

AUSTRALIAN ELECTORAL COMMISSION

**SUBMISSION TO THE INQUIRY BY THE JOINT
STANDING COMMITTEE ON ELECTORAL MATTERS
INTO THE 2007 FEDERAL ELECTION**

30 April 2009

1. INTRODUCTION

1.1 On 27 February 2008, the Special Minister of State requested the Joint Standing Committee on Electoral Matters (JSCEM) to inquire into and report on the conduct of the 2007 Election and matters related thereto. On 20 March 2008, the Chair of the JSCEM wrote to the Electoral Commissioner inviting the Australian Electoral Commission (AEC) to make a submission to the inquiry. This submission is supplementary to those already provided in response to that invitation, as well as to evidence provided at public hearings, and discussions with the Chair of the JSCEM. It deals with the following specific matters:

- provision of electronic certified lists in polling places and pre-poll voting centres (PPVCs);
- optional provision of roll and certified list prints in electronic form to Senators and Members of the House of Representatives;
- enhanced flexibility in the allocation of enrolment processing tasks;
- provision for online applications for postal votes;
- provisional enrolment for 16 year olds;
- clarification of permitted official marks, and removal of obstacles to “on-demand” printing of ballot papers; and
- mobile polling flexibility.

2. PROVISION OF ELECTRONIC CERTIFIED LISTS IN POLLING PLACES AND PRE-POLL VOTING CENTRES (PPVCs)

2.1 The Chair of the JSCEM has specifically raised this matter with the AEC.

2.2 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 last year, no hardcopy certified lists were used at all; total reliance was placed on personal data assistant (PDA) 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. The ACT experience proved to be an entirely positive one: 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.

2.3 The use of electronic certified lists has the potential to provide for benefits in polling locations. For example, at the recent Queensland State election, the lists used in the Brisbane Town Hall booth were totally electronic, providing a very convenient facility for the identification of voters' names on the list, and the recording of the

names of those who had voted. Since 2001, Western Australia has used a similar system for issuing pre-poll votes, in concert with legislation that allows pre-poll votes to be cast as ordinary votes.

2.4 Such electronic certified lists have a number of advantages over the paper equivalent.

- They are likely to have 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.
- They are easy to transport.
- They reduce the need for a separate scanning process post-election, thereby enabling quicker identification of apparent non-voting and multiple voting.
- They provide 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.
- The 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 queueing times.
- The use of electronic certified lists should lead to a reduction in polling official error in marking incorrect names.

2.5 The AEC recommended in its first submission (Submission number 169, recommendation 8) that the *Commonwealth Electoral Act 1918* (CEA) be amended to allow for home division pre-poll votes to be issued as ordinary votes (for which exercise a certified list would be required). Whilst the recommendation could be implemented using a hardcopy certified list, the utilisation of electronic markoff similar to other jurisdictions would currently not be possible, as the CEA does not cater for the use of electronic certified lists.

2.6 While there may have been a time at which the use of technology of this type would have been seen as a “brave” initiative involving significant risks, that is no longer the case: the technology is well-proven, and its use is now a standard element of many major operations which have to be managed on a geographically decentralised basis.

2.7 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. A shift to the use of electronic certified lists would, of course, need to be accompanied by appropriate measures to ensure the security of the equipment and data. At the 2008 ACT election, measures used included:

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

2.8 **Recommendation 1:** The AEC **recommends** that appropriate amendments be made to the CEA and the *Referendum (Machinery Provisions) Act 1984* (RMPA) to enable the use of such technology.

3. **OPTIONAL PROVISION OF ROLL AND CERTIFIED LIST PRINTS IN ELECTRONIC FORM TO SENATORS AND MEMBERS OF THE HOUSE OF REPRESENTATIVES**

3.1 A table in section 90B of the CEA sets out the persons and organisations to whom the AEC must give information in relation to the rolls and certified lists of voters, and specifies the information to be given and the circumstances in which it is to be given. Items 7 to 10, 11 to 14, and 15 in the table specify information to be given to Senators and Members of the House of Representatives; all of those items refer to the supply of “a copy” or “copies” of either certified lists or rolls, and thereby require the supply of hardcopy documents. Such a requirement does not reflect the increasing use of technology to store information in large quantities.

