

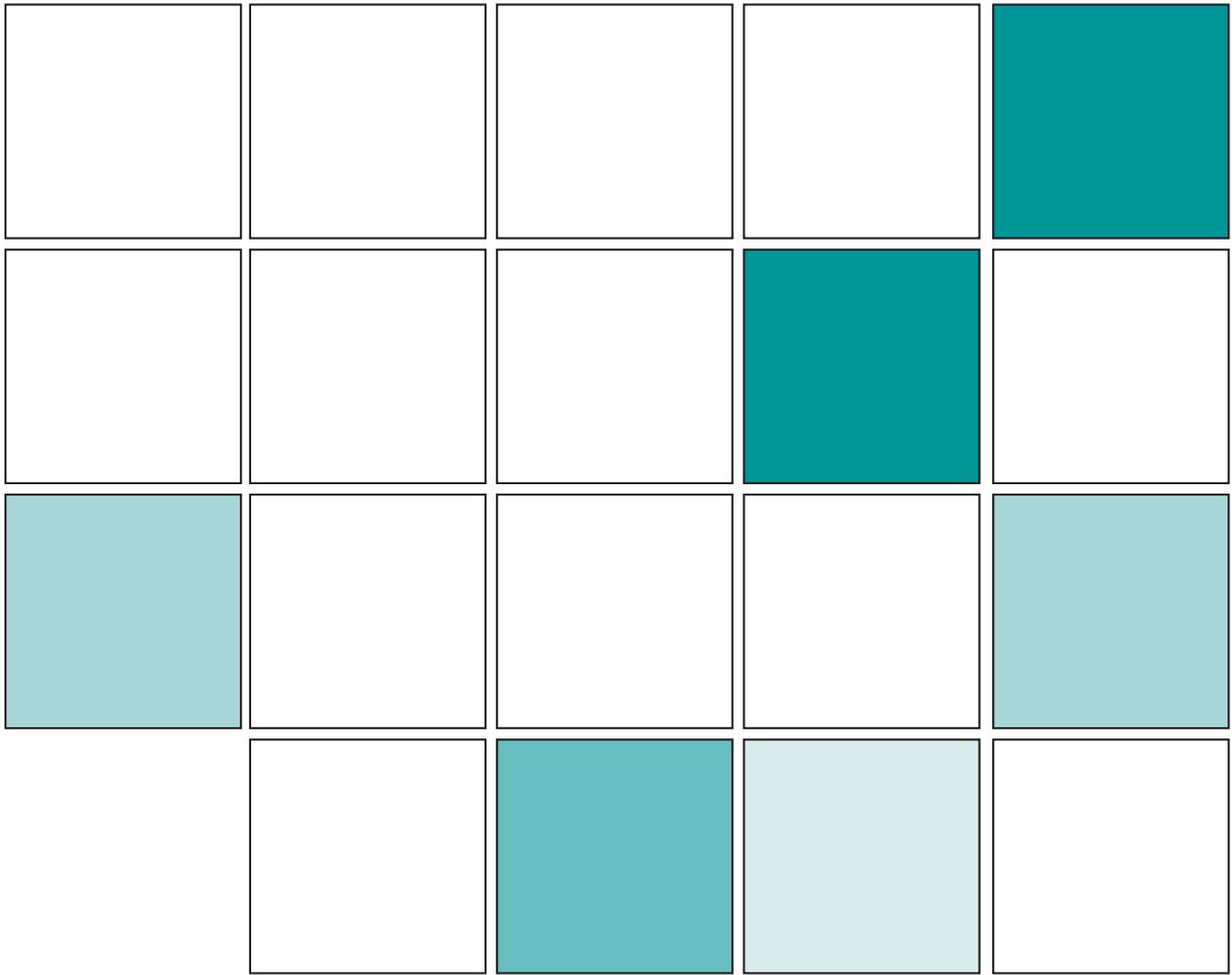


Report on the ACT Legislative Assembly Election



ACT Electoral Commission

2008



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ACT Electoral Commission

2008

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Mr Simon Corbell MLA
Attorney General
ACT Legislative Assembly
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CANBERRA ACT 2601

Dear Attorney General

This report on the conduct of the 2008 ACT Legislative Assembly election is presented to you under section 10A of the Electoral Act 1992.

Section 10A(2) of the Electoral Act requires you to present a copy of this report to the Legislative Assembly within 6 sitting days of receiving the report.

Yours sincerely



Roger Beale AO
Chairperson

16 September 2009

Phillip Green
Electoral Commissioner

16 September 2009

Christabel Young
Member

16 September 2009

Contents

List of appendices.....	vi
List of tables.....	vii
Glossary.....	ix
Introduction	1
Notable features of the election.....	2
Recommendations	3
Key facts about the 2008 election	5
Legislative changes made since the 2004 election	9
Innovative use of information and communications technology.....	11
Electoral rolls	13
Redistribution of electoral boundaries	20
Party registration	22
Nomination of candidates.....	26
Ballot papers	27
2008 election information / education campaign	30
Voting	34
Complaints made to the Electoral Commissioner	45
Political campaigning.....	47
Defamation of candidates	50
Election night and the tally room	53
The count of preferences	56
Election staff	60
Election equipment	62
Disclosure of political donations and expenditure	63
Public funding	66
Compulsory voting.....	67
Multiple voting	70
Ballot paper surveys	71
2008 election budget	76
Casual vacancy provisions	77
The size of the Legislative Assembly and the number of members to be elected in each electorate.....	79
Legislative Assembly electoral matters committee.....	81
Statutory independence	82

List of appendices

Appendix 1 – Summaries of first preference vote counts, including
electronic votes and paper votes83

Appendix 2 – Market research findings on voter awareness and Elections
ACT services87

Appendix 3 – Preference sequences on formal ballot papers 96

Appendix 4 – Australian Electoral Commission submission on defamation 100

List of tables

Table 1 – Key election dates.....	5
Table 2 – Registered political parties eligible to contest the 2008 election.....	6
Table 3 – Candidates nominated by party and electorate.....	6
Table 4 – Summary of first preference votes by electorate: ACT total	7
Table 5 – Summary of first preference votes by party/vote type: ACT total.....	7
Table 6 – Summary of first preference votes by party/vote type: Brindabella	8
Table 7 – Summary of first preference votes by party/vote type: Ginninderra	8
Table 8 – Summary of first preference votes by party/vote type: Molonglo	8
Table 9 – Close of rolls enrolment by electorate	13
Table 10 – Eligible voters by age group and estimated percentage of those eligible – 2008 election	14
Table 11 – Measures of enrolment and voter turnout at 2004 and 2008 elections.....	17
Table 12 – 2008 election actual enrolment compared to redistribution projected enrolment.....	21
Table 13 – Parties registered for the 2008 election	22
Table 14 – Candidates by gender and electorate	26
Table 15 – Discarded computer votes by electorate	36
Table 16 – Interstate voting at the 2008 election	37
Table 17 – Postal vote outcomes.....	37
Table 18 – Applications for postal votes	38
Table 19 – Outcome of postal vote material sent to the applicant on the Thursday before polling day.....	40
Table 20 – Percentage of votes cast by vote type.....	41
Table 21 – Staff employed during the 2008 election.....	60
Table 22 – Summary of Election and Annual disclosure return lodgement and display requirements	64
Table 23 – Public funding at the 2008 election	66
Table 24 - Percentage of non-voters at ACT elections.....	67
Table 25 - Percentage of non-voters at federal elections	67
Table 26 - Percentage of non-voters at Queensland State elections.....	67
Table 27 - Percentage non-voters at Western Australian State elections	67
Table 28 – Non-voter statistics for the 2004 and 2008 elections	68
Table 29 - Informal voting in the ACT	71
Table 30 – Breakdown of informal papers ballot by reason for informality – 2008 election.....	72
Table 31 – Breakdown of informal electronic ballots – 2008 election	72

Table 32 – Summary of informal ballots – 2008 election.....	73
Table 33 - Comparison of rate of informal voting – paper v electronic ballots	73
Table 34 – 2008 election expenditure	76
Table 35 – Summary of all first preference votes.....	83
Table 36 – Summary of all first preference votes at e-voting polling places	84
Table 37 – Summary of electronic first preference votes at e-voting polling places	85
Table 38 – Summary of paper first preference votes at e-voting polling places	86
Table 39 – Information sources used to locate an ACT polling place	87
Table 40 – Usage and satisfaction with the Elections ACT website.....	88
Table 41 – Awareness and use of the 2008 Elections ACT brochure.....	89
Table 42 – Awareness of exclusion of handing out how-to-vote cards within 100 metres of polling places.....	90
Table 43 – Problems caused by lack of easy accessibility of how-to-vote cards	90
Table 44 – Awareness of Robson rotation method	90
Table 45 – Voter awareness of the name of their electorate	91
Table 46 – Voter awareness of how many Members will be elected in their electorate	91
Table 47 – Knowledge of number of Members 2008 election	91
Table 48 – Voter perception of adequacy of instructions on ballot papers.....	92
Table 49 – Voter satisfaction with service delivery provided by ACT polling places.....	92
Table 50 – Voter inconvenience at the polling place	93
Table 51 – Voter satisfaction with queuing.....	93
Table 52 – Voter awareness and usage of ACT election computerised voting procedures.....	93
Table 53 – Voter usage of electronic voting	94
Table 54 – Voter satisfaction with electronic voting.....	94
Table 55 – Reason why some voters at computerised voting polling places did not vote using the computerised methods	94
Table 56 – Voter interest in computerised voting at polling places where it was not available.....	95
Table 57 – Length of sequence – Brindabella	96
Table 58 – Length of sequence – Ginninderra	97
Table 59 – Length of sequence – Molonglo	98
Table 60 – Sequence breaks in formal ballot papers	99

Glossary

ABS	Australian Bureau of Statistics
ACT	Australian Capital Territory
ACT Self-Government Act	<i>Australian Capital Territory (Self-Government) Act 1988</i> (Commonwealth)
AEC	Australian Electoral Commission
Commission	ACT Electoral Commission
Commissioner	ACT Electoral Commissioner
Commonwealth Electoral Act	<i>Commonwealth Electoral Act 1918</i> (Commonwealth)
EEP	Eligible elector population (an estimate of the number of persons who are eligible to be enrolled at a particular point in time)
Elections ACT	The office of the Electoral Commissioner and the staff appointed to assist the Commissioner
Electoral Act	<i>Electoral Act 1992</i>
Hare-Clark	The proportional representation electoral system used in the ACT
InTACT	The ACT Government information technology management agency
JACS	ACT Department of Justice and Community Safety
joint roll	The common ACT and Commonwealth electoral roll maintained under a formal government-to-government arrangement
MLA	Member of the ACT Legislative Assembly
non-voter	A person listed on the electoral roll for an election who apparently did not vote at that election
party	A political party registered under the Electoral Act
PDA s	Personal Digital Assistants (hand-held computers used in polling places as electronic electoral rolls)
redistribution	A redistribution of electoral boundaries

Introduction

This report examines the conduct of the ACT Legislative Assembly election held on 18 October 2008 and makes recommendations for further refinement of the *Electoral Act 1992* and other aspects of the electoral process in the ACT.

The 2008 election saw further improvements in the conduct of elections for the ACT Legislative Assembly. Of particular note was the introduction of electronic electoral rolls for marking the names of voters in all polling places, the introduction of electronic scanning of handwritten preferences on paper ballots, and the extension of electronic voting to around 1 in 5 of all ACT voters.

These innovations combined to provide electoral services to the greatest number of ACT electors since self-government was introduced, with the result provided in the shortest time ever. The final result for the election was announced on Saturday, 25 October 2008, 7 days after polling day.

These outstanding results reflect the productivity and accuracy which come with careful use of electronic technologies. The Commission's increasing dependence on information and communications technology also brings new risks – in particular the need to maintain systems integrity and reliability. This report discusses the Commission's plans to ensure that those objectives are met.

This report can be read in conjunction with the following reports:

- ◇ The *Election Statistics* for the election, published in December 2008; and
- ◇ The Commission's *Annual Report 2008/2009*.

This report of the conduct of the 2008 election is a more detailed report than the Commission's reports on previous ACT elections. After the last 2 elections, the Commission adopted the practice of publishing a review of the operation of the Electoral Act, focussing on recommending areas for improvements, and a report of the operation of the electronic voting and counting system, with a more general descriptive report of the election included in the Commission's Annual Report.

The Commission considered that it would be valuable and useful to combine these 3 different reports into this one more comprehensive report. The Commission considers that the electronic voting and counting system is now integral to the Commission's standard operations. Consequently, the electronic voting and counting system is discussed in this report in context with the other elements of the election process that relate to these processes.

The Commission's Annual Report for 2008/2009 will also necessarily contain information on the conduct of the election. However, the level of detail that was once included in the election year Annual Report has been included in this volume, and this year's Annual Report will refer readers seeking more detail to this report.

In addition to reporting on the conduct of the 2008 election, this report makes recommendations for changes to the electoral legislation with a view to preparations for and the conduct of the 2012 ACT Legislative Assembly election. The report also considers the implications for the Commission's responsibilities of the possibility of increasing the size of the Legislative Assembly. Another issue discussed is an option for changing the process of filling casual vacancies.

Notable features of the election

Notable features of the 2008 ACT Legislative Assembly election included:

- ◇ Taking the highest number of votes in an ACT election – 220,019 (compared to 209,749 in 2004) (representing a turnout of 90.4% of enrolled voters, down from 92.8% in 2004);
- ◇ For the first time in the ACT, replacing printed electoral rolls in polling places with electronic rolls, resulting in efficiencies and environmental savings;
- ◇ Successful expansion of electronic voting facilities to 43,525 voters – almost 20% of all voters (compared to 28,169 in 2004);
- ◇ Continued provision of secret voting facilities for blind and sight-impaired people, using electronic voting;
- ◇ High voter satisfaction with electoral services, with over 97% of voters rating Elections ACT polling staff as friendly and efficient;
- ◇ For the first time in Australia for a parliamentary election, using an intelligent character recognition scanning system for capturing and counting preferences marked on paper ballots;
- ◇ Finalising the election result in record time, with the count concluded 7 days after polling day as a result of combining the scanning of paper ballots with electronic voting and the eVACS® counting system;
- ◇ Adopting for the first time in the ACT an interactive electronic training manual for polling staff;
- ◇ Continued use of an electronic display for the draw for positions on ballot papers;
- ◇ Introduction of simplified processes for applying for a postal vote, including on-line and phone applications, contributing to a record number of postal votes counted – 9,599 (compared to 6,532 in 2004);
- ◇ Extending the number of pre-poll voting centres to 5 (from 4 in 2004), contributing to a record number of voters using pre-poll voting: 44,635 (compared to 30,734 in 2004);
- ◇ Use of an improved display of election results on the internet and in the Tally Room on and after election night;
- ◇ Extending the right to enrol and vote to all prisoners entitled to enrol for an ACT address, regardless of their length of sentence;
- ◇ Introducing simplified rules for authorisation of electoral material;
- ◇ Implementing new rules for grouping candidates on ballot papers;
- ◇ Introducing lowered disclosure thresholds for election returns following the standardisation of thresholds at \$1,000; and
- ◇ Payment of a record amount in public funding to parties and candidates: \$295,453 (compared to \$246,931 in 2004).

