity to take on that role for states and territories as well?

Mr Pirani—Under our legislation we can do certain things in relation to a fee-for-service regime. Section 7A of the Commonwealth Electoral Act does enable that to take place. We do conduct elections for local government bodies—

Mr MORRISON—I am not talking about elections. I am talking about palming out the role of receiving disclosure reports, all the issues relating to expenditure reporting including those that are suggested in this bill, and the monitoring and policing of those. So I am talking about a single campaign finance authority, which works at both state and federal levels, and whether the AEC has the administrative capacity currently to undertake that task and whether it could be folded into the AEC's role or whether a separate organisation would be required.

Mr Pirani—The current status is that we do not have the administrative capacity to undertake that task. That is principally a resource issue, but we also have issues in relation to our legal capacity to undertake that task without the conferral of power from the states.

CHAIR—But if we had cooperative federalism and a referral power from the states, if you were resourced, you would have the expertise to do that. I notice that Mr Dacey in his opening statement basically indicated that, if this bill goes through, there would be a need for resource increases.

Mr Pirani—That is right.

CHAIR—But, if you were tasked and the states referred this part of their administration to the Electoral Commission, you could do it if you were properly resourced?

Mr Pirani—If we were adequately resourced, yes, it could be done if those other hurdles were overcome.

CHAIR—You could have a specialist division that could operate under the umbrella of the Electoral Commission as against something operating outside the Electoral Commission?

Mr Pirani—That is correct.

Mr Dacey—One advantage of that could be in relation to harmonisation of course—a one-stop shop for the players in the process.

Mr MORRISON—That is what the Democratic Audit and many of the committee members have been thinking or saying. Are you thinking it would be better within the AEC or would it be better, as the Democratic Audit suggests, that you set these up as separate agencies? The AEC can then focus on its core tasks of running elections and maintaining roles et cetera; whereas this is a different function not necessarily inextricably linked to the running of election process.

Mr Dacey—The current funding and disclosure unit is within the AEC and they are not really involved in our other core business. So if we were resourced to establish such a unit that would be quite possible from within the AEC.

Mr MORRISON—My second question relates to the expenditure reports. In principle, I consider the idea of telling people how you spent the money is a good one when you are looking at large amounts of public funding being provided for those purposes. Can I just clarify if reporting expenditure in kind would be required under this regime. If someone donates to a campaign office or printing, you do have to disclose that as a donation but would you then have to report that as expenditure as well?

Mr Pirani—Clearly, at the moment it is a gift; therefore it does fall within the definition of a gift in the act. In relation to electoral expenditure, clearly we would want to see something that was at arms-length and to be able to give a true market value to whatever that claimed expenditure was. My understanding of the history of electoral expenditure in relation to public funding is that, prior to 1996, the regime did involve a reimbursement model but there were lots of concerns raised about the actual value that was placed on some of the expenditure claims. There were concerns that people who were volunteers all of a sudden were lodging invoices and it was not clear whether moneys were actually being paid.

Mr MORRISON—We would need to separate clearly the issues of volunteering and, in the broader inquiry the committee has undertaken, I think there has been some good discussion of that. It is more that I am seeking to ensure there is symmetry between what people are disclosing in terms of the value of a gift and what that expenditure would have therefore been. The two numbers should be the same. If someone has given you an office for six weeks and you have disclosed the value of that as a donation in kind, the six weeks of equivalent commercial rent for that site should be in your expenditure return, shouldn't it?

Mr Pirani—The AEC agrees.

Mr MORRISON—This question relates to the reduction in the threshold for disclosure. I cannot speak for my colleagues but, while in principle I have no issue with changing the disclosure threshold, I am concerned that when people have appeared as donors on disclosed lists they have been the subject of discrimination, intimidation and a range of other fairly nasty practices. Why are there are no provisions in this bill to address that sort of behaviour—or is that more properly a remedy that should be contained in some other act?

Mr Pirani—The AEC acknowledge that we are aware of certain claims being made. Indeed, our colleagues in the department of finance had a letter-writing campaign about expenditure that was reported in annual reports of political parties. I understand there was some correspondence on that. The issue that we have is that, in the Electoral Act as it is currently drafted and the policy behind it, we are talking about the disclosure of information and transparency in relation to the private and public funding of the main players in the electoral process. We have some issues that appear to be mutually exclusive. Under our act, the policy aim is to have this information in the public domain so that the Australian public are aware of who is behind the funding that is provided to political parties. Yet, on the converse side, we have issues relating to privacy and issues relating to harassment. Going back to the scenario you were painting, I suggest that maybe it is something that needs to be looked at in the context of some form of discrimination legislation or perhaps in relation to something to do with vilification.

Mr MORRISON—In providing support to the minister, which I assume the AEC did in drafting these measures and working up the policies, was the issue of protection for people who might be subject to harassment ever raised or even considered?

Mr Pirani—I have some difficulties with you saying that we provided support. Clearly, we were involved with the preparation of the drafting instructions to give effect to government policy, and that is what has taken place.

CHAIR—You provided advice to us.

Mr Pirani—That is correct.

Mr MORRISON—But was advice provided about providing protection to those who might be the subject of harassment as a result of the change to the disclosure laws?

Mr Pirani—As I understand it, the concern is that that arose irrespective of the nature of the actual threshold. It is something that is currently occurring.

