Third interim report on the inquiry into the conduct of the 2016 federal election: AEC modernisation

Joint Standing Committee on Electoral Matters
Chair's Foreword

All functional and robust democracies require effective Electoral Management Bodies (EMBs) to conduct free and fair elections, and Australia is no exception. Voters must have confidence that the result declared by the EMB in a democratic election accurately represents the votes cast, regardless of whether voters dislike or disagree with the results. In Australia, the Commonwealth EMB is the Australian Electoral Commission (AEC).

The AEC’s legislated mandate is to ‘maintain an impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of polling services and targeted education and public awareness programs.’ Therefore, the AEC is a critically important democratic institution in Australia, the health of which must never be taken for granted or held hostage to partisan politics in the Parliament.

Since 1983, the size and scale of federal elections have posed greater complexities and challenges, which the AEC has at times struggled to meet despite the dedication and commitment of their staff. Evidence to the Committee indicates public confidence in the ability of the AEC to effectively deliver this mandate has been weakened over recent federal elections. This has not happened due to fraud or corruption, but through internal process failure and technological and legislative impediments.

Recent events domestically and overseas, including the denial of service attack on the Australian Bureau of Statistics (ABS) and speculation on attempts to influence last year’s US election, indicate cyber security threats to Australian electoral processes must be effectively identified and mitigated.

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Successive JSCEM reports on the conduct of federal elections and the Keelty Inquiry into the 2013 WA Senate election have identified that significant process, technological and cultural reforms are required. Implementation of these reforms requires commitment from the AEC and bipartisan support from governments and Parliaments.

The Committee commends the AEC for its willingness to adopt the Keelty reforms and its proactive efforts to identify ways of transforming culture and processes. But this ability is significantly constrained by outdated legislative requirements and the Parliament’s support for change is required.

This third interim report provides a range of recommendations for reform to assist the AEC to address some of the most urgent impediments to its ability to implement organisational change. However, the Committee acknowledges that while these reforms will provide much needed improvements, they will not create an organisation that is genuinely transformative in nature. Nor will they realise the IT infrastructure required to deliver electoral services in ways that meet current community expectations.

The task of transforming the AEC into an organisation that is able to continuously adapt to meet its mandate in a rapidly evolving world will take ongoing bipartisan political support and oversight. To this end, I sincerely thank the Deputy Chair, Mr Andrew Giles MP, Committee members and participating members for their ongoing engagement, good-will and genuine commitment to ensuring the integrity of our national electoral processes.

On behalf of the Committee, my sincere thanks to the Committee Secretariat; Julia Agostino, Nathan Fewkes, Andrew Gaczol, Nick Parsons and Kelly Burt for their continued hard work, professionalism and engagement with the Committee.
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Terms of Reference

That the following matters be referred to the Joint Standing Committee on Electoral matters for inquiry and report:

1. All aspects of the 2016 Federal election and matters related thereto, and without limiting the scope of the committee’s inquiry, with particular reference to:
   a. The application of provisions requiring authorisation of electoral material to all forms of communication to voters;
   b. The potential applicability of ‘truth in advertising’ provisions to communication to voters including third-party carriage services;
   c. The options available to Parliament to ensure consistent application of disclosure rules to and the regulation of all entities undertaking campaign activities; and,
   d. The potential application of new technology to voting, scrutiny and counting, with particular reference to its application to remote voting, ADF personnel on deployment and supporting vision-impaired voters.

2. The extent of donations and contributions from foreign sources, persons, entities and foreign-owned subsidiaries to political parties, associated entities and other third parties and entities undertaking campaign activities, and the options available to Parliament to regulate these.

3. The current donations, contributions, expenditure and disclosure regime, its application and timeliness and alternative approaches available to Parliament.
4 The extent to which fundraising and expenditure by third parties is conducted in concert with registered political parties and the applicability and utilisation of tax deductibility by entities involved in campaign activities.

5 Any matters related to the terms outlined above.

In considering these matters, the Committee is encouraged to consider previous inquiries and reports of past committees, regulatory developments implemented by States and Territories and recent determinations of the High Court with respect to these.

The Committee is requested to provide a report in respect of item 1a by 1 December 2016, and item 2 by 3 March 2017.
List of Recommendations

Recommendation 1

3.10 The Committee recommends that the Commonwealth Electoral Act (1918) and the Referendum (Machinery Provisions) Act (1984) be amended, based upon the Australian Electoral Commission’s proposals contained in Appendix A of this report.

Recommendation 2

3.55 The Committee recommends that the Australian Government consider additional funding for the Australian Electoral Commission to invest in modernisation for future federal elections, including:

- Planning and expert advice on upgrading the AEC’s information technology and business systems.
- Additional training for temporary staff who are likely to remain engaged over multiple elections.
- The deployment of additional electronic certified lists at polling stations.
- A trial to test the scanning and electronic counting of House of Representatives ballot papers.

Recommendation 3

3.56 The Committee recommends that the AEC consider specific operational systems and training to accommodate the particular challenges associated with the conduct of elections in rural and regional areas, hospitals and aged care facilities.
Recommendation 4

3.57 The Committee recommends the Australian Electoral Commission extend the deployment of electronic certified lists at the next federal election to ensure all polling places (including all absentee voting points) and mobile teams are equipped with at least one electronic certified list, or as a minimum an electronic roll lookup facility.

Recommendation 5

3.58 The Committee recommends that the Australian Electoral Commission provide updates to the Committee every six months on priorities and progress towards modernisation for future elections, in order for the Committee to review this activity on an ongoing basis.
Executive Summary

Australia has a long history of electing governments through fair, open and democratic elections. Our Constitution provides that the Senate and House of Representatives shall be ‘chosen by the people’. The terms of Senators are limited to six years and the House of Representatives, collectively, is limited to three years. This creates a requirement for a federal election at least every three years. Ministers of the Executive are required to be Senators or Members of the House.

The Australian Electoral Commission (AEC) is responsible for the conduct of federal elections. As the entity trusted to count the votes and declare results, the AEC fulfils a critically important role supporting our democracy.

Notwithstanding all of the above, modernisation of the AEC has fallen behind community expectations. There is significant scope for technology to improve and replace manual handling methods. Overdue upgrades of the AEC’s core information technology systems pose unacceptable risks to the integrity of elections. Outdated and cumbersome legislation needs amending. The AEC recognises that it needs to invest in better training for temporary election staff.

Successive governments have not pursued reform of the AEC. Consequently, the AEC has had limited capacity to modernise and is experiencing organisational stress. Voters must have confidence in the election result and certainty that no bias or error has influenced the outcome. Change is now imperative to maintain this confidence and the AEC needs additional resourcing to keep pace.

This report focuses on urgent short term reform issues for the AEC, those being:

- modernising the current paper-based system and integrating information technology systems;
- new and enhanced training for temporary election staff; and
technical amendments to legislation.

While this represents a starting point, the Committee understands that modernising the AEC is going to be a continuous transformational journey. There are evolving challenges, such as cyber security and the influence of foreign actors that requires close scrutiny and an ability to rapidly respond to ensure the integrity of our electoral system. Future technology may provide new opportunities and solutions.

The Committee will continue to monitor developments at the AEC, by reviewing reform progress every six months.
1. Introduction

An overview of the Australian Electoral Commission

1.1 The Australian Electoral Commission (AEC) is responsible for conducting federal elections and referendums and maintaining the Commonwealth electoral roll. The AEC also provides a range of electoral information, education programs and activities.¹

1.2 The AEC is funded to deliver one key outcome:

Maintain an impartial and independent electoral system for eligible voters through active electoral roll management, efficient delivery of polling services and targeted education and public awareness programs.²

1.3 Australian federal elections are conducted in accordance with the Australian Constitution and relevant legislation, notably the Commonwealth Electoral Act (1918) (‘the Electoral Act’).³


³ Other relevant legislation includes the Referendum (Machinery Provisions) Act (1984); the Representation Act (1983); the Electoral and Referendum Regulation (2016); and the Electoral and Referendum Amendment (Pre-poll Voting and Other Measures) Regulations (2010).