Recommendations

The Commission has made the following recommendations in this report.

Recommendation 1

The Commission **recommends** that the Electoral Act be amended to provide for the inclusion of an elector's year of birth and gender on the certified list of electors for an election. (See page 19.)

Recommendation 2

Should the year of birth and gender be included on the certified list, the Commission **recommends** that the lists provided to candidates should exclude the year of birth and gender details, on privacy grounds. (See page 19.)

Recommendation 3

The Commission **recommends** that the Legislative Assembly consider whether it is desirable to amend the Electoral Act to provide that candidates may be given electronic copies of the certified lists. (See page 19.)

Recommendation 4

The Commission **recommends** that section 113 of the Electoral Act be amended to provide that where a candidate has qualified for the return of a nomination deposit, then the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it, and, in the case of a candidate dying before polling day, to the person who paid it or a person authorised in writing by the person who paid it, or in any other case, the deceased's personal representative. (See page 26.)

Recommendation 5

The Commission **recommends** that it would be prudent to amend the Electoral Act to explicitly provide for the format of the ballot paper where a party's candidates are split into two columns, to put the issue beyond doubt. (See page 28.)

Recommendation 6

If the casual vacancy provisions in the Electoral Act are amended to remove any incentive to nominate more candidates than the number of vacancies, the Commission **recommends** that the Assembly consider amending the Electoral Act to prevent a party from nominating more candidates in an electorate than the number of vacancies. (See page 28.)

Recommendation 7

The Commission **recommends** that the Electoral Regulation be amended to provide that the word "declaration" be printed adjacent to the words "ballot paper". (See page 29.)

Recommendation 8

The Commission **recommends** that the requirement in the Electoral Act for a witness to sign a postal vote certificate be removed. (See page 39.)

Recommendation 9

If the previous recommendation is not accepted, then the Commission **recommends** that the requirement for the witness to observe the whole of the postal voting process by the voter be removed, and replaced with a requirement that the witness only witness the signing of the postal vote declaration by the voter. (See page 39.)

Recommendation 10

The Commission **recommends** that the Assembly consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day. (See page 43.)

Recommendation 11

The Commission **recommends** that the Assembly consider whether an amendment to the Electoral Act is warranted to address the issue of authorisation of double-sided stickers containing electoral matter. (See page 47.)

Recommendation 12

The Commission **recommends** that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed. (See page 52.)

Recommendation 13

The Commission **recommends** that the two disclosure issues (the proposal to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and proposals that may arise resulting from the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure) be considered, perhaps by a Legislative Assembly parliamentary committee, once the outcome of the Commonwealth review is known. (See page 63.)

Recommendation 14

The Commission **recommends** that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased to, say, \$25. (See page 69.)

Recommendation 15

The Commission **recommends** that consideration be given to whether it would be desirable to amend the Electoral Act to provide that, where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act. (See page 78.)

Recommendation 16

The Commission **recommends** that, if the size of the Assembly is to be changed prior to the 2012 election, all necessary legislative changes should be made by October 2010. (See page 80.)

Key facts about the 2008 election

The seventh general election for 17 Members of the ACT Legislative Assembly was held on 18 October 2008.

Unlike most State and federal elections, there are no writs issued to commence an ACT election. The legislative basis for the timing of ACT elections is contained in section 100 of the *Electoral Act 1992*, which provides that a general election of the ACT Legislative Assembly must be held on the third Saturday in October in the fourth year after the year in which the last election was held. The official "pre-election period" commences 36 days before polling day.

Key dates for the 2008 election are shown in the following table.

Table 1 – Key election dates

Event	Date
Last day to lodge applications for party registration	30 June 2008
Close of register of political parties	11 September 2008
Pre-election period commenced and nominations opened	12 September 2008
Rolls closed	19 September 2008 (8 pm)
Nominations closed	24 September 2008 (12 noon)
Nominations declared and ballot paper order determined	25 September 2008 (12 noon)
Pre-poll voting commenced	29 September 2008
Pre-poll voting concluded	17 October 2008 (8 pm)
Polling day	18 October 2008 (8 am – 6 pm)
Last day for receipt of postal votes	24 October 2008
Election result announced	25 October 2008
Declaration of the poll	29 October 2008
Legislative Assembly formed	5 November 2008

The Register of Political Parties closed on 11 September 2008. Nine parties were registered on that date. Eight of these parties contested the election. One party, Free Range Canberra, did not contest the election. The following table shows the registered parties eligible to contest the election.

Table 2 – Registered political parties eligible to contest the 2008 election

Registered party	Registered abbreviation	Abbreviation used in this report
Australian Labor Party (ACT Branch)	Australian Labor Party	ALP
Australian Motorist Party	A.M.P.	AMP
Free Range Canberra	FRC	(no candidates)
Liberal Democratic Party	Liberal Democrats	LDP
Liberal Party of Australia (A.C.T. Division)	Canberra Liberals	CL
Pangallo Independents Party	Pangallo Independents	PI
Richard Mulcahy Canberra Party	Canberra Party	RMCP
The ACT Greens	The Greens	Greens
The Community Alliance Party (ACT)	Community Alliance	CA

A total of 86 candidates contested the 2008 election. The following table sets out the numbers of candidates nominated for each party for each electorate and the ACT.

Table 3 – Candidates nominated by party and electorate

Party	Brindabella	Ginninderra	Molonglo	Total
ALP	5	5	7	17
AMP	5	5	7	17
CA	2	3	4	9
CL	5	5	7	17
Greens	2	2	3	7
LDP			2	2
PI			3	3
RMCP			3	3
Others		7	4	11
Total	19	27	40	86

Table 4 – Summary of first preference votes by electorate: ACT total

Party	Brindabella		Ginninderra		Molonglo		ACT total	
	Votes	%	Votes	%	Votes	%	Votes	%
ALP	23123	36.51%	24119	40.17%	31884	36.12%	79126	37.39%
AMP	4418	6.98%	3684	6.13%	2451	2.78%	10553	4.99%
CA	4829	7.62%	1897	3.16%	1004	1.14%	7730	3.65%
CL	22364	35.31%	16683	27.78%	27808	31.50%	66855	31.59%
Greens	8600	13.58%	8350	13.91%	16107	18.25%	33057	15.62%
LDP	0	0.00%	0	0.00%	774	0.88%	774	0.37%
PI	0	0.00%	0	0.00%	4252	4.82%	4252	2.01%
RMCP	0	0.00%	0	0.00%	2341	2.65%	2341	1.11%
Other	0	0.00%	5316	8.85%	1645	1.86%	6961	3.29%
Formal	63334	95.79%	60049	96.00%	88266	96.62%	211649	96.20%
Informal	2782	4.21%	2503	4.00%	3085	3.38%	8370	3.80%
Total	66116	100.00%	62552	100.00%	91351	100.00%	220019	100.00%
Enrolment	71394		68358		103719		243471	
Total as % of enrolment	92.61%		91.51%		88.08%		90.37%	

Table 5 – Summary of first preference votes by party/vote type: ACT total

Party	MLAs elected	Ordinary votes		Postal votes		Pre-poll votes		Declaration votes		Total votes	
		Votes	%	Votes	%	Votes	%	Votes	%	Votes	%
ALP	7	60118	38.0%	3168	33.6%	15534	35.9%	306	40.5%	79126	37.4%
AMP	0	8094	5.1%	252	2.7%	2126	4.9%	81	10.7%	10553	5.0%
CA	0	5693	3.6%	316	3.4%	1699	3.9%	22	2.9%	7730	3.7%
CL	6	48674	30.8%	3591	38.1%	14398	33.3%	192	25.4%	66855	31.6%
Greens	4	25164	15.9%	1335	14.2%	6438	14.9%	120	15.9%	33057	15.6%
LDP	0	557	0.4%	22	0.2%	194	0.4%	1	0.1%	774	0.4%
PI	0	3009	1.9%	297	3.2%	937	2.2%	9	1.2%	4252	2.0%
RMCP	0	1743	1.1%	125	1.3%	471	1.1%	2	0.3%	2341	1.1%
Other	0	5116	3.2%	322	3.4%	1501	3.5%	22	2.9%	6961	3.3%
Formal		158168	95.9%	9428	98.2%	43298	97.0%	755	92.9%	211649	96.2%
Informal		6804	4.1%	171	1.8%	1337	3.0%	58	7.1%	8370	3.8%
Total	17	164972	100.0%	9599	100.0%	44635	100.0%	813	100.0%	220019	100.0%
Total as % of votes		75.0%		4.4%		20.3%		0.4%		100.0%	

Table 6 – Summary of first preference votes by party/vote type: Brindabella

Party	MLAs elected	Ordinary votes		Postal votes		Pre-poll votes		Declaration votes		Total votes	
ALP	2	17673	37.2%	718	31.4%	4630	34.8%	102	43.8%	23123	36.5%
AMP		3424	7.2%	96	4.2%	872	6.6%	26	11.2%	4418	7.0%
CA		3564	7.5%	186	8.1%	1067	8.0%	12	5.2%	4829	7.6%
CL	2	16353	34.4%	985	43.1%	4961	37.3%	65	27.9%	22364	35.3%
Greens	1	6501	13.7%	299	13.1%	1772	13.3%	28	12.0%	8600	13.6%
Formal		47515	95.5%	2284	98.5%	13302	96.6%	233	94.0%	63334	95.8%
Informal		2258	4.5%	35	1.5%	474	3.4%	15	6.0%	2782	4.2%
Total	5	49773	100.0%	2319	100.0%	13776	100.0%	248	100.0%	66116	100.0%
Total as % of votes		75.3%		3.5%		20.8%		0.4%		100.0%	

Table 7 – Summary of first preference votes by party/vote type: Ginninderra

Party	MLAs elected	Ordinary votes		Postal votes		Pre-poll votes		Declaration votes		Total votes	
ALP	2	18482	41.0%	902	36.1%	4644	38.1%	91	37.6%	24119	40.2%
AMP		2851	6.3%	79	3.2%	712	5.8%	42	17.4%	3684	6.1%
CA		1418	3.1%	75	3.0%	401	3.3%	3	1.2%	1897	3.2%
CL	2	12193	27.0%	875	35.0%	3562	29.2%	53	21.9%	16683	27.8%
Greens	1	6263	13.9%	340	13.6%	1709	14.0%	38	15.7%	8350	13.9%
Other		3912	8.7%	231	9.2%	1158	9.5%	15	6.2%	5316	8.9%
Formal		45119	95.6%	2502	98.3%	12186	97.1%	242	92.4%	60049	96.0%
Informal		2073	4.4%	42	1.7%	368	2.9%	20	7.6%	2503	4.0%
Total	5	47192	100.0%	2544	100.0%	12554	100.0%	262	100.0%	62552	100.0%
Total as % of votes		75.4%		4.1%		20.1%		0.4%		100.0%	

Table 8 – Summary of first preference votes by party/vote type: Molonglo

Party	MLAs elected	Ordinary votes		Postal votes		Pre-poll votes		Declaration votes		Total votes	
ALP	3	23963	36.6%	1548	33.3%	6260	35.1%	113	40.4%	31884	36.1%
AMP		1819	2.8%	77	1.7%	542	3.0%	13	4.6%	2451	2.8%
CA		711	1.1%	55	1.2%	231	1.3%	7	2.5%	1004	1.1%
CL	2	20128	30.7%	1731	37.3%	5875	33.0%	74	26.4%	27808	31.5%
Greens	2	12400	18.9%	696	15.0%	2957	16.6%	54	19.3%	16107	18.2%
LDP		557	0.8%	22	0.5%	194	1.1%	1	0.4%	774	0.9%
PI		3009	4.6%	297	6.4%	937	5.3%	9	3.2%	4252	4.8%
RMCP		1743	2.7%	125	2.7%	471	2.6%	2	0.7%	2341	2.7%
Other		1204	1.8%	91	2.0%	343	1.9%	7	2.5%	1645	1.9%
Formal		65534	96.4%	4642	98.0%	17810	97.3%	280	92.4%	88266	96.6%
Informal		2473	3.6%	94	2.0%	495	2.7%	23	7.6%	3085	3.4%
Total	7	68007	100.0%	4736	100.0%	18305	100.0%	303	100.0%	91351	100.0%
Total as % of votes		74.4%		5.2%		20.0%		0.3%		100.0%	

Legislative changes made since the 2004 election

A number of significant changes were made to the electoral legislation after the 2004 ACT election.

On 21 June 2006 the Commonwealth Parliament passed the *Electoral and Referendum Amendment (Electoral Integrity and Other Measures) Act 2006*. This Act amended the *Commonwealth Electoral Act 1918* to make several significant changes to the federal election laws, including closing the electoral roll on the day the writs are issued for a federal election, requiring identification for enrolment, preventing all prisoners from voting at federal elections, extending the right to enrol to all eligible prisoners (that is, prisoners over 17 who are Australian citizens) and raising the disclosure threshold for political donations to over \$10,000.

Some of these changes had automatic application to the ACT's electoral laws, as many of the ACT's enrolment, candidacy and disclosure provisions are linked to the Commonwealth Electoral Act.

Prior to the changes, persons serving a prison sentence of 3 years or longer were unable to enrol or vote for ACT or federal elections. The changes removed the right of all prisoners to vote at federal elections. This amendment did not apply to voting at ACT elections. However, the changes also extended the right to enrol to all prisoners, regardless of their length of sentence, for both Commonwealth and ACT purposes. As under the ACT Electoral Act all those enrolled are entitled to vote, and there was no specific exclusion of prisoners, this had the effect of automatically granting the right to vote in the ACT to all eligible prisoners.

As the extension of the right to vote to all prisoners was consistent with the ACT Government's stated policy, it was concluded that there was no need for any consequential amendments to the ACT's Electoral Act at that time to prevent this occurring.

However, a consequence of extending the right to enrol to all prisoners would have been also to extend the right to be elected and to sit as an MLA to all prisoners. Previously, as the right to be elected and to sit as an MLA was linked to the right to enrol, persons serving a prison sentence of 3 years or longer were unable to be a candidate or an MLA.

In anticipation of the Commonwealth changes, the ACT Government moved to amend the Electoral Act to provide that a person is not eligible to be a candidate or an MLA if the person is under a sentence of imprisonment for 1 year or longer for a conviction of an indictable offence. This amendment was made by the *Sentencing Legislation Amendment Act 2006*, which commenced on 2 June 2006. The Sentencing Legislation Amendment Act also amended the Electoral Act to provide for mobile polling at the ACT's then proposed new prison.