3.2 **Recommendation 2:** The AEC accordingly **recommends** that:

- (i) where an item in the table in section 90B of the CEA entitles a Senator or Member to receive one copy of a roll or certified list, that item be amended to permit the Senator or Member to opt for the relevant copy to be supplied in electronic rather than hardcopy form; and
- ((ii) where an item in the table in section 90B of the CEA entitles a Senator or Member to receive three copies of a roll or certified list, that item be amended to permit the Senator or Member to opt to receive one of the copies in electronic rather than hardcopy form, and to receive either zero, one or two hardcopies.

4. **ENHANCED FLEXIBILITY IN THE ALLOCATION OF ENROLMENT PROCESSING TASKS**

4.1 There would be benefit in providing the AEC with greater flexibility than currently exists under the CEA to conduct its enrolment-related work, in a non-election period, in the same manner as during election times. Once an election has been publicly announced, the AEC is able to manage its workload by having

enrolment activities conducted outside the division in which the person is enrolling, as long as it is processed by a division that is within the same State or Territory. These provisions exist to allow the AEC to process and handle its workload in a manner that seeks to ensure that enrolments are processed in a timely and accurate manner at a critical time in the election cycle.

4.2 The benefits of a wider application of such arrangements are numerous. 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).

4.3 In all instances of such enrolment activity, the AEC 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. The AEC's existing quality assurance monitoring and validation processes would also act as further safeguards against any decline in accuracy and integrity in the roll.

4.4 **Recommendation 3:** The AEC **recommends** that the CEA be amended to enable the AEC to conduct its enrolment-related work, in a non-election period, in the same manner as during election times.

5. PROVISION FOR ONLINE APPLICATIONS FOR POSTAL VOTES

5.1 The AEC sees considerable benefit in giving electors the option of applying for a postal vote online and removing the witness requirement for written postal vote applications. To implement these proposals amendments to the CEA would be necessary to remove the elector signature and witnessing requirements for online postal vote applications (PVAs) and to remove the witness requirement for written PVAs.

5.2 Online PVAs were successfully introduced for the ACT Legislative Assembly election held in October 2008.

5.3 At the 2007 election, the AEC issued 833,178 postal votes which included 171,275 postal votes issued to registered General Postal Voters who did not need to complete a PVA. This means that over 660,000 electors were required to either post (or manually return) their PVAs to the AEC before they could be sent ballot papers. Reliance on postal services, particularly in remote areas, can result in significant delays in the time taken to issue postal votes.

5.4 Online PVAs would eliminate current delays in applications reaching the AEC by post and maximise the time available for electors to receive, complete and return their postal votes.

5.5 An additional benefit of online applications is that there would be a reduction in the number of defective PVAs resulting, for example, from PVAs not being signed, witnessed or dated, or from differing applicant and witness signature dates. There were approximately 50,000 defective PVAs at the 2007 election; in those cases, the elector was sent a “defective application” notice, and was required to complete and return a fresh PVA – a process that could take up to a week or more.

5.6 To ensure that integrity in the postal voting process is maintained, in the absence of an elector and witness signature on the online PVA, there could be a requirement for electors to provide a word in response to an appropriate prompting question (eg “Mother’s maiden name?”) on their PVAs, which they would then need to provide on their postal vote certificate (PVC). (Similar processes have now been extensively adopted by banks and other online transaction providers.) This would be matched in the same way as the current signature check process. Where the elector did not include their “secret word” on the PVC, or had forgotten it, the AEC could undertake a signature check between the PVC and the elector’s most recent enrolment form image to verify the identity of the elector.

