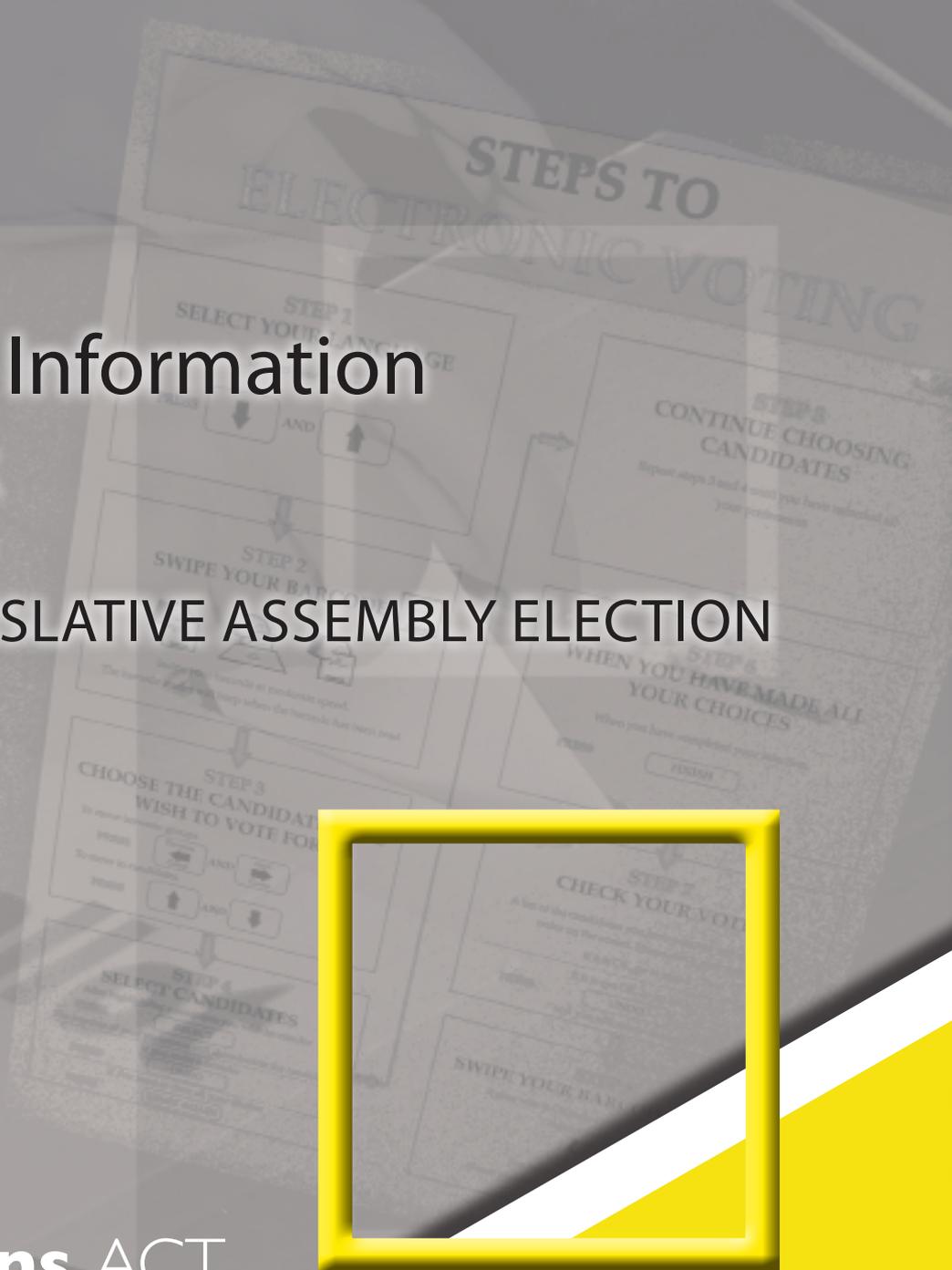


Candidate Information Handbook

2008 ACT LEGISLATIVE ASSEMBLY ELECTION



Elections ACT



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Introduction

Disclaimer

This information booklet is intended to summarise the electoral law relating to candidates for the ACT Legislative Assembly, but it is not a substitute for the law.

Candidates and other interested persons are encouraged to consult the *Electoral Act 1992*.

This version of the *Candidates information handbook* incorporates the provisions of the Electoral Act as at 21 May 2008.

On 21 May 2008, amendments to the Electoral Act took effect. These amendments included the removal of the ability of candidates to form non-party groups, simplification of the requirements for authorising electoral material and changes to the financial disclosure provisions. Other amendments included those to postal voting and enrolment. The Commission's legislation page on its website at www.elections.act.gov.au/elections/legislation.html describes the recent changes.