On 26 September 2007 the High Court, in *Roach v Electoral Commissioner [2007] HCA 43*, upheld a challenge to the 2006 amendments to the Commonwealth Electoral Act that removed the right to vote for federal elections from all prisoners. The High Court ruled that the removal of the right to vote from all prisoners was unconstitutional. The effect of the Court's decision was to revert to the Commonwealth provision that applied before the 2006 change. This meant that prisoners serving sentences of 3 years or longer were no longer entitled to enrol for federal or ACT elections under the Commonwealth Electoral Act. Eligible prisoners were subsequently given the right to enrol and vote in the ACT through amendments to the ACT Electoral Act that came into effect on 21 May 2008 (see below).

The changes to the Commonwealth Electoral Act to raise the disclosure thresholds for political donations from \$1,500 to over \$10,000 also had an automatic application to the ACT, as political parties registered at both federal and ACT levels were able at that time to satisfy the ACT's annual disclosure requirements by submitting a copy of their Commonwealth annual return. The Commonwealth changes broke the nexus between the Commonwealth's and the ACT's disclosure requirements, with local parties and donors still required to disclose transactions of \$1,500 or more under the ACT's Electoral Act.

The Electoral Amendment Act 2006 amended the Electoral Act to widen the field of persons who may be appointed as Chairperson of the Commission and to prevent the appointment of people to the Commission who have recently been engaged in political activity through membership of a political party or an Australian parliament. This amendment commenced on 28 September 2006.

The Justice and Community Safety Legislation Amendment Act 2006 made a minor amendment to the Electoral Act in relation to the harmonisation of court rules. This amendment came into effect on 29 September 2006.

The Surveyors Act 2007 amended the Electoral Act in relation to the membership of the Redistribution Committee, to replace the reference to commissioner for surveys with a reference to the chief surveyor. This amendment came into effect on 14 November 2007.

The Planning and Development (Consequential Amendments) Act 2007 made a minor amendment to the Electoral Act in relation to the application of the offence of marking electoral graffiti. This amendment came into effect on 31 March 2008.

The Electoral Legislation Amendment Act 2008 was passed by the ACT Legislative Assembly on 8 May 2008. The Act came into effect on 21 May 2008 after official notification in the ACT's Legislation Register.

Changes made by the Electoral Legislation Amendment Act included:

- ◇ Removing the provision for non-party groups to be listed on ballot papers;
- ◇ Reducing all the thresholds for disclosure of political donations and expenditure to \$1000 from 1 July 2008, to bring the ACT disclosure scheme into line with proposed changes to the Commonwealth disclosure scheme;
- ◇ Allowing electors to apply for postal votes by phone, email, internet, fax or post, without the need for a signature or a witness;
- ◇ Providing that an elector is not eligible to apply for a postal vote if they are able to attend at a pre-poll voting centre in the ACT before polling day;
- ◇ Simplifying the requirements for authorisation of published electoral material;
- ◇ Extending the right to enrol and vote to all ACT prisoners otherwise entitled to enrol (before this change, prisoners under sentence for 3 years or more were not eligible to enrol or vote for ACT elections);
- ◇ Providing that an application for registration of a political party that includes the name of a person in the party's name must include a statement signed by that person indicating the person's consent to the party name;
- ◇ Making it an offence to take a photo of a person's marked ballot paper so as to violate the secrecy of the ballot; and
- ◇ A range of other more minor amendments.

Innovative use of information and communications technology

Since the conduct of the Commission's first election in 1995, Elections ACT has progressively introduced a range of information and communications technologies aimed at better, faster electoral services to the ACT community. Elections ACT has led Australia in the adoption of many electoral ICT innovations, notably the electronic voting and counting system introduced at the 2001 election.

The 2008 election saw the greatest use of ICT innovations for elections for the ACT Legislative Assembly. These included the introduction of electronic electoral rolls for marking the names of voters in all polling places, the introduction of electronic scanning of handwritten preferences on paper ballots, and the extension of electronic voting to around 1 in 5 of all ACT voters. The 2008 election also saw the first use in Australia of on-line applications for postal votes for a parliamentary election. The Elections ACT information program also relied heavily on ICT systems in the tally room and the Elections ACT website. ICT was also used extensively in back office applications and in provision of interactive training material for polling officials.

These various innovations are discussed further in this report under the appropriate subject area section.

These innovations combined to provide electoral services to the greatest number of ACT electors since self-government was introduced, with the result provided in the shortest time ever. The final result for the election was announced on Saturday, 25 October 2008, 7 days after polling day. These outstanding results reflect the productivity and accuracy which come with careful use of electronic technologies. The Commission's increasing dependence on ICT also brings new risks – in particular the need to maintain systems integrity and reliability.

A range of strategies were adopted to ensure systems integrity and reliability. The critical ICT systems – the electronic voting and counting system and the ballot paper scanning system – were independently audited by BMM International Pty Ltd to ensure that the electronic voting, scanning and counting software was free of malicious source code and was tested with due diligence.

All the Elections ACT ICT systems were tested extensively in the lead-up to the 2008 election. The eVACS® system, of course, was also extensively tested before implementation at the 2001 and 2004 elections.

Elections ACT also consulted with stakeholders through its Electronic Voting and Counting System Reference Group, consisting of representatives of political parties, MLAs and other special interest groups. The Commissioner convened this group during the lead-up to the 2008 election to consider the improvements made to the electronic voting and counting system following the 2004 election, and the new scanning of ballot papers system. Reference Group members expressed satisfaction with the electronic voting, scanning and counting systems.

The ACT Government's in-house ICT service provider, InTACT, provided Elections ACT with extensive assistance with the 2008 election, including provision of a project manager and assistance with purchasing equipment and installation of equipment in the Elections ACT head office and the tally room.

In the lead-up to the 2008 election, the Chairperson of the Electoral Commission convened an ICT Systems Review Committee, consisting of the Members of the Commission, the Deputy Electoral Commissioner, the Electoral Commissioner for Victoria and senior representatives from the Department of Justice and Community Safety and InTACT. This Committee was tasked with examining whether the proposed Elections ACT ICT business systems were fit for purpose; examining the risks of adopting each of the proposed ICT business systems; and advising the Commission on whether the Committee supported the use of the proposed ICT systems. The Commission was particularly grateful that the Victorian Electoral Commissioner, Mr Steve Tully, was able to provide the Committee with the benefit of his views.

The Committee was generally satisfied that the systems being used for the election were fit for purpose and that they should be deployed for use. However, the Committee sought assurance from InTACT that the development of the systems and their implementation was suitably robust, and that risks had been mitigated and controls were in place. As a result, InTACT undertook a review of the critical election systems, including the testing, system documentation and risk mitigation strategies that were in place. This review concluded that the Elections ACT ICT systems were fit for purpose and that ICT risks were identified and managed.

In its post-election review, Elections ACT noted that its election critical ICT systems were aging and required redevelopment to make them operational for future elections. Accordingly, Elections ACT asked for and received additional budget funding in the lead-up to the 2012 election to upgrade its election ICT systems.

The 2009/2010 ACT Budget included funding for a 4-year program of re-development of all of the Elections ACT ICT systems. The redevelopment of the electronic voting and counting system, eVACS®, will be a major component of that program. In particular, the redevelopment program will ensure that electronic voting will be compatible with contemporary hardware. The election results system will also be redeveloped for the 2012 election using accepted project tools and methodology, with the aim of making the system more robust.

Electoral rolls

The electoral roll is one of the keystones of the election process. An accurate and up-to-date electoral roll is required to facilitate the franchise and to ensure the integrity of the election. In the ACT, as in all other Australian States and Territories, the electoral roll is maintained by the Australian Electoral Commission under a formal joint roll arrangement. In non-election years, the cost paid by the ACT to the Australian Electoral Commission for its share of maintaining the electoral roll is the Commission's largest expense other than its staff costs. The joint roll cost approximately \$166,000 in 2008/2009.

The Australian electoral roll is kept up-to-date by encouraging eligible citizens to enrol using a variety of strategies, including direct mail, field reviews of habitations and making electoral enrolment forms widely available, for example, at post offices and on the internet. However, the accuracy of the roll ultimately depends on eligible citizens completing and signing a hardcopy electoral enrolment form when they first become eligible to enrol, and every time they move address thereafter.

While electoral authorities strive to maintain an accurate electoral roll at all times, it is well documented that many people defer bringing their enrolment up-to-date until an election is imminent. In recognition of this tendency, electoral authorities place special emphasis on encouraging eligible citizens to enrol in the lead-up to the close of the roll for a general election. In the ACT, the electoral roll stimulation activities preceding the federal election held in November 2007 provided a good basis for building the roll for the 2008 ACT election. The following discussion outlines the steps taken in 2008 to encourage eligible electors to enrol for the ACT election.

Close of rolls

By the close of the rolls on 19 September 2008 there were 243,471 electors enrolled to vote for the 2008 election. The following table compares the number of electors enrolled at the last 3 elections.

Table 9 – Close of rolls enrolment by electorate

Electorate	2008	2004	2001
Brindabella	71,394	65,279	64,020
Ginninderra	68,358	65,271	63,267
Molonglo	103,719	95,548	91,328
Total	243,471	226,098	218,615

The following table shows the numbers of electors enrolled by age group at the 2008 election and the estimated eligible proportion of each age group enrolled.

Table 10 – Eligible voters by age group and estimated percentage of those eligible – 2008 election

Age	Number enrolled	% of estimated entitled to enrol ²
18 ¹	3,850	79.9%
19	4,453	85.4%
20-24	24,078	91.1%
25-29	24,844	94.3%
30-34	23,249	97.4%
35-39	25,030	98.4%
40-44	22,829	98.4%
45-49	23,618	98.3%
50-54	21,819	100.0%
55-59	20,418	101.2%
60-64	16,647	100.7%
65-69	10,716	100.3%
70+	21,920	99.6%
Total	243,471	97.1%

Note 1: This includes 266 17 year old electors who turned 18 after the close of rolls and on or before polling day, and were therefore entitled to vote.

Note 2: The percentages in the above table showing the proportion of electors who were actually enrolled compared to the estimated number of people eligible to enrol need to be treated with caution as they are based on various assumptions about residency and eligibility. The estimates shown are post-censal estimates based on 2006 census data updated by birth and death registrations, and estimated interstate and overseas migration. The fact that some age groups show participation rates greater than 100% is likely to be due to the preliminary nature of the estimates, and because the AEC delays the removal of people from the roll, where it has information that people may have left their enrolled address, pending further investigation of these enrolments.

The estimated number of electors on the roll compared to the estimated number entitled was 97.1% at the close of rolls. This compares to an estimate of 97.5% at the 2004 election close of rolls published by the Commission after that election. A difference is particularly evident in the 18 and 19 year age groups, each of which is below the 2004 level of participation (84.3% and 88.2% respectively). As noted above, caution needs to be exercised in comparing these estimates as there may have been differing base data on which the estimates are calculated. In particular, the estimate of eligible population used as at the 2004 election was subsequently rebased by the ABS using 2006 census data. Using this rebased estimate, the estimate of electors enrolled as a percentage of the eligible population was revised to approximately 93.4%. The rebased estimate of eligible population by age group for 2004 is not available. Nevertheless, these results conform with the nation-wide trend for 18 and 19 year olds to be significantly under-enrolled.

Since the 2004 election there was a net increase of 17,373 electors to the roll. This represents a 7.7% increase since the 2004 election. The increase between the 2001 and 2004 elections was 3.4%. The substantial increase in the number of electors could be attributed to a number of factors including the change from 3 to 4 year terms, more targeted enrolment campaigns, more effective continuous roll update processes, a change

in AEC policy related to delaying the removal of names from the roll (discussed below), a major roll stimulation exercise in the year preceding the November 2007 federal election, and specific activities aimed at the ACT electorate in the lead-up to the 2008 election.

These specific activities, and the regular ongoing activities, included:

- ◇ The Elections ACT 2008 election information and advertising campaign;
- ◇ Fieldwork (home visits) during June aimed at addresses where change of residents has been identified but there had not been a response to correspondence to that address;
- ◇ Fieldwork in July and August 2008 targeted at areas of high population growth but relatively low enrolment, such as Gungahlin and Harrison;
- ◇ Establishing AEC information stalls during August and September 2008 at the Kingston and Gungahlin markets;
- ◇ Standard monthly mail review during April to August 2008, inclusive;
- ◇ Sending birthday cards to 17 and 18 year olds on a weekly basis inviting them to enrol; and
- ◇ The national enrol to vote week from 28 July to 3 August 2008.

The total of 243,471 electors enrolled at close of rolls is estimated to be 97.1% of the eligible population at that time. Looking at the close of rolls for the November 2007 federal election, the ACT had the highest enrolment participation rate of all the States and Territories. In November 2007, it is estimated that the enrolment participation rate in the ACT was 96.6%, compared to a national average of 92.3%. The next highest participation rate was 96.2% in Tasmania, while the lowest was 82.4% in the Northern Territory. The proportion of eligible citizens enrolled in the ACT at the time of the 2008 ACT election was higher than at the 2007 federal election and still higher than for any other State or Territory.

However, only measuring participation rates by examining the absolute number of electors enrolled may give a misleading indication of the accuracy of the roll. A significant change implemented by the AEC in the lead-up to the 2007 federal election, and maintained since, was the adoption of a policy of delaying the removal of electors from the roll where the AEC is aware that an elector has left their enrolled address, while the AEC attempts to contact the elector at their new address and secure an updated enrolment at that new address. Before this policy was introduced, electors were more likely to be removed from the roll earlier where the AEC was aware the elector had left their address. As a result of this policy change, it would appear that the roll for the 2008 election may have been inflated with the names of electors who had left the ACT, but who in past years would have been removed from the rolls before the election. The lower than expected voter turnout of 90.4% and resultant high number of non-voters may have been a result of this change in policy by the AEC.

However, it would also appear that this approach had a positive benefit in retaining people on the ACT roll where they had moved from one address to another in the ACT, whereas in the past they may have been removed from the roll. An indicator of this outcome is the number of declaration votes admitted to the count. Declaration votes are given to people claiming to vote whose name cannot be found on the roll. Where records indicate that these people had retained a right to enrol for the address for which they were removed from the roll, their declaration votes are admitted to the count. In 2008, 813 declaration votes were admitted to the count (consisting of 580 voters who were on the roll but who were not found on the roll in the polling place, and 233 voters whose names had been removed from the rolls by the AEC, generally on the ground of non-residence) compared to 1,818 admitted declaration votes in 2004 (consisting of 516 voters who were on the roll but who were not found on the roll in the polling place, and 1,302 voters whose names had been removed from the rolls by the AEC). These figures would indicate that the policy of retaining electors' names on the rolls where evidence indicated they had left their enrolled address acted to preserve the right to vote for those people who had retained a residence in the ACT.

The 2008 election saw an increase in the percentage of non-voters compared to the 2004 election (9.6% in 2008 compared to 7.2% in 2004), although the percentage in 2008 was similar to the 2001 result (9.1%). Tables showing the percentage of non-voters for ACT elections since 1995 and for federal and State elections over a similar period, are included under **Compulsory Voting** at page 67 of this report.