CHAIR—The point you make is valid. That has been around for some time. You are aware that, in some instances, that has happened. I suppose the point that Mr Morrison and I think the committee is interested in is: is it possible to frame a clause that says that if anyone is harassed or whatever as a result of information they provide, pursuant to the act penalties can apply? It seems to me that you can put in a penalty provision that basically says that anyone who seeks to move against someone as a result of information that is disclosed could leave themselves—

Mr MORRISON—Or where they are treated unfairly by any exercise of government policy.

CHAIR—We do not need that answer today.

Mr Pirani—I might answer that. There is an existing provision in section 327 of the act. But because it is a criminal offence provision—it is the provision that deals with interference with political liberty—there could well be an argument that that provision could be built upon to deal with this specific type of concern.

CHAIR—Can that be looked at?

Mr Pirani—Again, it was not an issue. To get back to your first question, Mr Morrison, no, it was not part of the discussions that we had when we were preparing the instructions to the bill.

Mr MORRISON—The point here is that transparency cuts both ways. If we are going to say to people that they need to disclose who they are providing donations to, that is a legitimate position of government and the parliament. But we also have to take steps to protect people in those instances as well. I would take it one step further: is there any complaint body or mechanism or ombudsman or anything around the place to which a person who feels they have been unreasonably discriminated against or intimidated or harassed—for example, their business has been damaged by these things—can take their complaint and have it reasonably heard?

CHAIR—Clause 2 of section 327 of the Electoral Act states:

A person must not discriminate against another person on the ground of the making by the other person of a donation to a political party, to a State branch or a division of a State branch of a political party, to a candidate in an election or by election or to a group:

- (a) by denying him or her access to membership of any trade union, club or other body;
- (b) by not allowing him or her to work or to continue to work;
- (c) by subjecting him or her to any form of intimidation or coercion;
- (d) by subjecting him or her to any other detriment.

It seems to me to be in there.

Mr MORRISON—But what is the penalty?

CHAIR—It states:

Penalty: (a) if the offender is a natural person—\$5,000 or imprisonment for 2 years, or both; or (b) if the offender is a body corporate—\$20,000.

Mr MORRISON—But where I am going with this is: where is the ombudsman? Is there an ombudsman or a complaints body that can receive these complaints from people in a very confidential way and they can have some sort of confidence that these matters will be addressed? At the moment, who do they call?

CHAIR—The police. These are criminal offences.

Mr MORRISON—What I am asking the AEC is: do they think it would be helpful with that provision if there was a sort of ombudsman authority that could deal with complaints regarding political harassment? They may not all be criminal matters—they may not fall within the hard, black and white definition of what you are talking about their—but there should be provision for people to make a complaint if they feel they are having any undue pressure being placed on them or anything unfairly imposed on them.

CHAIR—Are you saying the Electoral Commission is the appropriate authority?

Mr MORRISON—What processes do the AEC currently have to deal with that? Is there a hotline number? Is there a website?

Mr Pirani—The AEC do have a complaints protocol and we do have a shared email address called info@AEC. When complaints come in, if they involve criminal matters then they actually come to me. We look at them, we have a look at what the evidence is et cetera, and if there is sufficient material then we either refer it to the Australian Federal Police or to the director of public prosecutions.

Mr MORRISON—How many staff do you have and what sort of resources do you have available to receive and review these complaints?

Mr Pirani—At the moment I have a staff of five lawyers and one paralegal.

Mr MORRISON—Is this the only function they undertake?

Mr Pirani—No, it is not.

Mr MORRISON—What other functions do they undertake?

Mr Pirani—They undertake the provision of legal services to the AEC.

Mr MORRISON—So how much time would they have to just specifically look after the interests of those complaints in an ombudsman-type capacity of dealing with complaints, reviewing complaints and determining whether these complaints have any veracity to them? Is there really a cop on the beat for this stuff within the AEC?

Mr Pirani—My answer to that is: yes, there is a cop on the beat. During the election campaign—and I only commenced with the AEC in July 2007—we dealt with over 400 complaints which all involved allegations of criminality. Of those, there were 10 that were referred to the Australian Federal Police for further work.

Mr MORRISON—Given you have worked in this area for a while, and I suspect there were a lot of other things you were doing at the time when you received those 400 complaints, do you think it would be helpful if there was a dedicated administrative resource—with particular powers similar to those of an ombudsman—to deal with this elements, particularly given that now we are going to lower the threshold to \$1,000?

Even people who were not under the \$1,500 disclosure threshold are now going to be on this register, and these registers are public. I think it is only fair that we provide some administrative support and resources to ensure that their rights are protected. This bill contains no such protection as I read it currently. There is nothing to provide any protection in this bill, greater than what currently exists, for people who will now be publicly disclosed on this register. Is that right?

CHAIR—There are the provisions of the existing act. The question is whether the commission thinks that the existing provisions can be further amended to encompass what you are saying.

Mr MORRISON—And that is my question.