Election Dates

Last day for applying to register a political party.....	30 June 2008
Close of register of political parties	11 September 2008
Pre-election period commences/nominations open	12 September 2008
Rolls close.....	19 September 2008 (8 pm)
Nominations close	24 September 2008 (12 noon)
Nominations declared/ballot paper order determined ...	25 September 2008 (12 noon)
Pre-poll voting commences.....	29 September 2008
Pre-poll voting concludes.....	17 October 2008 (8 pm)
Polling day	18 October 2008 (8 am – 6 pm)
Last day for receipt of postal votes	24 October 2008
Distribution of preferences completed not earlier than .	25 October 2008

Qualifications

Qualifications to be a Member of the ACT Legislative Assembly

To be eligible to be a Member of the Legislative Assembly (MLA), subject to the following exceptions, a person must be:

- an Australian citizen;
- at least 18 years of age; and
- an elector or entitled to be an elector.

To be entitled to be an elector on the ACT electoral roll, a person must also have a current place of living in the ACT and have had a place of living in the ACT for at least the preceding month. (A candidate is not required to live in the electorate for which he or she is standing.)

A person is not entitled to be an elector if:

- because of unsound mind, he or she is incapable of understanding the nature and significance of enrolment and voting;
- he or she has been convicted of treason and has not been pardoned; or
- under the *Migration Act 1958*, he or she is the holder of a temporary visa or is an unlawful non-citizen.

A person is not eligible to be an MLA if:

- the person is a member of the Commonwealth Parliament or the legislature of a State or another Territory;
- the person:
 - holds an office or appointment (other than the office of Speaker, Deputy Speaker, Chief Minister, Deputy Chief Minister, Minister or MLA) under a Commonwealth, State or Territory law; or
 - is employed by the Territory, the Commonwealth, a State or another Territory, or by a Territory authority or a body (whether corporate or not) established by a law of the Commonwealth, a State or another Territory;

and he or she is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in respect of the office, appointment or employment;

- the person is under a sentence of imprisonment for one year or longer for a conviction of an indictable offence; or
- the person has, within the preceding two years:
 - been convicted of an offence related to bribery, violence or intimidation under the *Electoral Act 1992*, or
 - been convicted of an offence related to interfering with political liberty under the Commonwealth *Crimes Act 1914* or the *Criminal Code*, or

- been found by the Court of Disputed Elections to have contravened one of the above laws.

Qualifications to be nominated for election as an MLA

A person is eligible to be nominated for election as an MLA if, at the hour of nomination (12 noon on 25 September 2008):

- the person is eligible to be an MLA; or
- the person would be eligible to be an MLA but for the fact that the person holds an office or appointment under a Commonwealth, State or Territory law or is employed by the Territory, the Commonwealth, a State or another Territory.

Do public servants or public office holders have to resign before contesting an election?

A person who holds public office or employment is eligible to be nominated under the Electoral Act but is not eligible to be an MLA. Therefore, a candidate who holds public office or employment should resign from that office or employment before the official declaration of the election result after polling day if, following the counting of votes, that candidate is to be declared elected.

Any public office holders or public servants considering contesting an election are advised to seek their own legal advice on their particular circumstances. In addition, advice should be sought from the relevant employer or service as to whether such a potential candidate is under any obligation to take leave or to resign his or her office or employment under the relevant conditions of service.

The Code of Conduct for Members

It is suggested that candidates familiarise themselves with the Code of Conduct for Members, which is a resolution of continuing effect agreed to by the Legislative Assembly. The resolution is contained at the back of the standing orders, which can be accessed by visiting the Assembly's website at www.parliament.act.gov.au/downloads/standing-orders/Standing_Orders.pdf

Nominations

When can candidates be nominated?

Nominations open on 12 September 2008 and close at 12 noon on 24 September 2008.

Candidates are advised to submit their nomination forms well before the close of nominations to allow time for any errors to be corrected before nominations are closed.

Who can nominate candidates?

Candidates can be nominated in two ways:

- party candidates** can be nominated by the registered officer of a registered political party (or by a duly appointed deputy registered officer); and
- non-party candidates** can be nominated by twenty electors who are entitled to vote for the electorate for which the candidate is being nominated.

How is a candidate nominated?

A nomination should be made on the approved form provided by the ACT Electoral Commission.

Each candidate must sign a statement on the nomination form to the effect that the candidate consents to the nomination and declares that he or she is eligible to be nominated.

Deposit

A deposit of \$250 must accompany each candidate's nomination. The deposit must be in cash or banker's cheque. A personal cheque is not acceptable.