A significant factor impacting on the ACT's relatively poor turnout is the fact, observed at all previous ACT elections, that Territory elections do not achieve the same level of turnout achieved at federal elections. A comparison with State, Territory and federal elections indicates that State and Territory elections simply do not attract the same level of participation from electors. This could be the result of a number of factors, including greater engagement with federal politics and the greater national and international media coverage devoted to federal elections.

The traditional method of measuring voter participation has been to express voter turnout as a percentage of enrolment. As discussed above, the result thereby obtained can be influenced by the completeness and accuracy of the electoral roll. There are two further ways of measuring performance relating to the completeness of the roll and voter turnout that could be considered. Each provides another perspective on the state of the roll and the level of voter turnout, and all three measures could be taken together.

The two additional measures would use as a base the eligible elector population (EEP). The EEP is calculated every quarter by the Australian Electoral Commission, using base data provided by the Australian Bureau of Statistics and applying a method developed by the AEC in consultation with the ABS. The EEP is an estimate of the number of persons who are eligible to be enrolled at a particular point in time, and is calculated using post-censal estimates based on the latest census data updated by birth and death registrations, and estimated interstate and overseas migration. The estimate is recalculated after each census and previous EEP estimates revised accordingly.

For example, at the time of the 2004 election, the EEP for the ACT was calculated as 231,664 people. This calculation used the 2001 census data as a base. Following the 2006 census, the figure was revised to approximately 242,042. Accordingly, EEP must be viewed with caution at particular points in time. The 2008 election EEP may also be revised following the 2011 census, and comparisons between the percentage of 2004 and 2008 election turnout and enrolment to EEP may alter as a result.

The first new performance measure would express enrolment as a percentage of the EEP at any given time (this is generally measured on a quarterly basis, and at each election). This measure could be used to provide a trend of the level of enrolment over time. This measure would provide an assessment of the effectiveness of the roll maintenance activities carried out by the AEC under the joint roll arrangement – the Commission’s largest non-election administration expense.

The second new performance measure would express voter turnout as a percentage of the EEP at polling day. This measure could be used to compare the change in turnout at subsequent elections. The EEP is available for the 2004 and 2008 elections, but not for earlier elections at this time. This measure would provide an assessment of the effectiveness of the Commission at encouraging electors to vote, regardless of the state of the accuracy of the electoral roll. Arguably, this is a better measure of the Commission’s performance than the current measure, which depends in part on the performance of the AEC in maintaining the roll and the point in time when the ACT election falls in the federal election cycle.

These two measures could be used in conjunction with the current measure, expressing voter turnout as a percentage of enrolment (electors eligible to vote) at polling day. As this measure is the traditional measure of election turnout, it still remains a valid method of comparing performance across time and across jurisdictions.

The following table provides the calculation of the three measures at the 2004 and 2008 elections. Note the 2004 estimate is based on the post-2006 census revised EEP.

Table 11 – Measures of enrolment and voter turnout at 2004 and 2008 elections

Election	Estimated eligible population (EEP)	Number enrolled	% number enrolled to EEP	Voter turnout	% voter turnout to EEP	% voter turnout to number enrolled
2004	242,042	226,098	93.4%	209,749	86.7%	92.8%
2008	250,743	243,471	97.1%	220,019	87.7%	90.4%

Using the information in this table, it can be concluded that while the comparison of voter turnout to the number enrolled at the 2004 and 2008 elections would appear to show that the turnout in 2008 was not as good as in 2004, a comparison of voter turnout to EEP shows that the turnout was better in 2008. Using EEP as the base is arguably the more reliable test because the number enrolled at any time can be impacted by factors unrelated to voter turnout. Such factors can be a roll that is either inflated or under-represented due to the timing of an ACT election within, for example, the federal election cycle. Depending on the place in that cycle, the roll may be inflated due to a federal election close of rolls or under-represented following large scale deletions from the roll due, for example, to processing return-to-sender mail after taking federal election non-voter action. On the other hand, the EEP reflects a more stable trend against which a comparison can be made, subject to the regular rebasing of the estimate after each census.

A further observation of the information in the table is further indication that the roll for the 2008 election was inflated when compared to 2004, or alternately, the 2004 roll was under-represented. The former conclusion is more probable because the turnout compared to enrolment in 2004 is more aligned to previous elections.

Electronic rolls in polling places – Personal Digital Assistants (PDAs)

For the first time at a full parliamentary election across an entire jurisdiction anywhere in Australia, Elections ACT introduced electronic rolls in polling places for marking the names of voters. The electronic roll took the form of a hand held personal digital assistant, or PDA, on which an electronic copy of the ACT roll was stored. This replaced the time-honoured system of marking by hand the names of voters on printed certified copies of the rolls. This electronic system also enabled the automatic capture of statistical information on voting time and total voters for each polling place.

PDAs had been used at earlier State and federal elections to find electors' enrolled electorates for the purpose of issuing absent votes, but not to replace printed certified lists. Only Tasmania had previously used PDAs to replace certified lists at upper house elections for parts of the State. Elections ACT was able to implement this electronic solution for a low cost through the generosity of two other State Electoral Commissions. A total of 1,000 PDAs were loaned to Elections ACT by the Electoral Commission of Queensland at the cost of freight only. The NSW Electoral Commission provided electoral roll inquiry software to run on the PDAs, which was customised for ACT-specific purposes by a local company, Software Improvements, under contract to Elections ACT, to enable the names of voters to be marked as having voted.

Each polling place was supplied with sufficient PDAs to cater for the maximum number of issuing points at that polling place, as well as a back-up supply of the same quantity. The decision to provide 100% redundancy was based on the concern that the battery life of the PDAs was insufficient to last a full day at maximum use. In reality, some PDAs retained a charge for the whole of the day, while others ran out of battery life during the late afternoon.

As a further contingency measure, each polling place was also supplied with an ACT-wide paper copy of the roll. If an elector's name was not found on a PDA, polling officials were instructed to search for the elector's name on the paper roll. If the name was found on the paper roll, this would enable the polling officials to correctly find the elector on the PDA roll and mark them as having voted. If an elector's name was not found on either the PDA roll or the paper roll, the elector would be issued with a declaration vote and their eligibility to vote would be verified after polling day.

Each polling place was also supplied with a master PDA. The PDAs were programmed with the Bluetooth facility so that the issuing PDAs would update the master as each voter's name was marked as having been issued with a ballot paper. This provided a backup of the votes issued should a PDA fail during the day and data be irrecoverable. As it happened, no PDAs lost data, and no PDA was misplaced or stolen. However, the Bluetooth transfer was not entirely successful and the statistical programming proved problematic during the day. That said, no data was lost, and all voting and statistical information was recovered later.

The operation of the PDA was simple. From the entry screen the operator, using the pointer and the on-screen keyboard, tapped in the first 3 letters of the voter's surname and the first 3 letters of the given name, and as necessary selected the relevant entry from the possible electors listed. The full details of the elector/voter would appear and, on confirmation that this was the correct entry, the voter's name was marked as having received a ballot paper. The screen showing the voter detail also gave the detail of the electorate, and was colour-coded accordingly.

Issuing staff found the operation quicker than the previous paper rolls for searching for elector names.

It also appears that the number of errors by polling officials made using the PDAs in 2008 was less than the number of errors evident after the 2004 election, when hand-marked certified lists were electronically scanned. An indicator of this is the number of people apparently sent non-voter notices in error, as they had in fact voted. After the 2004 election, 873 electors sent non-voter notices claimed to have voted, compared to 307 such electors in 2008.

The provision of the electronic rolls also saved the printing of approximately 200,000 sheets of paper, an environmental and cost saving to the Territory.

The electronic rolls were a great success, but will be reviewed for the 2012 election. Among the matters for consideration include:

- ◇ The availability of similar hardware in 2012 – PDAs will be old technology and battery life will be problematic between 2008 and 2012; and
- ◇ Solving the Bluetooth transfer and statistical data issues.

In examining apparent multiple and non-voters, it became clear that some errors had still been made by some issuing staff when marking the names of electors. This is not an issue particular to electronic rolls in polling places, but is an issue for paper based rolls also. The certified list of electors does not contain the date of birth or gender of electors. When presenting to vote, an elector provides his or her name and address. There are a number of electors who have the same name and address of another person, for example father and son who live at the same address. While it cannot be proven conclusively, it is also apparent that some votes may have been issued in the name of an elector whose name is the same or very similar to the person claiming to vote, but who is not in fact enrolled. In these cases, the elector's name is marked as having voted, and then marked again (on another roll) when the real elector presents to vote.

To help overcome this issue, it is proposed that the certified list of electors include the year of birth and gender of each elector. The full date of birth is not necessary and, in the unlikely event of the data being stolen, could provide a perceived vehicle for identity theft.

The Commission **recommends** that the Electoral Act be amended to provide for the inclusion of an elector's year of birth and gender on the certified list of electors for an election.

Under current provisions a certified list is made available to a candidate on request (section 121 of the Electoral Act). Should the year of birth and gender be included on the certified list as recommended above, the Commission **recommends** that the lists provided to candidates should exclude the year of birth and gender details, on privacy grounds. These details are not included on the rolls provided to registered political parties or MLAs.

Provision of electronic electoral rolls to candidates

Currently, certified lists are only provided to candidates in printed form, to avoid the risk that candidates accidentally or deliberately compromise the security of the rolls (despite the relevant offences). However, copies of the roll are available to registered political parties in electronic form. It is arguable that this discriminates against the independent candidates. On the other hand, it would be regrettable if candidates nominated simply so as to receive free electronic mailing lists. The Commission **recommends** that the Legislative Assembly consider whether it is desirable to amend the Electoral Act to provide that candidates may be given electronic copies of the certified lists.

Redistribution of electoral boundaries

A redistribution of the ACT Legislative Assembly electoral boundaries occurs after every general election. The most recent redistribution was finalised in 2007.

Section 36 of the Electoral Act sets out the criteria under which a redistribution is to be conducted. This section prescribes that the Augmented Electoral Commission, in making a redistribution of electorates, shall:

- a. in accordance with the ACT Self-Government Act, ensure that the number of electors in an electorate immediately after the redistribution will not be greater than 110%, or less than 90%, of the expected quota for the electorate at that time;
- b. endeavour to ensure, as far as practicable, that the number of electors in an electorate at the time of the next general election of members of the Legislative Assembly will not be greater than 105%, or less than 95%, of the expected quota for the electorate at that time; and
- c. duly consider —
 - i. the community of interests within each proposed electorate, including economic, social and regional interests;
 - ii. the means of communication and travel within each proposed electorate;
 - iii. the physical features and area of each proposed electorate;
 - iv. the boundaries of existing electorates; and
 - v. the boundaries of divisions and sections fixed under the *Districts Act 2002*.

A redistribution process has two main steps. In the first step, a Redistribution Committee submits a proposed redistribution of boundaries for public comment. (The Redistribution Committee consists of the Electoral Commissioner, the Planning and Land Authority, the Chief Surveyor and an appointed member.) In the second stage, the Augmented Electoral Commission (the members of the Electoral Commission and the Redistribution Committee combined) considers objections to the Redistribution Committee's proposal, if any, and makes a final determination of the boundaries for the electorates.

At the 2007 redistribution, the Redistribution Committee proposed two changes to the then current boundaries: transferring the suburb of Palmerston from Molonglo to Ginninderra, and transferring the suburb of Farrer from Molonglo to Brindabella. After receiving objections to this proposal, the Augmented Commission decided to transfer only the suburb of Farrer from Molonglo to Brindabella. Detailed information on the redistribution can be found in the Augmented Commission's *Redistribution Report: ACT Legislative Assembly Electoral Boundaries Redistribution 2007*, available on the Elections ACT website.

The following table shows the projected 2008 election enrolment numbers and variations from quota estimated at the time of the redistribution, and the actual results as at the close of rolls for the 2008 election.

Table 12 – 2008 election actual enrolment compared to redistribution projected enrolment

Electorate	Estimated enrolment for polling day 2008 used during 2007 redistribution			Actual results for polling day 2008		
	Projected enrolment at redistribution	Projected quota	Projected variation from quota	Actual enrolment at election	Actual quota	Actual variation from quota
Brindabella	70,597	70,240	0.51%	71,394	71,609	-0.30%
Ginninderra	67,643	70,240	-3.70%	68,358	71,609	-4.54%
Molonglo	100,578	98,336	2.28%	103,719	100,252	3.46%
Total	238,818			243,471		

Party registration

There were 9 political parties registered for the 2008 election. Of these, all but one (Free Range Canberra) nominated candidates for the election. The following table lists those parties on the ACT Register of Political Parties at the start of the pre-election period for the 2008 election.

Table 13 – Parties registered for the 2008 election

Party name	Party abbreviation
Australian Labor Party (ACT Branch)	Australian Labor Party
Australian Motorist Party	A.M.P.
Free Range Canberra	FRC
Liberal Democratic Party	Liberal Democrats
Liberal Party of Australia (A.C.T. Division)	Canberra Liberals
Pangallo Independents Party	Pangallo Independents
Richard Mulcahy Canberra Party	Canberra Party
The ACT Greens	The Greens
The Community Alliance Party (ACT)	Community Alliance

New party registrations between 2004 and 2008 elections

In May 2004 the Electoral Act was amended to provide that applications to register a political party, or to change a party's registered name or abbreviation, had to be lodged by 30 June in an election year in order to apply at the election. This provision has now applied at the 2004 and 2008 elections. It has appeared to have served the intended purpose of allowing sufficient time for proper consideration to be given to applications for registration, and any objections to those applications, before the close of the Register of Political Parties prior to the commencement of the pre-election period in September in an election year.

Four political parties were added to the Register of Political Parties between the 2004 and 2008 elections. All 4 parties applied for registration in 2008, before the 1 July 2008 cut-off. They were the Australian Motorist Party, The Community Alliance Party (ACT), the Pangallo Independents Party and the Richard Mulcahy Canberra Party.

There are several opportunities for public objections to applications to register a political party. Objections can be lodged upon public notification of an application for registration; a request for an internal review of a decision to register a party made by the Electoral Commissioner or the Commissioner's delegate can be made to the full Electoral Commission; and a review decision of the Commission can be appealed before the ACT Civil and Administrative Tribunal (formerly the Administrative Appeals Tribunal).

Objections to the applications for registration by the Pangallo Independents Party and the Richard Mulcahy Canberra Party were lodged with the Electoral Commissioner's delegate. The delegate rejected the objections and decided to register both parties. Applications for review of the decisions to register these 2 parties were received by the Electoral Commission. The Commission considered these requests for review and decided in each case to confirm the delegate's decision to register the parties. The appellants chose not to take the further option of appeal to the (then) Administrative Appeals Tribunal.

Issues that arose in the course of the requests for review by the Commission of the decisions to register the parties included:

- ◇ That section 116(1)(g) of the Electoral Act, which provides that the name of each candidate shall be printed once only on each ballot paper for an election, prevented registration of a political party with a name that includes a candidate's name;
- ◇ That sections 93(2)(e) and (f) of the Electoral Act, which provide that an application for party registration must be refused if the proposed registered name or registered abbreviation of the party consists of the word 'independent' or consists of the words 'independent party', prevented the registration of a party with a name or abbreviation that includes the word 'independent' or the word 'independents' with other words; and
- ◇ That 'Canberra Party' is not capable of being registered as an abbreviation of 'Richard Mulcahy Canberra Party' under Part 7 of the Electoral Act as it was not an abbreviation within the definition of the term.