CHAIR—What I would suggest is that the witnesses take it on notice, have a look at it and come back to us. I think they have the thrust of what you are saying. What you are in effect saying is, ‘Well, if I am not wrong, even if it is lower than the criminal standard; in other words, you want people to be protected even though—

Mr MORRISON—I want them to be protected but I also want them to know that there is somewhere they can go. In all cases that will not be criminal, and in some cases it might be quite innocent. But the sheer fact that the government had provided a home to those complaints, I think, would be reassuring given that we are seeking to expose them more significantly than

before. I cannot recall—Daryl, you probably will; or Michael will—when the \$1,500 disclosure threshold came in. It was the early 90s or early 80s wasn't it?

Mr Dacey—It was the mid-80s.

CHAIR—It was the mid-80s, and some of us kept it there for a long while.

Mr MORRISON—And it was at \$1,500 then, wasn't it?

CHAIR—Yes.

Mr MORRISON—If you adjusted that for inflation, that would probably be four times that now. So we are talking about lowering the disclosure threshold to an unprecedented level and we must provide some protection to people who could be disadvantaged not because of any sort of improper motive on their part but because of the improper motives of others. But I have made that point, so I am happy to move on.

I have one other question on the next issue, and this relates to the pooling, if you like, of donations between the various branches of political organisations. Does the bill make a provision to ensure that there is some separation of purpose behind those donations? You may have people who are donating in Western Australia for a state campaign and you could have someone in Far North Queensland donating to a federal campaign. As I understand it, both of those donations, which may be completely unaware of each other, would now be pooled. Is that right?

Mr Pirani—It is correct, but that is what is currently the case in relation to the annual returns of political parties. It is all income and all expenditure that is included in the annual returns, irrespective of the purpose and the source of those funds—where they were obtained from. That distinction does not presently exist in relation to the political parties. For candidates, there is a distinction, and that is currently there in section 304(5), I think it is, where if the gift is being made for the purposes of a state election or in a private capacity it does not have to be recorded. That is section 304, subsection (5), of the act.

Mr MORRISON—The key change that has been brought forward then, if you can just explain it to me—what is now happening with the donation-splitting issue? What is the effect of that change?

Mr Pirani—The effect of the change is that a person will not be able to give a donation \$1 under the thresholds to various branches or units of a political party which are separately registered with the AEC, and the donor would have to report the total amount that is given to the overall entity.

Mr MORRISON—Are you saying already?

Mr Pirani—No, that is what the amendments propose.

Mr MORRISON—No, the party would already be pooling those.

Mr Pirani—At this stage you can lawfully give a separate donation to a candidate or a branch of a political party that is \$1 under the threshold and you would not be required to report it.

Mr MORRISON—In the case of, say, a Queensland branch of the LNP and the Western Australian branch of the Liberal Party, currently all Western Australian donations would be bundled up and putting their returns, but the LNP and the Western Australian branch returns would not necessarily be amalgamated.

Mr Pirani—No, but, Mr Morrison, the issue is that the change is not to the returns for the political parties; the change is to the donor obligations. Again, we still have and will still be getting the annual returns which will have all receipts. What this change does is put the obligation on the donor. For example, the recent issue that was raised in the media, with the allegations about that particular sect and the offer having been made that was rejected, could not possibly have occurred under the new reporting regime that is proposed in the bill.

Mr MORRISON—Okay. I do not know that they like being called a sect, by the way—but anyway, that is for them. That is all I had, Chair.

CHAIR—All right. What I will do now is let Bruce Scott do his wide-ranging questions now, because he has to leave at 10.15.

Mr BRUCE SCOTT—Just before I do ask some questions I would like to be associated with the compliments, if I could put it that way, to Ian Campbell, and congratulate him on his elevation to Secretary of the Department of Veterans' Affairs. In fact, I was the person who employed him as the deputy secretary of the Department of Veterans' Affairs, and I have watched his progress—

CHAIR—You didn't declare that before this!

Mr BRUCE SCOTT—He is a very good public servant, and I have got a lot of time and respect for him, and I just wanted to associate myself with your comments there, Chair.

CHAIR—No worries.

Mr BRUCE SCOTT—I wanted to go back to the definition of the electoral expenditure. I know that Scott Morrison asked some of these questions, such as how you define these things. Although this bill does not amend the definition of 'electoral expenditure', it is a concern to me. Can you just describe to me how spending under this definition compares to other Australian jurisdictions that also have a reimbursement model for public funding?

Mr Edgman—With those state jurisdictions that currently have a reimbursement scheme, it is in effect identical to what used to operate federally—that is, there is no definition of or restriction on what the expenditure might be, just that the expenditure has to be related to the campaign. So it is far more wide ranging than this, but it is limited by the fact that it has to have been campaign expenditure, not administrative expenditure.

Mr BRUCE SCOTT—I also want to go back to what Scott Morrison was asking about in relation to donations in kind. It could be the rental of an office, but what about if someone in,

say, an ad agency was offering in-kind support for drawing up advertisements or a pollster was doing some polling as an in-kind donation, not disclosed? How do we deal with those issues in relation to disclosure? Those are considerable expenditures for anyone seeking public office.

Mr Edgman—That would be a gift and would be required to be disclosed, both by the party or the candidate receiving it and by the ad agency that has delivered it as an in-kind service.

Mr BRUCE SCOTT—How would you audit the actual expenditure? They could say, ‘This polling really only cost a very small amount—probably \$5,000,’ and yet if you bought it commercially, particularly in an election context, it could be 10 times that amount. How do you audit that and verify the authenticity of the amount being offered as a donation?

