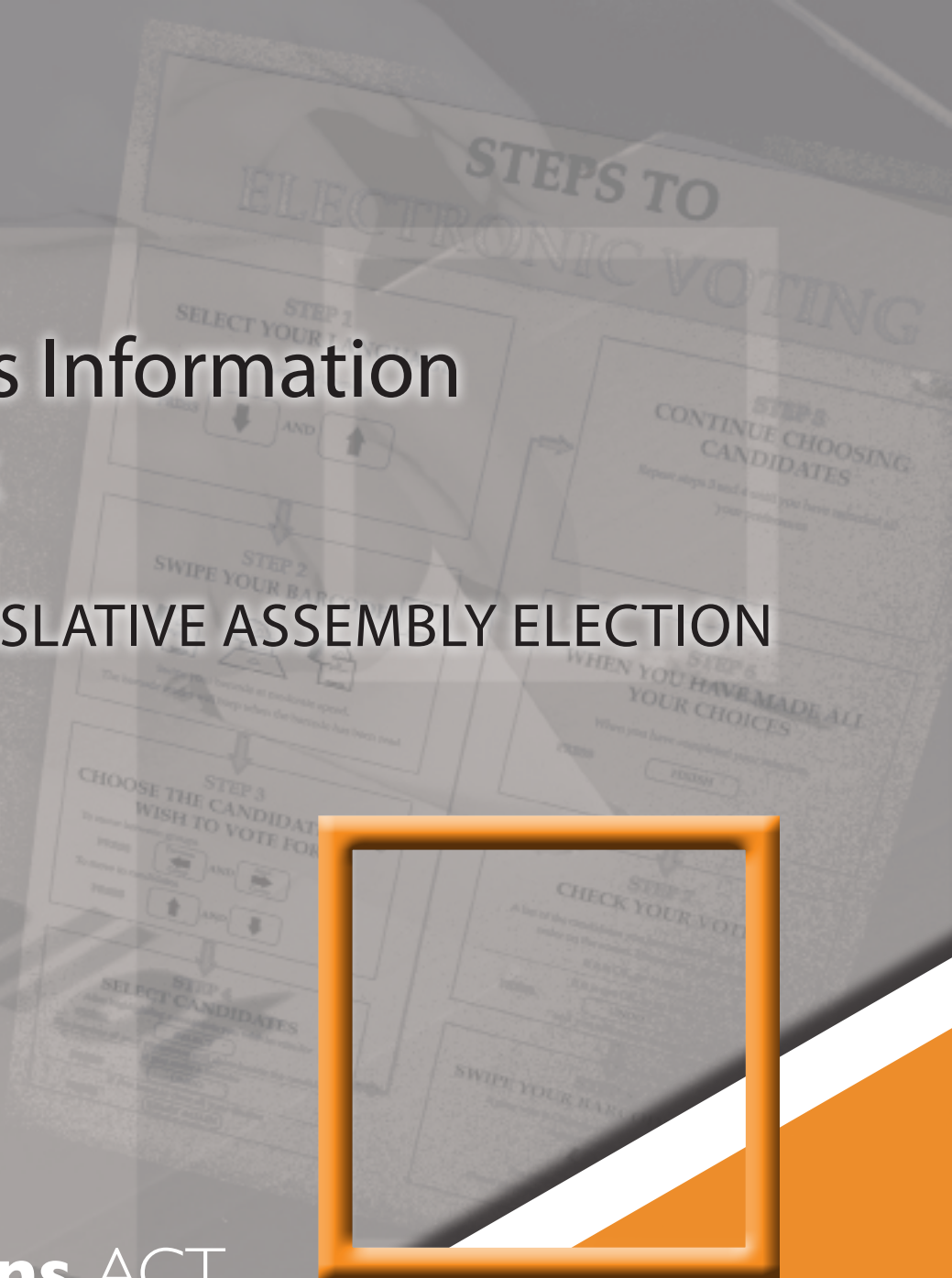


Scrutineers Information Handbook

2008 ACT LEGISLATIVE ASSEMBLY ELECTION



 **Elections** ACT



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2008 ACT LEGISLATIVE ASSEMBLY ELECTION



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Introduction

Disclaimer

This information booklet is intended to summarise the electoral law relating to scrutineers for the ACT Legislative Assembly, but it is not a substitute for the law. Scrutineers and other interested persons are encouraged to consult the *Electoral Act 1992*.

Scrutineers, candidates and other interested persons are encouraged to consult the *Electoral Act 1992*.

This version of the *Scrutineer's information handbook* incorporates the provisions of the Electoral Act as they applied in May 2008, incorporating the amendments that took effect on 21 May 2008. The Electoral Act may be amended by the ACT Legislative Assembly before the commencement of the 2008 election period. Therefore the procedures set out in this handbook may change before the election is held.

Please consult the Commission's legislation page on its website at www.elections.act.gov.au/elections/legislation.html to determine whether any changes to the electoral law are forthcoming or have been recently made.

Elections for the ACT Legislative Assembly

The 2008 election will be the fifth ACT Legislative Assembly election held using the Hare-Clark electoral system and the third ACT election where limited electronic voting will be available.

Electronic voting will be available at five pre-poll voting centres (which will also be open on election day as ordinary polling places).

Electors at these locations will be able to choose to vote electronically or to vote using traditional paper ballots.

Electronic voting will not affect the role of scrutineers in the polling place.

Certified lists of electors will be in an electronic form, rather than in printed form, on personal digital assistants (PDAs). Voters' names will be marked on the PDAs as having voted.

After the initial count of first preference votes on polling night, the preferences marked on all formal paper ballots will be scanned or data-entered 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 scanned or manually input paper ballots and count the votes and distribute the preferences according to the Hare-Clark rules. The program will also highlight ballot papers that appear to have numbering errors, such as missing or duplicated numbers.

Scrutineers will be able to observe this process and to challenge apparent incorrect data entry of the original ballot papers.

Progressive results of the computer tally will be released from polling night until the conclusion of the count. Scrutineers 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.

Another significant feature of ACT elections, introduced for the first time at the 1998 election, is the ban on canvassing within 100 metres of a polling place. Under the ban, it is an offence, within a polling place, or within 100 metres of the building or enclosure containing a polling place, to:

- 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;
- 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
- exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

The ban applies to polling places on polling day, pre-poll voting centres before polling day and mobile polling in hospitals and institutions.

The imposition of the ban means that how-to-vote cards cannot be distributed within 100 metres of a polling place. There are no other restrictions on distribution of how-to-vote material, other than the usual rules applying to content and authorisation.

Pre-poll centres in the ACT function in the same way as polling places on polling day. Ordinary votes are issued without declaration.

Election dates

Last day for applying to register a political party.....	30 June 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
Preliminary scrutiny of pre-poll votes commences	13 October 2008
Pre-poll voting concludes in the ACT	17 October 2008 (8 pm)
Polling day (hours of polling)	18 October 2008 (8 am – 6 pm)
Polling day (scrutiny commences)	18 October 2008 (6 pm)
Scrutiny of postal, pre-poll and declaration votes commences.....	19 October 2008 (10 am)
Data entry of paper ballots commences.....	20 October 2008 (9 am)
Last day for receipt of postal votes	24 October 2008
Distribution of preferences completed not earlier than	25 October 2008

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. They may not be appointed as scrutineers.