The Commission did not accept that any of these arguments were grounds for refusing the registration of a political party. In particular, the Commission noted:

- ◇ "There are no provisions in Part 7 of the Electoral Act that would permit an application for party registration to be rejected if a party name included the name of a candidate. On the contrary, section 89 of the Electoral Act explicitly permits the use of a living person's name in a party name, provided that the person has consented to the use of their name";
- ◇ "The legislature's intent with regard to the restriction on the use of 'independent' can be easily ascertained from section 93(2)(g), which makes it plain that the legislature does allow acceptance of a party name that includes the word 'independent' in conjunction with other words, provided that those other words do not include the name, abbreviation or acronym of another established political party, or words that would be likely to be confused with the name, abbreviation or acronym of another established political party"; and
- ◇ "Guidance for the meaning of 'abbreviation' comes both from the specific definition provided in the Electoral Act's Dictionary, which permits an alternative form of the party name, and in the normal dictionary meaning of abbreviation, which includes a shortened form ... there are several ACT and Commonwealth precedents that indicate that the party name form [Person's name, Party name] has been acceptably abbreviated as [Party name] ... Canberra Party is clearly both a shortened form and an alternative form of Richard Mulcahy Canberra Party within the meaning of abbreviation as used in the Electoral Act."

Changes to existing party names between 2004 and 2008 elections

Several changes to the registered names and abbreviations of existing registered parties were made between the 2004 and 2008 elections.

The registered name for the Australian Labor Party (ACT Branch) was changed (from Australian Labor Party, Australian Capital Territory) and the registered abbreviation for the party was changed to Australian Labor Party (from ACT Labor) on 13 October 2005.

The registered abbreviation of the Liberal Party of Australian (A.C.T. Division) was changed to Canberra Liberals (from Liberal Party) on 6 June 2008.

The registered abbreviation of the Liberal Democratic Party was changed to Liberal Democrats (from LDP) on 11 July 2008.

The registered abbreviation of The Community Alliance Party (ACT) was changed to Community Alliance (from CAP) on 29 July 2008.

The application to change the registered abbreviation of the Liberal Democratic Party, from LDP to Liberal Democrats, was also the subject of two objections lodged with the delegate of the Commissioner. The objections asserted that the proposed change to the registered abbreviation of the name of the party should be rejected on the ground set out in section 93(2)(d) of the Electoral Act, that is, that the registered abbreviation of the name of the party so nearly resembled the name of another registered party that it was likely to be confused with or mistaken for that name. In this case, the objectors claimed that the proposed abbreviation Liberal Democrats could be confused with or mistaken for either the Liberal Party or the Australian Democrats.

In rejecting the objections to the proposed change of abbreviation, the Commissioner's delegate, the Deputy Electoral Commissioner, noted the decision of 3 presidential members of the Administrative Appeals Tribunal in *Keith Woollard v. Australian Electoral Commission* [2001] AATA 166, including the following argument:

Political parties in Australia use, and historically have used, in their names generic words such as "Australia", "liberal", "labour", "democrat", "national", "christian", "progressive", "socialist" and the like. Absent clear language to contrary effect, the disqualifying provision is not to be construed so as to lock up generic words as the property of any organisation when it comes to names that can be used on the ballot paper.

The Deputy Electoral Commissioner concluded, in the light of the detailed arguments put forward in Woollard and the history of party registration at the Commonwealth level and in the ACT, that the proposed abbreviation Liberal Democrats was not likely to be confused with or mistaken for either the Liberal Party or the Australian Democrats. No requests for review of this decision were received by the Commission.

Party registrations cancelled between 2004 and 2008 elections

Ten registered parties contested the 2004 election. During the period between the 2004 and 2008 elections the registration of 5 of those parties was cancelled: the ACT Equality Party, the Australian Democrats, the Christian Democratic Party ACT Division, the Harold Hird Independent Group, and the Helen Cross Independents Group.

The ACT Equality Party was deregistered at the request of the party on 8 June 2007. The Helen Cross Independents Group was deregistered at the request of the party on 30 June 2006. The Harold Hird Independent Group was deregistered at the request of the party on 12 October 2005.

The Christian Democratic Party ACT Division was deregistered on 8 June 2007 because the delegate of the Electoral Commissioner considered on reasonable grounds that it had ceased to exist.

The Australian Democrats was deregistered on 13 September 2007 because the acting Electoral Commissioner considered that the party did not have at least 100 members who were electors in the ACT. After every election, the Commissioner writes to all registered political parties seeking assurance in writing that they currently had at least 100 members whose names were on the ACT electoral roll. In response to the Commissioner's inquiry, the registered officer of the Australian Democrats advised that the party did not have the requisite 100 members. The Electoral Act provides that the Commissioner must cancel the registration of a party where the Commissioner believes on reasonable grounds that the party did not have at least 100 members who were electors in the ACT.

In the lead-up to the 2008 election, the president of the ACT Democrats issued a media release criticising the rule that prevented the party from re-applying for registration in the same election cycle in which they were deregistered. Section 99 of the Electoral Act prevents the re-registration of a party that has had its registration cancelled within the same parliamentary cycle. As a result, the ACT Democrats were ineligible to re-apply for registration before the 2008 election as the party was deregistered in 2007. This provision was introduced in 1994. The provision was based on the equivalent provisions of the current section 136(2) of the *Commonwealth Electoral Act 1918* (originally section 58P) introduced in 1983.

The provision to restrict the registration of a party with the same name or name similar to the party that has had its registration cancelled has two main underlying intents. The first is that it reinforces the requirement that a party must maintain its membership above the threshold for eligibility at all times. It would be untenable for parties to be able to register before an election only to be deregistered after the election on a cyclical basis. The second is that it provides some measure of protection against the inappropriate use of the name by another group that had an ability to recruit the required number of members and claim that party name. This situation would lead to some confusion for voters who could be led to believe that they were voting for the candidates of the originally registered party, when in fact it was an entirely different group. Accordingly, the Commission does not consider that any change is warranted to section 99 of the Electoral Act.

Nomination of candidates

There were 86 candidates nominated for the 2008 election, compared to 77 in 2004. The following table provides a breakdown by gender and electorate.

Table 14 – Candidates by gender and electorate

Brindabella	Male	Female	Total
2008	14	5	19
2004	13	8	23
Ginninderra	Male	Female	Total
2008	18	9	27
2004	12	11	23
Molonglo	Male	Female	Total
2008	28	12	40
2004	20	13	33

All nomination deposits for candidates of political parties were made as one payment for all candidates for the party. This is typical as the nominations for grouped candidates tend to be lodged at one time by the campaign director, party secretary or registered officer on behalf of all candidates for that party, and is usually paid by the party rather than the individual candidates. Accordingly, the nomination deposits for all candidates for the party are receipted as one amount.

Under section 113 of the Electoral Act, the nomination deposit is returned to a candidate who:

- ◇ is elected;
- ◇ at the time when they are excluded from the poll under scrutiny, has votes equal to or exceeding 20% of the quota for election; or
- ◇ has votes totalling 20% or more of the quota at any stage of the counting, although neither elected nor excluded.

Taken literally, section 113 could be read as requiring the Commissioner to return the deposit to the candidate, who may or may not have paid the deposit to the Commissioner. In practice, where a deposit is not made by a candidate directly, the Commissioner returns the deposit to the person or party who paid the deposit, on the basis that this person or party is acting as the candidate's agent. The Commission considers that it would be desirable to amend section 113 to more accurately reflect actual practice. In addition, should a candidate die before polling day, the Commission considers that the deposit should be returned to the person who paid it or the person authorised in writing by the person who paid it, or in any other case, to the personal representative of the deceased.

In 2001, similar amendments were made to the relevant sections of the Commonwealth Electoral Act, on which section 113 of the ACT Electoral Act is based.

Accordingly, the Commission **recommends** that section 113 of the Electoral Act be amended to provide that where a candidate has qualified for the return of a nomination deposit, then the deposit is to be returned to the person who paid it or a person authorised in writing by the person who paid it, and, in the case of a candidate dying before polling day, to the person who paid it or a person authorised in writing by the person who paid it, or in any other case, the deceased's personal representative.

Ballot papers

Nomination of more candidates in a party group than there are vacancies

An issue that arose in the lead-up to the 2008 election concerned the number of candidates that may be nominated by a party in an electorate.

The Electoral Act provides that, where a party nominates more candidates for an electorate than there are vacancies in the electorate, those candidates are to be split into 2 or more adjacent columns of equal length (so far as practicable), so that no column of candidates is longer than the number of vacancies.

The main purpose behind this requirement is to limit the length of columns on ballot papers so as to minimise the number of Robson rotation variations that are needed to ensure fairness to all candidates. Currently the 5 member electorate ballot papers are printed 60 different ways and the 7 member electorate ballot papers are printed 420 different ways.

At the time of drafting this requirement, it was not anticipated that parties were likely to nominate more candidates than vacancies. This view was taken on the basis that it can be argued that it would not be in a party's interests to nominate more candidates than vacancies: as the ballot paper instructions specify that voters should as a minimum show as many preferences as there are vacancies, a party that nominates more candidates than vacancies runs a significant risk that votes for that party will be lost through exhaustion of preferences, given that a very high proportion of voters only show as many preferences as there are vacancies.

However, for the first time, both the Australian Labor Party and the Liberal Party announced, in the lead-up to the 2008 election, that they were intending to nominate 6 candidates in at least one of the 5 member electorates. In the event, both parties changed their view and neither party, nor any other, nominated more candidates than the number of vacancies in any electorate.

However, the fact that the possibility was being considered caused a degree of concern within the Commission, particularly regarding how the ballot paper might be formatted in 2 columns for one party group and the impact on the computer voting system design and whether it could be updated in time for the election.

The Electoral Act does not provide explicitly how to format the ballot paper where a party is split between 2 columns. The Commissioner sought legal advice on the form of the ballot paper where a party nominated more candidates than vacancies in an electorate. The ACT Government Solicitor advised that a ballot paper formatted with the party candidates listed in two columns, with one column heading and no dividing line between the candidates, would comply with the Electoral Act. A sample ballot paper would look as follows.

Sample ballot paper showing format where a party nominates 6 candidates in a 5 member electorate

+	Ballot Paper	Election of 5 Members	2008		Legislative Assembly for the Australian Capital Territory	+	
Electorate of Ginninderra							
Number five boxes from 1 to 5 in the order of your choice							
You may then show as many further preferences as you wish by writing numbers from 6 onwards in other boxes							
A PARTY NAME	B ANOTHER PARTY NAME	C ANOTHER PARTY NAME	D ANOTHER PARTY NAME	E ANOTHER PARTY NAME	F ANOTHER PARTY NAME	G ANOTHER PARTY NAME	UNGROUPED
<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME INDEPENDENT
<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME INDEPENDENT
<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	
<input type="checkbox"/> First Name SURNAME			<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	<input type="checkbox"/> First Name SURNAME	
			<input type="checkbox"/> First Name SURNAME		<input type="checkbox"/> First Name SURNAME		
1	Remember, number at least 5 boxes from 1 to 5 in the order of your choice						1
+						+	

While the Government Solicitor did not consider it necessary to make regulations under the Electoral Act to provide for certainty for this scenario, the Commission **recommends** that it would be prudent to amend the Electoral Act to explicitly provide for the format of the ballot paper where a party's candidates are split into two columns, to put the issue beyond doubt.

The main reason why a party might want to nominate more candidates in an electorate than the number of vacancies would be where a party expected to win several seats in the electorate and the party wanted to ensure that it had a sufficient number of unelected candidates available to contest any subsequent casual vacancies (which in ACT Legislative Assembly elections are filled by conducting a recount of the ballot papers used to elect the vacating member). For example, if a party won 3 seats in a 5 member electorate, and the party had nominated 5 candidates, there would only be 2 unelected candidates available to contest any vacancies arising in relation to the 3 party members elected. If all 3 of those elected candidates resigned or died during the term of the Assembly, the party would only be able to win 2 of those 3 seats in the casual vacancy count-back, as there would only be 2 unelected party candidates available to contest the vacancy.

If this scenario was considered likely, it can be conceded that a party might see a reason to nominate more candidates than the number of vacancies in an electorate. However, it would be unfortunate if a tactical decision dictated by the method of filling casual vacancies by count-back was to unduly complicate a general election in this manner. Rather than addressing this issue by nominating more candidates than the number of vacancies, it might be desirable to re-examine the casual vacancy process to determine whether there might be a better way of filling casual vacancies where a party vacancy occurs and a nominee from that party is not available to contest the vacancy. This issue is discussed below under **Casual vacancy provisions**.

If the casual vacancy provisions in the Electoral Act are amended to remove any incentive to nominate more candidates than the number of vacancies, the Commission **recommends** that the Assembly consider amending the Electoral Act to prevent a party from nominating more candidates in an electorate than the number of vacancies. This would serve to keep the size of the ballot papers smaller and to prevent a party from getting any perceived advantage from having its candidates split over 2 or more columns.

Declaration ballot papers

Section 5A of the *Electoral Regulation 1993* provides that the word "declaration" is to be printed above the words "ballot paper" on declaration vote ballot papers. Declaration ballot papers are issued to postal voters and to voters attending a polling place who satisfy the polling official that:

- ◇ The certified list of electors for the electorate does not specify the person's name; or
- ◇ The certified list of electors for the electorate has been marked so as to indicate that a ballot paper has already been issued to that elector, but the elector claims not to have already voted.

The aim of the provision is to ensure that ballot papers issued in these circumstances can be identified from ordinary ballot papers should they be accidentally (or deliberately) placed in the ballot box, rather than inside the declaration vote certificate envelope for later checking of the eligibility of the voter. If declaration ballot papers are found in an ordinary vote ballot box, they are required to be classified as informal votes, as the voter's right to vote has not been verified.

However, in practical terms, the placement of the word "declaration" above the words "ballot paper" causes some issues, in particular with the space available on the ballot paper, and the restriction it places on the effective operation of the scanning of ballot papers system.

To effectively identify declaration ballot papers using the ballot paper scanning system, the word declaration must be in a specifically designated position on the ballot paper. Given the required design of the ballot paper, this is not readily achievable if the word is to be located above the words "ballot paper". For the 2008 election, the word "declaration" was placed in the blank space below the words "ballot paper".

To allow some flexibility in the placement of the word to meet operational purposes, while at the same time retaining the intent of the placement of the word on declaration ballot papers, the Commission **recommends** that the Electoral Regulation be amended to provide that the word "declaration" be printed adjacent to the words "ballot paper".

Non-party groups on ballot papers

In June 2008 a change was made to the Electoral Act to remove the provision allowing non-party candidates to form a group on the ballot paper. This change drew some comment from non-party candidates and in particular from the unregistered Australian Democrats. Having lost party registration through not maintaining the required 100 members, the Democrats could not form a party group and therefore be placed in a group column.