The deposit is returned to a candidate if:

- the candidate is elected; or
- at the time at which the candidate is excluded during the counting of preferences, the candidate's total votes equal or exceed 20% of the quota for the election; or
- the candidate is neither elected nor excluded during the counting of preferences, and the candidate's total votes equal or exceed 20% of the quota for the election at any stage of the count.

Can a person be nominated more than once?

No. If, at the hour of nomination (12 noon on 25 September 2008) a person is nominated more than once to be a candidate in a particular electorate, or a person is nominated to be a candidate in more than one electorate, each such nomination is invalid and the person will not be listed as a candidate.

Can a nomination be rejected?

Yes. The Electoral Commissioner will reject a nomination if a nomination form has not been correctly completed in accordance with the Electoral Act.

To be correctly completed, a nomination form must be signed by the candidate(s) and:

- in the case of a party candidate, the form must be signed by the registered officer or a deputy registered officer of the party; or
- in the case of a non-party candidate, the form must be signed by 20 electors who are on the electoral roll and entitled to vote for the electorate for which the candidate is standing.

A nomination will also be rejected if it is not accompanied by the required deposit in cash or banker's cheque.

The Electoral Commissioner must also reject a nomination where, in the Commissioner's opinion, the name under which the candidate is nominated is obscene, is frivolous or has been assumed for a political purpose.

If a nomination is rejected, the Commissioner will give the person whose nomination is rejected a written notice setting out the reasons for the rejection.

If nominations have not yet closed, a candidate whose nomination has been rejected may, in some circumstances, be renominated. If this later nomination is in order, the candidate's nomination will be accepted. For this reason, **it is advisable to submit all nominations before the last day for nominations to allow time for defective nominations to be corrected.**

Can a nomination be withdrawn?

Yes. A nomination can be withdrawn up until the time nominations close (12 noon on 24 September 2008). After that time a nomination cannot be withdrawn.

Any person nominated to be a candidate may withdraw his or her consent to the nomination by giving the Electoral Commissioner a written notice of withdrawal.

The registered officer of a party may also cancel a nomination made by the officer by giving the Electoral Commissioner a written notice of cancellation. An official notice for this purpose can be obtained from the Electoral Commission.

If a nomination is withdrawn or cancelled, the deposit will be refunded.

Uncontested elections

If the number of candidates nominated in an electorate is no greater than the number of candidates to be elected in the electorate, the Electoral Commissioner will declare each of those candidates duly elected, and an election will not be held in that electorate.

Death of a candidate

Where a person nominated as a candidate dies before the hour of nomination (12 noon on 25 September 2008), that person will be taken not to have been nominated and the deposit lodged will be returned to the deceased's personal representative.

Where a person nominated as a candidate dies after the hour of nomination (12 noon on 25 September 2008) but before polling day, that person will be treated as a candidate and will appear on the relevant ballot papers. Any votes cast for that candidate will be counted to the next available preference (if any) indicated on each such ballot paper. The deposit lodged will be returned to the deceased's personal representative.

Ballot papers

Party candidates

Where two or more candidates are nominated in the same electorate by the registered officer of a registered party, those candidates are grouped together on the ballot paper. Grouped party candidates will be identified on the ballot paper by the registered name or abbreviation of the party.

Where only one party candidate is nominated for a particular party in an electorate, that candidate will be included in an “ungrouped” column. Ungrouped party candidates will be identified on the ballot paper by the registered name or abbreviation of the party.

Non-party candidates

Non-party candidates are listed in an “ungrouped” column on the ballot paper.

A non-party candidate can choose to have the word “Independent” printed under his or her name on the ballot paper.

In what order will groups and candidate names be printed on the ballot papers?

Grouped candidates will be identified on the ballot paper by a letter—the left-hand group labelled “A”, the next “B” and so on.

All ungrouped party or non-party candidates will be included in one or more “ungrouped” columns on the right-hand side of the ballot paper.

The Electoral Commissioner will conduct a random draw to determine the position of each group on each ballot paper. Each particular group will appear in the same column position on every ballot paper for their electorate.

Candidates’ names will be printed in each column using “Robson rotation”. Candidates’ names in each column are printed in different orders on consecutive ballot papers so that no candidate in a column has the advantage of appearing in the same position on every ballot paper.

How will candidates’ names appear on ballot papers?

A candidate can specify on the nomination form how he or she wishes his or her name to appear on the ballot paper, subject to the following restrictions.

The surname or family name of a candidate must be the same as the surname or family name under which he or she is enrolled or entitled to be enrolled.

The given name of a candidate can be the same as any given name under which he or she is enrolled or entitled to be enrolled, or a commonly accepted variation of that name (including an abbreviation or truncation of that name or an alternative form of that name), or an initial for that name. A candidate may give more than one given name, but there is no obligation to do so.