Mr Edgman—What we do now is we have a regime of compliance reviews of all political parties. Certainly one of the main things we like to focus on is gifts in kind, because it is a problem area—for people’s understanding, not just for any other issue. Appropriately valuing it is an issue as well. So it is one of the areas that we focus on with our compliance reviews. We will seek an amendment to a return or a donor return late if we discover something like that.

Mr BRUCE SCOTT—So you will be quite forensic in that process. Are there any examples of that that you have come across—without wanting you to disclose who those companies or people may have been? You have actually had that experience?

Mr Edgman—We do find gifts in kind, yes. It is not an uncommon thing. It is one of those areas that political parties sometimes overlook because it is not actually in their books of account and they prepare their returns from their books. So in most cases it is just an oversight. It is one of the reasons why we look at it specifically.

Mr BRUCE SCOTT—Is an advertisement from a third party that obviously has a political bias considered a gift, or would that be revealed as a political donation?

Mr Pirani—The answer at the moment is probably no, but it would be disclosed in terms of section 314AEB, which is on third-party disclosure. So there are current provisions in the act—and these were from the 2006 amendments to the act—which deal with where ‘a person incurs expenditure for any of the following purposes during the year, by or with his or her own authority’, and it includes:

- (i) the public expression of views on a political party, a candidate in an election or a member of the House of Representatives ...
- (ii) the public expression of views on an issue in an election by any means ...

The example of a third party that most people use is GetUp and some of their campaigns. That was regarded, and that clearly was, a third-party activity that was disclosed to us as political expenditure.

Mr BRUCE SCOTT—It was disclosed by?

Mr Pirani—It was disclosed by that third party.

Mr BRUCE SCOTT—By the third party.

Mr Pirani—That is correct.

Mr BRUCE SCOTT—It is not directly linked to a political party.

Mr Pirani—We do not accept, necessarily, on the evidence that it was directly linked to a political party—that is the associated entity type approach. They have different reporting regimes from the third parties. Again, it was the 2006 amendments that inserted this in the act, which put this increased disclosure and reporting obligation on third parties that was not there previously.

Mr BRUCE SCOTT—Let's take, for instance, the case of the ads run during the last federal election campaign and the lead-up to it by the National Farmers Federation in relation to communications. Is that a third-party gift?

Mr Pirani—It is a third-party expenditure that needed to be disclosed.

Mr BRUCE SCOTT—And it was.

Mr Pirani—It is not necessarily a gift to the party, but it is an expenditure that the National Farmers Federation would need to disclose.

Mr BRUCE SCOTT—But it was endorsing a particular political party's policy.

Mr Pirani—Indeed, but the legislation as it is currently framed does not mean that any person who might enter the fray and do an advertisement on a particular view that supports a particular policy, whether it is climate change or other matters, is in essence reporting as part of that party that has put forward a policy which they choose to support. That is a similar position to overseas. We are no different to what occurs in Canada and the UK, other than there is that additional requirement, as I understand it, in both Canada and the UK where if you are going to enter the fray and promote such advertisements et cetera you are required to be registered, otherwise you have committed a criminal offence. We do not have that sort of regime here in Australia.

Mr BRUCE SCOTT—The very large expenditure in the last campaign was in the union campaign, which probably outspent the major political parties.

Mr Pirani—That is correct.

Mr BRUCE SCOTT—How was that dealt with through the AEC?

Mr Pirani—That is dealt with as an associated entity with the different reporting obligations for associated entities contained in the act.

Mr BRUCE SCOTT—In both of the examples I have given you, if that was under the Canadian system, would they have to be registered?

Mr Dacey—Certainly under the UK system they would have to be registered. I am not quite sure—

Mr BRUCE SCOTT—Registered as?

Mr Dacey—Registered to be able to conduct that campaign.

Mr BRUCE SCOTT—And if they were not registered they would not have been able to run those campaigns without—

Mr Pirani—They would have committed a criminal offence if they had gone forward and actually run such a campaign.

Mr MORRISON—It sounds like a very good reform, Bruce.

Mr BRUCE SCOTT—So under the Canadian system that would not have occurred, but under the British system they would have to be registered—as what? As a political entity?

Mr Pirani—No.

Mr BRUCE SCOTT—What would they be registered as?

Mr Pirani—I would have to take that on notice. I did have a briefing on this in January and they have a regime where third parties who enter the fray by putting out advertisements that involve statements of views that are before the electorate are required to be registered. The briefing involved non-government organisations, church groups et cetera, and some of them were apparently quite shocked to find that they could not go out and support a particular view or policy that was in issue in the election process unless they were registered. What the United Kingdom Electoral Commission did was to adopt a policy of education to make these people aware that they had to be registered. They got a warning first and if they repeated it without being registered they were prosecuted.

CHAIR—So that fellow who was running ads about East Timor and, I think, Indonesia—the multimillionaire—could be prosecuted under that if he was not registered?

Mr Dacey—Under the UK law.

CHAIR—Under the UK law, not our law. They are not breaking any Australian law.

Mr BRUCE SCOTT—But this is my point. If we move to a different disclosure regime it leaves a huge, gaping loophole, as I would read it, for third-party type endorsement that could be entering the fray and declaring a gift. And I have been very fair, Mr Chairman. I have said there were two ads—the union and campaign and the National Farmers Federation campaign. They were on different sides of the political spectrum in terms of their support. If this were to pass in its current form, we would see a situation, I think, where we would get a lot more third-party type activity. To me, that opens up a huge loophole and would shift the dynamics if we did not, say, look at the UK model.