The provision that allowed for non-party groups was repealed by the Assembly in 2008 following a recommendation of the Commission. The Commission examined this issue at length in its reviews of the 2001 and 2004 elections. The Commission concluded in its 2004 review that "it is apparent that the existence of non-party groups does not assist voters by providing them with any meaningful information about why such candidates are grouped together" and recommended that the provisions enabling non-party groups be removed.

The Commission stands by this conclusion and considers that a change to the current provision is not warranted.

2008 election information / education campaign

The Commission undertook an extensive communication campaign leading up to the 2008 election. The campaign communicated several messages to ACT electors, including:

- ◇ Informing ACT electors that there would be an election for the ACT Legislative Assembly on 18 October 2008;
- ◇ Encouraging eligible citizens to enrol for the first time or to update their address details before the rolls closed;
- ◇ Informing electors that they would be voting for one of three electorates;
- ◇ Informing electors living in the suburb of Farrer of the electorate boundary changes that moved Farrer from the electorate of Molonglo to the electorate of Brindabella;
- ◇ Providing information about the voting process to allow electors to cast a valid and informed vote (including an explanation of the implications of preference choices, such as numbering only one box, numbering the number of boxes for which there are seats in the electorate, or giving preferences to as many candidates as the electors wish);
- ◇ Explaining the procedures for voting in both paper and electronic forms;
- ◇ Providing information about the physical requirements of the election, such as where to vote, when to vote, what to do in special circumstances (including information on pre-poll voting, postal voting and voting at polling places on polling day);
- ◇ Identifying the locations of polling places;
- ◇ Informing electors that voting is compulsory; and
- ◇ Informing electors about the 100 metre ban on how-to-vote cards outside polling places.

The Commission again used the campaign theme that had been used successfully at the 2001 and 2004 elections. The Commission placed its advertising using the ACT Government's advertising agency, HMA Blaze. This approach enabled the Commission to use its communication budget primarily for message delivery, avoiding the need for creative concept development.

The advertising campaign included advertising on radio and television, in newspapers, through direct mail to all households, public relations activities, and activities targeted to electors from non-English speaking backgrounds and print-handicapped electors.

The earliest election related media releases were issued in February and May 2008, setting out the deadline for applying to register new political parties. Over the following months the Commission worked to increase awareness of the election by briefing journalists and political participants, and by generating news stories in the media. The Commission recognises the important role played by the general media in assisting the Commission by providing factual information about the election.

The Commission's formal advertising campaign commenced with the first of 2 household deliveries. The first mail out was an information pamphlet delivered to all households in the week commencing 8 September 2008. The core messages of this pamphlet were alerting electors to the need to update address details on the roll, or to enrol, before the close of rolls, arrangements for alternatives to voting on polling day, and the effect of the redistribution in 2007.

The second household delivery in the form of a booklet took place in the week commencing 7 October 2008. This corresponded to the second week of pre-poll voting and included the key messages of arrangements for voting for those who cannot vote at a polling place on polling day, how-to-vote using the electronic voting option, how to correctly mark a ballot paper, the location of pre-poll and polling day polling places, an explanation of Robson rotation of names on ballot papers, and the distribution of preferences.

Radio, television and newspaper advertising was conducted in three phases – enrolment, postal and pre-poll voting, and voting formally. The campaign commenced on 3 September 2008 and concluded on polling day with a booklet included in The Canberra Times. This booklet largely contained the same messages as the booklet delivered to households 2 weeks earlier.

For the first time the television advertisements were converted to a format that allowed them to be included in the streaming vision on screens at Canberra Connect shopfronts. In addition, relevant election information was included in the Canberra Connect call centre messages aired while callers were waiting on the phone to speak to an operator. The advertisements and messages were changed to coincide with the relevant phase of the election campaign.

Public relations activities

A wide range of public relations activities was undertaken during the election campaign. These activities succeeded in generating a large amount of positive coverage of the Commission's election messages.

Public relations activities included:

- ◇ Issuing 17 media releases;
- ◇ Radio, television and newspaper interviews conducted by the Electoral Commissioner and Deputy Electoral Commissioner;
- ◇ Arranging photo and television opportunities in order to draw attention to aspects of the election, particularly voting by computer and the scanning of ballot papers; and
- ◇ Holding public events, including the declaration of the nominations and draw for ballot positions on the ballot papers, the election night Tally Room and the official declaration of the poll.

Market Research

Market Attitude Research Services (MARS) was engaged to undertake an evaluation of voter satisfaction with the 2008 election polling place services, voter knowledge of voting procedures, and an assessment of the impact of the public information program conducted by the Commission. Similar evaluations were conducted by MARS for the 1995, 1998, 2001 and 2004 elections.

Random intercept exit interviews were conducted on polling day with voters as they departed the polling place. Interviews were conducted with 545 voters across a random selection of 26 polling places, of which 4 were electronic voting places.

The key findings of the research were:

- ◇ Sources of awareness of ACT election polling places was greatly assisted by paid advertisements in newspapers and the Elections ACT brochure and website;
- ◇ Usage of the Elections ACT website is increasing, and satisfaction is high;
- ◇ ACT voter usage of the Elections ACT household brochure has declined since the 2004 election, but this decline has been offset by voters increasingly accessing the Elections ACT website to obtain information;
- ◇ Voters' awareness of the "Robson rotation" method of ballot papers and that "how-to-vote" cards were unavailable within 100 metres of a polling place showed weaknesses in voter awareness during the 2008 ACT election, but these issues did not cause major problems;
- ◇ Voter awareness of the name of their electorate, however, was strong, but voter awareness of the number of members to be elected in their electorate was lower;
- ◇ For the 2008 ACT election over 94 in 100 voters expressed satisfaction with polling place staff helpfulness and over 97 in 100 expressed satisfaction with polling place staff efficiency and friendliness; and
- ◇ During the 2008 ACT election over 8 in 10 voters surveyed at a computerised voting polling place actually voted using computerised voting, and most expressed satisfaction except for the ease of card swiping and to some extent the clarity of computerised voting instructions.

Detailed findings from the research can be found at Appendix 2.

The Commission will take account of these findings for the 2012 election to fine-tune its communication strategy, particularly in relation to Robson rotation, the ban on how-to-vote cards and electronic voting instructions.

Activities aimed at people with special needs.

Several information activities were aimed at people with special needs, including people from culturally and linguistically diverse backgrounds and people with vision or hearing impairment.

Elections ACT once again employed bilingual educators to provide information to their communities. A total of 6 educators from 7 language groups were employed. These educators conducted 46 sessions which were attended by approximately 800 people. They distributed pamphlets and other election information. A specific election related pamphlet which had been translated into 11 languages and issued by Elections ACT was also distributed at the sessions and left in appropriate church centres, clubs and restaurants. Some of the educators used the translated pamphlet to read on various ethnic radio programs. Positive feedback was received from participants in this program. Short articles with information about the election were placed in the Office of Multi-cultural Affairs e-newsletter which goes to the ACT's multicultural community groups.

Election ACT's election guide was read on Radio 1RPH (radio for the print-handicapped). It was also included in the Canberra Blind Society's monthly audio newsletter which is sent to members and placed in Canberra public libraries.

Close liaison was maintained with the Canberra Blind Society in the setting up of a public demonstration of voting by computer with audio prompts. The demonstration was part of the Canberra Blind Society's Overview 2008 expo.

The Telephone Interpreter Service information panel was printed on some of the Elections ACT publications, encouraging electors with limited English to make use of the services to assist with understanding electoral information. Alternative formats for printed publications were available on request.

A register of language capacity of all casual staff was maintained and was used to assist with the recruitment of the bilingual educators.

Website visits

The Commission made extensive use of its website **www.elections.act.gov.au** as a means of providing information about the election and supplying electoral forms. For example, following legislative change, the 2008 election saw the introduction of an on-line postal vote application form. Previously this was done through signed and witnessed paper applications received by the Electoral Commission through the mail or fax.

In the lead-up to the election, large numbers of users accessed the list of polling places, the electronic postal vote application, information on electronic voting, answers to frequently asked questions, the election timetable, the electoral boundaries, the list of candidates and the fact sheet on the Hare-Clark system.

On and after polling day, most users accessed the on-line election results. Similar to the 2004 election results system, the 2008 virtual tally room allowed the media to access up-to-date election results through the Electoral Commission website rather than having to wait for the release of Commission issued media releases.

Statistics on website activity point to a large increase in visits to the Commission's site for the election period.

Before the election period began, the number of page hits on the website averaged 1,038 per day. In August 2008 this increased to an average of 1,432 page hits per day. After the election period officially started, the number of website page hits increased dramatically to 40,189 per day in October. The largest number of page hits – 86,013 – was recorded on election day. Usage remained high through November, averaging 37,323 per day.

Voting

At the 2008 election, 220,019 electors cast votes that were admitted to the scrutiny, a turnout of 90.4%. This was a lower than expected turnout, and represents a 2.4% reduction compared to 2004, and the lowest percentage turnout since 1995. However, this was the highest absolute number of votes taken in an ACT Legislative Assembly election – 220,019 votes (compared to 209,749 in 2004). Table 20 provides details of turnout, and percentage of votes by type, since 1995. There were 8,370 informal votes in 2008, or 3.8% of votes cast. The informal rate increased by 1.15 percentage points from 2004.

The turnout of voters is discussed above in the context of the state of the electoral roll under **Electoral rolls**.

Details of numbers of votes cast by vote type and electorate are in Tables 5-8.

Pre-poll voting

Pre-poll voting was provided at Belconnen, Civic, Gungahlin, Tuggeranong and Woden in the 3 weeks before polling day, commencing on Monday 29 September 2008. Gungahlin was used as a pre-poll centre for the first time for an ACT Legislative Assembly election in 2008. Computer voting was provided at all pre-poll voting centres. A total of 44,635 pre-poll votes were cast, or 20.3% of all votes. In 2004, pre-poll votes accounted for 14.7% of all votes. Of the pre-poll votes cast, 36,323, or 81.4% were cast by computer. In 2004, there were 20,722 pre-poll votes cast by computer, or 68.2% of all pre-poll votes.

The pre-poll centres were also used as polling places on polling day, with computer voting available at those locations.

Details of the numbers of pre-poll votes cast at the 2008 election are in tables at Tables 5-8.

Electronic voting

The ACT's electronic voting and counting system was introduced at the 2001 election, improved for the 2004 election and further improved and upgraded for the 2008 election.

Following the 2004 election, several minor enhancements were made to improve the electronic voting component of the system, eVACS®, including:

- ◇ Allowing the voter to change the volume of the audio instructions;
- ◇ Allowing for different font sizes for group and candidate names;
- ◇ Removing the hard coding of electorate names;
- ◇ Allowing for the support of newer hardware;
- ◇ Allowing for the support of new barcode readers;
- ◇ Improved shutdown functionality, and power loss recovery; and
- ◇ Including more "please wait" messages during setup.

Electronic, or computer, voting was deployed in the 5 pre-poll voting centres located in each of the main town centres (Belconnen, Civic, Gungahlin, Tuggeranong and Woden) for the period of 3 weeks before polling day. These same locations also had computer voting on polling day. Normal paper ballots were also available at each computer voting centre.

Staff of Elections ACT set-up the pre-poll centres with a voting server and 20 voting booths as well as normal voting facilities for paper ballot voting.

Each computer voting booth was equipped with a 17" voting display screen, barcode reader, keypad and instruction poster.

One of the 20 computer voting booths was configured to suit those with disability, including headphones for voters who are blind or vision impaired, a larger 21" display screen and wheelchair access.

The number of voters using the computer voting facilities increased markedly from 2004 to 2008.

In 2004 there were 20,722 pre-poll votes cast by computer, or 68.2% of all pre-poll votes, whereas in 2008, of the pre-poll votes cast, 36,323, or 81.4%, were cast by computer.

In 2004, there were 11,710 votes issued at 8 computer voting centres on polling day, of which 7,447 or 63.6% were computer votes. In 2008 there were 9,312 votes issued at 5 computer voting centres, of which 7,497 or 80.5% were computer votes.

In total the number of computer votes increased from 28,169 in 2004, being 66.9% of all votes cast at computer voting centres (and 12.5% of all votes cast) to 43,820 votes in 2008 (including 295 discarded barcodes counted as informal votes), or 81.7% of votes cast at computer voting centres (and 19.9% of all votes cast).

Tables at Appendix 1 show the number and percentage of paper ballots and computer votes by electorate cast at the 5 computer polling places.

Staff in computer voting centres commented on a number of issues that arose that will need to be addressed, including:

- ◇ Voters attempting to use the voting display screen as a touchscreen;
- ◇ Display screens entering "sleep" mode too quickly;
- ◇ Barcode readers not reading the barcode in every case, especially the barcodes for Molonglo; and
- ◇ A small number of voters not completing their vote, or not completing their vote to their satisfaction, possibly due to one or more of the circumstances above.

The voting display screens used were standard flat screen LCD screens. Touchscreens had been considered but were not used due to cost and useability reasons. In most cases, electors quickly discovered that the screens did not work as touchscreens and proceeded to vote correctly using the keypad.

Sample barcodes were printed, tested and proved acceptable prior to the direction being given to commence production printing. However, after the complete run of barcodes was printed, it became apparent that some of the barcodes for Molonglo could not be read without repeated attempts. For no apparent reason, this problem did not occur in all pre-poll centres. Where the barcodes could not be read, staff assisted voters with swiping barcodes and issued replacement barcodes if necessary.

It is possible that some voters did not complete their computer votes correctly where the barcode was not read the second time to finalise the voting process. Staff noted that there were a small number of incomplete votes left on voting screens after the voter had departed the polling place. It is not possible to determine whether the voter was confused by the process, leaving the screen open believing they had finished, whether the voter's barcode did not read the second time, or if the voter deliberately left the screen open. At least one staff member in every electronic polling place was assigned as an "e-vote helper", with the task of assisting voters with the electronic voting process and monitoring voting screens to prevent voters from leaving before finalising their votes.

Staff also noted that the display screens entered "sleep" mode too quickly, prompting staff to patrol the voting area to "wake" the screens. This tendency had not been a feature of the 2001 and 2004 elections, when cathode ray tube screens were used. It appears that the flat screens used in 2008 were set to enter sleep mode more quickly than the screens used previously. This issue may have contributed to a small number of votes not being completed as the voter intended.

Some idea of the extent of these issues can be taken from the number of "discarded" computer votes (where a voter was issued with a barcode for computer voting but did not use the barcode to register an electronic vote). However, this is not conclusive, as some of the cases may have involved a deliberate action by the voter to effectively cast a blank or informal vote.

Discarded computer votes by electorate are shown in the following table.

Table 15 – Discarded computer votes by electorate

Brindabella	Ginninderra	Molonglo	Total
105	40	150	295

The extent of these issues was not large but Elections ACT is concerned that any voter may have inadvertently missed out on their deliberate vote. These issues will be carefully considered as part of the redevelopment of the computer voting system before the 2012 election.