Appointment of scrutineers

Candidates may appoint scrutineers to represent them at every polling place on polling day and at each pre-poll centre in the ACT open during the three week period leading up to polling day. Candidates may also appoint scrutineers to accompany mobile polling teams, which can operate from the Monday before polling day until the close of polling on polling day. Candidates may also appoint scrutineers to represent them at every scrutiny centre at which votes are being counted or at which 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 signed 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.

On polling day, scrutineers should present completed appointment forms to the officer in charge (OIC) of the polling place or scrutiny centre.

Limitations on numbers of scrutineers appointed

At a polling place on polling day or at 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.

At a scrutiny centre or a mobile polling visit, the number of scrutineers representing a particular candidate shall not exceed the number of officers present.

Scrutineer's badge

A scrutineer must wear an identification badge supplied by the Electoral Commission.

Scrutineers at pre-poll voting centres

Pre-poll voting centres in the ACT issue ordinary votes to electors who declare they are entitled to a pre-poll vote. Scrutineers will be entitled to be present at ACT pre-poll centres, which will be open from Monday, 29 September. References in this booklet to "polling places" will generally include references to pre-poll voting centres in the ACT.

An elector is entitled to receive a pre-poll vote if he or she expects to be unable to attend a polling place on polling day, or if the person is a "silent elector" with his or her address suppressed on the electoral roll.

Interstate pre-poll voting centres only issue declaration votes. Scrutineers are not entitled to be present at interstate pre-poll voting centres. All declaration votes cast at an interstate pre-poll voting centre can be examined by scrutineers before being admitted during the preliminary scrutiny.

Canvassing for votes during polling

Canvassing outside polling places

Canvassing for votes is banned within 100 metres of a polling place, pre-poll voting centre or building in which mobile polling is taking place. Under the ban, it is an offence, within a polling place, or within 100 metres of the building or enclosure containing a polling place, to:

- 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;
- 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
- exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of the ban. It is an offence to obstruct an officer exercising or attempting to exercise this function.

The imposition of the ban means that how-to-vote cards cannot be distributed within 100 metres of a polling place. There are no other restrictions on distribution of how-to-vote material outside the 100 metre limit, other than the usual rules applying to content and authorisation.

How-to-vote cards

How-to-vote cards may be distributed to electors outside the 100 metre limit, for example, by direct mail or distribution at shopping centres. Electors may take how-to-vote cards with them when they go to vote, provided they do not give them to other electors or leave them behind in the polling place.

Electoral material may not be provided by candidates to electoral visiting officers conducting mobile polling.

News media photographers

News media photographers or their equipment must not hinder or inconvenience polling staff or voters, and no photographs are to be taken of persons actually recording a vote so as to reveal how that person voted. Anyone arranging for photographers to visit a polling place should ask permission of the Electoral Commissioner or the OIC of the polling place.

ACT Electoral Commission officers

Polling place officers

Each polling place on polling day is staffed by an officer in charge (OIC) and a range of other polling staff. Depending on the estimated number of voters expected at a polling place, a typical polling place will be staffed by an OIC, a second in charge, a ballot box guard, a queue controller and a number of vote issuing staff. All staff, other than the OIC and 2IC, will be rotated through a variety of duties.

There are three types of vote issuing staff. "Home-electorate" issuing staff only issue ordinary votes to electors enrolled for the electorate the polling place is situated in. "Multi-electorate" issuing staff issue ordinary votes for all 3 electorates. "Declaration vote" issuing staff issue declaration votes. Electors will be directed to the appropriate issuing officers by the queue controller.

After the polls close at 6 pm on polling day, each polling place becomes a scrutiny centre and the officers employed at the polling place will be responsible for counting the votes and packaging all polling place material for return to the central scrutiny centre.

Polling Area Managers

Around 7 officers will be appointed as Polling Area Managers with responsibility for overseeing the operation of about 11 polling places each. These officers will visit each polling place several times on polling day to ensure procedures are being followed, to assist OICs in resolving any concerns and to supply additional polling material if necessary. The Polling Area Managers will also be monitoring the implementation of the ban on canvassing within 100 metres of polling places.

Central scrutiny centre officers

At the central scrutiny centre, ballot papers for each electorate will be input into a computer system by data entry operators. The data input operation will be supervised by one or more senior Electoral Commission officers. These senior officers will have specific powers under the Electoral Act in relation to the scrutiny.

The Electoral Commissioner

The Electoral Commissioner has statutory responsibility for the conduct of ACT elections. The Electoral Commissioner has final authority over all other officers appointed as OICs and may affirm or vary any decision made by any other officer.

Scrutineers during polling

Scrutineers' rights

A scrutineer has the right to:

- Enter and leave the polling place at any time and be replaced by a properly appointed and relieving scrutineer, but only one scrutineer for each candidate at each issuing point can be present in the polling place at any one time.
- Observe all voting procedures except the elector actually voting (unless the elector is being assisted by an Electoral Commission officer).
- Observe the OIC sealing each empty ballot box before the poll commences at pre-poll voting centres or mobile polling locations, the sealing of each ballot box at the conclusion of each day's polling and the opening of each ballot box at the close of the poll after 6 pm on polling day.
- Observe the OIC sealing each empty ballot box before polling commences (8 am) and the opening of each ballot box after the close of the poll (6 pm).
- Observe the questioning of voters by the issuing officer.
- Observe voting by disabled and illiterate voters who request assistance from an officer. A scrutineer may enter a voting compartment to witness an officer marking the ballot (paper or electronic) of a person who is incapable of marking the ballot without assistance. However, such a voter may appoint another person to enter the voting compartment with him or her to mark, fold and deposit the ballot paper, or to vote electronically. In this case neither an officer nor a scrutineer may accompany the elector into the voting compartment.
- Observe the removal, packaging and sealing of data (on disk) from the electronic voting terminals for forwarding to the central scrutiny centre.
- Observe and accompany an electoral visiting officer conducting mobile polling in hospitals and special institutions.
- Observe the conduct of preliminary scrutines of declaration votes. Preliminary scrutines may commence on the 5th day before polling day.
- Observe the data entry of paper ballot papers at the scrutiny centre after polling day and the running of the scrutiny program.

Scrutineers **must not**:

- remain in a polling place without an identification badge;
- interfere with, or attempt to influence, any elector;
- disclose any knowledge gained concerning the vote of a person;
- wear a badge or emblem of a political party or candidate within the polling place; or
- deliberately show or leave in the polling place any how-to-vote card or similar direction as to how an elector should vote.

Voting

Electoral rolls

Before polling begins, each OIC is supplied with up-to-date certified copies of the electoral roll for each electorate in the ACT. These rolls are called *certified lists of electors*. For the 2008 election, the certified lists of electors will be in electronic form – on personal digital assistants (PDAs). The names of voters will be marked on the PDAs. Apart from declaration voters (see below) only those persons whose names are on the certified lists are entitled to vote at an election.

Ballot papers – the “paper” version

An elector is entitled to receive one ballot paper for his or her electorate. Legislative Assembly ballot papers are colour coded according to the electorate:

Brindabella — BLUE

Ginninderra — GREEN

Molonglo — ORANGE

An elector who spoils a ballot paper before placing it in the ballot box may, on returning it to a polling official, receive a new one.

Ballot papers – the “electronic” version

Where an elector chooses to vote in electronic form, the elector will be provided with a unique barcode printed on a card. This barcode card is to be used in an electronic voting computer to validate the person’s right to vote and to identify the elector’s electorate. When the barcode is swiped through the barcode reader, an electronic ballot paper will appear on screen. The elector can indicate preferences by using the supplied key pad.