1.4 The AEC was first established as a branch of the Department of Home Affairs in 1902. Between 1973 and 1984, it was known as the Australian Electoral Office. On 21 February 1984, following major amendments to the Electoral Act, the AEC was established as an independent statutory authority.4

1.5 The AEC’s corporate plan for the period 2016 to 2020 outlines its current objectives:

- deliver a changed model for elections and referenda;
- govern the organisation for quality and assurance;
- professionalise the workforce;
- re-establish the reputation of the AEC; and
- build an agile and responsive organisation.5

The need for modernisation

1.6 The AEC’s original submission observed that federal elections are ‘often described as the largest peace-time logistical events in Australia.’6 The AEC characterised the current model for conducting federal elections as being unsustainable:

…the current model for the conduct of elections, including the recruitment and training of temporary election officials, is at the end of its useful life. While the AEC’s funding has been sufficient for election delivery within the existing model, there has not been any capacity for significant improvement or replacement of systems.7

1.7 The AEC advised the Committee that without legislative reform and additional funding, further modernisation would be difficult to achieve:

…the AEC has innovated within its current significant legislative and resource constraints. Following an evaluation of the successes and challenges of the 2016 federal election, the AEC has concluded that further meaningful

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6 AEC, Submission 66, p. 2.
7 AEC, Submission 66, p. 4.
innovation and modernisation are unlikely without legislative reform and significant investment in the AEC’s base operating systems and models.\(^8\)

1.8 Further, the AEC advised that its 1990s information technology systems are potentially expensive to maintain and vulnerable to evolving cyber threats:

The maintenance of these systems and efforts to keep them operating within the modern environment are becoming increasingly costly and present an increasing risk to the integrity and security of the electoral process.\(^9\)

1.9 The AEC explained that cybersecurity is an area of concern:

…recent cyber security incidents, for example, the incident affecting the 2016 census conducted by the Australian Bureau of Statistics, and ongoing speculation about the recent US Presidential election, demonstrate the potential catastrophic risk of a failure in this domain.\(^10\)

1.10 The AEC has noted in its submissions that since 1983, the size and scale of federal elections have posed greater complexities and challenges:

- the size of the eligible voting populations – 9.4 million in 1983 to 15.7 million in 2016;\(^11\)
- the manner in which electors and other stakeholders engage with the AEC – the number of pre-poll votes has also grown from 5.9 per cent to 22.1 per cent of all votes issued since the 2004 federal election;\(^12\) and
- the number of political parties and candidates seeking to participate.\(^13\)

1.11 The loss of Senate ballot papers in Western Australia during the 2013 federal election count triggered a series of external reviews, as well as a period of self-analysis. Reviews by the ANAO and Mr Mick Keelty AO APM, (the

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\(^8\) AEC, Submission 66 (18), p. 2.
\(^9\) AEC, Submission 66 (18), p. 6.
\(^11\) AEC, Submission 66 (15), p. 2, (Table 1).
\(^12\) AEC, Submission 66 (15), p. 3.
\(^13\) AEC, Submission 66 (15), p. 2.
‘Keelty Report’)\textsuperscript{14} as well as self-analysis, on the incident and on the AEC’s delivery of federal elections, have led to ongoing reform within the AEC.\textsuperscript{15}

1.12 The AEC noted that ‘changes required to modernise... will not happen overnight.’\textsuperscript{16}

Acknowledgements

1.13 The Committee wishes to thank all individuals and organisations who have contributed to the inquiry process.

1.14 All transcripts of public hearings and written submissions are on the Committee’s website. A complete list of submissions and witnesses will be included in the Committee’s final report for this inquiry.


\textsuperscript{15} AEC, Submission 66 (7), p. 2.

\textsuperscript{16} AEC, Submission 66 (18), p. 15.
2. Context

Introduction

2.1 During this inquiry, the Committee received evidence from stakeholders who have expressed frustration with the way in which the 2016 federal election was conducted. Some of which have included the processes adopted by the Australian Electoral Commission (AEC). These include:

- election services for people with disability;¹
- prevention of alleged irregularities;² and
- issues at polling booths, such as long queues.³

2.2 The Committee has considered these and other concerns and sought advice from the AEC on where its capabilities could be improved.

2.3 The AEC has provided the Committee with suggestions for where its capabilities could be potentially improved. The AEC grouped them into four categories:

1. more modern and efficient delivery of the complex, multi-part, paper-based election system, which may include further automation;

2. investment in information/technology (IT) systems to allow for upgrade or replacement and cross-system integration;

¹ Matthew Potocnik, Submission 97 (1); Vision Australia, Submission 35; People With Disabilities Australia, Submission 124.
² Frank Raynor, Submission 1; Australians For Honest Elections, Submission 6.
³ Australian Greens, Submission 89, p. 5; the Hon Warren Snowden MP, Submission 73, pp. 2-4; Emma Godfrey, Submission 113; Laura Sinclair, Submission 37.
3 further work on the employment models for the recruitment and training of the temporary election workforce and professional development of the AEC’s permanent workforce; [and]

4 addressing unnecessary prescriptions and other technical issues within the Commonwealth Electoral Act (1918) (‘the Electoral Act’).

2.4 The AEC submitted that legislative and financial constraints have so far prevented the AEC from trialling or investing in possible solutions in these areas.

Risks to successful conduct of elections

Complexity of the federal election system

2.5 The AEC has noted in its submissions that, since the March 1983 federal election, the size and scale of federal elections have posed greater complexities and challenges for the organisation. These challenges include:

- the size of the eligible voting populations;
- the manner in which electors and other stakeholders engage with the AEC; and
- the number of political parties and candidates seeking to participate.

2.6 Since 1983, the electoral roll has increased at a rate of roughly one million electors every two elections. This has increased:

- the number of electoral divisions;
- the average number of electors per divisions; and
- the average number of electors per polling place.

2.7 The number of pre-poll votes has grown from 5.9 per cent to 22.1 per cent of all votes issued in the past five federal elections.

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4 Australian Electoral Commission (AEC), Submission 66, p. 5.
5 AEC, Submission 66, p. 5.
7 AEC, Submission 66 (15), p. 2.
8 AEC, Submission 66 (15), p. 3.
2.8 The AEC submitted that during the election period, operational visibility of voting activities around Australia are limited:

There is no AEC ‘command centre’, there is no existing system which enables AEC senior management to have visibility of (or even reliable communication with) polling places and staff working in out-posted centres, and there is no ability to source real time data during the electoral period to monitor the flow of voters (including queues), ballot paper supply, progress of the count, and the progress of critical (sometimes urgent) issues that arise in polling places.9

2.9 Notwithstanding constraints and complexities, the AEC’s submission noted that it operates in a ‘high risk environment which has zero tolerance for error.’10

Complexity of legislation

2.10 The AEC’s has described the Electoral Act as ‘extremely complex and prescriptive.’11 The AEC added that ‘any failure of the AEC and its staff to comply with the requirements of the Electoral Act can… lead to an election being voided by the Court of Disputed Returns.’12

2.11 The AEC provided the following examples to demonstrate the extent of the prescriptive nature of the Electoral Act:

- Legislative constraints mean the AEC cannot easily invest in technology or make changes to procedures which might make elections more efficient and strengthen integrity;

- The prescriptive nature of the Electoral Act in relation to formality, scrutiny and recounts compels the AEC to conduct a complex initial count, then fresh scrutiny and an additional recount process where there are close seats. This prescriptive process can impact on the timely delivery of the result of the election and the eventual formation of government;

- Legislative complexity also challenges the accuracy of the roll. Restrictions on the AEC’s power to remove electors from the roll in a

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timely and efficient manner have the potential to impact on the integrity of the electoral roll and therefore the election results; and

- While ever a paper-supported election model is used, complex logistics arrangements will be necessary.\(^{13}\)

**Ageing information technology systems**

2.12 The AEC submitted that its two main IT systems have been in use since the early 1990s and that they require either an upgrade or replacement. These include the systems providing operational visibility of election activities.\(^ {14}\)

2.13 The AEC submitted:

> Some 25 years on… AEC information technology systems do not enable the agency to provide an agile response to changes in the legislative, regulatory, demographic or technology environments.\(^ {15}\)

2.14 The AEC submitted that with investment in information technology, an electronic polling management system could be used for federal elections.\(^ {16}\)

2.15 The AEC also noted that during recent the Australian Capital Territory and Northern Territory elections, officials could monitor activity and ballot paper stock at every polling place in real time.\(^ {17}\)

**Inconsistent election experience**

2.16 The AEC submitted that many state and territory electoral commissions are making significant investments in technology and services that will ensure their electoral systems keep pace with community expectations. In contrast, the AEC submitted that there has been minimal investment (by both sides of politics) in the federal electoral system by both sides.\(^ {18}\)

2.17 For example, Mr Rikki Chaplin (Blind Citizens Australia), said:

> The introduction of an electronic voting system, even if limited to certain demographic groups, is the preference widely held by people who are blind or

\(^ {13}\) AEC, *Submission 66 (15)*, pp. 8-9.

\(^ {14}\) AEC, *Submission 66 (15)*, p. 10.