A candidate's name must be written in the alphabet used for the English language.

Electoral offences

The following electoral offences relate to the responsibilities of candidates and to election campaigning generally.

Definition of “electoral matter”

Several offences relate to the treatment of published “electoral matter”:

“Electoral matter” is defined as matter that is intended or likely to affect voting in an election. Matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- the election;
- the performance of the Government, the Opposition, a previous Government or a previous Opposition;
- the performance of an MLA or former MLA;
- the performance of a political party, a candidate or a group of candidates in the election; or
- an issue submitted to, or otherwise before, the electors in connection with an election.

However, a publication of the Assembly, including a Committee of the Assembly is not electoral matter.

Value of a penalty unit

The maximum fines that may be imposed for the offences listed in this section are given in penalty units. Under the *ACT’s Legislation Act 2001*, the value of a penalty unit is—

- \$100 if the person charged is an individual; or
- \$500 if the person charged is a corporation.

Offences related to postal voting and other forms of declaration voting

In this section, references to “declaration voting” also refer to “postal voting”.

Witnessing electoral papers (s315)

A person shall not witness a signature shown on an electoral paper unless:

- (a) the paper is signed by the signatory;
- (b) he or she has seen the signatory sign the paper;
- (c) he or she is satisfied as to:
 - (i) the identity of the signatory; and
 - (ii) the truth of any statements made in the paper by the signatory; and
- (d) he or she is able to sign his or her own name.

Penalty: 10 penalty units.

For the purposes of paragraph (c) above, a witness may satisfy himself or herself on the basis of personal knowledge of the signatory, inquiries made of the signatory or any other reasonable means.

A candidate may not be a witness for the purposes of postal voting or assisted voting.

Soliciting applications for postal declaration votes (s143)

A person commits an offence if the person applies for declaration voting papers for postal voting for an election for someone else and does not have the other person's consent to make the application.

Penalty: 30 penalty units.

A person shall not do anything for the purpose of inducing someone else to complete an application form for postal voting papers and to return the completed form to an address other than an address authorised by the Electoral Commissioner.

Penalty: 30 penalty units.

A person shall not do anything to induce someone else to complete an application form for postal voting papers that is not a form approved for the purpose by the Electoral Commissioner.

Penalty: 30 penalty units.

Transmission of applications for postal votes (s144)

A person who accepts for transmission to the Commissioner a completed application for declaration voting papers for postal voting shall transmit the application to the Commissioner as soon as practicable.

Penalty: 10 penalty units.

Interference with declaration voting (s145)

Except at the request of the elector, a person shall not, without reasonable excuse:

- (a) communicate with an elector while he or she is casting a declaration vote;
- (b) interfere with an elector's casting of a declaration vote;
- (c) do anything to find out how an elector voted by declaration vote; or
- (d) enable any other person to find out how an elector voted by declaration vote.

Penalty: 30 penalty units.

Soliciting completed postal votes (s146)

A person shall not, without reasonable excuse, do anything for the purpose of inducing an elector to give to the person completed postal voting papers.

Penalty: 30 penalty units.

Transmission of completed postal votes (s147)

A person who accepts for transmission to the Commissioner completed postal voting papers shall transmit them to the Commissioner as soon as practicable.

Penalty: 10 penalty units.

Opening envelopes containing declaration votes (s148)

Unless authorised under the Electoral Act, a person shall not, without reasonable excuse, open an envelope which appears to contain a completed declaration vote.

Penalty: 5 penalty units.

Protection of rights**Bribery (s285)**

A person shall not offer, solicit, or accept an electoral bribe.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

For the purposes of the above offence:

"bribe" does not include a declaration of public policy or a promise of public action;

"electoral bribe" means a bribe for the purpose of:

- (a) influencing the vote of an elector;
- (b) influencing the candidature of a person in an election;
- (c) otherwise influencing the course or result of an election;
- (d) inducing a person not to apply, or to withdraw an application, to be a candidate for a casual vacancy; or
- (e) inducing a person not to apply, or to withdraw an application, to dispute the validity of an election.

There are also a range of generic bribery offences contained in the ACT's *Criminal Code 2002*. For further detail, see Part 3.7 of the Criminal Code.

Influencing votes of hospital and nursing home patients (s287)

The proprietor of a hospital or nursing home, or an employee or agent of such a proprietor, shall not, without reasonable excuse, do anything for the purpose of influencing the vote of a patient or resident of the hospital or nursing home.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Violence and intimidation (s288)

A person shall not, by violence or intimidation, hinder or interfere with the free exercise of a right under the Electoral Act or the free performance of a duty under the Electoral Act.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Discrimination on grounds of making political gifts (s289)

A person shall not discriminate against another person on the ground of the making by the other person of a gift to a political party or a candidate in an election.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

For the purposes of the above offence:

"discriminate against", in relation to a person, means:

- (a) deny the person access to membership of any trade union, club or other body, whether incorporated or not;
- (b) not allow the person to work or to continue to work;
- (c) subject the person to any form of intimidation or coercion; or
- (d) subject the person to any other detriment.

