



ACT | Aboriginal and  
Torres Strait Islander  
Elected Body

## Information for Candidates

### ACT Aboriginal and Torres Strait Islander Elected Body Election 2014



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# Introduction

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## Disclaimer

This information is intended to summarise the electoral law relating to candidates for the ACT Aboriginal and Torres Strait Islander Elected Body, but it is not a substitute for the law.

Candidates and other interested persons are encouraged to consult the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (the ATSIEB Act) and the *Electoral Act 1992* as applied by the ATSIEB Act.

This version of *Information for Candidates* incorporates the provisions of the ATSIEB Act and the Electoral Act (as applied) as they applied in February 2014.

## Election Dates

| Timetable  | Date   |
|--|--|
| Election start day/nominations open.....                 | 19 May 2014                                      |
| Nominations close .....                                  | 2 June 2014 (12 noon)                            |
| Nominations declared/ballot paper order determined ..... | 3 June 2014 (12 noon)                            |
| Rolls close .....  | 23 June 2014 (5 pm)                              |
| Polling start day .....                                  | 5 July 2014                                      |
| Last day for receipt of postal vote applications .....   | 10 July 2014 (5pm)                               |
| Polling close day.....                                   | 12 July 2014                                     |
| Last day for receipt of postal votes.....                | 18 July 2014                                     |
| Scrutiny commences.....                                  | Not earlier than 22 July 2014                    |
| Election result declared .....                           | As soon as possible after the scrutiny concludes |

## Qualifications

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### Qualifications to be a Member of the ACT Aboriginal and Torres Strait Islander Elected Body

To be eligible to be a member of the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB), subject to the following exceptions, a person must be:

- an Aboriginal person or Torres Strait Islander; and
- at least 18 years old; and
- enrolled, or entitled to be enrolled, on the ACT electoral roll.

A person is not eligible to be an ATSIEB member if the person is under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

To be entitled to be on the ACT electoral roll, a person must have a current place of living in the ACT and have lived at that place for at least the preceding month.

A person is not entitled to be on the ACT electoral roll 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.

### Qualifications to be nominated for election as a member of ATSIEB

A person is eligible to be nominated for election as a member of ATSIEB if, at the hour of nomination (12 noon on 2 June 2014) the person is eligible to be a member of ATSIEB.

# Nominations

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## When can candidates be nominated?

Nominations open on 19 May 2014 and close at 12 noon on 2 June 2014.

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 must be nominated by four persons, each of whom is:

- an Aboriginal person or Torres Strait Islander; and
- at least 18 years old; and
- enrolled, or entitled to be enrolled, on the ACT electoral roll; and
- not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

## 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, at the hour of nomination, they are:

- an Aboriginal person or Torres Strait Islander; and
- at least 18 years old; and
- enrolled, or entitled to be enrolled, on the ACT electoral roll; and
- not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

Each of the 4 people nominating the candidate must also sign the nomination form to declare that, at the time of signing the declaration, they are:

- an Aboriginal person or Torres Strait Islander; and
- at least 18 years old; and
- enrolled, or entitled to be enrolled, on the ACT electoral roll; and
- not under a sentence of imprisonment for 1 year or longer for a conviction for an indictable offence.

The nomination form includes space for 4 additional optional nominators. Candidates may wish to include extra nominators on their nomination forms in case any of their nominators are deemed ineligible to be a nominator.

## Can a nomination be invalid?

Yes. The Electoral Commissioner will decide a nomination is invalid if a nomination form has not been correctly completed in accordance with the Electoral Act as applied by the ATSIEB Act.

To be correctly completed, the relevant declarations on the nomination form must be signed by the candidate and by the 4 people who are nominating the candidate.

If it is decided that a nomination is invalid, the Commissioner will, as soon as possible after declaring it invalid and before the close of nominations (12 noon on 2 June 2014), take reasonable steps to inform the nominee that the nomination is invalid. If the nomination can be corrected, the Commissioner will advise the nominee how it can be corrected and that the corrected nomination can be provided to the Commissioner before the close of nominations.

Therefore, it is advisable to submit all nominations well before the last day for nominations (12 noon on 2 June 2014) to allow time for invalid nominations to be corrected. Corrections cannot be made after the close of nominations.

