

Modernisation and sustainability of electoral administration

- 9.1 The Australian Electoral Commission (AEC) has raised a number of concerns with the committee relating to the sustainability of its operations given the twin pressures of a reduction in the growth of appropriations and the rising costs of conducting elections and ongoing operations.
- 9.2 The AEC participated in a recent inquiry by the Joint Committee of Public Accounts and Audit (JCPAA) on the application of an annual efficiency dividend to small Commonwealth public sector agencies. The AEC raised concerns with the JCPAA about the application of the efficiency dividend to the AEC. In its inquiry report the JCPAA noted that the Joint Standing Committee on Electoral Matters was the preferred forum for addressing issues associated with the *Commonwealth Electoral Act 1918*.
- 9.3 There are certain areas where the AEC considers that it has limited flexibility to continue to find ongoing savings as required under current funding arrangements. There are a number of changes that could be made to give the AEC flexibility and provide for a business model that incorporates a greater reliance on electronic transactions.

Election costs and cost pressures

- 9.4 As noted in chapter 2, the AEC estimate that the cost of the 2007 federal election was \$114 million, excluding \$49 million in public funding provided to election candidates. Most of the expenditure related to

staffing costs, although advertising and promotion expenses were also significant (table 9.1).¹

Table 9.1 2007 election expenditure, to 30 June 2008 (\$)

Item	Amount (\$)
Employee Expenses	42,517,402
Property Office Supplies and Services	6,235,077
Election Cardboard and Supplies	4,860,054
Contractors	1,945,670
Consultancy	1,265,580
Travel	2,770,215
Advertising, Promotion and Media Services	29,519,430
ITC Services	10,874,985
Mailing and Freight Services	8,296,548
Printing and Publications	4,643,200
Legal Services	485,960
Other Expenses	659,347
<i>Sub total</i>	<i>114,073,467</i>
Public funding	49,002,639
Total expenses	163,076,106

Source Australian Electoral Commission, *Electoral pocketbook: election 2007 (2009)*, p 73.

9.5 In real terms, the cost of the election per elector increased from \$6.38 at the 2004 election to \$8.36 at the 2007 election, a rise of 31 per cent. The AEC nominated several areas where they had experienced increases in election expenses including:

- a one-off pay increase of 5 per cent pay for polling officials;
- increased staffing costs due to a rise of approximately 2,300 temporary staff for the 2007 election;
- running the electronic voting trials at a cost of \$2.8 million; and
- a 30 per cent increase in venue hire costs.²

9.6 As noted in chapter 2, a key driver of the higher election cost in 2007 was the increased spending on advertising. The committee calculates that if the additional \$19.3 million spent on advertising at the 2007 election compared to the 2004 election was excluded, the cost per elector for the 2007 election would have been around \$6.95, representing an 8.9 per cent real increase in the cost of the 2007 election compared to the 2004 election.

1 Australian Electoral Commission, submission 169, p 79.

2 Australian Electoral Commission, submission 169, p 80.

The AEC was required to fund this increased advertising expenditure by drawing on its accumulated cash reserves, running operating losses over the financial years 2006-07 and 2007-08.³ Such a situation is obviously unsustainable over the longer term.

Inquiry into the effect of the efficiency dividend on smaller public agencies

9.7 During 2008, the JCPAA conducted an inquiry into the effects of the ongoing efficiency dividend on smaller public agencies.

9.8 The then Electoral Commissioner told the JCPAA that:

The combination of the efficiency dividend with the indexation arrangements [...] means that we are suffering quite significant, real losses in our running-cost appropriations and that is what we are actually struggling with.⁴

9.9 In their submission to the JCPAA's inquiry, the AEC noted that the *Commonwealth Electoral Act 1918* imposed a range of requirements that make it difficult to achieve efficiencies:

The Commonwealth Electoral Act mandatory nature and the prescription of its provisions are fundamentally at 'odds' with the application of the efficiency dividend. The prescription in the Commonwealth Electoral Act inhibits contemporary and efficient ways of transacting with eligible enrollees, electors, political parties and associated entities. Efficiencies that can be brought to bear on highly prescribed processes are few in number.⁵

9.10 Some examples of the constraints imposed by the Commonwealth Electoral Act provided by the AEC included a requirement under s. 38 of the Act to maintain a divisional office network and the high level of mandated and prescribed processes associated with maintaining the electoral roll.⁶

3 Australian Electoral Commission, submission 169, p 79.

4 Campbell I, Australian Electoral Commission, transcript, 21 August 2008, p 60.

5 Australian Electoral Commission, submission 42 to the Joint Committee on Public Accounts and Audit inquiry into the effects of the ongoing efficiency dividend on smaller public agencies, p 5.

6 Australian Electoral Commission, submission 42 to the Joint Committee on Public Accounts and Audit inquiry into the effects of the ongoing efficiency dividend on smaller public agencies, pp 5-6.

- 9.11 In its report to the parliament, the JCPAA acknowledged the adverse impact of the efficiency dividend on small agencies and proposed that the government either exempt the first \$50 million of all agencies' appropriations from the efficiency dividend, excluding departments of state (the preferred option) or exempt the first \$50 million of the appropriations of all agencies that have departmental expenses of less than \$150 million, excluding departments of state. A further recommendation on sharing savings through coordinated procurement was also made.⁷
- 9.12 The JCPAA further noted that the Joint Standing Committee on Electoral Matters was the preferred forum for addressing issues associated with the Commonwealth Electoral Act.⁸ As a result, and in accordance with concerns about ensuring the continued integrity of electoral processes and elections, the committee considers that it must give the application of the efficiency dividend to the AEC due attention.