Employees' right to leave of absence for voting (s290)

Upon notification from an employee before a polling day, the employer shall allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.

Penalty: 10 penalty units.

The above offence does not apply if the absence of the employee from employment could endanger any person, animal, or thing, or cause substantial loss to any person.

An employee shall not notify an employer that he or she wishes to take leave for the purposes of voting if he or she does not have a genuine intention of voting during the period of the leave to be granted for the purpose of voting.

Penalty: 5 penalty units.

Campaigning offences**For the purposes of the following campaigning offences:**

"disseminate", in relation to electoral matter (whether in printed or electronic form), means print, publish, distribute, produce or broadcast;

"news publication" means a newspaper or periodical and includes an electronic publication of a similar kind.

"reportage or commentary", in relation to a news publication, means everything in the newspaper or periodical except:

- (a) advertisements; and
- (b) letters to the editor.

Dissemination of unauthorised electoral matter (ss292-295)

A person commits an offence if the person disseminates electoral matter and the matter does not include-

- (a) the name of the person who authorised the matter or its author; and
- (b) a statement to the effect that the named person authorised, or is the author of, the matter; and
- (c) if the matter is published for a registered party, a candidate for election or a person who has publicly indicated that he or she intends to be a candidate for election – a statement to the effect that the matter is published for the party, candidate or person.

Penalty: 10 penalty units.

The requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in reportage or commentary in a particular news publication if the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in reportage or commentary in the publication.

Further, the requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in a letter to the editor in a particular news publication of a newspaper or periodical if:

- (a) the author's name and the place where the author lives are stated at the end of the letter; and
- (b) the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in letters to the editor in the publication.

For the purposes of paragraph (a) above, it is sufficient to identify where the author lives by reference to:

- (a) the suburb or town of, or nearest to, the author's residence; and
- (b) if the residence is outside the ACT - the State, other Territory or other country of that residence.

The requirement to authorise electoral matter does not apply to electoral matter on any of the following items, unless the item includes a representation of a ballot paper:

- (a) a letter from an MLA that includes the name of the MLA and an indication that he or she is an MLA;
- (b) a press release published by or for an MLA that includes the name of the MLA and an indication that he or she is an MLA;
- (c) a report under the *Annual Reports (Government Agencies) Act 2004*;
- (d) a publication of a government agency that includes-
 - (i) the name of the agency; and
 - (ii) the City of Canberra Arms; and
 - (iii) the words "Australian Capital Territory", "Australian Capital Territory Legislative Assembly", "ACT Legislative Assembly", "Australian Capital Territory Government" or "ACT Government";
- (e) a business or visiting card that promotes the candidacy of a person in an election;
- (f) a letter or card on which the name of the sender appears;
- (h) a T-shirt;
- (i) a badge or button;
- (j) a pen or pencil;
- (k) a balloon;
- (m) an item prescribed by regulation.

"Advertorials" (s296)

An electoral "advertorial" is an advertisement in a news publication that appears to be reportage or commentary and includes electoral matter.

Where an electoral advertorial is published, the proprietor of the news publication must ensure the word "advertisement" is included, in legible form, as a headline to the advertisement on each page on which the advertisement appears.

Penalty: 10 penalty units.

Misleading or deceptive electoral matter (s297)

A person shall not disseminate, or authorise to be disseminated, electoral matter that is likely to mislead or deceive an elector about the casting of a vote.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

It is a defence to a prosecution for this offence if it is established that the defendant did not know, and could not reasonably be expected to have known, that the electoral matter was likely to mislead or deceive an elector about the casting of a vote.

Inducement to illegal voting—representations of ballot papers (s298)

A person shall not disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Graffiti (s299)

A person shall not, without reasonable excuse, mark any electoral matter directly on any building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air) without the consent of:

- (a) in the case of a place—the lessee or lawful occupier of the place; or
- (b) in the case of an object—the owner or lawful possessor of the object.

Penalty: 10 penalty units.

Defamation of candidates (s300)

A person shall not make or publish, or authorise to be made or published, a false and defamatory statement about the personal character or conduct of a candidate.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

It is a defence to a prosecution for this offence if it is established that the defendant believed on reasonable grounds that the relevant statement was true.

A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate may, at the suit of the candidate, be restrained by injunction from repeating the statement or any similar false and defamatory statement.