**Can a nomination be withdrawn?**

Yes. A nomination can be withdrawn up until the time nominations close (12 noon on 2 June 2014). 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.

An official notice for this purpose can be obtained from the Electoral Commission.

**Uncontested elections**

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

**Death of a candidate**

Where a person nominated as a candidate dies before the hour of nomination (12 noon on 2 June 2014), that person will be taken not to have been nominated.

Where a person nominated as a candidate dies after the hour of nomination (12 noon on 2 June 2014) 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.

## Ballot papers

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### **In what order will candidate names be printed on the ballot papers?**

Candidate names will be printed on the ballot papers in a single column.

The Electoral Commissioner will conduct a random draw to determine the position of each candidate name on the 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

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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 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 ATSIEB member or former ATSIEB member;
- 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 Legislative 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:

- \$140 if the person charged is an individual; or
- \$700 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:

- (a) personal knowledge of the signatory;
- (b) inquiries made of the signatory; or
- (c) any other reasonable means.

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

#### Soliciting applications for postal 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.*

#### **Soliciting completed declaration votes (s146)**

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

*Penalty: 30 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.*

#### **Giving completed ballot papers to the Commissioner (s318A)**

A person who accepts completed ballot papers to be given to the Electoral Commissioner must give them to the commissioner as soon as practicable.

*Penalty: 10 penalty units.*

#### **Transmission of completed declaration votes (s147)**

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

*Penalty: 10 penalty units.*

#### **Opening envelopes containing ballot papers (s318B)**

Unless authorised under the Electoral Act as amended by the ATSIEB Act, a person must not open a ballot box, or an envelope, that appears to contain completed ballot papers.

*Penalty: 5 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.*

#### **Interference with voting (s286)**

A person must not interfere with the casting of a vote by an elector, do anything to find out how an elector voter, or allow anyone else to find out how an elector voted. This does not apply to a person assisting an elector to vote.

*Penalty: 30 penalty units.*

### **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.*

## **Protection of rights**

### **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 function under the Electoral Act.

*Penalty: 30 penalty units.*

### **Influencing of votes by officers (s317A)**

An officer, including a liaison officer, must not do anything to influence someone else's vote.

*Penalty: 30 penalty units.*

### **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.

### **Discrimination on grounds of political donations (s289)**

A person shall not discriminate against another person on the ground of the making by the other person of a donation 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 news publication 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 ATSIEB member that includes the name of the ATSIEB member and an indication that he or she is an ATSIEB member;
- (b) a press release published by or for an ATSIEB member that includes the name of the ATSIEB member and an indication that he or she is an ATSIEB member;
- (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

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.*

### **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.*

**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.*

**Disruption of election meetings (s302)**

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

*Penalty: 5 penalty units.*

**For the purposes of this 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.

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.*

**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*

**Voting fraud (s307)**

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

*Penalty: 20 penalty units.*

A person commits an offence if the person dishonestly obtains a ballot paper.

*Penalty: 20 penalty units*

A person must not mark a ballot paper unless the person is an elector or assistant assisting the elector under the provisions of the Electoral Act as applied by the ATSIEB Act.

*Penalty: 30 penalty units.*

A person commits an offence if the person casts a ballot and the person is not entitled to vote.

*Penalty: 30 penalty units.*

**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.*

**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.*

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

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### 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.

Candidates may also appoint scrutineers to represent them at each 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 close day up to the completion of counting after polling day.

Candidates must appoint scrutineers by supplying a written notice to the Electoral Commissioner. 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, the number of scrutineers representing a particular candidate shall not exceed the number of officers responsible for issuing ballot papers at that place.

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

### Information for Scrutineers

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

## Miscellaneous

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### Liaison Officers

In each polling place there will be an officer in charge, ballot paper issuing officers and a liaison officer. The role of the liaison officer is to decide, on the balance of probabilities, whether a person wishing to vote is an Aboriginal person or Torres Strait Islander. The liaison officer may ask the person wishing to vote any question the officer believes on reasonable grounds is necessary to make their decision.