Funding arrangements and the impact of the efficiency dividend

- 9.13 The AEC is typically funded on an election cycle basis, with annual appropriations rising and falling to take account of the peak of expenditure around federal election events (figure 9.1).
- 9.14 The most recent resourcing review, conducted during 2003-04, provided for a degree of budget supplementation, with an additional \$28.1 million provided over the five years to 2007-08. Additional funding of \$6.3 million over four years to 2007-08 was also provided to support roll integrity activities (table 9.2).⁹ In each case, supplementation was subject to the efficiency dividend.¹⁰

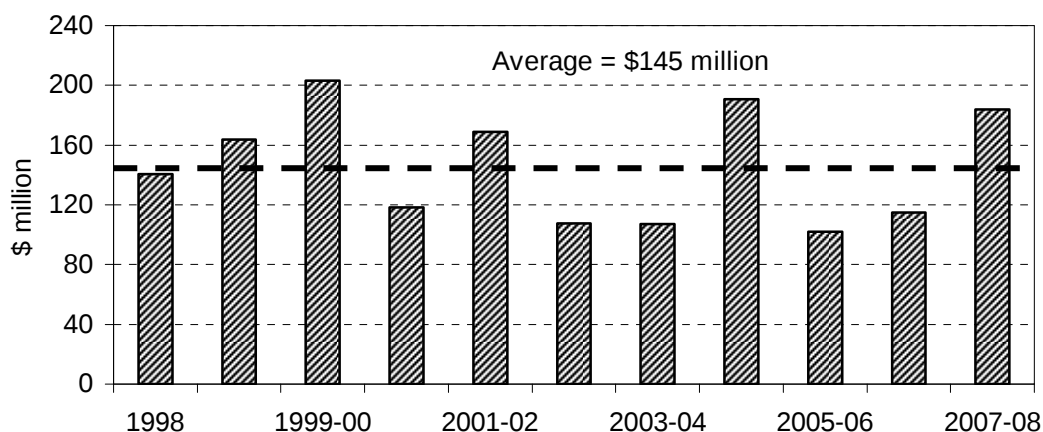
7 Joint Standing Committee on Public Accounts and Audit, *Report 413, The efficiency dividend and small agencies: Size does matter* (2008), Commonwealth of Australia, p 134.

8 Joint Standing Committee on Public Accounts and Audit, *Report 413, The efficiency dividend and small agencies: Size does matter* (2008), Commonwealth of Australia, pp 33-34.

9 Australian Electoral Commission, submission 169.15, p 8.

10 Australian Electoral Commission, submission 169.15, p 8.

Figure 9.1 Australian Electoral Commission annual appropriations, 1997-98 to 2007-08, (real \$ million)



Source Australian Electoral Commission, *Annual Report 2007-08*, p 178; *Annual Report 2005-06*, p 156; *Annual Report 2003-04*, p 136; *Annual Report 2001-02*, p 114; *Annual Report 1999-2000*, p 112.

Table 9.2 Supplementation provided to the Australian Electoral Commission following the 2003-04 resourcing review (\$ million)

	2003-04	2004-05	2005-06	2006-07	2007-08
General supplementation	5.1	19.7	8.0	4.1	15.4
Roll integrity activities		1.7	1.4	1.3	1.4

Source Australian Electoral Commission, submission 169.16, p 8.

9.15 In the AEC's view, the additional resources provided to maintain a staffing of three full time equivalent (FTE) employees in each divisional office was based on a 'snapshot' of actual staffing. As a result, it did not take account of average staffing levels nor allow for absences including backfilling and represented an ongoing shortfall of between \$2.3 million (45 FTE) and \$4.4 million (75 FTE).¹¹

9.16 The ongoing impact of the efficiency dividend on the AEC will require it to absorb significant savings, at a level that is significantly higher than in past years (table 9.3).

11 Australian Electoral Commission, submission 169.15, p 8.

Table 9.3 Annual efficiency dividends rate (per cent) and impact on the Australian Electoral Commission's budget (\$ million)

	2003-04	2004-05	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2011-12
Efficiency dividend rate (%)	1	1	1	1.25	1.75	3.25	3.25	3.25	3.25
Estimated impact on funding (\$m)	-0.9	-1.6	-0.9	-1.3	-3.0	-3.0	-3.2	-5.8	-3.2

Source Australian Electoral Commission, submission 169.16, p 8.

- 9.17 The AEC noted that the cumulative effect of the increased efficiency dividend to 2011-12 of \$29.4 million exceeds the additional resources gained from the 2003-04 resourcing review.¹²
- 9.18 Notwithstanding the impact of the efficiency dividend, the AEC pointed to the unsustainability of continuing to incur operating losses, which over the past two financial years has amounted to up to \$17 million.¹³
- 9.19 The AEC estimated that, were it to retain the current business model through to the next election, the cost of the election (excluding public funding) would be \$135 million.¹⁴ This compares to a cost of \$113 million for the 2007 election.¹⁵ The AEC noted that:
- This estimate provides for a slight increase in the scale of public awareness leading up to the event to ensure the accuracy of the electoral roll, but does not take account of increases in the eligible enrolment and voting population. Further, it does not take account of Government policy initiatives that may impact the AEC over the next cycle such as emissions trading and the rise of 'green' procurement. Given the AEC's dependency on paper, property and logistics, the AEC is exposed to cost increases these initiatives might bring.¹⁶
- 9.20 Should the AEC not receive significant additional funding over the electoral cycle to meets its obligations under the Commonwealth Electoral Act and avoid further operating losses, the AEC warned the committee that it would result in 'less polling places and reduced staff, both leading