Publication of statements about candidates (s301)

A person shall not, without the written authority of the candidate, publish, or authorise to be published, on behalf of a body (whether incorporated or unincorporated) a statement:

- (a) expressly or impliedly claiming that a candidate in an election is associated with, or supports the policy or activities of, that body; or
- (b) expressly or impliedly advocating that a candidate should be given the first preference vote in an election.

Penalty: 30 penalty units.

This offence does not apply in relation to a statement:

- (a) published on behalf of a political party; and

- (b) relating to a candidate who has been nominated by that party, or who has publicly declared his or her candidature to be on behalf of, or in the interests of, that party.

Disruption of election meetings (s302)

A person shall not, without reasonable excuse, disrupt an election meeting.

Penalty: 5 penalty units.

For the purposes of the above offence:

“election meeting” means a lawful public meeting held during a pre-election period in association with the relevant election.

The chairperson of an election meeting may request a police officer to remove from the meeting any person who, in the opinion of the chairperson, is disrupting the meeting. Upon a request from the chairperson, a police officer may take reasonable action to remove from the meeting the person disrupting the meeting. A person who has been so asked to leave a meeting shall not, without reasonable excuse, return to the meeting without the authority of the chairperson after leaving it or being removed from it.

Penalty: 10 penalty units.

Prohibition of canvassing near polling places (s303)

A person shall not, within a polling place, or within 100 metres of the building or enclosure containing a polling place:

- (a) do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- (b) do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- (c) exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

Penalty: 5 penalty units.

Where a building used as a polling place is situated on grounds within an enclosure, the Commissioner may, by notice in the *Gazette*, specify that those grounds are part of the polling place for the purposes of defining the 100 metre limit.

For the purposes of the above offence:

“polling place” means:

- (a) a place where voting is taking place before polling day;
- (b) a polling place on polling day; or
- (c) a place where mobile polling is taking place.

An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of this offence. A person shall not obstruct an officer exercising or attempting to exercise this function.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Badges and emblems (s304)

An officer or scrutineer shall not wear or display in a place where voting is taking place a badge or emblem associated with a candidate or political party.

Penalty: 10 penalty units.

How-to-vote material in polling places (s305)

A person shall not, except for the purposes of lawfully assisting another person to vote, exhibit or leave in a polling place any printed electoral matter.

Penalty: 5 penalty units.

For the purposes of the above offence:

"polling place" means:

- (a) a place where voting is taking place before polling day;
- (b) a polling place on polling day; or
- (c) a place where mobile polling is taking place.

Voting fraud (s307)

A person shall not supply a ballot paper unless authorised to do so.

Penalty: 50 penalty units.

A person shall not obtain a ballot paper by fraudulent means.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person other than an elector shall not mark a ballot paper, unless expressly authorised under the Electoral Act.

Penalty: 50 penalty units.

A person shall not fraudulently put a ballot paper, or any other paper, in a ballot box.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person shall not fraudulently take a ballot paper out of:

- (a) a place where voting is taking place before polling day;
- (b) a polling place on polling day; or
- (c) a scrutiny centre.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person shall not, without reasonable excuse, interfere with a ballot box, or a ballot paper, unless authorised to do so.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Electoral papers**For the purposes of the following offences:**

"electoral paper" means any document or form provided for or required under the Electoral Act.

Electoral papers—forgery

There are a range of generic forgery offences contained in the ACT's *Criminal Code 2002*. These offences would include, for example, the offence of forging an electoral paper. (For further detail, see Part 3.6 of the Criminal Code.)

Penalty (for forgery): 1000 penalty units or imprisonment for 10 years, or both.

Electoral papers—false or misleading statements

There are a range of generic offences related to the making of false and misleading statements contained in the ACT's *Criminal Code 2002*. These offences would include, for example, the offence of making a false and misleading statement in an electoral paper. (For further detail, see Part 3.4 of the Criminal Code.)

Penalty (for making a false and misleading statement): 100 penalty units or imprisonment for 1 year, or both.

Electoral papers—unauthorised possession (s311)

A person shall not, without reasonable excuse, except for the purposes of the Electoral Act:

- (a) possess an electoral paper; or
- (b) possess an instrument designed or adapted particularly for producing an electoral paper, or an official mark on an electoral paper.

Penalty: 30 penalty units.

Electoral papers—defacement etc. (s313)

A person shall not fraudulently deface, remove, mutilate, or destroy an electoral paper.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Ballot Paper – Photographs (s315A)

A person commits an offence if the person takes a photograph of a ballot paper used by the person or another elector for voting in an election and the photograph shows, or would be likely to show, how the person or elector voted in the election if the person knows the identity of the elector or it would be possible for the person or someone else to find out the identity of the elector.