When the elector has completed marking preferences, a confirmation screen will be displayed listing the candidates the voter has shown preferences for. The elector is given the option of confirming the vote or returning to the ballot paper and changing the vote. The elector confirms the vote by swiping the barcode a second time. This second swipe of the barcode is the electronic equivalent of dropping a ballot paper in a ballot box – after this point corrections cannot be made.

After casting an electronic vote, the elector must deposit the barcode card in a ballot box. Once a barcode has been used to cast a vote, it cannot be used to vote again.

Types of votes

Scrutineers will observe electors recording different types of votes. Consequently, they should be aware of the different categories of voting as their rights and duties may differ in the observation of each:

- ordinary voting at a polling place (using paper ballots or electronic voting where available)
- declaration voting at a polling place
- pre-poll voting:
 - by post
 - at a pre-poll voting centre (using paper ballots or electronic voting)
- voting by mobile polling
- assisted voting

Ordinary voting at a polling place

Ordinary votes are issued in polling places on polling day to any elector whose name is on a certified list. "Silent" electors whose addresses are suppressed on the electoral roll for reasons of personal or family safety are able to cast ordinary votes.

Ordinary votes can be issued for all electorates at any polling place, regardless of the electorate in which the polling place is actually located. There are no "absent" votes issued.

There are three types of vote issuing staff; home-electorate, multi-electorate and declaration vote issuing staff. Home-electorate and multi-electorate issuing staff will be provided with an electronic version of the certified list which lists all of the electors for each of the three electorates. Home-electorate issuing staff are provided with ballot papers for the home electorate, that is the electorate in which that particular polling place is located. Multi-electorate issuing staff are provided with ballot papers for each of the three electorates. Declaration vote issuing staff will issue declaration votes (see below).

The queue controller will ask each elector which suburb he or she is enrolled for, to determine which electorate the elector is enrolled for. The controller will then direct the elector to an issuing officer equipped with the correct ballot paper.

When issuing an ordinary vote, the issuing officer must:

- ask the elector for his or her full name and address (note that a "silent" elector is not required to state his or her address), find the name on the electronic certified list and mark the electronic certified list;
- where electronic voting is available, ask the elector whether he or she wishes to vote by paper ballot or electronic ballot; and
- issue the elector with the correct Legislative Assembly ballot paper or, in the case of an electronic vote, a barcode card, making sure that the name of the electorate on the ballot paper or barcode matches the name of the electorate on the electronic certified list.

In the case of a paper ballot, the elector must then retire alone to a voting compartment and, in private, mark his or her vote on the ballot paper, fold it so that the vote is concealed, and then, without unfolding the ballot paper, place it in the ballot box and leave the polling place.

Note that ballot papers do not have to be initialled on the reverse by the issuing officer; nor are voters asked “have you voted before in this election?”

An elector who has chosen to vote electronically will be issued with a barcode. The elector must then retire alone to one of the dedicated electronic voting screens where, after swiping the barcode to begin voting, he or she must follow the on-screen instructions to mark the electronic ballot paper. The vote will be recorded when the barcode is swiped for the second time.

At the completion of electronic voting the elector must place the barcode in the ballot box provided.

Declaration voting at a polling place

Declaration votes are issued at a polling place if:

- an elector’s name cannot be found on the certified list of electors for the electorate; or
- an elector’s name has been apparently incorrectly marked on the certified list of electors as having already voted at the polling place.

All declaration votes must be made on paper ballots.

When a declaration vote is being issued:

- the declaration voter must complete a declaration envelope stating his or her name and address (with the exception that an elector with silent enrolment is not required to disclose his or her address);
- the declaration voter then signs the declaration on the envelope in the presence of the issuing officer who must sign as witness to the declaration;
- the issuing officer must give the person a statement explaining declaration voting;
- the elector is then given the relevant ballot paper and a vote is cast in the ordinary manner;
- the declaration voter returns the folded ballot paper to the issuing officer who then places it in the signed and witnessed declaration envelope, seals it and puts it in a ballot box for later dispatch to the central scrutiny centre.

Pre-poll voting

A pre-poll vote is a vote cast before polling day. There are two ways of casting a pre-poll vote — by post or in person at a pre-poll voting centre.

Postal voting

An elector may apply for a postal vote if he or she:

- expects to be unable to attend a polling place on polling day or a pre-poll centre in the ACT before polling day, or
- has silent enrolment and thus his or her address does not appear on the roll.

An eligible elector can apply orally or in writing for a postal vote (other than a registered general postal voter — see below). An application for a postal vote may be made by phone, on-line on the Elections ACT website www.elections.act.gov.au, by fax, by email or by posting a form available from the Elections ACT and post offices in the ACT. A person authorised by an eligible elector may also apply for a postal vote on behalf of the eligible elector.

The application must include a declaration that the elector is entitled to apply for a postal vote. There is no requirement for the applicant to sign an application.

An elector who is outside Australia must apply for ballot papers to be sent from Elections ACT in Canberra (ballot papers are not issued by overseas posts as they are for federal elections).

Applications from electors in Australia must be received by Elections ACT by no later than the Thursday before polling day to allow time to post material to the elector before polling day.

Applications from electors outside Australia must be received by Elections ACT by no later than the Friday 8 days before polling day to allow time to post material to the elector overseas before polling day.

On receipt of a postal vote application, Elections ACT will send to the elector postal vote material, which includes a postal certificate, a ballot paper and a return envelope.

After receiving the postal vote material, the elector must:

- exhibit the unmarked ballot paper(s) to an authorised witness;
- sign the postal vote certificate in the presence of the authorised witness;
- obtain the signature of the authorised witness on the postal vote certificate;
- cast a vote in the presence of the authorised witness, but so that the authorised witness cannot see the vote; and
- immediately enclose the postal ballot paper(s) in the envelope, and post or deliver the sealed envelope to the ACT Electoral Commission.

Electors who are **registered general postal voters** automatically receive a postal vote certificate and a postal ballot paper after the close of nominations.

Voting at pre-poll voting centres

An elector may apply for a pre-poll vote if he or she:

- expects to be unable to attend a polling place on polling day, or
- has silent enrolment and thus his or her address does not appear on the roll.

A person may apply in person for a pre-poll vote at any pre-poll voting centre during the times determined by the Electoral Commissioner. For the 2008 election, pre-poll voting commences on Monday 29 September.

Pre-poll votes will be available at pre-poll voting centres in Canberra City, Belconnen, Gungahlin, Woden and Tuggeranong. Pre-poll voting will also be available at the head office of the State/Territory Electoral Commission in each capital city in the States and the Northern Territory, and at a limited number of Australian Electoral Commission divisional offices. Contact the ACT Electoral Commission for details of locations and business hours. Pre-poll voting is not available at all Australian Electoral Commission offices.

At pre-poll voting centres in the ACT, votes will be issued in the same manner as if the pre-poll voting centre was a polling place on polling day. At interstate pre-poll voting centres, all votes cast will be declaration votes. Scrutineers are entitled to be present at pre-poll voting centres in the ACT, but not at interstate pre-poll voting centres.

All pre-poll voting centres in the ACT will have facilities to vote by computer.