5.7 The AEC also suggests removal of the witness requirement for written PVAs as, in the current environment, it does not appear to add integrity to the process. Removal of this requirement would ensure a level of consistency if online PVAs proceed. As the PVC will still require a witness signature, the AEC does not consider there will be a reduction in postal voting integrity. Removal of the witness requirement for written PVAs will ensure that people who may find it difficult to locate a witness, such as those who are overseas or living in remote areas, are able to lodge their PVA in a timely manner. A witness is no longer required for written PVAs in the ACT jurisdiction and removal of the PVA witness requirement did not have any adverse implications at the last ACT Legislative Assembly election.

5.8 As indicated above, the witness requirement is the cause of a significant number of defective PVAs applications (up to 70%).

5.9 Removal of the witness requirement would also result in a reduction in the size of the approved PVA as witness instructions currently take up an entire panel of the approved PVA.

5.10 **Recommendation 4:** The AEC **recommends** that the CEA and the RMPA be amended to allow postal vote applications to be made electronically with the need for an elector signature or witness replaced with a requirement to provide a secret word (or meet a similar identity verification requirement) which would then need to be also supplied on the PVC; and that the witness requirement also be removed for written PVAs.

6. PROVISIONAL ENROLMENT FOR 16 YEAR OLDS

6.1 Section 100 of the CEA enables a 17 year old to be enrolled; such an elector cannot however vote at an election unless he or she has turned 18 on or before polling day. This process was originally referred to the CEA as “provisional enrolment”, but now goes by the name of “age 17 enrolment”. It serves two distinct purposes.

- It provides a mechanism for enrolment (including in the period between the announcement of an election and the close of rolls) and voting by people who turn 18 between the close of the rolls and polling day, and who would otherwise be unable to vote.
- It gives young people the opportunity to interact with the electoral process, and have their details captured, at an earlier age.

6.2 The AEC already contacts future electors in schools, and seeks to enrol 17 year olds through various activities. In addition to activities that directly target students during school hours, the AEC uses school data in conjunction with other sources to feed into mail outs such as Birthday Cards and the monthly mail review. These mail outs are an important part of the overall Continuous Roll Update (CRU) program.

6.3 The following table gives an estimate of the proportion of the population aged 14-18 in full time study across Australia, excluding tertiary studies.

ABS estimates of % of population in Full Time study (2008)

Age	14	15	16	17	18
Est %	98.6	94.7	82.9	62.7	14.5

Taken from ABS publication Schools, Australia (cat. no. 4221.0), does not include tertiary education.

6.4 These figures highlight the potential which exists to get more young people “into the system” by lowering the age of eligibility for provisional enrolment: there are simply more 16 year olds in school than 17 year olds. Once the AEC has enrolled an elector it is easier to match them against other agencies’ records, and to contact them seeking an update of their enrolment as required.

6.5 The current processes for enrolling 17 year olds could easily be extended to include 16 year olds. Early involvement in the political process in Australia, facilitated by such provisional enrolment for 16 year olds, may encourage people to enrol and to keep their enrolment up to date.

6.6 The concept of provisional enrolment needs to be clearly distinguished from that of lowering the voting age. There is no necessary link between the two: decisions on the right to vote reflect an important societal decision about who has the right to determine a country’s trajectory; decisions on who has the right to enrol are driven by the need to have as complete and accurate a roll as possible. In countries where the electoral roll is based on a population register, people are, in one sense, “enrolled” at birth.

6.7 Any move to change the provisional enrolment age, or the voting age, would ideally be done in conjunction with the State and Territory governments to ensure harmonisation of electoral laws.

6.8 **Recommendation 5:** The AEC **recommends** that the CEA be amended to change the minimum age for provisional enrolment from 17 to 16.