\(^ {15}\) AEC, *Submission 66 (18)*, p. 6.


\(^ {17}\) AEC, *Submission 66 (18)*, p. 13.

vision impaired. The New South Wales system of electronic voting continues to be greatly appreciated by people who are blind or vision impaired and, to our knowledge, has not experienced any breaches of security.  

2.18 The AEC noted that the Australian public have a different election experience between state and federal elections with many voters not realising that the AEC is a separate entity to the various state electoral commissions that conduct state elections. The perception of most electors is that both state and federal electoral commissions are the same entity.  

Recent AEC modernisation

2.19 Notwithstanding the financial and legislative constraints, the AEC has introduced some new services, adopted new technology and provided more training for election staff.

Introduction of new technology

2.20 The AEC provided the Committee with examples of where new technology has improved outcomes during recent federal elections. These are discussed below.

eReturn portal

2.21 Since 2009, an eReturn portal has been available for participants in the electoral process that have disclosure obligations. This allows parties, individuals and organisations to lodge their disclosure returns online.

2.22 The eReturn portal allows a greater degree of accuracy of information, and reduces the risk for error with manual data entry, increases autonomy for the participant and provides assurance of security through the use of individual credentials.

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19 Mr Rikki Chaplin, Committee Hansard, 15 November 2016, p. 28.
22 AEC, Submission 66 (15), p. 4.
2.23 Usage has increased from approximately 36 per cent of lodgements in 2009 to 70 per cent for the 2014-15 financial year.\(^{23}\)

**Electronic Certified Lists**

2.24 An electronic certified lists (ECL) is an alternative to the traditional paper certified list used to mark off electors as they receive their ballot papers, in electronic format on a device. The AEC characterised ECLs as being ‘computerised versions of the electoral roll’.\(^{24}\)

2.25 During the 2016 federal election, 1 544 ECLs were deployed at polling stations. The AEC’s submission commented that while these were beneficial, the number used was ‘negligible compared to the total number of polling stations.’\(^{25}\)

2.26 The potential expanded use of ECLs for future elections is discussed in chapter three.

**Online enrolment**

2.27 Online enrolment was introduced by the AEC for the enrolment period prior to the 2013 federal election, when 85 per cent of all enrolment transactions between the announcement of the election and the close of the rolls were completed online.\(^{26}\) The AEC submitted that:

> …the AEC’s Online Enrolment Service (OES) was the most common channel for enrolment transactions in this period. Eighty-four per cent (576 363) of enrolment transactions processed during the 2016 close of rolls period originated from the OES.\(^{27}\)

\(^{23}\) AEC, Submission 66 (15), p. 4.

\(^{24}\) AEC, Submission 66 (15), p. 5.

\(^{25}\) AEC, Submission 66, p. 35.


\(^{27}\) AEC, Submission 66, p. 11.
The AEC believes that the increase in enrolment participation by 18–24 year olds from the historical average of below 80 per cent to over 86 per cent for the 2016 federal election is likely to be attributable to online enrolment.\footnote{AEC, Submission 66, p. 11.}

**On-line postal vote applications**

Legislative changes in January 2011 enabled the AEC to develop an online postal vote application (PVAs) process for the 2013 Federal election. Approximately 28 per cent of postal vote applications were completed online. In 2016, this grew to approximately 35 per cent.\footnote{AEC, Submission 66, p. 30.}

The AEC submitted that the increase in online postal vote applications reduced the need for manual processing and provided efficiencies in the provision of postal votes to applicable voters.\footnote{AEC, Submission 66 (15), p. 4.}

At the 2016 federal election, the AEC introduced, for the first time, the scanning of paper PVAs with the intent of maximising the efficiency of processing PVAs and the despatch of postal vote packs to voters.\footnote{AEC, Submission 66 (15), p. 5.}

**Workforce reform**

The AEC has faced increasing complexity and an increasing workload at each federal election. The 2013 Keelty report recommended the AEC review workforce culture and capability to improve performance and accountability. Previous JSCEM and ANAO reports have made recommendations on improving the way the temporary election workforce is sourced, selected and managed.

From these recommendations, the AEC developed a formal workforce planning framework for the 2016 election. Reforms included:

- a wholesale review of training for both temporary and APS staff;
- the development of an operational workforce planning model;
- a feasibility study into options regarding election recruitment; and
the introduction of character checks for senior polling staff.\textsuperscript{32}

\textbf{Training}

2.34 Following the 2013 federal election, the AEC enhanced or restructured all aspects of its training for polling officials at the 2016 federal election. The reform’s intent was focussed on ballot paper handling principles and electoral integrity.\textsuperscript{33}

2.35 The following training and resources were introduced at the 2016 election:

- Senior polling officials had access to the AEC’s Election Training System (ETS) and were required to complete a selection of online training modules specific to their role;
- Senior polling officials, such as officers-in-charge, second-in-charge, polling place liaison officers and others received a role-specific Election Procedures Handbook (EPH) and had access to online resources;
- Ordinary vote issuing officers, ballot box guards and queue controllers, attended a briefing by their officer-in-charge before commencing duty on election day. They also had access to an optional online resources and training;\textsuperscript{34} and
- Selected permanent APS staff who had an election role were required to complete the ‘Election Readiness Program’ (ERP) – an online training course.\textsuperscript{35}

2.36 Following a review of the 2013 election, measures to improve monitoring of training completions were introduced, with completion rates recorded in the AEC’s Election Training System. High completion rates for both face-to-face and online training were recorded.\textsuperscript{36}

\textbf{Committee comment}

2.37 The Committee notes that the AEC has implemented a series of changes to improve how elections are conducted. There are areas of risk, in particular

\textsuperscript{32} AEC, \textit{Submission 66}, p. 47.
\textsuperscript{33} AEC, \textit{Submission 66}, p. 48.
\textsuperscript{34} AEC, \textit{Submission 66}, p. 48.
\textsuperscript{35} AEC, \textit{Submission 66}, p. 50.
\textsuperscript{36} AEC, \textit{Submission 66}, p. 23.
complex legislation and the age of the AEC’s information technology systems.

2.38 There is scope for further modernisation and reform, which is discussed in the next chapter of this report.
3. Australian Electoral Commission's proposed reforms

Introduction

3.1 During the inquiry, Australian Electoral Commission (AEC) identified areas where reform or amendments could be made.\(^1\)

3.2 The AEC has proposed a series of technical legislative amendments to ‘essentially remedy errors, defects and anomalies in the legislation’ that do not involve any change of policy.\(^2\)

3.3 The AEC has proposed reforms designed to ‘ensure the continued successful conduct of federal elections.’\(^3\) Some of these reforms leverage reforms piloted or partially implemented by the AEC over recent years. These include:

- pilot scanning of House of Representatives ballot papers;
- extending the use of Electronic Certified Lists (ECLs); and
- ongoing engagement with senior temporary election staff.

3.4 The AEC also identified three areas that involve long-term reform:

- legislative reform;
- investment in systems, people and processes; [and]

\(^1\) These are largely summarised in AEC, Submission 66 (18).

\(^2\) AEC, Submission 66 (8), p. 4.

\(^3\) AEC, Submission 66 (15), p. 1.
- stakeholder support and community engagement.\textsuperscript{4}

3.5 While the AEC’s proposals are considered within this chapter, background information can be found in chapter two. The majority of the Committee’s views and recommendations follow at the end of this chapter.

**Technical legislative amendments**

3.6 At the request of the Committee, the AEC provided recommendations for 34 legislative amendments to the *Commonwealth Electoral Act (1918)* (‘the Electoral Act’) to remedy errors, out-dated provisions and anomalies in the legislation that do not involve any change in policy. Some amendments relate to the *Referendum (Machinery Provisions) Act (1984)* (‘the Referendum Act’) to align it with the Electoral Act.\textsuperscript{5}

3.7 These amendments would correct unforeseen difficulties in processes, improve procedures and enhance the integrity of the electoral process.\textsuperscript{6} The suggested reforms can be summarised as follows:

- improving consistency between the referendum legislation and the electoral legislation;
- allowing the AEC to undertake electoral processes more efficiently without compromising integrity;
- aligning legislation with contemporary AEC management structures and administrative arrangements; and
- correcting minor errors and omissions in the electoral legislation.

3.8 The amendments were identified by the AEC being ‘critical first steps’.\textsuperscript{7} The full text of these legislative proposals, as provided by the AEC, is included as Appendix A of this report.

**Committee comment**

3.9 The Committee has considered the legislative amendments proposed by the AEC (see Appendix A). The Committee believes that making technical

\textsuperscript{4} AEC, Submission 66 (18), p. 2.