Mobile polling

On polling day, at hospitals that are appointed as ordinary polling places, polling officials take voting material to all rooms or wards containing patients who are eligible electors who wish to vote, and take their votes in person. The polling place at the hospital continues to be staffed at all times when polling officials are taking the votes of patients in the wards.

At declared mobile polling institutions, which include nursing homes, the ACT prison, remand centres and similar institutions, electoral visiting officers may visit patients, residents or detainees who are eligible electors to take their votes, in the 5 days preceding polling day and/or on polling day itself.

The Electoral Commissioner will give public notice of the institutions that will be visited and the days and times of visits.

Patients, residents or detainees at mobile polling institutions who will not be able to get to a polling place are not obliged to vote when electoral visitors call — they are also entitled to vote by post if they would prefer.

Assisted voting

The OIC may permit any elector unable to vote without assistance to be accompanied by a person appointed by the voter to mark, fold and deposit the voter's ballot papers, or to assist with casting an electronic vote. Where no such person is appointed, the same role may be performed by a polling official in the presence of any scrutineers present or, if no scrutineers are present, in the presence of another polling official. The voter may indicate a voting intention to the polling official by the use of a how-to-vote card.

Scrutiny

While the key stages of a scrutiny under the Hare Clark system remain the same as for a manual count of paper ballots, the application of a computerised counting process has led to changes in some of the processes involved.

There are several different stages to the scrutiny of votes:

- The preliminary scrutiny of declaration votes, when the decision is made to admit or reject a declaration vote for further scrutiny. At this preliminary scrutiny the ballot papers themselves remain sealed in the declaration envelope.
- The initial count of first preference votes on polling night and after. Votes cast electronically will be reported at each polling place and collated centrally at the Tally Room on election night. Election results will also be available on election night on the Electoral Commission's website, www.elections.act.gov.au.
- The scanning or data entry of all paper ballots after the election, and the computerised amalgamation of these votes with the votes cast electronically.
- Running the computer program for the Hare Clark scrutiny.
- Recounts (if necessary) at the direction of the Electoral Commissioner or the Electoral Commission.
- The declaration of the poll.

Scrutineers' rights during the scrutiny

A scrutineer may:

- Inspect the condition of and observe the opening of ballot boxes by the OIC for the scrutiny (ballot boxes containing votes taken at the pre-poll voting centres and by electoral visitors in special hospitals, the prison and the Remand Centres are forwarded unopened to the Electoral Commission).
- Observe preliminary scrutines of declaration votes.
- Observe the counting of ballot papers on election night, further counting of ballot papers after election night, including the scrutiny of admitted postal and declaration votes, and any recount of ballot papers.
- Observe the input of ballot papers by data entry operators at the central scrutiny centre.
- Object to the admission or rejection of a ballot paper, in which case the officer conducting the scrutiny decides whether the vote is formal or informal and marks the ballot paper "admitted" or "rejected" (the officer may reject a ballot paper as informal even if no scrutineer has objected to it as informal). At a recount, a scrutineer may request that a ballot paper be reserved for the decision of the Electoral Commissioner.
- Countersign endorsements on any parcels of ballot papers, and statements showing votes for each candidate and the number of informal ballot papers.

A scrutineer must not (other than when casting a vote to which the scrutineer is entitled) handle, separate or arrange ballot papers or touch a computer terminal which is being used for the input of ballot papers, or for the processing of the scrutiny.

PENALTY: 10 penalty units or imprisonment for 6 months, or both.

Whilst scrutineers have the right to observe all stages of the scrutiny and challenge the formality decisions made by sorting staff, it is the duty of the OIC to ensure that the election results from the polling place are reached in an orderly and timely way. To achieve an agreeable balance between the rights of scrutineers and the duties of the OIC it is important that scrutineers refrain from unreasonable requests or queries during the scrutiny.

Formality rules

Rules for formality of ballot papers fall into two categories: rules to determine whether the ballot paper is an authentic one which does not identify the voter; and rules to determine whether the voter has marked the ballot paper sufficiently well for it to be accepted.

Authenticity checks

A ballot paper is classed as informal if the OIC of the scrutiny centre is not satisfied that it is authentic. Normally, every ballot paper will be printed with a colour screen and a security device. Ballot papers that have been fraudulently copied will be readily apparent, and will be set aside as informal.

In rare circumstances where official ballot papers are unavailable, handwritten or photocopied ballot papers may be issued. In these cases the authenticity of the ballot papers will be endorsed on the reverse of the ballot papers by the issuing officer and noted in records kept by the issuing officer.

Postal votes and other declaration votes will have the word "DECLARATION" printed or endorsed on them above the words "Ballot Paper". Any declaration votes placed in a ballot box without being admitted at a preliminary scrutiny will be enclosed in an envelope and set aside as informal.

A ballot paper is also classed as informal if it has writing on it by which, in the opinion of the OIC, the elector can be identified.

Formality checks

An authentic ballot paper is informal where:

- it has no first preference marked in a candidate square; or
- a first preference is marked in two or more candidate squares.

While the statutory instructions on the ballot papers ask electors to show preferences for at least as many candidates as there are vacancies, a ballot paper is nevertheless considered formal if it has one (and only one) first preference.

A first preference must be indicated with a number. Ticks and crosses are not accepted as first preference marks.

Except as provided for above, a ballot paper is formal and effect shall be given to the elector's intention so far as that intention is clear. In particular, a preference may be validly marked outside a candidate square so long as the elector's intention is clear. However, to assist Elections ACT during the final scrutiny in the weeks following polling day, polling officials are instructed that all ballot papers which have numbers written outside the squares, without any mark at all in the corresponding square, are to be placed in the informal pile.

The initial scrutiny on polling night in polling places

Counting of ordinary votes cast in polling places on paper ballots commences immediately after the poll closes at 6 pm on polling day.

Votes cast electronically will be counted and displayed on a computer screen in the polling place (first preference data only). Voting data will then be downloaded onto disks, which will be sealed and transported to the Tally Room, where interim preference distribution results will be published. Each data disk will have an associated "hash key", which is an encrypted number that can be used to verify that the data has not been tampered with.

Ordinary votes can be cast for all three electorates at any polling place, which means that most polling places will have ballot papers from all three electorates to count. The ballot papers from the "home" electorate will be dealt with first, followed by ballot papers from the "away" electorates.

If the total number of ballot papers cast for one particular electorate is less than 20, those ballot papers will not be sorted to candidates. Instead the total number will be recorded and the ballot papers will be parcelled and sealed unsorted. They will then be despatched to the Electoral Commission central scrutiny centre, where they will be combined with other ballot papers and counted to candidates. This is to preserve the secrecy of the ballot.

Where the total number of ballot papers for an electorate is greater than 19, they are sorted by the polling officials into first preference votes and informal ballot papers. The results are then tabulated and sent to the Electoral Commissioner.

Note that where there is significant doubt as to the formality of a ballot paper, polling place staff are instructed to class such ballot papers as informal on polling night. Also, as noted above, to assist Elections ACT during the final scrutiny in the weeks following polling day, polling officials are instructed that all ballot papers which have numbers written outside the squares, without any mark at all in the corresponding square, are to be placed in the informal pile. All ballot papers are re-examined again after polling night any doubtful ballot papers and ballot papers with numbers outside the squares will be dealt with by a senior officer.

As soon as the scrutiny of ordinary votes ends, the ballot papers are placed in sealed parcels and delivered to the Electoral Commissioner.