The definition of photograph includes a video recording.

Penalty: 10 penalty units

Identification of voters and votes (s318)

Except as authorised under the Electoral Act, a scrutineer (or a person who has been, but is no longer, a scrutineer) shall not, directly or indirectly, disclose any information acquired in the performance of his or her functions which would be likely to enable it to be known how an identified voter has voted.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Electronic voting offences (s306A & B)

A person must not, without reasonable excuse, destroy or interfere with any device or computer program that is used, or intended to be used, for or in connection with electronic voting.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

A person must not, without reasonable excuse, destroy or interfere with any device or computer program that is used, or intended to be used, for counting votes electronically.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Responses to official questions (s319)

A person shall not, in answer to an official question, make a statement that is false or misleading in a material particular.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

It is a defence to a prosecution for the above offence if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

For the purposes of the above offence:

"official question" means a question asked by an officer in the performance of his or her functions.

Control of behaviour at voting centres (s320)

A person shall not, without reasonable excuse, disrupt an activity at a voting centre.

Penalty: 10 penalty units.

A person at a voting centre shall not, without reasonable excuse, disobey a lawful direction given by the OIC.

Penalty: 10 penalty units .

A person shall not, without reasonable excuse, enter or remain at a voting centre without the permission, express or implied, of the OIC.

Penalty: 10 penalty units.

The above offence does not apply:

- (a) to an officer;
- (b) to a scrutineer who is entitled to be on the premises; or
- (c) if the voting centre is a polling place—to a voter who enters the place for the purpose of voting and remains no longer than is necessary and reasonable for that purpose.

A person who contravenes this section may be removed from the premises by a police officer or by an authorised officer.

For the purposes of the above offences:

"OIC", in relation to a voting centre, means the officer in charge of the centre;

"voting centre" means:

- (a) a place where a vote may be taken before polling day;
- (b) a place where mobile polling is taking place;
- (c) a polling place on polling day; or
- (d) a scrutiny centre.

Improper influence—members of Electoral Commission etc. (s316)

A person shall not do anything improper for the purpose of influencing a member of:

- (a) the Electoral Commission;
- (b) an augmented Commission; or
- (c) a Redistribution Committee.

Penalty: 50 penalty units or imprisonment for 6 months, or both.

Scrutineers

Role of scrutineers

Scrutineers observe, on behalf of candidates, the polling and scrutiny conducted by electoral officials. Scrutineers have legal rights and obligations under the Electoral Act.

Candidates may not, in any way, take part in the conduct of an election, therefore, candidates may not be appointed as scrutineers.

Appointment of scrutineers

Candidates may appoint scrutineers to represent them at every polling place on polling day, at each pre-poll voting centre in the ACT during the 3 weeks before polling day and during mobile polling operations.

Candidates may also appoint scrutineers to represent them at every scrutiny centre at which votes are being counted or a "preliminary scrutiny" of declaration votes is taking place. Preliminary scrutines, at which the decision is made to accept or reject a declaration vote for further scrutiny, can be conducted from the Monday prior to polling day up to the completion of counting after polling day.

Scrutineers are not entitled to be present at interstate pre-poll voting centres (where all votes cast are declaration votes).

Candidates must appoint scrutineers by supplying a written notice to the Electoral Commission. Appointment forms will be made available for this purpose.

Each scrutineer must sign an undertaking in the approved form (attached to the appointment form) that he or she will not attempt to influence the vote of an elector and that he or she will not disclose any knowledge acquired concerning the vote of any elector.

Limitations on numbers of scrutineers appointed

At a polling place on polling day or a pre-poll voting centre in the ACT, the number of scrutineers representing a particular candidate shall not exceed the number of officers responsible for issuing ballot papers at that place.

During mobile polling, the number of scrutineers representing a particular candidate shall not exceed the number of officers on the mobile polling team.

At a scrutiny centre, the number of scrutineers representing a particular candidate shall not exceed the number of officers at that place.

Scrutineers Information Booklet

More detailed information concerning the rights, duties, powers and functions of scrutineers during polling and the scrutiny are contained in the *Scrutineers Information Handbook*. This booklet also explains the method of voting, matters relating to formality and informality of ballot papers, and the scrutiny process.

Miscellaneous

Electronic voting

The 2008 election will be the third ACT Legislative Assembly election at which electronic voting will be used.

Electronic voting will be available at all pre-poll voting centres during the pre-poll voting period. Those same locations will open as ordinary polling places on polling day, with electronic voting available.

Voters using electronic voting will be issued with a barcode rather than a ballot paper. This barcode will be used to access an electronic ballot paper.

More information about electronic voting is available on the Commission's website.