The 2008/2009 ACT Budget has made allowance for the commencement of a 4-year program of re-development of the Elections ACT computer systems. The redevelopment of the electronic voting and counting system, eVACS®, will be a major component of that program. In particular, the redevelopment program will ensure that electronic voting will be compatible with contemporary hardware, and any issues that arose in 2008 that may have impacted on the service facilities for voters are addressed.

Interstate voting

Interstate voters could vote in person at the office of the capital city office of each State and Territory electoral commission and at the AEC's divisional offices at Goulburn, Narrandera and Nowra during the pre-election period. This is the first election that the AEC divisional offices were used as voting places. These locations were selected as they issued a relatively large number of votes for ACT electors at the 2007 federal election. These venues will be reviewed for the 2012 election as only 17, 7 and 19 votes were cast at these places, respectively, for the 2008 ACT election. There were 369 votes taken at the capital city offices of the State and Territory electoral commissions. The following table shows the detailed returns from each interstate voting venue. The interstate pre-poll votes are included in the total pre-poll votes in Tables 5-8.

Table 16 – Interstate voting at the 2008 election

Interstate Venue	Brindabella	Ginninderra	Molonglo	Total
AEC Divisional Office, Goulburn	8	1	8	17
AEC Divisional Office, Narrandera	1	3	3	7
AEC Divisional Office, Nowra	8	7	4	19
NSW Electoral Commission	33	33	72	138
NT Electoral Commission	10	6	16	32
QLD Electoral Commission	9	6	18	33
SA Electoral Commission	5	4	14	23
TAS Electoral Commission	4	8	5	17
VIC Electoral Commission	20	22	43	85
WA Electoral Commission	8	18	15	41
TOTAL	106	108	198	412

Postal voting

There were 9,599 postal votes cast for the 2008 election, from a total of 11,833 postal vote packages dispatched as a result of application. In 2004 there were 6,532 postal votes cast. The change from 2004 to 2008 represents an increase of 47%.

The following table provides details of the number of postal votes issued, returned and admitted and the various categories of postal votes received by Elections ACT but rejected from the count, for the 2001, 2004 and 2008 elections.

Table 17 – Postal vote outcomes

Category	2001	2004	2008
Postal votes issued	8,194	8,325	11,833
Postal vote ballot papers admitted to the count	6,410	6,532	9,599
Postal vote envelopes admitted that did not contain ballot papers	30	2	12
Applied for a postal vote but voted at a polling place or pre-poll centre	399	605	339
Postal votes received but not admitted because voter not correctly enrolled	62	22	68
Postal votes received but not admitted because voter claimed a vote for the wrong electorate	14	20	0
Postal votes received but not admitted because the voter did not sign the declaration	129	150	249
Postal votes received but not admitted because the witness did not sign the declaration	15	73	45
Postal votes received but not admitted because the voter's signature did not match the signature on the application/enrolment ¹	34	9	2
Postal votes received but not admitted because the voter marked his or her vote after polling day	121	78	95
Postal votes received too late	264	211	291
Postal vote returned to sender unclaimed	58	52	63
Postal vote cancelled and ordinary vote not issued	5	0	35
Total postal votes returned to Elections ACT or postal voters who voted at a polling place or pre-poll centre	7,541	7,754	10,798
Total postal votes not returned to Elections ACT	651	571	1,035

Note 1: For 2008, the application did not require a signature (it could be made on the phone, by email or in writing). Signature checks were made against the applicant's latest enrolment application where possible.

Two significant legislative changes were made to the postal voting process in May 2008:

- ◇ Removing the requirement for a postal vote application to be signed and witnessed; and
- ◇ Allowing an application to be made on behalf of another elector, provided that elector has authorised the person to apply on their behalf.

For the first time, postal applications could be made over the phone, by email, online on the Elections ACT website, or on a written application as in the past. Applications over the phone were made through the Canberra Connect call centre. Significant changes were made to the Elections ACT postal vote system to facilitate these new arrangements.

The system worked extremely well, with anecdotal comments made by applicants about the ease of applying. Details of applicants were either entered directly to the postal voting system, or by operators at the call centre, or from email and written information. This automation enabled a much quicker turnaround of the postal vote ballot material to the applicant.

The following table shows the number of postal vote applications received using the various methods of application. Note that electors registered as general postal voters are automatically sent postal ballot papers without needing to make an application.

Table 18 – Applications for postal votes

	Brindabella	Ginninderra	Molonglo	Total
General postal voters	711	742	1510	2963
Written application ¹	379	446	834	1659
Canberra Connect call centre/ shopfronts ²	494	513	997	2004
Internet application by elector	996	1105	2110	4211
Internet application on behalf of elector	266	261	469	996
Total	2846	3067	5920	11833

Note 1: Includes a small number of telephone inquiries received before the call centre commenced on 8 September 2008.

Note 2: Includes applications by telephone and in person at shopfronts.

Under the previous scheme, on the return of postal vote material from the voter, the signature on the postal vote certificate was checked against the signature on the application. This was not possible under the new scheme as most applications were made over the phone, online or by email. Instead, signatures on postal vote certificates were checked against the AEC's scanned copy of the latest enrolment application of the voter. The postal vote system provided a facility whereby the image of the elector's enrolment application was retrieved automatically when the details of the postal vote certificate were entered (by reading a barcode printed on the postal vote certificate). There were some cases where an image of a signature was not available from the AEC (some very old images were either not available or unreadable). In such cases an assessment was made on the face of the available evidence to accept the signatures as those of the elector.

The Commission believes that the checking of postal vote signatures against signatures on enrolment applications, where possible, provides a more secure check than checking against the postal vote application, as had previously been the case.

The Commission considers that a further extension of the 2008 changes could be explored. The requirements for casting a postal vote provide that (section 144A(2)):

- a. the person must show the unsigned declaration and certificate, and the unmarked ballot paper to an authorised witness; and
- b. the person must complete and sign the declaration in the presence of the witness; and
- c. the witness must complete and sign the certificate as witness; and
- d. the person must, in the presence of the witness but no so that the witness can see the vote, mark his or her vote on the ballot paper, fold the ballot paper, place it in the envelope addressed to the commissioner and fasten the envelope

The witness must be:

- ◇ in Australia or an external Territory, an officer, an elector or a person who is enrolled on any roll kept under the Commonwealth Electoral Act; or
- ◇ in any other place (ie overseas), a person who is at least 18 years old.

The witness details are not checked by electoral staff, and to do so would be excessively time consuming and provide no real benefit. The requirement for a witness to effectively only witness a signature adds no value or security to the postal voting process. There is arguably no significant benefit to having a witness to the voter's signature, given that the new postal voting procedures include a check of the voter's signature against the signature on the voter's enrolment form.

On the other hand, 45 postal votes were rejected in 2008, and 73 postal votes were rejected in 2004, because a witness had not signed the postal vote declaration. Removing the requirement for a witness would prevent this situation from occurring in future.

The Commission **recommends** that the requirement in the Electoral Act for a witness to sign a postal vote certificate be removed.

If this recommendation is not accepted, then the Commission **recommends** that the requirement for the witness to observe the whole of the postal voting process by the voter be removed, and replaced with a requirement that the witness only witness the signing of the postal vote declaration by the voter.

Postal vote applications must be made to the Electoral Commissioner no later than the last mail clearance on the Thursday before polling day for postal vote material (including the ballot paper and declaration certificate envelope) to be sent to the applicant, if the applicant is within Australia. If the applicant is outside Australia, then the cut-off is 5:00 pm on the Friday 8 days before polling day. The cut-off of the last mail clearance on Thursday before polling day is the last time by which the lodgement of postal voting material can be made with Australia Post such that the material will likely to be received by the applicant on the Friday before polling day, thus enabling the applicant to complete the ballot paper and certificate and have it back in the postal system before the close of polling.

There were 126 postal vote applications received on the Thursday before polling day before the cut-off at the last mail clearance. The following table shows the number returned, and the outcome once returned, and those not returned.

Table 19 – Outcome of postal vote material sent to the applicant on the Thursday before polling day

Action taken or other outcome	Number
Admitted to the count	33
Rejected because the person voted after polling day	33
Rejected because the postal vote was returned after the cut-off (Friday after polling day)	11
Returned to sender	1
Not returned	45
Other	3
Total	126

Although there were 33 postal votes rejected because the vote was recorded after polling day, 11 were rejected for being received too late, and a further 45 were not returned, the fact that 33 votes were received in time to be included in the count shows that the cut-off of the last mail clearance on the Thursday before polling day is appropriate. Any change to the cut-off by bringing it forward would have meant these voters would have missed out, unless they applied earlier. The Commission considers that the best strategy to adopt to minimise the number of postal votes not included in the count is to encourage electors to apply for postal votes as early in the election period as possible, or, if the elector is in the ACT, to encourage the elector to vote at a pre-poll centre.

Voting at polling places

Public schools, private schools, hospitals and community facilities were used as polling venues in the 2008 election.

Wherever possible the Commission attempted to keep the same polling places that were used at previous ACT and federal elections in order to minimise public confusion. Due to the closure of some public schools and the unavailability of other venues due to renovation, among other things, there were different polling venues in 13 suburbs.

As at previous ACT elections, electors were able to cast an ordinary vote at any polling place within the ACT. An ordinary vote is a vote issued to an elector whose name is found on the certified list of electors for the election.

For the first time, each polling place was issued with certified lists loaded onto hand held personal digital assistants, or PDAs. The PDAs proved to be a great success at this election. They were not only quick and easy to use, but also saved printing approximately 200,000 sheets of paper. The certified lists and PDAs are further discussed above under **Electoral rolls**.

Mobile polling

Teams of polling officials visited 24 nursing/retirement homes/villages, the Canberra and Calvary (Bruce and Deakin) hospitals and the Belconnen and Symonston remand centres in the week leading up to and including polling day.

The mobile teams took a total of 1,105 votes from patients, residents and inmates of those institutions. This compares to the 1,511 votes taken in 2004.

Declaration voting

A declaration vote is issued to a voter in a polling place or pre-poll centre when his or her name cannot be found on the roll for any of the three electorates. There were 813 declaration votes issued in 2008, compared to 1,818 in 2004.

The most likely explanation for the decrease in the number of declaration votes issued in 2008 compared to 2004 is that the AEC had altered its policy of removing electors from the rolls on the ground of non-residence in the lead-up to and aftermath of the 2007 federal election. As a result, electors who in the past may have been removed from the rolls on the ground of non-residence were more likely to be retained on the roll for an out-of-date address while the AEC sought to re-enrol the person for their current address. One effect of this policy appeared to be the reduction in the number of declaration votes issued, as electors who in 2004 would have been removed from the rolls would have still been on the roll in 2008 under this policy. Another effect of this policy was the apparent inflation of the roll by failure to remove electors from the rolls where they had left the ACT (discussed above under **Electoral Rolls**).

The AEC was again contracted to undertake the scrutiny of declaration votes. This is a complex task involving the detailed examination of the voter's enrolment history using the AEC's computerised roll management system.

Voting behaviour

The percentage of voters who voted before polling day almost reached 25% of all votes cast at the 2008 election. Pre-poll votes accounted for 20.3% of all votes and postal votes accounted for 4.4%. At the 2004 election 14.7% of votes were pre-poll and 3.1% were postal votes. The following table shows the percentage of ordinary, pre poll and postal votes for each ACT election since 1995.

Table 20 – Percentage of votes cast by vote type

	Ordinary %	Postal %	Pre-poll %	Declaration %	Total %	Turnout %
1995	86.1	2.4	10.6	0.9	100	89.5
1998	84.1	2.8	12.2	1.0	100	91.8
2001	83.8	3.2	12.4	0.6	100	90.9
2004	81.4	3.1	14.7	0.9	100	92.8
2008	75.0	4.4	20.3	0.4	100	90.4

The percentage of pre-poll voters has increased by almost 92% from 1995 to 2008, and from 2004 to 2008 by over 38%

At the 2004 and 2007 federal elections, 15.4% and 16.7% of voters, respectively, in the ACT cast pre-poll votes. This was substantially higher than the national average at the 2004 and 2007 federal elections (5.8% and 8.2%, respectively), indicating that ACT voters appear more inclined to cast pre-poll votes than voters elsewhere. It should be noted that voters having a pre-poll vote in ACT elections cast an ordinary vote, whereas the federal election voters cast a declaration vote. This is a significant issue as declaration votes take much longer to scrutinise, and have the potential to delay the outcome of the election, should the margins be close. Since pre-poll votes in ACT elections are ordinary votes, the delay to the result is not an issue for ACT elections.

However, ACT voters in general, whether at ACT or federal elections, have a high tendency for voting before polling day.

The percentage of postal votes has steadily increased since 1995 although relatively stable from 1998 to 2004 inclusive. However, from 2004 to 2008, the percentage increased by 1.3 percentage points, or 42%. This may be a reflection of the changes to the postal voting provisions, which included allowing an application for a postal vote to be made over the phone or online at the Elections ACT website. However, while this convenience may have accounted for some of this increase, it would have had no impact on the similar increase in the percentage of electors having a pre-poll vote over the same period. Further, the percentage of postal votes cast in ACT elections remains relatively low when compared to pre-poll votes, and also when compared to the number of postal votes cast by ACT electors in federal elections. In contrast to the percentage of pre-poll votes cast, ACT electors cast relatively fewer postal votes than the national average. In the 2004 federal election 3.5% of ACT voters cast a postal vote compared to the national average of 5.0%, and in 2007 it was 4.4% compared to 5.5% nationally.

One reason for the higher level of postal voting at federal elections may be that at federal elections political parties broadly distribute postal vote applications across the electorate, with a return address to the party. This practice does not occur at ACT elections as it is specifically prohibited.

However, the percentage of ordinary voters has declined continuously since 1995 and by over 6% percentage points (or almost 8%) between 2004 and 2008 (from 86.1% to 75%); which is more than half of the total percentage change since 1995 (at 11.1 percentage points or almost 13%).

What does the increasing percentage of voters choosing to vote before polling day mean for future elections? The first consideration is to ask "why is it occurring?"

This is not a simple question to answer, as there is no empirical evidence to support any one or more conclusions. However, it is possible that one or more of a number of factors may be at play, such as:

- ◇ An increasing emphasis on family and leisure time;
- ◇ ACT elections are held in late spring – often a time when families travel to the coast for the weekend;
- ◇ Changing work patterns, with more people, especially in the younger age groups and those paying mortgages on lower incomes, working weekends;
- ◇ Increasing public demand for flexible service delivery; and
- ◇ Convenience.

The trend towards an increase in early voting is likely to continue given the history of previous elections.

As noted above, the increasing percentage of pre-poll votes in the ACT has no bearing on the time that it takes to determine the result, because pre-poll votes are issued as ordinary votes, either as computer votes that are added to the count on polling night, or as paper ballots that are counted and added to the count on the Sunday after polling day.