Where a person's right to vote is challenged by the liaison officer, that person may have a declaration vote, and the person's right to vote will be decided by a Review Panel.

The liaison officer must be an Aboriginal person or Torres Strait Islander, at least 18 years old, and enrolled, or entitled to be enrolled, on the ACT electoral roll, and must not be a candidate in the election.

### The Review Panel

The review panel will consist of 3 people, each of whom is an Aboriginal person or Torres Strait Islander, at least 18 years old, and enrolled, or entitled to be enrolled, on the ACT electoral roll, and who is not a candidate in the election.

The review panel will decide, on the balance of probabilities, whether a person, whose right to vote has been challenged by the liaison officer, is an Aboriginal person or Torres Strait Islander, and therefore whether that person's vote will be admitted to the scrutiny.

The review panel also decides whether each postal voter is an Aboriginal person or Torres Strait Islander, and therefore whether that person's vote will be admitted to the scrutiny. The review panel also decides whether a postal voter who is not on the electoral roll is living in the ACT, and therefore entitled to have their vote admitted to the count.

### The scrutiny

Candidates may not be present during the scrutiny. Candidates may appoint scrutineers to represent them at the scrutiny.

#### Preliminary scrutiny of postal and declaration votes

A preliminary scrutiny may take place after the 5<sup>th</sup> day prior to polling close day. A notice must be placed at the office of the Electoral Commissioner by 4pm on the day before the scrutiny begins.

Declaration votes, made because the voter could not be found on the certified list at a polling place, require the voter to provide evidence of their residence in the ACT. This may have been done at the polling place, and the declaration envelope will show this. If not provided at the polling place, the voter has 3 business days after the close of polling to provide the evidence to the Electoral Commissioner. Where the evidence is not provided, the declaration vote envelope is not opened and the ballot paper is not admitted to the count.

For postal votes to be admitted, the date of posting must be prior to the close of the poll. Also the review panel must have decided that the voter is an Aboriginal person or Torres Strait Islander.

Before any declaration vote or postal vote is admitted to further scrutiny, the signature on the declaration will be checked to ensure that it is the elector's signature, and the declaration will be checked that it has been witnessed appropriately. Note that if the witness signature is missing, for a declaration vote other than a postal vote, the vote may be admitted to further scrutiny if there is a polling place record of the vote being issued, or the checking official is satisfied that it was issued properly.

The postal votes are then checked against the certified list of voters for the election, and where the voter is enrolled it is admitted to further scrutiny. Those not found on the certified list are provided to the review panel for a decision as to whether the person lives in the ACT. This only applies to postal ballot papers.

Declaration and postal votes that pass the preliminary scrutiny checks are opened, ballot papers extracted and checked for formality.

**Formality of ballot papers**

All ballot papers are checked for formality. A ballot paper is informal if:

- it is not authentic; or
- has writing on it that can identify the voter; or
- it has no first preference; or
- there is a first preference for more than 1 candidate; or
- if it is a declaration vote ballot paper, it is not in the appropriate envelope before the preliminary scrutiny.

**Ascertaining the result**

The votes will be counted using the ACT Legislative Assembly's Hare-Clark proportional representation electoral system. For more details see the Elections ACT website [www.elections.act.gov.au](http://www.elections.act.gov.au).

**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) a decision by a liaison officer or review panel in relation to an elector's claim to be an Aboriginal person or Torres Strait Islander;
- (b) a decision by a review panel in relation to an elector's claim to live in the ACT;
- (c) the acceptance or rejection of a nomination of a candidate by the Commissioner;
- (d) the eligibility of a person to be nominated as a candidate, to be elected or to be a member;
- (e) any matter connected with the printing or endorsement of ballot papers;
- (f) any matter connected with the issue, or scrutiny, of ballot papers by an officer; or
- (g) 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.

## More information

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For more information on Aboriginal and Torres Strait Islander Elected Body ACT 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](http://www.elections.act.gov.au);
- email: [elections@act.gov.au](mailto:elections@act.gov.au); or
- the Commission's office at:

Ground Floor, North Building  
Civic Square, London Circuit  
Canberra City ACT 2601

Other publications of particular interest to candidates include:

- Information for Scrutineers

ACT Electoral Commission  
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