The scrutiny commences as soon as practicable after the close of the poll. Scrutineers are entitled to be present throughout and all proceedings of the scrutiny must be open to scrutineers. The scrutiny may be adjourned from time to time as might be necessary until the counting of the votes is complete.

The initial scrutiny at the central scrutiny centre

Ordinary votes cast at pre-poll centres will be kept in secure storage until they are ready for counting. These votes will be counted at the central scrutiny centre on the Sunday after polling day.

Declaration votes (including declaration votes cast at pre-poll voting centres and polling places and all postal votes) must undergo a “preliminary scrutiny” to determine whether the person making the declaration is eligible to vote, before the envelopes can be opened and the ballot papers inside are counted (see below). Those declaration vote ballot papers admitted for further scrutiny before the close of the poll will be counted at the central scrutiny centre on the Sunday after polling day. (Declaration vote ballot papers will continue to be counted in the week after polling day until they have all been dealt with. Postal votes may be received by the Electoral Commission until the 6th day after polling day.)

Ballot papers from mobile polling teams and ballot papers in parcels smaller than 20, received unsorted from polling places, will be combined and counted at the central scrutiny centre in the week following polling day.

Scrutiny of declaration votes

The scrutiny of declaration votes will be carried out at the central scrutiny centre. This scrutiny is conducted in 2 stages:

- the preliminary scrutiny** of postal vote certificates or declaration envelopes containing postal or other declaration votes to determine whether the claimant is entitled to a vote (preliminary scrutines may commence from the Monday prior to polling day); and
- the further scrutiny** when the ballot papers admitted to the scrutiny are treated in the same way as ordinary ballot papers (further scrutines may only commence after the close of the poll).

Preliminary scrutiny of declaration votes

The Electoral Commissioner is required to give notice of the date, time and place of commencement of a preliminary scrutiny. A notice must be displayed in the Electoral Commissioner’s office not later than 4.00 pm on the day before the preliminary scrutiny is to begin.

In the case of postal votes, the OIC of the scrutiny or his or her delegate will, in full view of any scrutineers who may be present, compare and allow scrutineers to inspect the elector’s signature on each postal vote certificate and the signature on the elector’s enrolment application. The aim of this process is to indicate that the signature on the postal vote certificate is genuine.

A declaration vote ballot paper will be accepted for further scrutiny if the OIC is satisfied that the elector is enrolled (or entitled to be enrolled and is not enrolled because of official error) for the electorate, his or her signature on the declaration vote certificate is genuine and properly witnessed, and the vote contained in the envelope was recorded prior to the close of the poll. The date of birth shown on the declaration will be compared with the elector’s date of birth as shown on the electoral roll as an aid to determine the elector’s authenticity. A postal declaration vote dated after the close of the poll will not be admitted for further scrutiny.

In some cases, postal votes may have been issued by an officer using a computer to verify the elector's enrolment at the time of issue. In these cases, a pre-printed label will be fixed to the postal vote certificate, showing the elector's name and address, an ID number and a barcode. At the preliminary scrutiny, these labels will be used to simplify the process.

Where an elector's name is not included on the electoral roll, but records indicate that the person was removed from the roll in error, the elector's vote will be admitted for further scrutiny, provided the declaration vote certificate is properly completed.

Antarctic electors

An Antarctic elector who has cast a vote will have his or her vote and details recorded as a declaration vote by the officer designated to receive the voting details. Such declaration vote certificates will be signed by an officer instead of the elector and that signature will not be witnessed.

Further scrutiny of declaration votes

Postal and other declaration ballot papers admitted to the further scrutiny are separated from the elector's declaration before they are unfolded or inspected. They are then treated in the same way as ordinary ballot papers.

The scanning or data entry of preferences at the central scrutiny centre

Unlike earlier manually counted elections, there will not be an automatic recheck or fresh scrutiny of the first manual count of all ballot papers counted at polling places. Instead, all preferences shown on all paper ballots will be scanned or data entered at the central scrutiny centre.

The preferences shown on every formal paper ballot will be entered into a computer system at the central scrutiny centre. Any apparent errors will be identified and corrected by electoral officials on the computer system. All informal ballots will be manually rechecked.

Scrutineers will be entitled to observe this process and seek rulings on interpretations placed on ballot papers. Any person approved by the officer conducting the scrutiny may also be present at the scrutiny.

Scanning

If scanning is the method used to capture data, the process will work as follows:

- All formal ballot papers will be parcelled at each polling place or counting centre in "batches" consisting of no more than 50 papers. Each batch will relate to first preferences counted to a particular candidate.
- Each batch will be allocated a number that will uniquely identify the batch, the relevant polling place and electorate.
- At the central scrutiny centre, starting either on the Sunday or Monday after polling day, each batch shall be read by an intelligent character recognition scanning machine.

- The scanner will read the preferences shown on each ballot paper. The scanning system will interpret the Robson rotation "version number" included on each ballot paper.
- The scanning system uses a range of strategies to ensure that preferences are captured with 100% accuracy.
- Supervisors will be entitled to be present during the scanning and validation process to observe the process and to challenge any interpretations of preferences or formality.
- After each batch of ballot papers has been scanned, scanning operators will be presented with an image of each preference number on each ballot paper, and will conduct an initial check on the accuracy of the scanned results (for example, by checking every "1" on every ballot paper in the batch, every "2" on every ballot paper in the batch, and so on).
- After this initial check, the scanning software applies a set of "business rules" to each ballot paper. Those ballot papers that the scanning software reads with a high level of certainty as consisting of an unbroken sequence of preferences will be automatically admitted for counting. Any ballot papers which have unclear numbers, or a break in the sequence of numbers, or appear to be informal, or appear to show a first preference for a candidate other than the candidate named on the batch card, will be flagged as requiring the attention of an Elections ACT supervisor.
- Any ballot papers that do not automatically pass the business rules check will require verification by an Elections ACT officer.
- An Elections ACT officer will investigate each ballot paper requiring verification by comparing the on-screen image of the ballot paper and the computer interpretation of the preferences shown on the original ballot paper to determine whether there has been any error in scanning or interpretation.
- The Elections ACT officer will correct any identified errors in scanning or interpretation on the computer system. If necessary the officer can view the original ballot paper if the scanned image is not sufficient to resolve any doubt.
- If an Elections ACT officer changes a record of a vote on-screen, that change must be verified by a second Elections ACT officer.
- Scrutineers are entitled to observe this verification process. Where a scrutineer believes that a ballot paper has been incorrectly interpreted, the interpretation can be challenged. Challenged ballot papers will be re-examined by a senior electoral official.
- Once all apparent errors in a batch have been corrected on the system, or confirmation is given that a batch is error-free, the batch will be "committed" to the scrutiny system. **Scrutineers should be aware that, if they wish to challenge ballot papers, they should do so before the relevant batch is committed.**

The above process will continue until all formal paper ballots have been scanned and all ballot papers have been verified.

All ballot papers identified at the first manual count as "formal" will be scanned. It is possible that some of these ballot papers will be classified as informal at the scanning stage.

All ballot papers identified at the first manual count as “informal” will be manually rechecked by an OIC at the central scrutiny centre. Any papers ruled at that stage to be formal will be scanned. Ballot papers confirmed as informal will not be scanned.