\textsuperscript{5} AEC, Submission 66 (15), p. 9.

\textsuperscript{6} AEC, Submission 66 (15), p. 10.

\textsuperscript{7} AEC, Submission 66 (15), p. 9.
amendments to legislation may assist the efficacy of the AEC conducting federal elections and counting votes.

Recommendation 1

3.10 The Committee recommends that the *Commonwealth Electoral Act (1918)* and the *Referendum (Machinery Provisions) Act (1984)* be amended, based upon the Australian Electoral Commission’s proposals contained in Appendix A of this report.

Pilot scanning of House of Representatives ballot papers

3.11 The AEC recommends that the *Commonwealth Electoral Act (1918)* be amended\(^8\) to account for an electronically assisted counting process. This would permit the AEC to pilot the scanning and electronic counting of House of Representatives ballot papers at the next federal election.

3.12 Dominion Voting Systems (a Canadian company that sells ballot paper scanners)\(^9\) noted the issues with large scale manual counting of ballot papers and the advantages of electronic counting:

Publically scrutinized paper ballot tally procedures have traditionally been the most reliable and trusted means of determining the outcome of an election. In spite of this, manual counts are time consuming and prone to errors. The frequency of these errors increases with ballot complexity. The combination of complex ballots and late night counting can compound errors and delays. Electronic ballot counting offers equivalent levels of security, transparency, and anonymity while providing results in a timely manner. In addition, electronic ballot counters process ballots with complete accuracy. Transparency is further enhanced by the use of optical scanners that capture and retain images of each ballot scanned.\(^{10}\)

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\(^8\) Subsection 268(2) and/or section 273A.

\(^9\) Dominion’s submission stated on p. 1: ‘We offer a full range of products that assist voters and election commissions to capture, scrutinize and tally votes. These include centralized optical scan ballot counters, precinct based optical scan ballot counters, direct recording electronic (DRE) voting terminals, and remote voting (internet and telephony) voting solutions.’

3.13 The Committee notes that postal votes can take up to 13 days to arrive, which contributes to the delay. 11 Mr Greg Northover (private capacity) supported scanning and electronic counting of House of Representatives ballot papers to speed up the count process:

The main problem with the 2016 election was that it took weeks for the result in the House of Representatives to become known and more than a month for the Senate. Clearly without any need for connection to the internet, the electoral system (Polling Places) should be automated such that the count can be determined in near real time (instantaneously) at the close of polls – plus 2 hours for Western Australian voters. 12

3.14 Mr Northover added:

The minimalist change scenario is to implement scanning of the existing ballot papers and this is already done in many jurisdictions overseas and in Australia including in the ACT for example. 13

3.15 The AEC implemented electronic counting of Senate ballot papers for the 2016 federal election following changes to the Electoral Act passed in March 2016 concerning Senate voting. The AEC submitted:

In just over three months the AEC developed, tested, certified and operationalised a new end-to-end solution to count and distribute Senate preferences. The semi-automated process, using scanning and image recognition technology to capture preferences, was developed with a contractor – Fuji Xerox Document Management Services. 14

**Extending the use of electronic certified lists**

3.16 An Electronic Certified List (ECL) is an alternative to the traditional paper certified list used to confirm an elector is enrolled for a division in an election, in electronic format on a device. ECLs are used primarily for:

- looking up and marking off the elector’s name when they vote in an election;
- recording if a declaration vote has been issued; and

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11 Commonwealth Electoral Act 1918, s. 266.
12 Mr Greg Northover, Submission 40, p. 5.
13 Mr Greg Northover, Submission 40, p. 5.
14 AEC, Submission 66 (15), p. 5.
confirming an elector’s entitlement for the election, as part of determining whether their declaration vote can be included in the count – known as ‘preliminary scrutiny of declaration votes’.\(^\text{15}\)

3.17 The AEC piloted ECLs in both the 2013 and 2016 federal elections. The AEC submitted:

For the 2016 federal election 1,544 ECLs were deployed for issuing ordinary and declaration votes by various polling teams and voting centres... This approach was determined following evaluation of an ECL pilot at the 2013 federal election, which used about half the number of ECLs. The pilot found ECLs were most useful in pre-poll voting centres (PPVCs) and mobile teams.\(^\text{16}\)

3.18 The AEC commented on the advantages of ECLs:

ECLs enabled elector identification and mark-off and real time update of a central copy of the certified list where network connectivity was present. This reduced the risk of polling official error and the risk of multiple voting and enabled more efficient search for electors, including by location.\(^\text{17}\)

3.19 The AEC also noted that ECLs could prevent incorrect House of Representatives ballot papers from being issued.\(^\text{18}\)

3.20 ECLs provide polling officials with the capacity to determine if and where the elector is enrolled in any division, whereas traditional paper certified lists are for one division only. The AEC observed that when ECLs were used in polling places to confirm the address where the elector is enrolled for the election, the number of electors being issued with the wrong House of Representatives ballot paper was significantly reduced:

AEC analysis shows that there was a significant difference in the proportion of declaration votes that were partially admitted where electronic certified lists (ECLs) containing national roll data were used, compared to where hard-copy certified lists (containing divisional roll data) were used. For example:

- 1,324,476 declaration votes (provisional, absent and pre-poll) were issued without the use of electronic certified lists (ECLs) of which 148,370 were partially admitted (11.2 per cent).

\(^\text{15}\) Section 266 of the *Commonwealth Electoral Act (1918).*

\(^\text{16}\) AEC, *Submission 66*, p. 35.

\(^\text{17}\) AEC, *Submission 66*, p. 35.

\(^\text{18}\) AEC, *Submission 66*, p. 35.
• 215 263 declaration votes (provisional, absent and pre-poll) were issued by ECLs of which 414 were partially admitted (0.19 per cent).\(^\text{19}\)

3.21 As a result of this issue, the AEC advised, 148 874 electors had their declaration votes partially admitted, with only their Senate ballot paper being included in the count.\(^\text{20}\)

3.22 Mr Antony Green (private capacity) also commented that using ECLs to confirm electors’ entitlement would reduce the number of partially accepted declaration votes:

The solution to this is to use a roll look-up for all voters not on the local roll to verify first that they are enrolled, and second to confirm the electorate where they are enrolled.\(^\text{21}\)

3.23 Mr Lex Stewart (private capacity) commented on the value of ECLs in reducing the opportunity for electors to vote more than once in an election:

Multiple voting could be eliminated by introducing ‘Electronic Certified Lists’ (ECLs), with polling booths linked electronically to a central Master Electoral Roll. Closing off each voter’s name from all Rolls at polling places as voting papers are issued to individual voters would prevent votes being made more than once in that person’s name.\(^\text{22}\)

3.24 Mr Michael Sherry, Australian Electoral Officer for the Northern Territory, commented on the advantages offered by ECLs in polling remote Indigenous communities:

They were extremely beneficial for a number of reasons. They speed up the time to identify an elector. We have challenges, if you like, identifying the spelling of Indigenous names \textit{et cetera}, so the ECLs are a terrific asset in that space. They also provide the ability to print off a House of Representatives paper for another division, outside Lingiari, for example, to save carrying lots

\(^{19}\) AEC, \textit{Submission 66 (9)}, p. 7.

\(^{20}\) During preliminary scrutiny of declaration votes the AEC found that the elector was not enrolled in the division they claimed a declaration vote for, but was enrolled for another division in the same state or territory.

\(^{21}\) Mr Antony Green, \textit{Submission 30}, p. 7.

\(^{22}\) Mr Lex Stewart, \textit{Submission 118}, p. 2.
and lots of ballot papers around. It has significant advantages, particularly in the Northern Territory.\textsuperscript{23}

3.25 The AEC commented that further work and investment would be required to expand the ECL solution used for the 2013 and 2016 federal elections. From discussions with other Australian and New Zealand electoral management bodies about ECLs, the AEC advised:

All jurisdictions agree that using ECL devices at all issuing points would be highly beneficial, however, all agree that the high cost of devices and logistical complexities of deployment are significant blockers to achieving that goal. Despite this, the AEC seeks to increase the usage of ECLs at the next federal election but will need significant financial support to do so.\textsuperscript{24}

3.26 The AEC submitted that more widespread use of ECLs would bring greater integrity and efficiency to the electoral process:

More widespread ECL use could potentially reduce wait and queuing times, and allow ballot paper stocks to be monitored in real time. As noted at the 2015 by elections, where the AEC used the ECLs widely, the initial number of apparent multiple voters was greatly reduced. More widespread use of ECLs offers greater integrity of the process.