12 Australian Electoral Commission, submission 169.15, p 8.

13 Australian Electoral Commission, submission 169, p 81.

14 Australian Electoral Commission, submission 169, p 81.

15 Australian Electoral Commission, submission 169, p 80.

16 Australian Electoral Commission, submission 169, p 81.

to increased queues at polling places and an increase in the time taken to count votes'.¹⁷

2009-10 Budget

9.21 As noted in chapter 6, the AEC will receive an additional \$13 million over the next four years as part of the 2009-10 Budget to deliver a program that will close the gap in areas of Indigenous disadvantage by improving the electoral enrolment and participation of Indigenous Australians.¹⁸

9.22 The AEC is expected to have an operating surplus of \$3 million in 2008-09, which the AEC attributed to 'a number of positions not being filled until late in the financial year and a reduced level of spending across the board'.¹⁹ The AEC noted that:

The reduction in spending was, in part a management decision to reduce expenditure in the 2008-09 year to improve the overall cash position of the agency following operating losses in 2006-07 and 2007-08.

9.23 Beyond 2008-09, the AEC is expecting that expenditure will be equal to revenue in each year over the forward estimates.²⁰ Appropriation revenue over the forward estimates period will rise from \$105 million in 2009-10 to \$186 million in 2010-11 (when the election is expected to be held) (table 9.4).

Table 9.4 2009-10 Budget Australian Electoral Commission appropriation revenue, 2009-10 to 2012-13 (\$'000)

	2008-09	2009-10	2010-11	2011-12	2012-13
Appropriation revenue (\$'000)	101,500	105,209	186,456	107,114	114,364

Source 2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.

9.24 The committee notes that as part of the 2009-10 Budget, further savings of \$6.1 million over four years (\$1.5 million per year) are to be recovered

17 Australian Electoral Commission, submission 169, p 81.

18 Senator the Hon John Faulkner, Special Minister of State, '\$13.0 million to help improve Indigenous electoral participation', media release, 12 May 2009.

19 2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.

20 2009-10 Budget, Portfolio Budget Statements, Department of Finance and Administration, p 99.

from the AEC, with savings to be achieved by reducing expenditure on Electoral Education Centres, the use of in-house legal advice rather than external legal providers and through implementing general efficiency measures.²¹ The committee noted that the budget papers state that:

Savings will also be achieved by closing the Electoral Education Centres located in Melbourne and Adelaide, and ceasing financial support for the Western Australian Electoral Education Centre. The internet and printed material will provide alternative means of providing electoral education.²²

Committee conclusion

- 9.25 The AEC, like many public sector organisations, faces significant cost pressures in the delivery of its services and the need to find savings to meet savings targets imposed by a whole of government efficiency dividend. As a public sector agency, the AEC should not be immune from the overall objectives of such a policy, which encourages agencies to innovate and become more efficient in the delivery of services.
- 9.26 The committee notes that the 2009-10 Budget did not address the issue of the application of the efficiency dividend to small agencies, as examined in 2008 by the Joint Standing Committee on Public Accounts and Audit. Further, the 2009-10 Budget included an additional \$6 million of savings over four years from a range of activities, including electoral education services in several capital cities.

Recommendation 39

- 9.27 **The committee recommends that the Australian Electoral Commission be resourced appropriately in order that it continue to provide high quality electoral services to the Australian population and to do so in a manner that does not compromise the integrity of the electoral system.**

21 2009-10 Budget, Budget Paper No 2, p 249.

22 2009-10 Budget, Budget Paper No 2, p 249.

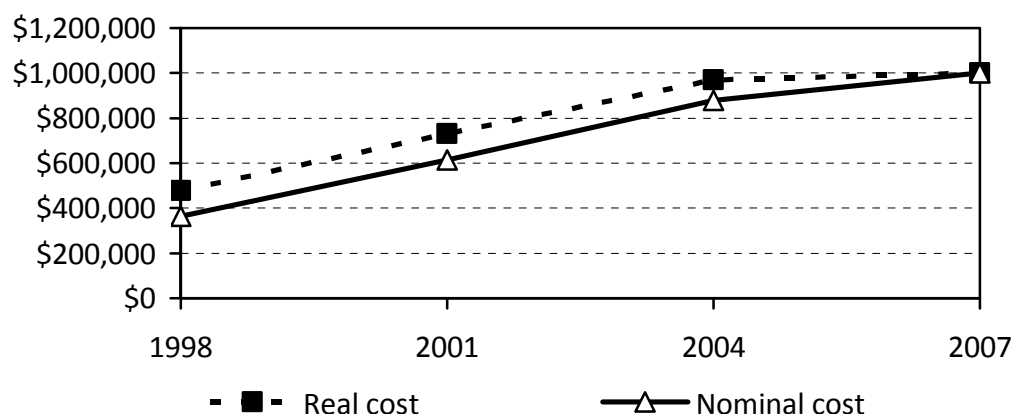
- 9.28 The committee considers that there are a range of areas where the AEC should be given more flexibility in the delivery of its services and in allocating its resources and has recommended such flexibilities be provided. Such changes will also provide greater capacity for innovation within the AEC. The committee considers that there are some services, such as the National Tally Room, where the AEC should continue to provide the same services as at previous elections. These are discussed below.
- 9.29 Should the government accept the committee's recommendations it is likely that the modernisation of some administrative arrangements and some additional flexibility in operational areas will yield some savings over the medium term. The committee will continue to monitor the financial pressures faced by the AEC – and if required, make further recommendations to the government about what further resources are required by the AEC.