7. CLARIFICATION OF PERMITTED OFFICIAL MARKS, AND REMOVAL OF OBSTACLES TO “ON-DEMAND” PRINTING OF BALLOT PAPERS

7.1 Under section 268 of the CEA, a ballot paper will be informal if:

“it is not authenticated by the initials of the presiding officer or by the presence of the official mark”;

with the proviso that it can still be accepted as formal if:

“the Divisional Returning Officer responsible for considering the question of the formality of the ballot-paper is satisfied that it is an authentic ballot-paper on which a voter has marked a vote.”

Section 209A of the CEA provides that:

“The official mark for the authentication of ballot-papers is either:

- (a) a water mark consisting of a representation of a shield having within it the letters "CA" intertwined; or
- (b) an overprinting of the paper in a particular manner, and using words, a design or a logo, approved by the Electoral Commission.”.

7.2 These provisions are of particular significance because it is not the case that all ballot papers are printed on watermarked paper. For example, in the early stages of postal voting at Australian embassies overseas, ballot papers are locally printed from “PDF” files supplied by the AEC following the close of nominations. Such “demand” printing is convenient and flexible, especially in venues where ballot papers may have to be issued to people from a range of different divisions; the Electoral Commission of Queensland recently used similar technology at its main pre-poll voting centre in Brisbane.

7.3 Legal advice sought by the AEC from the Australian Government Solicitor in the aftermath of the McEwen petition has, however, put a narrow construction on the meaning of paragraph 209A(b) of the CEA, as follows.

“What does 'overprinting' mean?”

- 13. The word 'overprinting' is not defined in the CEA. The words 'overprint' and 'overprinting' have been used in some cases to mean either (a) an excess number of prints or (b) to print over the top of pre-existing printed matter. ... In our view, the latter use of the word (i.e. to print over the top of other printed

matter) is consistent with the way the term has been used in judgments of various courts ... and conforms to the ordinary natural meaning of 'overprint' as evidenced in the *Macquarie Dictionary*, ... which relevantly states:

overprint

verb (t) **1.** to print additional material or another colour on a forme or sheet previously printed. noun **2.** a quantity of printing in excess of that desired; an overrun. **3.** Philately a. any word, inscription or device printed across the face of a stamp altering its use or its locality, or overprinted for a special purpose. b. a stamp so marked.

14. As the above definition makes plain, an overprint requires printing 'additional material or colour on a sheet previously printed' (emphasis added). On this view, overprinting a ballot paper will require the words, design or logo to be added to the ballot paper as a subsequent stage in the production of a ballot paper. For example, if a white piece of paper is washed through with green colour (to satisfy s 209(3)) and then is printed with the approved words, design or logo, it will be 'overprinted' for the purposes of s 209A(b). This view is consistent with the Explanatory Memorandum to the Election and Referendum Amendment Bill 1997 (which was enacted as Act No. 94 of 1998) which envisaged the 'washing' of green into white paper and the subsequent printing of text on that paper. ... We would add that it is possible, in our view, for the white piece of paper to be washed green and the words to be printed over the top of the green as one process that involves two stages in the production of a ballot paper. It necessarily follows that a stock of white paper that has been printed green and subsequently used as the paper onto which the text of a ballot paper has been printed will also have been 'overprinted' for the purposes of s 209A(b).
15. However, we doubt that paper that has been dyed green in the production process has been printed. Consequently, printing text onto dyed green paper will not, of itself, amount to an 'overprinting'. In our view, had Parliament intended s 209A(b) to require only one stage of printing, the provision would read: '(b) a *printing* of the paper in a particular manner...', rather than '(b) an *overprinting*...'
16. We also think our conclusion is consistent with the terms of s 209A(b) in so far as the provision distinguishes between 'overprinting...in a particular manner' and the use of 'words, a design or a logo...'. That is, the 'manner' of overprinting is conceptually distinct from the use of 'words, a design or a logo'.
17. Of course, the matter could be put beyond doubt by amending s 209A(b)."