Real time information regarding voter services delivery and monitoring at polling place level would improve voter services and support polling staff deliver services more efficiently. The AEC is not funded for a national roll out of ECLs to every polling place.\textsuperscript{25}

3.27 The AEC advised that ‘further work is required to identify a solution that will enable a greater rollout of ECLs’ and the improvements in relation to ‘accuracy and reconciliation of ballot papers issued.’\textsuperscript{26}

**Ongoing engagement with temporary election staff**

3.28 During an election, the AEC grows from an organisation comprising less than 1 000 people to a size of more than 70 000 people. The AEC advised that as the conduct of federal elections relies upon manual processes and


\textsuperscript{24} AEC, *Submission 66 (15)*, p. 11.

\textsuperscript{25} AEC, *Submission 66*, p. 36.

\textsuperscript{26} AEC, *Submission 66 (18)*, p. 13.
human involvement, this situation creates significant risks and the potential for human errors. The AEC submitted:

Changes to electoral processes, procedure and legislation, and significantly enhanced accountability requirements, amongst other changes, have made the role of the AEC’s temporary workforce more complex (and far more scrutinised) than ever before in Australia’s history.

3.29 According to the AEC, there is a 50 per cent turnover rate of temporary staff at each federal election. Turnover of temporary staff holding senior positions is lower, with approximately 80 per cent of staff being retained.

3.30 The AEC told the Committee that it faces increasing difficulty and risk in using a large temporary workforce as the main staffing component in the delivery of federal elections:

…the current model for recruitment and training of the temporary workforce is at the end of its useful life. Unless changes are made to the recruitment and training model there are likely to be significant adverse consequences for future federal elections. Perhaps the most visible of those consequences will be an inability of the AEC to meet the Australian community’s long held and cherished expectation of ‘a result on the night’.

3.31 The AEC commented that temporary election staff work in an environment of increasing workloads, complexity, scrutiny, and expected levels of assurance for each election:

It is one of those rare events where every elector walks through the doors during a brief period of time, and most of them on the day of the election. We are relying on manual systems and manual processes, and on temporary staff who do a fantastic job but, even with the best will in the world, they have received a brief period of training.

3.32 The AEC submitted:

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29 For example: Officers in Charge and Polling Place Liaison Officers.
32 Mr Tom Rogers, AEC, Committee Hansard, Canberra, 28 November 2016, p. 4.
This presents significant risks for the AEC: not only in terms of the need to scale from an organisation of less than 1 000 people to one of more than 70 000, within less than five weeks but also in terms of the inevitability of human error.  

3.33 The Hon Warren Snowdon MP (Federal Member for Lingiari) submitted:

Many electors whose name did not appear on the roll were turned away even though they believed they were entitled to vote and had done so before. Officials did not inform these electors of their right to claim a provisional vote.

3.34 The AEC has proposed a temporary staffing model which focuses on a core group of temporary staff who are trained to fill senior polling official positions during an election:

This would involve recruiting and training approximately 18 750 temporary staff at the supervisory level... The broad intent would be to ensure that key temporary staff who work in supervisory roles (e.g. OICs [Officers in Charge]) have been trained, certified as competent, and updated with any legislative or procedural changes on a relatively regular basis. This might only involve one or two days a year between elections.

3.35 The AEC submitted that this model would provide greater continuity of knowledge between elections:

The model proposed above would provide the AEC with a more or less continuously trained workforce able to cope with the complexities of Australia’s electoral system, including non-fixed term elections, and the ability to more easily adapt to any legislative changes in each electoral cycle.

3.36 The AEC added that this approach could potentially allow for staff to be shared with state and territory electoral commissions.

33 AEC, Submission 66 (15), p. 11.
34 The Hon Warren Snowdon MP, Submission 73, p. 6.
Long-term reforms

3.37 The Committee also considered the AEC’s proposals for strategic reforms, requiring significant investment over a number of electoral cycles, to ensure the long-term sustainability of Australia’s electoral system. These are outlined below.

Legislative reform

3.38 The Commonwealth Electoral Act (1918) currently runs to 560 pages and was described by the AEC as being a ‘complex, intricate and cumbersome document.’

3.39 The AEC submitted that the restrictiveness of the Electoral Act means it ‘cannot easily utilise technology or make changes to procedures which might help make elections more efficient and strengthen integrity.’

3.40 The AEC also commented that a principles based approach to electoral legislation would allow more flexible and responsive innovation. The AEC submitted:

A principles-based approach governed by regulations would provide the relevant Minister and the Electoral Commissioner with greater flexibility to amend and improve processes by regulating rather than amending the Electoral Act between elections.

Investment in information technology

3.41 In their submission, the AEC commented on the limitation these IT systems impose on the AEC’s ability to respond to changes in elector behaviour and community expectations:

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38 AEC, Submission 66 (18), p. 12.
40 AEC, Submission 66 (18), p. 11.
42 AEC, Submission 66 (18), p. 6.
The IT systems, which have been built over a long period of time, are not able to be easily integrated with contemporary mobile platforms and in many cases, will not be supported by vendors in future.\textsuperscript{43}

3.42 The AEC recommended updating systems to support the future sustainability and integrity of the electoral system:

In a changing external environment, continuing investment in outdated systems that are now past their useful life is inefficient, and investment in systems built for the current and future environments must now be considered. If left in their current state, these ageing systems pose a serious risk to the ongoing sustainability and integrity of the electoral system.\textsuperscript{44}

3.43 The AEC advised that integration, testing and development of a new election management system into its operation would take an estimated six years. The AEC noted that this would require a robust business case and input from expert advisors over the next ten years. The AEC also advised:

The AEC does not currently have the capability, expertise or funding to commence this journey. It is critical that funding is made available now to allow the AEC to start this strategic planning in investment in systems, people and processes.\textsuperscript{45}

\textit{Stakeholder and community engagement}

3.44 The AEC noted that modernisation requires careful planning and engagement with stakeholders:

Particular constraints around modernisation for the AEC include the need for legislative change and the ability to implement any new capabilities in line with the electoral cycle. These constraints mean that stakeholder and community engagement is critical to manage expectations and maintain trust in the AEC’s ability to deliver electoral outcomes characterised by efficiency and integrity.\textsuperscript{46}

\textsuperscript{43} AEC, \textit{Submission 66}, p. 4.

\textsuperscript{44} AEC, \textit{Submission 66 (18)}, p. 6.

\textsuperscript{45} AEC, \textit{Submission 66 (18)}, p. 15.

\textsuperscript{46} AEC, \textit{Submission 66 (18)}, p. 15.
Committee comment

3.45 The Committee acknowledges that the AEC is facing challenges. The AEC has advised the Committee of the following:

- the current model for conducting federal elections has reached the end of its useful life; and
- due to current funding limitations, the AEC cannot make long-term investments or system upgrades to improve the way federal elections are conducted.

3.46 The AEC’s experience during the 2016 election suggests there could be potential risks to future elections. The AEC is currently resourced to provide essentially the same services at each election event, without adequate provision to keep investing in business systems and information technology.

3.47 The Committee supports modernising the conduct of Australian federal elections, particularly through the use of new technology. Introducing new technology has the potential to enhance voter experience, minimise risks related to manual processing, improve efficiency and uphold the AEC’s credibility in the eyes of voters.

3.48 Upgrades to the AEC’s information technology systems have become overdue. The Committee notes the AEC’s advice that this could take many years to complete. The AEC did not provide the Committee with an estimate of how much this upgrade would cost. At this stage, the AEC does not have available funding to begin planning and preparation for an upgrade.

3.49 The Committee’s 2014 report on electronic voting options noted the potential value of electronic scanning, counting and storage of ballot papers. The Committee notes that the AEC has implemented scanning and electronic counting of Senate ballot papers in 2016. These practices could be expanded to include House of Representatives ballot papers.

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3.50 In its 2014 report, the Committee also noted the potential benefits of electronic certified lists. Extending the use of electronic certified lists could help reduce the number of electors being issued with the incorrect ballot papers.

3.51 ECLs allow polling staff to confirm where the elector is enrolled, and provide the elector with the correct ballot papers. While there remains the potential for clerical error in the issuing of ballot papers, the Committee believes extending the use of ECLs will significantly reduce the number of electors being given the wrong ballot papers.

3.52 Scrutineers fulfil an important duty. Having people involved in scrutineering elections is good for civil society. The Committee notes that electronic scanning of ballot papers does not allow for traditional scrutineering, which may be an issue in marginal seats. Changing from current practice would require an education campaign and broad support from voters and candidates.