Computerised scrutiny

After the initial count of first preference votes on polling night, the preferences marked on all formal paper ballots will be data-entered and/or scanned into a computer system at the central scrutiny centre.

This data input will be checked for accuracy before being committed to the count.

A computer program is used to add the electronic ballots to the manually input and/or scanned paper ballots and count the votes and distribute the preferences according to the Hare-Clark rules.

Progressive results of the computer tally will be released from polling night until the conclusion of the count. Candidates should be aware that these progressive results will serve as an indication of the likely winning candidates, but that the final result may be different from any interim results.

Recounts

Recounts usually occur when the result of an election is very close and there is an indication that the original count was in error, either at the discretion of the Electoral Commissioner or as directed by the Electoral Commission. A recount can be held at any time before the official declaration of an election result.

A candidate may request a recount in writing to the Electoral Commissioner, setting out the reasons for the request. The Commissioner will only conduct a recount if he or she thinks fit. If the Commissioner refuses to conduct a recount on the request of a candidate, that candidate may appeal to the full Electoral Commission for a review of that decision. The Electoral Commissioner is not permitted to take part in a review of his or her decision not to conduct a recount.

Before recounting any ballot papers, the Commissioner will notify each candidate of the date, time, and place fixed for the recount.

An electoral officer conducting a recount has the same powers as if the recount was the original scrutiny, and may reverse any decision made in an earlier scrutiny.

Court of Disputed Elections

The validity of an election may only be disputed by application to the Supreme Court sitting as the Court of Disputed Elections after the result of the election is declared.

If any of the following matters in relation to an election is called into question, the validity of the election is to be taken to be in dispute:

- (a) the acceptance or rejection of a nomination of a candidate by the Commissioner;
- (b) the eligibility of a person to be nominated as a candidate, to be elected or to be an MLA;
- (c) any matter connected with the printing or endorsement of ballot papers;
- (d) any matter connected with the issue, or scrutiny, of ballot papers by an officer;
- (e) any matter connected with electronic voting; or
- (f) any matter connected with the admission or rejection of declaration votes by an officer at the preliminary scrutiny.

The following persons are entitled to dispute the validity of an election:

- (a) a candidate in the election;
- (b) an elector entitled to vote at the election; or
- (c) the Electoral Commissioner.

Procedures for disputing an election are set out in detail in Part 16 of the Electoral Act and in rules of the Supreme Court. Any person contemplating a challenge should consult his or her own legal advisers.

Injunctions

Where a person has apparently breached or proposes to breach a law of the Territory in relation to elections, a candidate or the Electoral Commissioner may apply to the Supreme Court for an injunction restraining that person from engaging in such unlawful conduct or requiring that person to do a particular act or thing, as the case requires.

Any candidate wishing to apply to the Supreme Court for an injunction should consult his or her own legal advisers.

Election funding

Public funding is available to parties and independent candidates contesting an election. For the 18 October 2008 election, public funding will be provided at 147.722 cents per first preference vote to those parties and independent candidates receiving at least 4% of the formal votes cast.

No person is obliged to accept public funding.

More information on election funding is available from the ACT Electoral Commission.

Disclosure of gifts and expenditure

All candidates contesting an election are required to submit details of gifts received and expenditure undertaken in relation to the election. These details are made public.

More information on disclosure requirements is available from the ACT Electoral Commission.

Radio and television electoral advertising

Authorisations for TV and radio political advertising are regulated under the Commonwealth's *Broadcasting Services Act 1992*. The responsible authority is the Australian Communications and Media Authority. The relevant rules for TV and radio political advertising are set out on the Australian Communications and Media Authority's website at www.acma.gov.au

Election advertising in the electronic media is subject to a "blackout" from midnight on the Wednesday before polling day until polling day. The blackout does not relate to news broadcasts or to the printed media. This is also a requirement of the Broadcasting Services Act. For further information contact the Australian Communications and Media Authority. For ACT elections, the blackout only applies to election advertisements related to an ACT election that are broadcast in or across the ACT.

More information

For more information on ACT Legislative Assembly elections, you can contact the ACT Electoral Commission:

- phone:
(02) 6205 0033;
- postal address:
PO Box 272 Civic Square ACT 2608;
- website:
www.elections.act.gov.au;
- email:
elections@act.gov.au; or
- the Commission's office:
Level 2, 12 Moore Street,
Canberra City ACT (until 30 May 2008)
- O'Connell Centre
Cnr Stuart Street & Blaxland Crescent
Griffith ACT (from 2 June 2008)

Other publications of particular interest to candidates include:

- Scrutineers Handbook
- Funding and Financial Disclosure Handbooks

ACT Electoral Commission
May 2008