Mr MORRISON—Earlier I heard Mr Pirani say that he had had a report in January on this. Is that right?

CHAIR—There was a briefing in January.

Mr MORRISON—Was that a written briefing?

Mr Pirani—No, I attended a conference in London.

Mr MORRISON—Okay. I was just wondering if the committee could be provided with that.

Mr Dacey—We could certainly provide the information.

Mr MORRISON—That would be helpful, because I understand that the Canadian system does require the registration and disclosure of all donations and expenditure—otherwise it is illegal.

Mr Dacey—We can provide the committee with an overview of both the Canadian and the UK requirements in terms of registration. Mr Scott, to reply to your concern, if there is more expenditure by third parties on election campaigning, that will still be transparent. It is not necessarily a loophole because they will still be required to lodge returns of their expenditure in relation to the election campaign—as is currently the case. This bill does not change any of that.

Mr BRUCE SCOTT—That leads me to the question as to whether we should consider limiting—particularly under the UK system, where they have to be registered—campaign expenditure.

Mr Pirani—That was clearly one of the matters that the minister, in his media doorstep on 28 March, indicated would be going into the green paper.

CHAIR—So the green paper will have all options on the table?

Mr Pirani—That is correct.

Mr BRUCE SCOTT—Including the UK model?

Mr Pirani—There will be discussion about the overseas experience, yes.

Mr BRUCE SCOTT—Of the UK, Canada and what the New Zealanders do?

Mr Pirani—And the New Zealand one, as discussed.

Mr Dacey—New Zealand is a very complex system, but the Canadian system—

CHAIR—We will not be going there!

Mr BRUCE SCOTT—It is a very complex one because of?

CHAIR—Their voting system.

Mr Dacey—Not just their voting system; their funding and disclosure system is also quite complex. We have all that information available.

CHAIR—If you could provide it, Mr Dacey, that would be appreciated.

Mr SULLIVAN—I am interested in a couple of things about registering third parties. Is there any suggestion that a third party who applies for registration would be denied?

Mr Pirani—I would have to go back and have a look at the briefing paper from the UK.

Mr SULLIVAN—Okay. Would that also apply to photographs of celebrities who appear in advertisements offering third-party endorsements for candidates?

Mr Dacey—I am not sure about the photographs. From my understanding of the UK system, as long as the third party who wants to be involved in the political process is, by being involved, spending money in the political process, they need to be registered. If that third party chose to use a photograph of a particular celebrity, that would be an issue between the third party and the celebrity.

Mr SULLIVAN—To go to the other issue that Mr Scott was talking about, in-kind donations, what is the situation with a discount? Currently discounts apply commercially in businesses. If you buy enough printing, for example, you will get it at a rate less than you would get if you bought a small quantity. Are those regarded as gifts or as normal commercial discounts?

Mr Edgman—Discounts given in the normal course of commercial trading are not considered gifts under the act. It is the normal price that anyone else would be paying if they were advertising the same volumes, or whatever. So no, they are not considered donations.

CHAIR—As long as it comes into the normal trading definition—is that what you are saying?

Mr Edgman—That is right.

Mr SULLIVAN—Normal commercial-type practices. Okay.

CHAIR—The minister issued a press release on 1 February 2008 regarding electoral disclosures. I will read the first three paragraphs:

The 85% drop in political donor disclosures over the past three years, revealed in today's Australian Electoral Commission annual financial disclosure returns, highlights a stark erosion in the integrity of Australia's electoral system.

The number of disclosed donations dropped from 1,286 in 2004/05 down to only 194 in 2006/07.

This drop is solely due to the increase in the disclosure thresholds to \$10,300, forced through Parliament by the Howard Government in 2006.

In light of that statement but also—

Mr BRUCE SCOTT—I would not say it was forced, Chair.

CHAIR—It ‘went through’; that is fine. I think the committee is particularly interested in obtaining any data that is comparable to information contained in the AEC’s 2004 *Funding and disclosure report* and I wonder if you are able to provide the committee with any data or information from the 2007 election returns or the 2006-07 annual returns to assist in the inquiry.

Mr Pirani—We have already had some discussions with the committee secretariat as to what information we are able to provide. We are presently in the process of finalising the report, under section 17 of the Commonwealth Electoral Act, to be tabled in parliament in relation to the funding and disclosure regime and we have indicated to the committee secretariat that we will extract some information that might be of assistance to the committee in that regard.

You would recall that we indicated, in one of our earlier letters, that the election returns from the parties in relation to November 2007 are not due until November this year. Sorry, it is about the annual return from parties which includes the November 2007 election period. So we actually do not have that at this time.

Mr Dacey—But we will continue to liaise with the secretariat and provide the committee with—

CHAIR—I would appreciate whatever information you can give us by the end of next week.

Mr Pirani—Yes, Chair.

Mr SULLIVAN—In a sense that sounds to me to be fairly unsatisfactory. We are still two months away from knowing what expenditure was incurred in the last federal election.

CHAIR—But that is the timetable.

Mr Pirani—Yes, that is the current timetable.