Manual Data entry

If manual data entry is the method used to capture data, the process will work as follows:

- All formal ballot papers will be parcelled at each polling place or counting centre in “batches” consisting of no more than 50 papers. Each batch will relate to first preferences counted to a particular candidate.
- Each batch will be allocated a number that will uniquely identify the batch, the relevant polling place and electorate.
- Data entry operators will be given a batch of ballot papers.
- The data entry operator will enter the batch number into the computer system.
- For each ballot paper, the data entry operator will first enter the ballot paper’s Robson rotation “version number” into the computer system. This number, printed on every ballot paper, will bring up a data-entry screen that presents the candidates in the same order as that shown on the ballot paper.
- The data entry operator will then enter the preferences shown on the ballot paper into the computer system.
- Supervisors will be present during data-entry to rule on unclear numbers and on disputed interpretations of preferences. Where a scrutineer believes that a ballot paper has been incorrectly data-entered, the data-entry can be challenged by attaching a “flag” to the relevant ballot paper, which will then be re-examined by a supervisor.
- After a batch has been data-entered for the first time, it will be given to a second operator, who will re-enter the batch in the same manner.
- After a batch has been entered a second time, the computer system will generate a printed report.
- The report will list papers where there is a difference between the first and second data entries, or where there are any preferences apparently omitted or duplicated.
- A supervisor will investigate the “apparent error” report by comparing the print-out and the computer record with the original ballot papers to determine whether there has been any error in data entry.
- Any identified errors in data entry will be corrected on the computer system by a “supervisor-level” data entry operator.
- Once all apparent errors in a batch have been corrected on the system, or confirmation is given that a batch is error-free, the batch will be “committed” to the scrutiny system. After this is done, the computer records of the ballot papers in the batch cannot be altered without commencing a formal recount process. **Scrutineers should be aware that, if they wish to challenge ballot papers, they should do so before the relevant batch is committed.**

The above process will continue until all formal paper ballots have been data-entered.

All ballot papers identified at the first manual count as “formal” will be data entered. It is possible that some of these ballot papers will be classified as informal at the data-entry stage.

All ballot papers identified at the first manual count as “informal” will be manually rechecked by an OIC at the central scrutiny centre. Any papers ruled at that stage to be formal will be data-entered. Ballot papers confirmed as informal will not be data entered.

The distribution of preferences

By using a computer program to distribute preferences shown on electronic votes and scanned or data-entered paper ballots, it is possible to conduct “interim” distributions of preferences. Previously, under the manual count system, the preference distribution process could not commence until the count and recheck of all first preferences shown on all ballot papers had been completed.

It is anticipated that the first interim distribution of preferences will take place on election night, using electronic voting data only. These results will be published in the central Tally Room and on the internet. The number of electronic votes available for counting in the Tally Room may increase as the evening progresses, as results from different locations are entered into the central computer.

Scrutineers and other observers should be aware that interim distributions of preferences only take account of a subset of votes, and the results can only be taken as possible indicators of the final results (including the identification of candidates likely to be elected). As further votes are entered in the system, the results could change from time to time. The final distribution of preferences, conducted after all ballots have been entered in the system, could give a different result to any earlier interim distribution.

After polling day, it is anticipated that the data entry or scanning of paper ballots will commence on the following Monday. At the end of each day’s data entry, an updated interim distribution of preferences will be published. This process will continue until all available ballots have been scanned or data entered and confirmed as correct.

The final results will be available after all postal ballot papers are received and checked and all ballots have been entered. The final day for receipt of postal votes is the 6th day after polling day – Friday 24 October. The timing of the announcement of the final result will depend on the time needed to scan or data-enter all ballots.

The scrutiny process uses the Hare-Clark method set out in the *Electoral Act 1992*. A copy of the Schedule from the Electoral Act detailing the scrutiny method is at Attachment A.

An example of the Hare-Clark scrutiny method, demonstrating the basics of the system, is at Attachment B.

Recounts

Recounts usually occur when the result of an election is very close, and there is reason to believe that the original count may have contained errors. A recount may be held either at the request or the discretion of the Electoral Commissioner or as directed by the Electoral Commission. A recount of some or all ballots can be held at any time before the official declaration of an election result. A “recount” should not be confused with routine rechecks of votes carried out by the Electoral Commission after polling day.

A candidate may request a recount of election ballot papers 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 Commissioner is not permitted to take part in any decision of the full Commission in relation to an appeal against a decision of the Commissioner 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.

With electronic voting and electronic vote counting, the Electoral Act sets out a number of ways in which a recount may be conducted:

- A recount may be conducted by recounting data from electronic ballot papers kept on a backup copy of electronic data produced at a polling place or scrutiny centre;
- A recount may be conducted by rerunning the program used to calculate the distribution of preferences, or by reloading the data into a different copy of the program and running that program;
- If practicable, a recount may be conducted by re-examining the accuracy of the scanning or data-entry of paper ballots;
- If practicable, a recount may be conducted by a partial or full manual scrutiny of paper ballots from which preference data has been scanned or data-entered; or
- If practicable, a recount may be conducted by a combination of a manual scrutiny of paper ballots and a computerised scrutiny of electronic ballot papers.

Electoral offences

The following electoral offences relate to scrutineers, party workers and other supporters of candidates.

Definition of “electoral matter”

Several offences relate to the treatment of published “electoral matter” (either in printed or electronic form). “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 Legislative Assembly or 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

Witnessing electoral papers

A person shall not witness the signature of 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

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

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

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 declaration votes

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 for postal voting.

Penalty: 30 penalty units.

Transmission of completed declaration votes

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

Penalty: 10 penalty units.

Opening envelopes containing declaration votes

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

Penalty: 5 penalty units.

Protection of rights

Bribery

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

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

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.

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

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, badge, button, pen, pencil or balloon; or
- (i) an item prescribed by regulation.

“Advertorials”

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

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

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

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.

Prohibition of canvassing within 100 metres of a polling place

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 specify that those grounds are part of the polling place for the purposes of defining the 100 metre limit.

For the purposes of this offence, “polling place” means—

- (a) a place where declaration voting is taking place;
- (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

An officer or scrutineer shall not wear or display a badge or emblem associated with a candidate or political party in a polling place or pre-poll voting centre, or during mobile polling.

Penalty: 10 penalty units.

How-to-vote material in polling places

A person shall not, except for the purposes of lawfully assisting another person to vote, exhibit or leave any printed electoral matter in a polling place, pre-poll voting centre or place where mobile polling is being conducted.

Penalty: 5 penalty units.

Voting fraud

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 take a ballot paper out of a polling place, pre-poll voting centre or scrutiny centre.

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

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, 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.

Identification of voters and votes

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.

Electoral papers

For the purposes of the following offences, "electoral paper" means any document, form or notice 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—unauthorised possession

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—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—defacement etc.

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

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

Electronic voting offences

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.

Control of behaviour at voting centres

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 pre-poll voting centre, a polling place or a scrutiny centre.

Legal proceedings

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 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;
- (c) the Electoral Commissioner.

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

Extract from the Electoral Act 1992

Schedule 4 Ascertaining result of poll

(see s 185)

Part 4.1 Preliminary

1 Interpretation for sch 4

In this schedule:

ballot paper means a ballot paper that is formal under part 12.

continuing candidate means a candidate, other than a successful candidate, an excluded candidate or a candidate who died before polling day.

count means an allotment of votes under clause 3 (1), 6 (3), 9 (2) (c) or 14 (2).

count votes—see clause 1A.

excluded candidate means a candidate excluded under clause 8.

next available preference means the next highest preference recorded for a continuing candidate on a ballot paper.

quota—

- (a) for this schedule generally—see clause 1B; and
- (b) for part 4.3 (Casual vacancies)—see clause 12.

successful candidate means a candidate who is successful under clause 3, 4, 6, 9 or 14.

surplus, in relation to a successful candidate, means the candidate's total votes less the quota, if the resulting number of votes is 1 or greater.

total votes, in relation to a candidate, means the sum of all votes allotted to the candidate.

transfer value—

- (a) for this schedule generally—see clause 1C; and
- (b) for part 4.3 (Casual vacancies)—see clause 13.