7.4 In the AEC's view, it was clearly not intended, at the time that paragraph 209A(b) was inserted in the Act, that there would be a critical distinction between ballot papers which had acquired their colour through printing with a coloured wash, and ballot papers which had acquired their colour through having been printed on dyed stock. Furthermore, the advice has highlighted the need to have a provision sufficiently flexible to enable the use of evolving technology for security printing (including "on demand" printing) – which these days can include methods which do not fall within the definition of "overprinting", such as the use of stock with markings visible under ultraviolet light, or even the inclusion of holograms.

7.5 **Recommendation 6:** The AEC accordingly **recommends** that paragraph 209A(b) of the CEA be amended so that it refers simply to “a feature approved by the Electoral Commission”. The same amendment should be made to paragraph 25A(b) of the RMPA.

8. MOBILE POLLING FLEXIBILITY

8.1 Sections 224 to 227 of the CEA allow the AEC to provide mobile polling services in four specific environments:

- hospitals that are polling places;
- “special hospitals”;
- prisons; and
- declared remote divisions.

8.2 These provisions do not give the AEC any flexibility to provide mobile polling outside these locations.

8.3 Mobile polling was discussed in the AEC’s First Submission (number 169) to the present JSCEM inquiry. Therein the AEC addressed in particular its inability to undertake mobile polling in the town camps around Alice Springs and Darwin, and recommended that the CEA be amended accordingly (Recommendation 11, page 54).

8.4 However, this would still retain a very specific focus on where mobile polling could be undertaken, without the AEC having a flexibility to undertake it at other locations (for example, shelters for the homeless), or where it would appear to be the best means for providing a service to a group of electors.

8.5 Prior to the last election the CEA was amended to allow for commencement of pre-polling in exceptional circumstances by allowing the gazettal of a location as soon as possible after it had commenced operating. However, there may well be circumstances where a mobile team would be the best response, but the current legislation provides no flexibility apart from the specific locations mentioned above.

8.6 This flexibility could be achieved by refining section 227 of the CEA to remove the reference to “remote” divisions. Further, in lieu of gazettal, greater accessibility to information on planned mobile polling could be achieved by requiring the places to be visited to be detailed on the AEC website, rather than gazetted. Existing local arrangements for advising political parties and candidates of the locations of mobile polling would continue to apply.

8.7 **Recommendation 7:** The AEC **recommends** that section 227 of the CEA be amended so that it applies to all divisions, not just “remote” divisions, and so that the places to be serviced by mobile polling under the section are required to be detailed on the AEC website, rather than gazetted.

Annex 2 - Optional preferential voting and instructions for formality

State	Legislature	Instructions on the ballot paper	Requirement for Formal Vote
NSW	Legislative Assembly	<p>Place the number "1" in the square opposite the name of the candidate for whom you desire to give your first preference vote.</p> <p>You may, if you wish, vote for additional candidates by placing consecutive numbers beginning with the number "2" in the squares opposite the names of those additional candidates in the order of your preferences for them.</p>	<p>A ballot paper shall be informal if:</p> <ul style="list-style-type: none"> • it is not duly initialled by an election official, pre-poll voting officer or postal voting officer, as the case may require, or • the voter has failed to record his or her vote in the manner directed on the ballot paper, or • it has upon it any mark or writing not authorised by the Electoral Act to be put upon it, which, in the opinion of the returning officer, will enable any person to identify the voter.
QLD	Legislative Assembly	<p>Place the number one ("1") in the square opposite the candidate of your choice.</p> <p>You may if you wish indicate your preference for additional candidates by numbering the other squares in your preferred order.</p>	<p>Formal</p> <ul style="list-style-type: none"> • The voter's intention must be clear. • It must have a "1" or a "✓" or a "X" against the name of one candidate. <p>Informal</p> <ul style="list-style-type: none"> • If it has no marking on it. • If it has a combination of two or more of "1" or "✓" or a "X". • If it has a mark or writing which identifies the voter. • If it is discarded.