Mr SULLIVAN—I agree. But that sounds to me—and I think that would sound to the normal person—to be unacceptable. Is there a better process in the new bill?

Mr Pirani—The process in the new bill is six monthly returns, to be lodged eight weeks after the end of the return period. We are required to publish those as soon as practicable.

Mr SULLIVAN—Okay.

Mr BRUCE SCOTT—This question is to you, Mr Dacey, if you would not mind. I know that at our last public hearing, when I was here and had to leave at a time similar to that of my leaving today, we were discussing postal votes and the validity or otherwise of those. I think there were 7,000 or 8,000 postal votes across Australia. The AEC representatives said they could break those down electorate by electorate as to the numbers of postal votes that were rejected on the basis that they were not lodged or postmarked by 24 November. Can you say just how far down the track you are?

Mr Dacey—I will take that on notice. I am quite sure that we have done that and maybe we have provided that. But we can check. If we have not provided that as yet we are certainly in the process of doing so.

Mr BRUCE SCOTT—If we have been provided with it I have not seen it. Maybe I have missed it.

Mr Dacey—We will follow that up.

Mr BRUCE SCOTT—Would you?

Mr Dacey—Yes.

Mr BRUCE SCOTT—Before our next sittings if possible.

Mr Dacey—And these are the ones that were rejected specifically because they were too late.

Mr BRUCE SCOTT—Yes, those that were too late. We had a quite detailed discussion about some that might have even been in the postal system for two or three days, in fact, before the 24th but were still rejected. Chair, may I be excused?

CHAIR—Yes. Before you go, we need a motion that we form a subcommittee consisting of me as the chair, Mr Morrison, Mr Sullivan, Mr Scott and Mr Danby. Would someone like to move that?

Mr MORRISON—I so move, Chair.

CHAIR—As there are no objections, that resolution is carried. Scott, do you have some more questions on the earlier stuff? If not, we will move on.

Mr MORRISON—No, Chair. I have covered what I wanted to cover.

CHAIR—Okay. We will move on.

[10.08 am]

Overseas and Anonymous Donations

CHAIR—Is there anything you want to say on this, Mr Dacey?

Mr Dacey—No, we do not wish to say anything, Chair. We are happy to take any questions.

CHAIR—Do you have in front of you the submissions by Democratic Audit of Australia in relation to that?

Mr Dacey—Yes.

CHAIR—As far as the ban on foreign property donations is concerned, they say at 3.1 that the structure of the proposals is clever and that they also support that. There is not much that I really want to ask you in relation to that. They say something as to anonymous donations in paragraph 4. Whilst they say they support that provision, being largely a tightening of the existing rules, they query whether the ban applies to all gifts however small. They go on to say a party fundraiser shaking a tin or selling raffle tickets will be required to demand and record the names and addresses of every contributor or if they refuse forfeit the contribution to the Commonwealth. It may be sensible to legislate a low threshold, say \$50. If so, regular contributions under the threshold will still have to be covered by the anonymity rule example—direct debits et cetera. I am interested to know if we can flesh that out. Is what they say consistent with what is in the proposed legislation?

Mr Pirani—The current ban on anonymous donations to political parties is actually already in the act.

CHAIR—Right.

Mr Pirani—There is no change in relation to the donations to the political parties. What is in the bill extends the current prohibition to associated entities and third parties who incur electoral expenditure.

Mr Dacey—That total ban on anonymous donations to parties has been there since inception.

Mr Pirani—The current ban in section 306 is on ‘anonymous donations above the threshold of \$10,000’, so in reality what we are doing is taking the threshold down to \$1,000.

CHAIR—It is to \$1,000, is it?

Mr Pirani—All the thresholds right throughout the act got changed to \$1,000.

CHAIR—What are they on about, then, in that submission? Have they misconstrued—

Mr Dacey—Maybe misunderstood—

CHAIR—Misunderstood?

Mr Dacey—Perhaps.

Mr Pirani—We will have a further look at that and come back to the committee. I am concerned that we have just seen this, so I want to make sure that I am not misleading the committee. I would like to take that on notice so that I can ensure that I am properly informing the committee as to what the actual effect of the bill is on this aspect, but the current provision is section 306 and the main purpose of the bill was to extend the current limitation across the other players.

Mr SULLIVAN—How are overseas branches of the parties who campaigned amongst expatriate voters—London would be a good example—governed under our legislation at present?

Mr Pirani—In relation to overseas gifts, there is no limitation at present in the current act.

Mr SULLIVAN—So a branch of an Australian political party operating in London advocating amongst expatriate voters in London to vote one way or the other in an upcoming federal election has got no limitations on it under our act? I can understand that, but were they to transmit moneys to Australia would they then be covered under the foreign donations?

Mr Pirani—That is correct. That is the case with anything relating to foreign property—which is the way that we drafted the provisions. We had a definitional issue giving effect to the recommendations from JSCEM in their 2005 report, and had a look at the issue of foreign companies and overseas donations. The issue became our limited power to enforce things offshore. The way that the legislation had to be drafted, therefore, was to do with foreign property coming into Australia that was being donated to a political party or used for a political purpose. That is what the new controls are proposing the bill regulate.

Mr SULLIVAN—Okay. I have never seen any evidence of this and I do not know that it is possible business-wise, but what if an overseas branch of a political party paid a newspaper corporation in the United Kingdom for a full-page ad that appeared in an Australian newspaper?