1A Meaning of **count votes**—sch 4

- (1) For this schedule, **count votes**, in relation to a candidate, means the number of votes worked out as follows:

$$BP \times TV$$

- (2) However, any fraction is to be disregarded.

- (3) In this clause:

BP means the number of ballot papers to be dealt with at a count that record the next available preference for the candidate.

TV means the transfer value of those ballot papers.

1B Meaning of *quota*—sch 4

- (1) For this schedule, **quota** means the quota of an electorate for an election worked out as follows:

$$\frac{BP}{N+1} + 1$$

Note **Quota**, for pt 4.3 (Casual vacancies)—see cl 12.

- (2) However, any fraction is to be disregarded.

- (3) In this clause:

BP means the number of ballot papers for the election.

N means the number of positions to be filled at the election.

1C Meaning of *transfer value*—sch 4

- (1) For this schedule, the **transfer value** of a ballot paper is the transfer value worked out under this clause.

Note **Transfer value**, for pt 4.3 (Casual vacancies)—see cl 13.

- (2) For the allotment of votes from the surplus of a successful candidate, the **transfer value** of a ballot paper that specifies a next available preference is worked out as follows:

$$\frac{S}{CP}$$

- (3) For the allotment of votes under clause 9 (2) (c) (Votes of excluded candidates), the **transfer value** is—

(a) for a ballot paper in relation to which votes were allotted to the excluded candidate under clause 3 (First preferences)—1; or

(b) for a ballot paper in relation to which count votes were allotted to the excluded candidate under clause 6 (3) (Surplus votes) or clause 9 (2) (c) (Votes of excluded candidates)—the transfer value of the ballot paper when counted for that allotment.

- (4) However, if the transfer value of a ballot paper worked out in accordance with subclause (2) would be greater than the transfer value of the ballot paper when counted for the successful candidate, the **transfer value** of that ballot paper is the transfer value of the ballot paper when counted for the successful candidate.

- (5) In this clause:

CP means the number of ballot papers counted for the candidate at the count at which the candidate became successful and that specify a next available preference.

S means the surplus.

2 Disregarding preferences

- (1) This clause applies if effect is to be given to preferences indicated in candidate squares on a ballot paper under section 180.
- (2) If the same number is marked in 2 or more candidate squares on a ballot paper, those numbers and any greater number shall be disregarded in determining the elector's preferences.
- (3) If a number is missing from the series of consecutive whole numbers marked in the candidate squares on a ballot paper, the missing number and any greater number shall be disregarded in determining the elector's preferences.

Part 4.2 General

3 First preferences

- (1) For each ballot paper recording a first preference for a continuing candidate, 1 vote shall be allotted to the candidate.
- (2) For subclause (1), a ballot paper on which a first preference for a candidate who died before polling day is recorded shall be taken to record a first preference for the candidate for whom the next available preference is recorded.
- (3) After the allotment of votes under subclause (1), each continuing candidate's total votes shall be calculated and, if the votes equal or exceed the quota, the candidate is successful.

4 Scrutiny to cease

- (1) If, after a calculation under clause 3 (3), 6 (4) or 9 (2) (d), the number of successful candidates is equal to the number of positions to be filled, the scrutiny shall cease.
- (2) If, after a calculation under clause 3 (3) or 6 (4) or after all the ballot papers counted for an excluded candidate have been dealt with under clause 9—
 - (a) the number of continuing candidates is equal to the number of positions remaining to be filled; and
 - (b) no successful candidate has a surplus not already dealt with under clause 6;

each of those continuing candidates is successful and the scrutiny shall cease.

5 Scrutiny to continue

If the scrutiny has not ceased in accordance with clause 4 and—

- (a) 1 or more successful candidates have a surplus not already dealt with under clause 6—subject to clause 4, each surplus shall be dealt with in accordance with clause 6; or

- (b) there are no successful candidates with such a surplus—1 continuing candidate shall be excluded in accordance with clause 8 and the ballot papers counted for him or her shall be dealt with in accordance with clause 9.

6 Surplus votes

- (1) Subject to clause 7, this clause applies in relation to the surplus of a successful candidate.
- (2) Each ballot paper counted for the purpose of allotting votes to the successful candidate at the count at which the candidate became successful shall be dealt with as follows:
 - (a) if it does not specify a next available preference—it shall be set aside as finally dealt with for this part;
 - (b) if it specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded.
- (3) The count votes for each continuing candidate shall be determined and allotted to him or her.
- (4) After the allotment under subclause (3), the continuing candidates' total votes shall be calculated and, if the total votes of a candidate equal or exceed the quota, the candidate is successful.

7 More than 1 surplus

- (1) In this clause—
 - (a) a reference to a **successful candidate** is a reference to a successful candidate with a surplus not already dealt with under clause 6; and
 - (b) a reference to the **earliest count** is a reference to the earliest count at which a successful candidate obtained a quota.
- (2) If there are 2 or more successful candidates, the surplus of the relevant candidate shall be dealt with in accordance with clause 6.
- (3) For subclause (2)—
 - (a) if only 1 successful candidate obtained a quota at the earliest count—that candidate is the relevant candidate;
 - (b) if 2 or more successful candidates obtained a quota at the earliest count—the candidate who, of those candidates, has the largest surplus is the relevant candidate; or
 - (c) if 2 or more successful candidates (**contemporary candidates**) who obtained a quota at the earliest count have the same surplus, being a surplus larger than that of any other candidate who obtained a quota at that count and—
 - (i) 1 of the contemporary candidates had more total votes than any other contemporary candidate at the last count at which all the contemporary candidates had unequal total votes—that candidate; or
 - (ii) there is no count at which all the contemporary candidates had unequal total votes—the contemporary candidate who is

determined by the commissioner by lot to be the relevant candidate;

is the relevant candidate.

(4) If—

- (a) a person becomes the relevant candidate under subclause (3) (c) (ii); and
- (b) the ballot papers are recounted in accordance with section 187; and
- (c) the same candidates would, apart from this subclause, become the contemporary candidates once again under that subparagraph;

the person shall be taken to be the relevant candidate for subclause (2) in the recounting of those ballot papers.

8 Exclusion of candidates

(1) If clause 5 or 15 requires a candidate to be excluded, the candidate with the least total votes shall be excluded.

(2) If 2 or more candidates each have the same total votes, being fewer total votes than any other candidate and—

- (a) 1 of those candidates had fewer total votes than any other of those candidates at the last count at which those candidates had unequal votes—that candidate; or
- (b) there is no count at which those candidates had unequal total votes—the candidate who, of those candidates, is determined by the commissioner by lot to be the candidate to be excluded;

shall be excluded.

(3) If—

- (a) a person is excluded under subclause (2) (b); and
- (b) the ballot papers are recounted in accordance with section 187; and
- (c) that paragraph would, apart from this subclause, be applicable once again to the same candidates;

the person shall be taken to be excluded in the recounting of those ballot papers.