National Tally Room

- 9.30 The provision of the National Tally Room (NTR) at the 2007 election was estimated by the AEC to have cost \$1 million to build and operate, with significant costs including:
- \$372,000 for IT services;
 - \$188,000 for construction and deconstruction;
 - \$117,000 for security;
 - \$96,000 for venue hire and Exhibition Park in Canberra services;
 - \$71,000 for contract staff; and
 - \$32,000 for signwriting/painting of the tally board.²³
- 9.31 In addition, storage costs for the tally board and associated structures are approximately \$18,000 per annum.²⁴
- 9.32 The cost of providing the NTR has increased significantly over recent elections, rising in real terms by almost 110 per cent from \$363,000 at the 1998 election (figure 9.2).

23 Australian Electoral Commission, submission 169, p 26.

24 Australian Electoral Commission, submission 169, p 26.

Figure 9.2 National Tally Room cost, 1998 to 2007 elections (\$)

Source Australian Electoral Commission, submission 16a to the Joint Standing Committee on Electoral Matters inquiry into certain aspects of the administration of the AEC, p 17; Joint Standing Committee on Electoral Matters, *Inquiry into the 2001 election and matters related thereto* (2003), Commonwealth of Australia, p 119; Australian Bureau of Statistics, Consumer Price Index, cat no 6401.0, viewed on 2 June 2009 at <http://www.abs.gov.au/AUSSTATS/abs@.nsf/DetailsPage/6401.0Mar%202009?OpenDocument>.

9.33 The AEC argued that its internet results centre known as the ‘virtual tally room’ is now the frontline system for the transparent publication of election results (including to media outlets), and the NTR is now primarily a large media centre, no longer a critical and essential forum for ensuring widespread dissemination of election results.²⁵ Given this, the AEC considered that these significant costs could be avoided by discontinuing the tally room at future elections.²⁶ The AEC noted that:

The cost of the NTR, and the burden which its establishment within a tight timeframe places on the AEC, continue to be a significant concern for the AEC, especially in a period in which resources are stretched. The AEC notes that during the JSCEM’s 2007 inquiry a number of media organisations expressed their support for the continuation of the NTR. The AEC believes that the time has come for media organisations to be asked to share some of the costs of the NTR. This, ultimately, is the only way of determining the true extent of the value they place on its continuation. While acknowledging the importance of the NTR to some people as part of the fabric of an election and its importance to the media the NTR is not necessary to the conduct of an election. If in the allocation of resources for an election, the AEC is

25 Australian Electoral Commission, submission 169, p 26.

26 Australian Electoral Commission, submission 169, p 26.

required to choose between diminishing services to electors, such as closing polling places, having longer queues at polling places or not running the NTR, then the AEC will deem the NTR of a lower priority and will not continue to provide it.²⁷

- 9.34 The AEC suggested that if the continued staging of the NTR is desired by the parliament, the AEC must receive additional funding, either through the budget or through charging, to cover associated costs.²⁸ The AEC considered that if the costs of running the NTR are to be recovered from media organisations, it would be most appropriate to charge a flat fee for access in advance.²⁹ The AEC noted that:

The quantum of fees could not be set until the costs of running the NTR in the election year are finalised. However, it is likely that television networks would pay the majority of access fees given their significant usage of floor space and infrastructure.

Conditions for access to the NTR would remain the same as for the 2007 election unless otherwise determined by the AEC (rotation of floor positions, floor space etc).³⁰

- 9.35 The committee notes that early in 2007 the AEC raised a proposal to abolish the NTR in favour of disseminating the results by electronic means. Following stakeholder consultation which yielded vastly differing views, the AEC announced that the NTR would continue to be staged for the 2007 election, which would 'enable broader consideration and assessment of the future for the NTR' for future elections.³¹

- 9.36 The Joint Standing Committee on Electoral Matters of the 41st parliament examined this issue in some detail during mid-2007 and supported the continuation of the NTR, recommending that 'the Australian Government ensures that the National Tally Room is retained for future federal elections'.³² In coming to this conclusion, this committee stated that:

The committee supports the continuation of the NTR given its historical place in Australian politics and elections. Australia is

27 Australian Electoral Commission, submission 169, pp 26–27.

28 Australian Electoral Commission, submission 169, p 27.

29 Australian Electoral Commission, submission 169.1, p 42.

30 Australian Electoral Commission, submission 169.1, p 42.

31 Australian Electoral Commission, 'AEC to stage Tally Room at 2007 Federal Election', media release, 18 May 2007, viewed on 21 April 2009 at http://www.aec.gov.au/About_AEC/Media_releases/2007/05_18a.htm.

32 Joint Standing Committee on Electoral Matters, *Review of certain aspects of the administration of the Australian Electoral Commission* (2007), Commonwealth of Australia, p 54.

one of the world's longest running democracies, and needs to value its history and traditions.

Furthermore, the committee notes, there is a value – and logic – in having a central tally room in the national capital for the federal election. This value extends far beyond dollar or logistical considerations.