Mr Pirani—If there was no movement of property from offshore to Australia—and that is how the amendments have been drafted—then it would not be caught. There has to be an actual movement of foreign property from offshore to onshore.

Mr SULLIVAN—What about the movement of property from Australia to the United Kingdom—a donation from an Australian company to an overseas branch of a political party that was then returned by way of expenditure overseas but the service was provided in Australia?

Mr Pirani—If the actual property has gone overseas and come back, or the benefit of that property has gone overseas and come back, then it would be caught.

Mr SULLIVAN—In a sense the donation is made in Australia to an overseas entity to avoid disclosure, but is it able to be disclosed because the overseas entity spends it overseas but the benefit is provided in Australia?

Mr Pirani—Yes.

Mr SULLIVAN—Excellent, thank you.

CHAIR—I want to take you to something else that the Democratic Audit have said because I think it is important to test some of their propositions. On page 2, in relation to public funding by way of reimbursement only, they say ‘The sight of an essentially celebrity candidate like Ms Hanson earning funding without doing much campaigning is unattractive.’ I will refrain from saying anything else. But as Professor Sawyer argues, ‘This proposal may significantly disadvantage genuine minor parties and Independents. That will further weaken the political equality purpose of public funding, a purpose already limited by an arbitrary four per cent threshold. In planning their campaigns, the established parties can bank on receiving public money and hence, for example, secure overdrafts in ways that minor parties. The reimbursement

only rule is doubly problematic given the restricted definition of claimable electoral expenditure.'

I do not necessarily agree with what they are saying but it seems to me that they are being a bit disingenuous there, aren't they? How does it disadvantage genuine minor parties? If they get four per cent, they get funding.

Mr Dacey—If they get four per cent, they get funding. Other than having to fall within the definition of electoral expenditure, it is really just a reversion to the process that was in place prior to 1996 where it was a reimbursement scheme.

CHAIR—It seems to me if we did what Democratic Audit wanted then every Tom, Dick or Harry that ran would be funded irrespective of getting their four per cent. That seems to be underpinning what they are saying or am I overstating the situation.

Mr Dacey—No. As I said, it is no different to what was in existence pre-1996 anyway.

CHAIR—Which was if you get four per cent, that is the threshold where we say you are credible.

Mr Dacey—That is correct. There is no change to that threshold of four per cent.

CHAIR—There is no change to that threshold. Thank you. I want to go through some other questions with you. The Democratic Audit submission seems to say that there may be difficulties in the tracing and enforcement of donations from people and property offshore. I am interested as to whether you share that view.

Mr Pirani—We have to acknowledge that that is an issue.

Mr Dacey—It is not going to be an easy situation.

CHAIR—That will be a resource issue for you, I assume.

Mr Dacey—It will.

Mr Pirani—And an investigation methodology issue.

Mr SULLIVAN—More jobs for the Federal Police

CHAIR—Are you aware of what enforcement other countries that might have similar provisions undertake in, say, the US or the UK or not?

Mr Pirani—Again, at the conference I attended in London in January, there was a discussion about some of the different enforcement measures that were used by other agencies. I would have to probably extract some of the information from that because we did have Chatham House rules.

CHAIR—I do not want you breaking Chatham House rules.

Mr Dacey—We could, for example, look at some of the enforcement mechanisms that are in place in Canada which we could provide the committee with—a summary of those.

CHAIR—Okay.

Mr SULLIVAN—In essence what you are saying to us is that there is experience. There are methodologies used. Do you have the confidence that those could be adopted and put in place in Australia?

Mr Dacey—We have a network of like electoral agencies, I guess, across the world and we can draw on that experience, benefit from that experience and learn from each other.

Mr SULLIVAN—And whilst the task may be difficult—

Mr Dacey—The task may be difficult and the task may be expensive, but that is a resourcing issue that we will be talking to our colleagues from the Department of Finance and Deregulation about.

Mr SULLIVAN—I believe they are very friendly!

Mr Dacey—Very friendly!

CHAIR—I will just ask a couple more questions. In paragraph 59 of the explanatory memorandum the bill proposes: ‘The AEC must accept or refuse claims and pay the applicable funding entitlement within 20 days.’ And at paragraph 60 of the EM it also provides: ‘The only consideration for the AEC in determining a claim is whether the claimed expenditure was an electoral expenditure and whether it was actually incurred.’ How will the AEC decide if claimed expenditure meets the definition of ‘electoral expenditure’? What measures will the AEC undertake to inform itself if such expenditure has been incurred and is the AEC confident it can undertake sufficient verification activities within the required time frame?

Mr Pirani—Before turning to my colleague, who has expertise in the actual monitoring compliance role, can I say that the proposed bill has a proposed section 298A. That is the key provision, because it indicates what has to be lodged as part of the claim. We are still doing work on designing the claim form to specify the information, but if they do not lodge a claim form on the approved form which is accompanied by the relevant documentary evidence then it is not a valid claim and we will not be processing it. In terms of the act, the onus is placed on the candidate, the political party, or the agent of the political party, in lodging the claim and that claim should have attached to it all the relevant information, invoices and documents in support of the amount that is claimed.