3.53 The Committee recognises the important role of the many people who serve temporary roles for the AEC during elections. The commitment and integrity of these staff is critical to the conduct of elections and the experience of voters at polling booths.

3.54 The AEC plans to improve the retention of knowledge among officials who are recruited on a temporary basis, particularly those placed in positions of greater responsibility. The Committee supports the AEC’s efforts in this area.

**Recommendation 2**

3.55 The Committee recommends that the Australian Government consider additional funding for the Australian Electoral Commission to invest in modernisation for future federal elections, including:

- Planning and expert advice on upgrading the AEC’s information technology and business systems.

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- Additional training for temporary staff who are likely to remain engaged over multiple elections.

- The deployment of additional electronic certified lists at polling stations.

- A trial to test the scanning and electronic counting of House of Representatives ballot papers.

Recommendation 3

3.56 The Committee recommends that the AEC consider specific operational systems and training to accommodate the particular challenges associated with the conduct of elections in rural and regional areas, hospitals and aged care facilities.

Recommendation 4

3.57 The Committee recommends the Australian Electoral Commission extend the deployment of electronic certified lists at the next federal election to ensure all polling places (including all absentee voting points) and mobile teams are equipped with at least one electronic certified list, or as a minimum an electronic roll lookup facility.

Recommendation 5

3.58 The Committee recommends that the Australian Electoral Commission provide updates to the Committee every six months on priorities and progress towards modernisation for future elections, in order for the Committee to review this activity on an ongoing basis.

Senator Linda Reynolds CSC
Chair
A. Australian Electoral Commission's proposed technical amendments to legislation

Extracted from AEC Submission 66 (8)

1. Approval requirement for the destruction of enrolment claims

The AEC recommends that section 391 of the Commonwealth Electoral Act (1918) be amended so the Electoral Commissioner, not the Australian Electoral Officer (AEO), is responsible for approving the destruction of claims for enrolment. The Electoral Commissioner may delegate the task (for example to Assistant Commissioner Roll Management).

Section 391: The change would simplify the process for the destruction of enrolment forms and improve efficiency. It is consistent with the 2010 changes to section 28 of the Act where Divisional Returning Officer and AEO references were changed to Electoral Commissioner, with the addition of a subsection for delegations.

2. Storing enrolment claims

The AEC recommends that section 391 of the Commonwealth Electoral Act (1918) be amended to provide for the Electoral Commissioner to approve the method of storing enrolment forms.
Section 391 requires an AEO (or the Electoral Commissioner for the ACT) to approve the method for storing enrolment forms (enrolment claims). The change from AEO to Electoral Commissioner would allow efficient and nationally consistent approach to storing enrolment claims in any permanent form approved by the Electoral Commissioner.

3. **Remove elector from the roll where added incorrectly**

The AEC recommends that section 105 of the Commonwealth Electoral Act (1918) be amended to introduce the power to remove an elector from the roll to correct mistakes of fact or process and maintain factual accuracy rather than having to rely on objection provisions. This power should be covered by the review provisions.

Section 105: There are circumstances where mistakes are made in the maintenance of the electoral roll, where the AEC does not have the power to administratively correct them in a timely manner. These include circumstances such as where a person is enrolled for the first time, but their enrolment application should have been rejected, for example the application did not satisfy the evidence of identity requirements under section 98AA of the Act. The AEC can only correct the enrolment through objection action on the grounds that the person is not entitled to be enrolled for that division.

A provision that allows the AEC to correct mistakes would maintain the relevance of the powers at section 105, address current limitations and be more efficient.

4. **Amend references to Census Collection Districts**

The AEC recommends that the Commonwealth Electoral Act (1918) be amended to replace the term ‘Census Collection District’ and ‘Census district’ to a generic term.

Subsection 76(17); Paragraph 76(9)(a); Paragraph 76A(8)(a); and Paragraph 90B(10)(e):

The change would update statistical geography terminology in the Act, and would provide for changes in terminology such as when the Australian Bureau of Statistics changed the standard statistical geography from ‘Census Collection District’ to a generic term.

5. **Amend superfluous reference to the Northern Territory**

The AEC recommends that subsection 93(10) of the Commonwealth Electoral Act (1918) be amended to remove references to the Northern Territory.
Subsection 93(10): The reference to Northern Territory in subsection 93(10) of the Electoral Act is superfluous given section 97 (in Part VII) of the Electoral Act provides for Part VII to apply to the Northern Territory (or the Australian Capital Territory) as if reference to a state in that Part were reference to that territory.

6. Requirement for addresses on the certified list

The AEC recommends that section 208 of the Commonwealth Electoral Act (1918) be amended to specifically provide for the enrolled address to be included as part of the certified list of voters.

Section 208: This section of the Act does not require an elector’s enrolment address to be included on the certified list of voters. However, at section 229 of the Electoral Act, at the time of voting, before the voter is issued with their ballot papers, the issuing officer asks where the voter lives. Any amendment needs to consider the requirement for suppression of address of silent electors as provided for in section 104.

7. Identifying features on ballot papers – administrative mark and/or colour

The AEC recommends that section 209 of the Commonwealth Electoral Act (1918) be amended to allow the AEC the flexibility to include an administrative mark such as the division name and/or a coloured mark, feature or panel.

Section 209: It would not be possible, in the absence of legislative amendment, to:

- print any of the text in colour, on the basis that subsection 209(3) requires ballot papers to be printed using ‘black type face of a kind ordinarily used in Commonwealth Government publications’; or
- change the background colour of the whole of a House of Representatives or Senate ballot paper, on the basis that this would offend the requirement in subsection 209(3) that Senate ballot papers be printed on a white background colour and ballot papers for the House of Representatives must have a green background colour.

Explicit authorisation of an administrative mark and / or a coloured mark, feature or panel, would remove any doubt as to whether incorporation of such elements offended the ‘black typeface’ or background colour requirements of subsection 209(3), or whether such elements were within the scope of subsection 392(1) which provides that substantial compliance with the forms in Schedule 1 will be sufficient.
Enabling the AEC to place an administrative mark on ballot papers, or the flexibility to print ballot papers with identifying features or colours, would assist:

- polling officials to issue correct ballot papers to electors
- staff counting votes, from voting centres issuing ordinary votes for more than one division, correctly attribute Senate ballot papers to the relevant division.
- contractors and AEC staff to accurately allocate correct division and Senate ballot papers to AEC offices and voting locations

It should be noted that such inclusions on ballot papers may affect the costs of ballot paper printing.

8. **Year on House of Representatives ballot paper**

The AEC recommends that Schedule 1 Form F of the *Commonwealth Electoral Act (1918)* be amended to include the year on House of Representative ballot papers.

*Schedule 1 Form F*: This would ensure consistency with the Senate ballot paper requirements.

9. **Correct drafting error in Form E**

The AEC recommends that Form E of the *Commonwealth Electoral Act (1918)* be amended to correct format errors.

*Form E*: The following drafting errors should be corrected:

- footnote number (4) should not appear above the line (ATL) – all current references to footnote (4) appearing ATL should be replaced with references to footnote (2)
- footnote (4) should only appear below the line (BTL) in the ungrouped column adjacent to the candidate name
- footnote (1) should also be added next to the candidate boxes in the ungrouped column above footnote (4)
- all references to footnote (4) BTL should be replaced with references to footnote (3)
- an additional candidate box needs to be added to Column D BTL.

These changes are required consequential to the repeal of subsection 211A.
10. **Directions for marking of votes in Senate election**

The AEC recommends that section 239 of the *Commonwealth Electoral Act (1918)* be amended so that directions for how to mark the ballot paper say ‘must’ for both above the line and below the line.

*Section 239:* This section provides that a person ‘must’ mark his or her vote in accordance with paragraphs (a) or (b), whereas subsection 239(2) provides that a vote ‘may’ be marked on a ballot paper in accordance with the directions set out in paragraphs 239(2)(a) and (b).

The inconsistent use of ‘must’ and ‘may’ was also used in the former subsection 239(1) and subsection 239(2). Amending the subsections to use the word ‘must’ would make the information on marking ballot papers consistent.

11. **General Postal Voters (GPV) under the Referendum Act**

The AEC recommends that section 58 of the *Referendum (Machinery Provisions) Act (1984)* be amended to enable the AEC to dispatch postal voting papers to general postal voters for a referendum, as soon as practicable after the close of rolls.

*Section 58 of the Referendum Act:* The Electoral Commissioner is required, under section 58 of the Referendum Act, to, ‘as soon as practicable after the issue of the writ for a referendum or the public announcement of the proposed date for the voting, whichever is the earlier’, arrange for the delivery of postal voting papers to each registered general postal voter.