... The committee is of the view that the abolition of the NTR would have a negative impact on the perception of the transparency of elections.³³

- 9.37 The government response to this committee's report, presented in September 2008, supported the recommendation in principle, noting that:

Prior to the next federal election, the Government will give careful consideration to the arrangements for the National Tally Room, including the possibility of sharing the cost of the facility with the media. The Government will take account of the views of the Parliament, the AEC and other interested parties, including media stakeholders.³⁴

Committee conclusion

- 9.38 The committee considers that the National Tally Room plays an important part in elections and should be provided by the AEC at future elections.
- 9.39 The committee believes that the National Tally Room is much more than a media centre on election night, providing a focus for broadcasts of election results. It serves as a manual back up contingency in the event of significant computer systems failures, where the capacity to revert to alternative means of presenting election results in a timely, transparent manner, is of major importance to all stakeholders in the electoral process.
- 9.40 For a voting population that includes persons from every element of Australia's diverse population, and who are for that one night, focussed on the electoral process more intently than at any other point in time, the National Tally room represents a transparent and accessible symbol of actual participation in the most inclusive electoral process in the world, one which determines the future of the nation.

33 Joint Standing Committee on Electoral Matters, *Review of certain aspects of the administration of the Australian Electoral Commission* (2007), Commonwealth of Australia, p 53.

34 Government response, viewed on 21 April 2009 at <http://www.aph.gov.au/house/committee/em/aec/caa.pdf>.

- 9.41 The committee notes the government's support for the continuation of the National Tally Room and consideration of the possibility that costs could be shared with media organisations.
- 9.42 While the issue of cost sharing with media organisations was also raised with the committee by the AEC, the committee is reluctant to move towards a funding arrangement that, by requiring media organisations to pay for participation, could then lead to media organisations having a greater opportunity to determine how the National Tally Room is structured and used on election night.
- 9.43 Therefore the committee does not consider that a cost sharing model is appropriate and that the AEC should fully fund the staging of the National Tally Room.

Recommendation 40

- 9.44 **The committee recommends that the Australian Electoral Commission be required to continue with staging the National Tally Room at future elections.**

Flexible regime for forms design

- 9.45 The current regime of forms used by the AEC is the 'approved form' as defined in the Commonwealth Electoral Act. Section 4 of the Commonwealth Electoral Act defines an approved form to be a form approved by the AEC by notice published in the Gazette. Various sections of the Commonwealth Electoral Act refer to the use of an approved form for the execution of an administrative function. For example, a claim for enrolment or a transfer of enrolment must be in the approved form s 98(2)(a).³⁵
- 9.46 The AEC noted that the current approved form regime permits only one approved form for each type of enrolment transaction at any one time, with a later approved form repealing an earlier form.³⁶ An implication of these requirements is that no more than one form can be in use at one time for the same enrolment purpose, preventing the AEC from producing forms in different formats for different audiences or initiatives.

35 Australian Electoral Commission, submission 169, p 76.

36 Australian Electoral Commission, submission 169, p 76.

- 9.47 The AEC considered that improving the flexibility of the arrangements for the design of forms would enhance the AEC's capacity to tailor forms to specific client groups, for example the vision impaired, or to persons who would benefit from the use of a form specifically targeted to their needs, rather than more generic ones.³⁷ The AEC also noted that in the longer term, any shift to the use of online transactions will require a more flexible regime, under which appropriate designs can be developed to meet the different requirements associated with the capture of information via computer, whilst still providing for the use of hardcopy forms.³⁸
- 9.48 In order to provide more flexibility in forms design, the AEC proposed the introduction of a new class of forms, to be known as authorised forms.³⁹ These forms would be subject to authorisation by the Commission (or its delegate) but would not require gazettal. The AEC considered that any new power for the AEC to authorise forms should specifically allow for the authorising of more than one form for a designated enrolment purpose at one time.⁴⁰

Committee conclusion

- 9.49 The committee supports the AEC's proposals that more flexible arrangements be established for the authorisation of approved forms. The committee considers that such an approach will allow the AEC to design forms that are targeted at different groups of electors and initiatives and facilitate the design of forms for the types of electronic transactions that the committee has supported in this report relating to updating enrolment details and applying for postal votes.

37 Australian Electoral Commission, submission 169, p 76.

38 Australian Electoral Commission, submission 169, pp 76-77.

39 Australian Electoral Commission, submission 169, p 77.

40 Australian Electoral Commission, submission 169, p 77.

Recommendation 41

9.50 The committee recommends that the *Commonwealth Electoral Act 1918* be amended to provide a flexible regime for the authorisation by the Australian Electoral Commission of approved forms, which will:

- allow for a number of versions of an approved form;
- enable forms to be tailored to the needs of specific target groups; and
- facilitate online transactions.

Flexibility in the allocation of enrolment processing tasks

9.51 The Commonwealth Electoral Act gives the AEC greater flexibility in allocating work across its divisional offices within the same state or territory during an election period (between the announcement of the election and polling day) than it has at other times.⁴¹

9.52 The AEC considered that there would be benefit in providing the AEC with greater flexibility to conduct its enrolment-related work in a non-election period in the same manner as during election times.⁴² The AEC told the committee that:

One of the other areas we have pursued is sharing enrolment processes across our divisions. Changing the Act to provide point-of-receipt processing by any AEC office within a state or territory has the potential to enhance timeliness of our operations. It will also result in better service delivery by providing electors with a higher level of customer service through reduced handling time. The Act currently provides for this process to be in place during election periods, so it seems logical to provide the same service to electors at all times.⁴³

41 *Commonwealth Electoral Act 1918*, ss 2A to 2E.