The proposed bill has been drafted in a way that does not require the claimants to lodge all documents in support of the amount of political expenditure they have incurred, only those which they wish the AEC to consider in working out which is the lesser of the actual electoral expenditure incurred, or the \$2.18c-odd of the four per cent first preference votes. We are hoping that, because of the way the bill has been drafted, our role will be fairly straightforward and

fairly simple. That is why, contrary to what is currently in the act, we put in a deadline for the AEC to make a decision. If we get a valid claim, with the necessary information, we are required to determine within 20 days. If we have not done it within 20 days then the claimant will have review rights. The aim of that is to assist the parties and candidates and other stakeholders in, hopefully, being able to work out their cash flow following an election, so if they do have invoices et cetera that are outstanding then they can expect to receive a payment from the AEC within a set time frame.

CHAIR—The explanatory memorandum, at paragraph 213, notes:

It is anticipated that advances in technology might enable claims or returns to be made available sooner than the fixed time of 24 weeks after polling day for—

election returns

or February in the calendar year—

for annual returns. When do you think the public disclosure under the proposed regime will take place and is it possible that a different period could be required for different types of returns?

Mr Pirani—It depends on discussions with our colleagues in the budget process. It is mainly a resource issue and an IT issue. Currently, in the act there are time frames—within a 15-, 16-, 20-week period—for the annual returns to be lodged. Eight weeks is proposed in the bill. Currently, we then have until the following February to put information on the website, and that is because of all the manual work we are required to do in dealing with hard copy returns that are lodged with us. As an outcome and as part of the transparency and accountability process, clearly the AEC would be seeking, and indeed we have undertaken negotiations with our colleagues in Finance, to have an IT solution that will enable this to be up in the public domain as soon as practicable. From the AEC's perspective and the overall policy's perspective we would see there being little point in having shortened reporting time frames if we were unable to publish that and have it in the public domain in an equally short time frame. That is the type of IT solution we are seeking and that is what we understood the Democratic Audit of Australia were pursuing in relation to the New York finance board process that they were encouraging us to undertake.

Mr Dacey—In relation to any IT solution that we may come up with, we will also be looking at a solution which will assist the parties and candidates in meeting their deadline of eight weeks within which to lodge their returns.

CHAIR—I was going to come to that because Mr Morrison, who is a former state director of the New South Wales Liberal Party, would also appreciate that within the major political parties we have a lot of volunteers and a lot of people running the campaigns who do not have the expertise or whatever. As it becomes more complex it is a bit more daunting. I am looking for templates and proformas and assistance from the AEC to assist participants in the electoral process to fill out their forms. I am not looking at gobbledegook, I am looking at plain English, simple stuff, that will assist them, because most of them are unpaid volunteers and, given the strict timetables that you want, I know that the penalties have been changed and now we are looking at intent in relation to that.

Mr MORRISON—I support that. Thanks for making the reference. Looking at what the ATO and other agencies have done with various forms of online forms, guides, information packs and so on, it is something that really needs to be looked at. In many cases, the non-compliance is not in any way anyone trying to obfuscate anything; it is just difficult for them. These people are doing it in their spare time, on weekends and at night. They are doing it just because they are good-hearted people who support their political parties. We have got to make it as easy as possible for them. We must also remember that they are doing this at a state level and at a local level in many cases. The administrative burden of this stuff is getting frighteningly high.

CHAIR—I can declare that in the recent council elections I ended up being the agent for a team within Bankstown Council because the appointed agent got frightened off in terms of the legalese and what was required to be submitted. Quite frankly, I think we need to address that. I understand that it might require resources within the commission.

Mr Dacey—It will.

CHAIR—I do not see it happening without those resources.

Mr Dacey—We are certainly very mindful of that. Our understanding, without looking in detail but we will look in detail at the system that operates at the New York City Campaign Finance Board, is that there is a software package provided to the participants in the process which they load on whatever systems they have and it allows them direct entry into the return system. We will be looking at whatever we can to make that as less a burden as we can for the participants, subject to resources.

CHAIR—The bill proposes, in clause 89, to broaden the investigatory scope of the AEC authorised officers by extending the list of persons who may be required to produce documents or other evidence. What is the practical effect of this proposed change? Has the AEC been limited in the past in relation to investigatory powers to compel the production of documents and would this broadening of powers lead to a change in the way the AEC undertakes its compliance activities?

Mr Pirani—To answer the first part of the question, yes the current powers in section 316 do limit the investigative powers of the AEC particularly in relation to associated entities, third parties et cetera. The aim of the proposed provision is to enable the AEC to have a standard process of compliance audits that can be applied to political parties, candidates, Senate groups, associated entities and third parties. We do have a current compliance audit model and we would not see there being any major change to that model.

CHAIR—Scott, have you got any more questions?

Mr MORRISON—No, but I reinforce the question you have just asked. It is something we have talked about a bit in committee. We can come up with all the laws we like but if they do not have the powers or the resources to investigate these things then you scratch your head a bit.

CHAIR—Mr Kalokerinos, you got off light today.

Mr Dacey—Perhaps not when we start to negotiate resources.

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

That this committee authorises publication, including publication on the parliamentary database, of the transcript of the evidence given before it at public hearing this day.

CHAIR—I thank everyone for their participation today. I know that we did not ask some witnesses much, but they were there in anticipation. It is much appreciated. Thank you, all.

Committee adjourned at 10.29 am