This change would reduce the number of voting papers sent to individuals who are ultimately not entitled to vote because the timeframe would mean that voting papers would only be sent to registered general postal voters after the close of the rolls for a referendum. In addition it ensures votes are issued in accordance with details on the finalised certified list.

Voting papers are sent to GPVs at elections held in conjunction with referendums, or elections, following the declaration of nominations, which follows the close of rolls.

12. **Postal vote application (PVA) from issue of writ**

The AEC recommends that subsection 55(4) of the *Referendum (Machinery Provisions) Act 1984* and subsection 184(4) of the *Commonwealth Electoral Act (1918)* be amended to allow application for a postal vote to be made only from the issue
of the writ, rather than from announcement of the proposed date of polling or the issue of writ, whichever is the earlier.

**Subsection 55(4) of the Referendum Act and subsection 184(4) of the Electoral Act:** This issue was considered in drafting the Plebiscite (Same-Sex Marriage) Bill 2016.

As the Explanatory Memorandum to that Bill noted, subclause 16(1) proposed to replace subsection 55(4) of the Referendum Act with a new subsection 55(4) for the purpose of the plebiscite. The replacement subsection 55(4) proposed to provide that a postal vote application may not be made until after the issue of the writ. This change would mean that even if the proposed date for voting is announced prior to the issue of the writ, postal vote applications may not be made until the writ is issued.

Requiring postal vote applications to be made after the issue of the writ is a minor but important administrative efficiency for the AEC. It would clarify for the AEC when PVAs can be made available and be validly accepted, given the term ‘announcement’ is not defined in the Electoral Act.

Potentially it would also be less confusing for electors who, following statements concerning the intended date of the federal election, seek to apply for a postal vote regardless of the election timetable.

13. **Consistent treatment of PVAs made under the Electoral and Referendum Acts**

The AEC recommends that section 184 of the Commonwealth Electoral Act (1918) and section 59 of the Referendum (Machinery Provisions) Act (1984) be amended to ensure consistency in the treatment of postal vote applications when an election and a referendum are held at the same time.

**Section 184 of the Electoral Act and Section 59 of the Referendum Act:** Section 59 of the Referendum Act has the effect of treating an application for a postal vote (PVA) in an election as a PVA for a referendum. But a PVA for a referendum is not treated as an application for an election. This was highlighted as an issue when a federal election was proposed to be held on the date that had already been announced for the proposed referendum on local government in 2013.

It is recommended that the Referendum Act and the Act be amended to provide that when an election and referendum are held at the same time, a PVA for a referendum is treated as a PVA for an election. This should have effect even when announcement of the events are made at different times.
14. **Remove requirement to produce PVAs at preliminary scrutiny**

The AEC recommends that Schedule 3, clause (2) and subsections 188A(2) and 188A(3) of the *Commonwealth Electoral Act (1918)* be amended to remove the requirement to produce PVAs at preliminary scrutiny and send PVAs to the relevant division.

*Schedule 3, clause (2) and subsections 188A(2) and 188A(3):* Following legislative change in 2010, PVAs are no longer matched with postal vote certificates (PVCs) or used in any part of preliminary scrutiny, which used to require a comparison of PVA and PVC signatures. The legislation also enabled PVAs to be processed centrally and online, so in many cases there is no hard-copy to be ‘produced’. The integrity of the process is maintained by issuing a barcoded PVC on the basis of a valid PVA and registering the returned PVC back to the online PVA. Each PVC maintains its link to the PVA through both being allocated the same unique identification number.

15. **Broaden reference to polling official**

The AEC recommends that subsection 4(1) and/or subsections 273(2) and 274(2) of the *Commonwealth Electoral Act (1918)* and/or relevant provisions be amended to reflect changes to scrutiny arrangements.

*Subsection 4(1) and/or subsections 273(2) and 274(2) and/or relevant provisions:* Various provisions in the Electoral Act require activities to be undertaken in the presence of a ‘polling official’. Subsections 273(2) and 274(2) require the re-opening of a ballot box in the presence of a ‘polling official’. However, the definition of ‘polling official’ in subsection 4(1) currently is limited to a deputy presiding officer and an assistant presiding officer, which are terms generally associated with polling activities or counting of votes in polling booths only.

To make more clear that ballot boxes from pre-poll voting centres and mobile teams may not necessarily be opened in a polling booth, and that a ‘polling official’ as defined will also include persons in the AEC’s workforce referred to as a scrutiny or count assistant or supervisor, it is recommended that relevant amendments are required to the terminology used in subsections 4(1) and/or subsections 273(2) and 274(2) and/or relevant provisions.

The AEC will work with the Office of Parliamentary Counsel to identify the relevant provisions requiring amendment to implement this recommendation.

16. **Forwarding of declaration votes**
The AEC recommends that section 228 of the *Commonwealth Electoral Act (1918)* be amended to revert to the pre-2016 federal election provisions.

**Section 228:** Following the 2016 legislative amendments, declaration vote ballot boxes were not opened or reconciled at the polling place as had occurred at previous elections. Instead they were required to be returned to the DRO unopened. This meant that the reconciliation workload previously carried out at each polling place was moved to divisional out-posted centres in the days following polling day. This resulted in two to three days of additional workload that needed to be carried out at out-posted centres before the declaration vote exchange could be finalised and the preliminary and further scrutiny of some declaration votes could commence.

(Reference was made to this issue at paras 145 – 147 of the AEC’s Submission 66 of 1 November 2016.)

**17. Opening ballot boxes and packaging and parcelling**

The AEC recommends subsections 273(2) and 274(2) and/or other relevant provisions of the *Commonwealth Electoral Act (1918)* be amended to remove references to counting ‘without inspecting’ and to allow the Electoral Commissioner to determine the method for packaging and parcelling of ballot papers.

*Paragraph 273(2)(c) and paragraph 274(2)(ab) and/or other relevant provisions:* After opening a ballot box containing Senate or House of Representatives ballot papers, the provisions require a ballot box to be opened, ballot papers to be removed, ballot papers to be counted without being inspected, and the number of ballot papers from the box to be recorded. Following this process, first preference votes can be counted.

Removing the step of counting the ballot papers without inspecting them and re-ordering remaining provisions to align with established processes would simplify the process of extracting ballot papers, counting first preferences and recording the number of ballot papers.

*Paragraphs 274(2)(b), (e), (g) and (h) and/or other relevant provisions:* The counting and packaging requirements in subparagraphs 274(2)(b), (e), (g) and (h) of the Electoral Act have the effect of requiring first preference votes for each candidate, and informal votes to be individually parced and labelled.
Senate packaging and parcelling arrangements outlined in subparagraphs 273(2)(e) and 273(3)(d) are less onerous, while ensuring that packaging of ballot papers is secure.

Removing the reference to parcelling in counting and handling provisions (paragraphs 274(2)(b) and (e) of the Act), while amending packaging and dispatch provisions (paragraphs 274(2)(g) and (h) of the Act) to provide for secure packaging and parcelling, in accordance with the directions of the Electoral Commissioner would speed up procedures without compromising any element of the process.

18. Declaration vote mark-off on electronic certified list (ECL)

The AEC recommends that Schedule 3 of the Commonwealth Electoral Act (1918) be amended to allow mark-off of declaration votes where an electronic certified list is in use thus allowing earlier commencement of this aspect of preliminary scrutiny.

Schedule 3: Where an elector has been found on a certified list outside the division where they are voting (for example because they can be searched on the state or national roll on an ECL) they are recorded as having a vote issued but are not officially marked off on the certified list, until the declaration vote is returned to the home division and subjected to preliminary scrutiny. The mark-off could occur at the time of issuing the vote and the receiving division would not need to conduct this aspect of the preliminary scrutiny. This would reduce the time needed for preliminary scrutiny of some declaration votes, once received in the home division, meaning that they could be counted earlier.

19. Nominations by email

The AEC recommends that Part XIV of the Commonwealth Electoral Act (1918) and/or Schedule 1 of the Electronic Transactions Regulations 2000 be amended to enable electronic lodgement of nomination forms, where these forms are currently are able to be lodged by facsimile.

Schedule 1: Part XIV of the Act should be amended to provide that forms may be lodged via facsimile and email.

Facsimile is no longer a common means of transmitting written copies of forms to the AEC. Enabling nomination forms to be lodged by scanning and emailing to the relevant AEO or DRO, would allow use of current technology. Facsimile is no longer a common means of transmitting written copies of forms to the AEC.
Enabling nomination forms to be lodged by scanning and emailing to the relevant AEO or DRO, would allow use of current technology.