42 Australian Electoral Commission, submission 169.18, p 3.

43 Dacey P, Australian Electoral Commission, transcript, 11 May 2009, p 3.

- 9.53 The AEC considered that the benefits of such an arrangement to be numerous, including assisting with roll processing during peak times. The AEC noted that:

For example, last year there were some 82 roll closes, at both State/Territory and local level, and the application of these wider processing arrangements at all times would assist the AEC in handling these other roll closes in an effective manner. Many of these roll closes also occur at short notice, making the desirability of an ongoing cross divisional processing arrangement within the same State/Territory very high. More broadly, the wider application would also help the AEC with scheduling and handling of other important issues, such as unexpected staff absences in particular divisions, absence of staff from offices for training and or educational purposes, or the conduct of school and community visits programs, as well as allowing further skilling up and development of staff by exposing them to enrolment matters that are not common in their division (e.g. rural road numbering, an issue not often encountered by those working in predominantly metropolitan divisions).⁴⁴

- 9.54 In conducting its activities under such arrangements, the AEC noted that it would 'apply and maintain its usual processes and practices to ensure that high levels of integrity of enrolment are maintained at all times, irrespective of the division in which the enrolment form is processed.'⁴⁵

Committee conclusion

- 9.55 The committee considers that giving the AEC additional flexibility to share workloads across its divisional offices within a state or territory will lead to a more effective use of resources within the AEC.
- 9.56 That said, the committee considers that the divisional office structure, which gives the AEC a physical presence in almost all of the 150 divisions across the country, is a significant asset to the AEC. The physical presence of an AEC office and dedicated staff in a division give the AEC a capacity to draw on local knowledge and experience when conducting roll maintenance activities and delivering electoral education.
- 9.57 While the committee supports the AEC's proposal to enable workloads to be shared across divisional office within the same state or territory outside

44 Australian Electoral Commission, submission 169.18, p 4.

45 Australian Electoral Commission, submission 169.18, p 4.

of election periods, the committee does not wish to see the administrative and electoral capacity or the importance of maintaining divisional offices reduced.

Recommendation 42

- 9.58 **The committee recommends that the *Commonwealth Electoral Act 1918* be amended to enable the Australian Electoral Commission to manage its workloads in non-election periods by allowing enrolment transactions to be processed outside the division for which the person is enrolling, provided that those transactions are processed by a division that is within the same state or territory. This will permit workloads to be managed in the same manner as is currently permitted during election periods.**

Electronic certified lists in polling places and pre-poll centres

- 9.59 At recent elections in their jurisdictions, the ACT, Western Australian, Queensland and Victorian Electoral Commissions have used electronic means to mark electors' names from the roll before providing them with ballot papers, either on polling day at some or all polling places, or at some, or all, pre-poll voting centres. At the ACT Legislative Assembly election in 2008, no hardcopy certified lists were used at all; total reliance was placed on personal data assistant devices as the storage medium for the lists of voters, and the hardcopy lists (one per polling place) which were provided as an emergency backup did not have to be used.⁴⁶
- 9.60 The AEC considered that the ACT experience proved to be an entirely positive one, noting that 'the facility was very well accepted by polling officials, and, in the view of the ACT Electoral Commissioner, significantly streamlined both election day and post-election activities'.⁴⁷
- 9.61 The AEC noted that the Commonwealth Electoral Act did not cater for the use of electronic certified lists and proposed that the Act should be amended to enable the use of such technology.⁴⁸

46 Australian Electoral Commission, submission 169.18, p 1.

47 Australian Electoral Commission, submission 169.18, p 1.

48 Australian Electoral Commission, submission 169.18, p 3.

9.62 Some of the advantages of such electronic certified lists outlined by the AEC included:

- having a smaller carbon footprint than paper lists (thereby reflecting government policy favouring the use of “greener” technology). For the 2007 election, more than 27,500 certified lists, each on average containing 90,000 names were scanned. The overall scanning process involved 2.5 billion records on nearly 13 million scanned pages, printed on over 6 million A4 sheets of paper;
- ease of transportation;
- reducing the need for a separate scanning process post-election, thereby enabling quicker identification of apparent non-voting and multiple voting;
- providing an enhanced opportunity to produce automated reports assisting with ballot paper reconciliation and voter flow monitoring, not least because the times at which people are marked off can be recorded automatically;
- time savings associated with the location of names on an electronic list rather than a hardcopy list can help to optimise voter flow through the polling booths, and thereby reduce queuing times; and
- a reduction in polling official error in marking incorrect names.⁴⁹

9.63 The AEC considered that having the flexibility to utilise this form of technology in certain locations and circumstances at AEC discretion would provide enhanced flexibility and allow the AEC to provide a better service to voters, and to take advantage of innovations in other jurisdictions.⁵⁰

9.64 At the 2008 ACT election, the ACT Electoral Commission put in place a range of measures to ensure the security of equipment and data including:

- treating hardware items, like hardcopy certified lists, as accountable items;
- password-protecting access to the software application;
- configuring the software application to shut down after a specified period of idleness, with a password being required to be entered to reactivate it; and

49 Australian Electoral Commission, submission 169.18, p 1.

50 Australian Electoral Commission, submission 169.18, p 2.

- deletion of the entire database after a specified number of unsuccessful attempts to enter a password.⁵¹

Committee conclusion

- 9.65 The committee considers that there are considerable benefits for the AEC in being able to use electronic certified lists in some situations. It is important that if such lists are to be used, appropriate security measures be put in place, such as those used by the ACT Electoral Commission for the 2008 ACT election, to protect the security of the equipment and data.