9 Votes of excluded candidates

(1) If a candidate is excluded in accordance with clause 8, the ballot papers counted for the candidate shall be sorted into groups according to their transfer values when counted for him or her.

(2) Subject to subclause (3), each group under subclause (1) shall be dealt with as follows:

- (a) if a ballot paper in the group does not specify a next available preference—it shall be set aside as finally dealt with for this part;
- (b) if a ballot paper in the group specifies a next available preference—it shall be grouped according to the candidate for whom that preference is recorded;

- (c) each continuing candidate's count votes shall be determined and allotted to him or her;
 - (d) continuing candidates' total votes shall be calculated and, if the votes of any of those candidates equal or exceed the quota, the candidate is successful.
- (3) The groups referred to in subclause (1) shall be dealt with under subclause (2) starting with the group with the highest transfer value and, subject to subclause 4 (1) or 15 (2), continuing in descending order until all the groups have been dealt with.

10 Setting aside ballot papers

If, after a calculation under clause 3 (3), 6 (4) or 9 (2) (d), the total votes of a candidate who became successful on that calculation equal the quota, the ballot papers counted for that candidate shall be set aside for this part.

How the Hare-Clark system works — an example

How votes are counted

The first step in counting votes using the Hare-Clark system is to count the number of first preference (or number “1”) votes for each candidate. Only ballot papers with a single figure “1” marked against one candidate are counted — ballot papers without a figure “1” or with more than one figure “1” are set aside as informal. Ticks and crosses are not counted.

In the table on page 43, the count of first preference votes is shown at “count 1”. The table is split into two halves. The left half shows ballot papers counted to each candidate, and the right half shows the numbers of votes those ballot papers represent. At count 1, the number of ballot papers is equal to the number of votes counted to each candidate.

How the quota for election is calculated

After all the valid first preference votes are counted, the quota can be calculated. The quota is the lowest number of votes a candidate needs to be certain of election. Any candidate with votes equal to or greater than the quota will be elected. A quota is calculated by using the formula:

$$\frac{\text{total number of valid votes}}{\text{number of vacancies} + 1} + 1$$

In our example, with 3 vacancies and 24,000 ballot papers, the quota is:

$$\frac{24,000}{3 + 1} + 1 = 6,001$$

(The quota in the two 5-member electorates will be one-sixth plus one, or roughly 16.67%. The quota in the 7-member electorate will be one-eighth plus one, or roughly 12.5%.)

Surplus votes

If a candidate has more first preference votes than the quota, the surplus votes counted to the candidate are distributed to other candidates according to the preferences indicated on ballot papers by the voters. All the ballot papers counted to an elected candidate with a surplus are distributed at a reduced value called a “fractional transfer value”. This value is calculated as follows:

number of surplus votes

total number of ballot papers with further preferences

In our example, candidate Blue has 10,000 first preference votes, and the quota is 6,001 votes. Blue has a surplus of 3,999 votes. The fractional transfer value applied to Blue's ballot papers is 0.3999 (3,999/10,000). All 10,000 ballot papers are distributed to continuing candidates, with each ballot paper having a value of 0.3999 of a vote. In other words, the 10,000 ballot papers are distributed with a total value of 3,999 votes (10,000 x 0.3999), which is equal to Blue's surplus. Blue's surplus is distributed at count 2 on the scrutiny sheet.

After all surplus votes from each elected candidate are distributed, the total number of votes counted to each candidate is calculated. Any further candidate with votes equal to or greater than the quota will be elected. Provided vacancies remain to be filled, the surplus votes of any such candidate are also distributed, but at this stage the only votes that are distributed to other candidates are those received by the successful candidate at the stage at which the candidate received more votes than the quota. In our example, there are no other candidates with a surplus at this stage.

Excluded candidates

If, after all surplus votes have been distributed, vacancies remain to be filled, the candidate with the fewest total votes will be "excluded" and his or her ballot papers will be distributed to continuing candidates according to the preferences shown by the voters. At this stage, ballot papers are distributed at the value at which they were received by the excluded candidate. Ballot papers received by the candidate as first preference votes have a value of "1", while ballot papers received following the distribution of a surplus will have a fractional transfer value.

In our example, the candidate with the fewest votes after count 2 is Pink. Pink's ballot papers are distributed to other candidates at count 3. As Pink had only received ballot papers as first preferences, all of Pink's ballot papers are transferred to continuing candidates with a transfer value of "1".

After ballot papers are distributed from an excluded candidate, the total votes counted to each continuing candidate are calculated to determine whether any candidate has received votes equal to or greater than the quota.

The process of distributing surplus votes from elected candidates and excluding the candidate with the fewest votes continues until all vacancies are filled.

In our example, no other candidate has received a quota of votes, so the candidate with the next fewest votes, Grey, is excluded. Grey had received ballot papers at three counts: first preference votes at count 1, ballot papers from Blue's surplus at count 2, and ballot papers from Pink at count 3. Ballot papers with different transfer values are always kept separate from one another, so Grey's ballot papers with a transfer value of "1" (received at counts 1 and 3) are distributed at count 4. As a result, Red received more votes than the quota. At this stage no more votes are distributed to Red. The ballot papers received by Grey at count 2, at a transfer value of 0.3999, are transferred at count 5.

Filling the final vacancy in our example

Red now has more votes than the quota. With 6,399 votes, Red has a surplus of 398. The fractional transfer value applied to Red's surplus ballot papers is 0.2653 ($398/1,500$) — only those ballot papers received at the count at which Red received more votes than the quota (count 4) are included in Red's surplus. Red's surplus is distributed at count 6 on the scrutiny sheet.

As a result, Brown is elected to fill the final vacancy, and the scrutiny ends.

Hare-Clark election — Scrutiny Sheet

No. of vacancies: 3

No. of formal ballot papers: 24000

Quota: $\frac{24000}{3 + 1} + 1 = 6001$

Count no.	Ballot Papers										Votes							
	Blue	Red	Brown	Pink	Grey	Green	Total ballot papers	Transfer value	Votes transf'd	Blue	Red	Brown	Pink	Grey	Green	Loss by fraction	Total votes	Comments
1	10000	750	4000	2750	1500	5000	24000	1	24000	10000	750	4000	2750	1500	5000		24000	Blue elected
2		6000			4000		10000	0.3999	3999	-3999	2399	4000		1599	5000	1		Blue's surplus distributed
3		1750	500		500		2750	1	2750	6001	3149	500	-2750	3099	5000	1	24000	Pink excluded
4		1500	500				2000	1	2000	6001	4899	4500	0	3599	5000	1	24000	Grey being excluded
5			1750				4000	0.3999	1599	6001	6399	5000	0	1599	5000	1	24000	Red elected
6						2250				6001	6399	699		-1599	899	1		Grey excluded
			1250			250	1500	0.2653	398	6001	-398	331	0	0	66	1	24000	Red's surplus distributed
										6001	6001	6030	0	0	5965	3	24000	Brown elected

More Information

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

- ☐ phone: (02) 6205 0033;
- ☐ write to PO Box 272, Civic Square, ACT 2608;
- ☐ look at the website at **www.elections.act.gov.au**;
- ☐ send an email to **elections@act.gov.au**; or
- ☐ visit the Commission's office at O'Connell Centre, Cnr Stuart Street & Blaxland Crescent, Griffith.

ACT Electoral Commission
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