20. **Pencils at polling places**

The AEC recommends that section 206 of the *Commonwealth Electoral Act (1918)* be amended to remove the prescription for pencils and allow for pens or pencils to be provided in polling booths.

*Section 206*: Pens may assist with processes to electronically capture marks from ballot papers, as per the new Senate scanning process. The AEC should have the flexibility to provide pens or pencils as the means to vote.

21. **Non-voter notices**

The AEC recommends that references to the Divisional Returning Officer in section 245 of the *Commonwealth Electoral Act (1918)* be amended to refer to a delegate of the Electoral Commissioner.

*Section 245*: The current provisions suggest that non-voter letters are dispatched by the DRO.

The Act does not reflect the existing centralised approach to dispatch of notices. Further, the provisions assume the existence of an individual DRO for each division at all times, which does not readily reflect the AEC’s staffing arrangements outside of an election period (particularly in larger work units involving co-located divisions where a DRO is not appointed for all divisions all of the time). It is recommended ‘Electoral Commissioner’ be substituted for the DRO. Relevant functions may then be delegated to AEC officers.

22. **Preservation of electoral documents**

The AEC recommends that section 393A of the *Commonwealth Electoral Act (1918)* be amended as follows regarding the preservation of electoral documents.

*Section 393A*: Amend the Act to say the AEC or Electoral Commissioner should store electoral documents, not the DRO/AEO. The AEC centrally stores many documents such as certified lists, ballot papers and postal vote applications.

Currently, only DROs can access parcels, based on directions issued by the Electoral Commissioner. Larger work units house more than one division and DROs are not appointed for all divisions all of the time. This prescription is an issue for things like the informal ballot paper study, or any kind of stocktake.
The Electoral Commissioner or their delegate, in compliance with the instruction of
the Electoral Commissioner, would replace the reference to DRO/AEO
responsibilities to safely store, and access stored, ballot papers.

Section 393A(9): This sub-section should be amended to refer to electoral
documents rather than simply document. This will ensure that the defined term
‘electoral document’ is consistently referenced throughout the section.

Section 393A: Allow for the preservation of documents for use in activities
approved by the Electoral Commissioner, such as testing processes and as training
materials. It is recommended that provisions be inserted to provide for use of
marked ballot papers as training material, after destruction is allowed or after
action by the Court of Disputed Returns is finalised.

23. Compliance with forms

The AEC recommends that the Referendum (Machinery Provisions) Act (1984) be
amended to insert similar arrangements provided for in section 392 of the
Commonwealth Electoral Act (1918) that allow for substantial compliance with forms.

Referendum Act: Necessary minor alterations to the forms such as ballot papers are
allowed in the Act but not in the Referendum Act.

24. Determining formality in Senate scrutiny

The AEC recommends that subsection 268(2) of the Commonwealth Electoral Act
(1918) be amended to include reference to the Australian Electoral Officer to
facilitate the determination of formality of Senate ballot papers.

Subsections 268(2) and 273(4): Changes to the Senate scrutiny now affect how
formality decisions are made. The DRO no longer plays a role in the conduct of a
Senate scrutiny under section 273 and accordingly the DRO is not present to
exercise the power provided under subsection 268(2) to determine and record a
decision in relation to ballot paper authenticity. This was a consequential
amendment missed in the Senate reform legislation in 2016.

It is recommended that the relevant subsection be amended so that Senate ballot
papers may be endorsed by the relevant Australian Electoral Officer in each state
or territory.

25. Electronically assisted counting
The AEC recommends that subsection 268(2) and/or section 273A of the Commonwealth Electoral Act (1918) be amended to account for an electronically assisted counting process.

Subsection 268(2) and/or section 273A: The current Senate ballot paper scanning protocol only scans the front of the ballot paper and as a result the written endorsement under subsection 268(2) that is placed on the back of the ballot paper is not recorded.

It is recommended that the requirement to endorse the back of the ballot paper under subsection 268(2) be able to be satisfied through the creation of a computer record rather than through physically endorsing the back of the ballot paper. For example, the image of the Senate ballot paper has that information included in the electronic file.

26. Registration of political parties

The AEC recommends that paragraph 132(7)(a) of the Commonwealth Electoral Act (1918) be amended from:

The Electoral Commission shall not register a political party unless:

a it has published a notice of the application for registration in accordance with this section to:

The Electoral Commission shall not register a political party unless:

b The Electoral Commissioner has published a notice of the application for registration in accordance with this section

Paragraph 132(7)(a): The Electoral Commission has the power to register or deregister a party, the Electoral Commissioner has the legislative responsibility to publish notices.

27. Party logo application

The AEC recommends that paragraph 134(2)(d) of the Commonwealth Electoral Act (1918) be amended to include the logo elements from paragraphs 134(1)(ea) and (1)(eb). Add “…for the purposes of paragraphs (1)(c), (d), (e), (ea) and (eb) – must be accompanied by a fee of $500.”
Paragraph 134(2)(d): This amendment would ensure that the $500 fee applies to an application for a party logo and would align with the existing requirement for other changes to the Register, as was intended when the provision was introduced.

28. **Deregistration of political parties - fraud**

The AEC recommends that paragraph 137(1)(c) of the *Commonwealth Electoral Act (1918)* be amended from:

> “the registration of a political party so registered was obtained by fraud or misrepresentation;”

...to...

> “the registration of a political party so registered or reviewed was obtained by fraud or misrepresentation;”

*Paragraph 137(1)(c):* Deregistration for fraud or misrepresentation in obtaining registration should be extended to cover information provided as part of a review of registration under section 138A.

29. **Party registration – review of decisions**

The AEC recommends that subsection 141(2) of the *Commonwealth Electoral Act (1918)* be amended from:

> “...within the period of 28 days after the day on which the decision first comes to the notice of the person...”

...to...

> “...within 28 days after the day on which the AEC notifies the decision...”

*Subsection 141(2):* The revised words would provide a tangible, measurable period during which an application for review of a decision can be lodged.

30. **Requisites for appointment of candidate agent**

The AEC recommends that subsection 290(3) of the *Commonwealth Electoral Act (1918)* be amended from:

> “if notice of the appointment was given to the Commission after the close of nominations for election”

...to...
“the appointment was given to the Commission after the due date of the lodgement of the candidate return.”

Subsection 290(3): There is no logical reason to link the appointment of a candidate agent to the close of nominations. A more appropriate approach would be to allow candidates to appoint an agent any time up to when disclosure returns are due.

31. Election funding not made in certain circumstances

The AEC recommends that section 297 of the Commonwealth Electoral Act (1918) be amended to provide that election funding will not be payable where a registered political party has elected not to receive election funding.

Section 297: Recognise where a party has indicated it does not want to receive election funding so that election funding will not be paid to them.

32. Disclosure of donations - loan records

The AEC recommends that paragraph 306A(3)(a) of the Commonwealth Electoral Act (1918) be amended as follows:

(3) The receiver of the loan must keep a record of the following:

(a) the terms and conditions of the loan; and

(b) if the loan was received from a registered industrial organisation other than a financial institution:

(i) the name of the organisation; and

(ii) the names and addresses of the members of the executive committee (however described) of the organisation; or

(c) if the loan was received from an unincorporated association:

(i) the name of the organisation or association; and

(ii) the names and addresses of the members of the executive committee (however described) of the association or organisation; or

(d) if the loan was paid out of a trust fund or out of the funds of a foundation:

(i) the names and addresses of the trustees of the fund or of the foundation; and
(ii) the title or other description of the trust fund, or the name of the foundation, as the case requires; or

(e) in any other case – the name and address of the person or organisation.

*Paragraph 306A(3)(a):* At the end of this paragraph an “and” should be added to make it clear that these details must always be disclosed along with one of either (b), (c), (d) or (e). The word “or” perhaps also needs to be included after paragraphs (b) and (c).

33. **Annual disclosure records**

The AEC recommends that section 317 of the *Commonwealth Electoral Act (1918)* be amended to require records to be maintained pertaining to annual disclosure returns.

*Section 317:* The requirement to maintain records for three years has never been updated to cover records required in support of annual disclosures. It still only applies to election disclosures. The three year period for annual disclosures could commence from 1 July in the financial year following the disclosure year.

34. **Require return for gifts to candidates in by-elections**

The AEC recommends that section 305A of the *Commonwealth Electoral Act (1918)* be amended to read “in relation to an election or by-election”.

*Section 305A:* Due to the way ‘election’ and ‘by-election’ are defined in subsection 303(1) of the Electoral Act, the requirement to submit a return under section 305A (gifts to candidates) does not apply to a by-election. This amendment would ensure that the requirements would apply to by-elections.