Recommendation 43

- 9.66 **The committee recommends that the *Commonwealth Electoral Act 1918* and the *Referendum (Machinery Provisions) Act 1984* be amended to enable the use of electronic certified lists in polling places and pre-poll voting centres, with appropriate measures implemented to ensure the security of the equipment and data.**

Proposed technical and operational amendments to the Commonwealth Electoral Act

- 9.67 As part of its initial submission to the committee the AEC outlined a number of 'technical' and 'operational' amendments to the Commonwealth Electoral Act. The AEC noted that:

There is continuing necessity to update and modernise sections of legislation. The AEC has compiled a list of recommended basic amendments to the CEA and the Referendum (Machinery Provisions) Act 1984 (Referendum Act). These amendments are consolidated into two tables. The first table outlines remedies for technical errors and defects, such as grammatical and cross-referencing errors. The second table outlines amendments that will assist in the administration of the CEA and the Referendum Act.⁵²

- 9.68 The suggested 'technical' amendments suggested by the AEC are outlined in table 9.5 and table 9.6.

51 Australian Electoral Commission, submission 169.18, p 3.

52 Australian Electoral Commission, submission 169, p 71.

Table 9.5 Suggested 'technical' amendments to the *Commonwealth Electoral Act 1918*

Provision	Australian Electoral Commission comments
17(1A)	This section still refers to subsection 91(4A) and 91(4A)(e) which were deleted after consequential amendments to the Commonwealth Electoral Act for roll access. Needs to be updated to refer to 90B(1) and 90B(4).
90B(1), Item 13	Replace incorrect reference to 'the Senator' with 'the member'.
93(8AA), 208(2)(c) and 221(3)	The High Court held in <i>Roach v Electoral Commissioner</i> [2007] HCA 43 that certain provisions of the Commonwealth Electoral Act are invalid because they are contrary to the Commonwealth Constitution. The Court held that subsections 93(8AA) and paragraph 208(2)(c) of the Commonwealth Electoral Act are constitutionally invalid.
Part XI and section 123	The 'Electoral Commission' is defined for the purposes of the Commonwealth Electoral Act in section 4 and the term is used generally throughout the Commonwealth Electoral Act. Part XI separately defines and uses the term 'Commission' except in section 138A where it refers to the 'Electoral Commission'. The distinction between 'Commission' and 'Electoral Commission' serves no purpose and should be remedied for legislative consistency.
171	Section 171 contains an incorrect cross-reference to paragraph 170(a)(ii), which should be to paragraph 170(1)(b).
306A(8)	Delete reference to AFIC Codes and the Corporations Act 2001. The AFIC Codes are no longer based in the Corporations Act 2001 and ADI's are now regulated by APRA under the Banking Act 1959.
314AA(1)	Remove the repeated word 'or' in the sentence.
318(2)	Reference to '3(c)' appears incorrect. Replace with '3' to correct typographical error.
385A(2)	Delete reference to section 332 of the Commonwealth Electoral Act. Section 332 was repealed in 1999.
390A	Remove reference to section 10 of the Crimes Act 1914, as section 10 has been repealed.
Various sections	The use of a hyphen in the words ballot and paper is inconsistent through out the Commonwealth Electoral Act. That is, ballot paper and ballot-paper are used interchangeably. It is recommended that the hyphen is removed.

Source Australian Electoral Commission, submission 169, Annex 10, p 73.

Table 9.6 Suggested 'technical' amendments to the *Referendum (Machinery Provisions) Act 1984*

Provision	Australian Electoral Commission comments
49 (1)	Requires amendment to be consistent with subsection 80(1) of the Commonwealth Electoral Act to provide for an explicit power to abolish polling places by notice in the Gazette.
Various sections	The use of a hyphen in the words ballot and paper is inconsistent through out the Referendum Act. Ballot paper and ballot-paper are used interchangeably. It is recommended that the hyphen is removed.

Source Australian Electoral Commission, submission 169, Annex 10, p 74.

9.69 The suggested 'operational' amendments proposed by the AEC are set out in table 9.7 and table 9.8.

Table 9.7 Suggested 'operational' amendments to the *Commonwealth Electoral Act 1918*

Provision	Australian Electoral Commission comments
31 (4)	This subsection comes under the heading of Assistant Australian Electoral Officers for States, however refers to a person acting as AEO for the ACT (this is already covered by subsection 30(4)). Should read 'An Assistant Australian Electoral Officer for a State who is acting as Australian Electoral Officer for the State has, and may exercise, all the powers of the Australian Electoral Officer for the State.'
90A	The Commonwealth Electoral Act does not explicitly prohibit the photographing and photocopying of the roll that is available for public inspection. If the recording of the roll by electronic device is not stopped it will allow for the recording of electoral roll information on a large scale. This may result in inappropriate use of electoral roll information.
90B(1) Item 16	Provision of roll information to State or Territory electoral authority. In the 2004 amendments, the mechanism for providing roll information to State and Territory electoral authorities was rolled into the table in subsection 90B(1). An inadvertent consequence of this is that the information can only be used for a permitted purpose. Subsection 91A(2B) currently limits the use of this information to any purpose in connection with an election or referendum, and monitoring the accuracy of information contained in a Roll. States such as WA use the information for a range of purposes, for example, jury lists.
126(2A)(b)	Section 126 deals with political parties who are applying to become registered political parties. Located within this section is subsection 126(2A), which deals with membership of the political party. Subsection 126(2A) applies to both applicant political parties and already registered political parties. The current language of paragraph 126(2A)(b) implies that any person may easily change the Register of Political Parties at any time. In reality a change to the Register of Political Parties can only be executed by following the requirements in section 134 of the Commonwealth Electoral Act. Paragraph 126(2A)(b) should refer to section 134 to align these two sections.
129(1)(d) and (da)	These provisions concern the registration of political parties. The previous government attempted to stop the registration of parties with similar names to the established parties by introducing these provisions. Considering the result of the AAT case on 'liberals for forests' and the advice sought from several Senior Counsel it appears that these provisions would not stop parties with similar words as existing parties from being registered. The application of these provisions is impossible due to the subjective test in the provisions. Recommended solution is to repeal the section or to provide a regulation making power to prescribe certain words that may not be used, for example, 'Labor'.
131	To become a registered political party an application must be made to the AEC (section 126). The AEC must give the applicant notice if their application is faulty. After the AEC has given the applicant this notice, section 131(2) provides that the AEC is not required to consider the issue further until they receive a written request from the applicant. As section 131 of the Commonwealth Electoral Act currently stands, there is no limitation period on the time the applicant can take to reply to a notice issued by the AEC. This means that there is no resolution of applications where no response is received to a notice under section 131(1). To facilitate administrative efficiency a reasonable time limitation should be attached to section 131. Amend section 131 to make clear that an application lapses if a notice under section 131(3) is not received within 90 days of the issue of a notice under section 131(1). This will resolve applications where no response is received to a notice under section 131 (1).

(continued)

Table 9.7 (continued)

132A and 133	These provisions cover the same topic. Sections 132A and 133 are in Part XI of the Act dealing with Registration of Political Parties. Section 132A explicitly states that the Commission must give reasons to applicants in relation to any decisions made under Part XI. Subsection 133(3) states that the Commission must give an applicant written notice of any decisions where an application of registration of a political party has been refused. This subsection is unnecessary duplication of the requirements of section 132A, which already requires written notice of all decisions.
185 (1A)	Repeal this provision. The current provision requires the DRO to ask Defence and AFP for information about the movements of their personnel. For security reasons this information is not openly available. Therefore, a DRO will not know when Defence or AFP personnel leave for their overseas service.
195A(6)	Subsection 194(2) of the Commonwealth Electoral Act provides that where a postal vote is unlikely to reach the appropriate Divisional Returning Officer within 13 days after polling day a person can hand their postal vote to a person who is at a capital city office of the Electoral Commission and who is an officer of the AEC as provided for by subparagraphs 195(2)(h)(i) and 195(2)(h)(ii). Subsection 194(3) provides that where an officer receives a ballot paper under this provision they must deal with the ballot paper in accordance with section 195A and 228 of the Commonwealth Electoral Act. As a matter of current procedure the AEC receives all ballot papers from overseas electors to one post office address in Sydney. The AEC has received advice from the Australian Government Solicitor that the procedural requirements for dealing with postal votes as set out in subsection 195A(6) do not apply to postal votes received from overseas electors to the Sydney post office address. For the avoidance of doubt the AEC would like subsection 195A(6) to be amended to specifically state that it only applies to postal votes received in accordance with subsection 194(2).

Source Australian Electoral Commission, submission 169, Annex 10, pp 75–76.

Table 9.8 Suggested 'operational' amendments to the *Referendum (Machinery Provisions) Act 1984*

Provision	Australian Electoral Commission comments
Part VII	Include a provision for the date fixed for the return of the writ shall not be more than 100 days after the issue of the writs. This will make this consistent with section 159 of the Commonwealth Electoral Act.
Part III	Provide for Electoral Commissioner discretion for 'Other Mobile Polling' where it is necessary or convenient to be done for the conduct of elections. This provision may provide for mobile polling to be conducted other than as currently provided, such as the town camps outside Alice Springs.

Source Australian Electoral Commission, submission 169, Annex 10, p 77.

Committee conclusion

- 9.70 The committee has commented on those sections relating to the photographing and photocopying of the roll (s 90A) and prisoner voting (ss. 93(8AA), 208(2)(c) and 221(3)), in chapter 11 of this report.
- 9.71 Apart from these sections, the committee considers that the changes suggested above by the AEC to make electoral legislation clearer (in the case of technical changes), or work more efficiently (in the case of operational amendments) are supported by the committee. In respect to section 129(1)(d) and (da), the committee favours the repeal of the section.

Recommendation 44

- 9.72 **The committee recommends that the technical and operational changes proposed by the Australian Electoral Commission in submission 169, Annex 10, with the exception of those relating to photographing and photocopying of the roll (s 90A), (see recommendation 52) and prisoner voting (ss 93(8AA), 208(2)(c) and 221(3)) (see recommendation 46), be incorporated into the *Commonwealth Electoral Act 1918* and *Referendum (Machinery Provisions) Act 1984* when other amendments to these Acts are progressed.**
- 9.73 As a general point, the committee has recommended throughout this report that a number of changes should be made to the Commonwealth Electoral Act. Where any applicable section/s of the Referendum (Machinery Provisions) Act are not specified in the recommendations, the committee considers that where applicable, consequential changes made to the Commonwealth Electoral Act should also be made to the Referendum (Machinery Provisions) Act.

Recommendation 45

- 9.74 **The committee recommends that any recommendations in this report that propose amending the *Commonwealth Electoral Act 1918* should, where also appropriate, be incorporated into the *Referendum (Machinery Provisions) Act 1984*, to ensure consistency between the provisions applying to elections and referenda.**