Effectively, the increase in early voting has no detrimental operational impact whatsoever. If anything, the more early votes taken at pre-poll centres as computer votes, the greater the increase in the number of votes included in the preliminary distribution of preferences on polling night, which will therefore provide an increasingly more accurate early indication of the likely result. Further, there would be relatively fewer paper ballots that would require scrutiny after polling day, leading to an earlier finalisation of the election result.

The Commission considers that the trend to early voting is an inevitable result of the expectations of the electorate, and suggests that there should be no move to restrict the trend continuing. The Commission recognises that this may require political parties to adapt the way that they conduct their campaigns to attract the early vote of electors.

One consideration that might be explored is to wholly embrace the trend to early voting by removing the eligibility requirement for a pre-poll or postal vote by allowing any elector to have an early vote. This concept recognises that voting on polling day is effectively no longer the accepted practice for a significant proportion of the population, and that voting is now conducted over a polling period of several weeks. This concept recognises the convenience of service demanded by the electorate, and in any case may be occurring by default.

The Commission **recommends** that the Assembly consider the arguments for and against amending the Electoral Act to provide that any elector may vote at a pre-poll voting centre, without the need to declare that they are unable to attend a polling place on polling day.

Prisoner voting

The entitlement for prisoners to enrol to vote was amended in May 2008 to allow all eligible ACT prisoners to enrol and vote in ACT Legislative Assembly elections. This entitlement allowed prisoners sentenced to imprisonment for 3 years or longer, who had an address in the ACT prior to their imprisonment, to enrol with respect to that address. This entitlement applied regardless of the location of the prison in which they were serving their sentence.

Elections ACT liaised with Corrective Services on all arrangements for the enrolment and voting by remandees and prisoners. ACT remandees were located in one of the two centres in the ACT (Belconnen and Symonston) and prisoners were located in one of the remand centres in the ACT or in prisons in NSW.

Elections ACT met with officers of Corrective Services in August to establish the identity and locations of all ACT prisoners in NSW prisons. The list was checked against the electoral roll, and those not enrolled were sent enrolment applications and information, through ACT Corrective Services. This list was updated again in the week of close of rolls with those who had been held on remand and imprisoned since the first list was supplied. Further applications and information was provided as required.

Arrangements were made with Corrective Services for mobile voting at the Belconnen and Symonston Remand Centres for Thursday 16 October. Postal vote applications were also made available for those who would not be able to vote when the mobile voting teams attended the centres. There were 25 persons on remand who were on the electoral roll. Eight ordinary votes and 6 declaration votes were taken at Belconnen. None of the 6 who had a declaration vote were on the roll or otherwise entitled to have their vote counted, so their votes were not admitted to the count. Four votes were taken at Symonston.

Arrangements were also made for postal applications to be provided to all ACT enrolled prisoners held in NSW prisons. There were 14 prisoners in NSW prisons identified as being on the electoral roll for the election. Elections ACT provided sufficient applications to Corrective Services on 2 October for those on the roll. Further applications were provided on 8 October following a request from Corrective Services that day.

Two completed postal vote applications were received from ACT prisoners before the cut-off date for posting ballot papers (5pm 16 October). Of these, one returned ballot papers in time to be included in the count, and the other did not. A further 14 postal vote applications were received after the cut-off date of 16 October. Of these, 10 were from prisoners not on the roll, and 4 from prisoners who were enrolled.

It is also possible that other prisoners may have applied for a postal vote, but could not be identified as prisoners from their applications. Those identified as prisoners are those who provided a prison address for the return of ballot material. It is possible that others may have provided a different address, for example of a relative. It would not be feasible to identify these occurrences.

Elections ACT will review these arrangements for future elections with a view to improving the take-up rate of voting by prisoners, and the more timely return of postal vote applications. These arrangements should be less complex as most, if not all, ACT prisoners and remandees should be in the one location at the new ACT prison by the time of the next election in October 2012. While it is too early to be definitive about the arrangements, an enrolment drive among prisoners in the lead-up to the next election would be likely, and mobile polling is also expected to be undertaken at the new prison facility.

Complaints made to the Electoral Commissioner

There were 154 complaints made to the Electoral Commissioner relating to the 2008 election. Each of these complaints was seriously considered and investigated.

Of these, 45 related to Elections ACT activities, with all but 4 of the remainder relating to the activities of parties and candidates.

Of the 45 complaints regarding Elections ACT's activities, there were 21 complaints regarding the staff of polling places and pre-poll centres, and of these 12 related to electronic voting (for example, not given an option, not a secret vote as required assistance, lack of assistance). The instructions provided to staff of electronic voting centres will be reviewed as part of the review of polling staff training.

Another 11 of these 45 complaints related to Elections ACT advertising, and included offering alternate views on how to correctly complete a ballot paper, whether voting is compulsory and what constitutes a valid vote. A further 10 complaints related to polling place locations, signage and facilities. Elections ACT will review polling places to ensure the most appropriate locations and facilities are used. However, locations and facilities engaged are often the only ones available.

While most of the 105 complaints relating to parties and candidates alleged a breach of the Electoral Act, 51 complaints related to matters that are not regulated by the Act. For example, the majority of these complaints included disagreement with the policy, content, placement or tone of a political party advertisement. Of these 51 complaints, 12 concerned the placement of signs in public places. These complaints were referred to the Department of Territory and Municipal Services. The issue of placement of signs in public places is discussed below under **Political Campaigning**.

Another 52 complaints related to matters that are regulated by the Electoral Act. In accordance with the Commission's prosecution policy in cases of apparent minor, technical or trivial breaches of the Act, where the Commissioner was of the view that a breach of the Act may have occurred, the Commissioner's first approach was to contact the potential offender and ask them to comply with the Act. This approach was apparently effective in preventing continuing minor or technical breaches of the Act.

Of these 52 complaints, 30 related to canvassing within 100 metres of a polling place or pre-poll centre. The ban on canvassing within 100 metres of a polling place is discussed in the next section. These 52 complaints also included 17 relating to the dissemination of unauthorised electoral material, allegedly in breach of section 292 of the Electoral Act. The Commissioner considered that most of these allegations did not involve a breach of the Electoral Act. Where the material did appear to be in breach the matter was brought to the notice of the responsible person and rectified. The authorisation of electoral material is further discussed in the next section.

While attracting only 4 formal complaints, the placement of a double sided sticker on the front page of *The Canberra Times* attracted some public feedback. The sticker was authorised on its reverse side, which was not visible when stuck to the newspaper. This advertisement was deemed to satisfy the authorisation requirements. This matter is further discussed below under **Political Campaigning**.

Only one complaint received during the 2008 ACT election was referred to the Australian Federal Police for investigation. A complaint was received from the representative of a candidate alleging defamation and seeking redress under section 300 of the Electoral Act. Following advice from the Director of Public Prosecutions the matter was referred to ACT Policing for advice on an investigation. At the time of writing this report ACT Policing was yet to formally reply to the referral. This matter is further discussed below under **Defamation of candidates.**

Political campaigning

Authorisation of electoral advertisements

Significant changes were made to the provisions relating to authorisation of electoral advertisements in May 2008. The changes included:

- ◇ Removing the requirement for advertisements to carry the address of the person who authorised the advertisement;
- ◇ Where the advertisement is disseminated for or on behalf of a candidate or party, removing the requirement to name the candidate or party, but requiring that the authorisation include a statement to the effect that the matter is published for the candidate or party;
- ◇ Removing the requirement that the authorisation statement appear at the end of the advertisement, or at the end of the first page if in a newspaper or periodical, or at the foot of each page if in electronic form;
- ◇ Reinstating the exemption for publications of government agencies from requiring authorisation statements, provided they meet certain prerequisites, in the period of 6 months prior to an election;
- ◇ Requiring advertorials in news publications to have the word "advertisement" in legible form rather than in a prescribed point size;
- ◇ Removing the exemption for authorisation from bumper stickers and any item that does not contain more than 10 words and is not in a news publication.

These changes reduced the number of complaints received regarding non-compliance with authorisation requirements, particularly regarding the placement of the authorisation statements.

One area of vigorous complaint related to a small sticker attached to *The Canberra Times* in the week leading up to polling day. The sticker was removable, although some complained that they could not do so thereby making the reverse of the sticker unreadable. The authorisation statement was on the reverse of the sticker. The Commissioner took the view that the sticker complied with the authorisation requirements. However, the circumstances raise the issue of whether the authorisation statement should be visible without having to first take some action, such as removing a sticker from another surface. The Assembly may wish to consider amending the Electoral Act to address the issue of authorisation of double-sided stickers containing electoral matter. One option may be to require an authorisations statement on the facing side of the sticker, rather than the side stuck to the other surface. Another option may be to require an authorisation statement to appear on both sides of a sticker.

The Commission **recommends** that the Assembly consider whether an amendment to the Electoral Act is warranted to address the issue of authorisation of double-sided stickers containing electoral matter.

Another area that may require clarification relates to the use of small "link" advertisements on the internet. These advertisements provide an invitation to readers/viewers to "click" on the space to link to a more substantial advertisement or statement. While the more substantial advertisement or statement would most likely require an authorisation statement, it is arguable that the link advertisement is not of itself electoral matter. One such example from the 2008 election related to an advertisement to work for a candidate. Another example was an invitation to view the policies of a candidate. In both cases the Commissioner took the view that the "link" advertisement did not require authorisation as it did not contain electoral matter.

The Commission is of the view that the changes made in May 2008 generally worked well during the 2008 election. With some clarification, the new provisions should be better understood by parties and candidates in 2012, and cause less difficulty.

The 100 metre ban on canvassing at polling places

Section 303 of the Electoral Act provides for an offence of canvassing within 100 metres of a polling place on polling day, within the hours of polling. This prohibition includes the handing out of how-to-vote cards.

At the 2008 election, allegations of breaches of the 100 metre ban constituted one of the major sources of complaint on polling day and overall. This high level of complaint, against several different parties, leads again to consideration of the policy intent of the ban.

The 100 metre ban was introduced before the 1998 election. A similar provision exists for Tasmanian House of Assembly elections, which also uses the Robson rotation method of printing ballot papers with the Hare-Clark system, although the Tasmanian provision bans the distribution of any advertising material (including how-to-vote cards) on polling day. Together, the ban on canvassing, Robson rotation and Hare-Clark proportional representation (without party ticket voting) are intended to reduce the influence of party tickets and give voters more power over their choice of elected members.

In practice, the 100 metre ban on canvassing at polling places is intended to ensure that how-to-vote cards are not made available to voters as they vote.

As most, if not all, parties are prepared to routinely hand out how-to-vote cards outside the 100 limit, then it is arguable that the ban serves no practical purpose.

Market research exit polling at polling places on polling day included testing voter awareness of the ban on how-to-vote cards within 100 metres of the polling places, and whether this ban caused any difficulties. Detailed results of the research are shown at Appendix 2.

While the research shows a long term decline in voter awareness of the ban (from 81% in 1998 to 64% in 2008), the percentage of voters who found the ban a problem has remained steady since 2001, at about 1 in 10.

The low percentage of voters for whom the ban is a problem and the relatively low level of informal voting would appear to indicate that the ban on distributing how-to-vote cards within 100 metres of a polling place is not causing a significant problem for voters.

The ban on canvassing on days on which pre-poll voting is conducted raises another set of issues of a practical nature. Pre-poll centres are generally established in retail and/or business centres as these are the most convenient locations for those needing to cast a pre-poll vote. The operation of the 100 metre exclusion zone around the building in which the pre-poll centre is located can lead to some extreme situations. For example, the Tuggeranong pre-poll centre was located in the Salvation Army Hall in Anketell Street, Tuggeranong Town Centre. The building housing the hall is a large complex which, if the rule were narrowly applied, would have seen the 100 metre line established well over 100 metres from the entrance to the pre-poll centre. In practice, the 100 metre line was determined from that section of the building that housed the polling place. The 100 metre exclusion zone (even if taken from the pre-poll centre entrance) also encompassed off and on-street parking zones. These were difficult to police because at any time vehicles bearing party political material could (and did) park within the 100 metre exclusion zone. While every effort was made to locate the drivers of the vehicles bearing campaign posters, short of seeking police assistance, there would be little that could be done should the drivers not return to their vehicles within a short time.

The Commission considers that these are issues of practical nature to be dealt with as they arise so as to enforce the intent of the law, and that no amendments to the application of the 100 metre ban during polling are necessary.

However, another significant issue that arose at the 2008 election was the practice in a small number of cases of political canvassers handing out how-to-vote cards to electors queuing to vote before the 8 am opening at some pre-poll centres and polling places, who then retreated outside the 100 metre limit at 8 am. The Assembly may wish to consider whether it would be desirable to amend the Electoral Act to commence the 100 metre ban on canvassing at, say, one hour before polling commences in order to prevent this practice.

Political party and candidate posters in public places

The Department of Territory and Municipal Services (TAMS) administers the laws relating to the placement of signs in public places in the ACT. TAMS has produced a pamphlet titled *The Code of Practice for the Placement of Movable Signs in Public Places*. The code applies, among other things, to election advertising signs, and recognises the Electoral Act and the Referendum Act (for the ACT and the Commonwealth) by requiring that signs conform to the requirements of any relevant provisions of those Acts. There are a number of areas where signs may not be placed, including on median strips and designated areas such as the major arterial roads in and around Canberra.

During the campaign, the Commission received a number of complaints from residents about the placement of campaign posters beside major arterial roads. These complaints were referred to TAMS. This issue was front page news in *The Canberra Times*.

There were also complaints that party campaign posters were being displayed on vehicles parked beside major arterial roads during peak hour, often with a candidate beside the vehicle waving or otherwise attracting the attention of motorists. The complaints included assertions that the placement of the vehicles and actions of the candidates was distracting to drivers and could cause an accident. The Commission does not consider that regulation of such activity should be the preserve of the Electoral Act as it is essentially related to traffic safety. If the Assembly is concerned about this activity, it may wish to take this matter up with the appropriate authorities.

Defamation of candidates

Section 300 of the Electoral Act provides for the offence of defamation of a candidate. Section 300 provides:

300 Defamation of candidates

1. 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.

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

2. It is a defence to a prosecution for an offence against subsection (1) if it is established that the defendant believed on reasonable grounds that the relevant statement was true.
3. A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may, at the suit of the candidate, be restrained by injunction from repeating the statement or any similar false and defamatory statement.

This section is essentially the same as the former section 350 of the *Commonwealth Electoral Act 1918* (CEA) that was repealed in 2007. Section 350 of the CEA was repealed on the recommendation of the Australian Parliament's Joint Standing Committee on Electoral Matters (JSCEM) in its report *The 2004 Federal Election – Report of the Inquiry into the Conduct of the 2004 Federal Election and Matters Related Thereto*, tabled in September 2005. In its submission number 198 to the JSCEM inquiry into the conduct of the 2001 federal election, the AEC provided a comprehensive argument for the repeal of section 350. A copy of the relevant extract of the AEC submission is at Appendix 4. In summary, the AEC argued that two High Court judgements delivered in late 2002 had a significant bearing on defamation litigation, particularly those cases relating to election campaigns. As a result the relevance of maintaining the defamation provision in electoral law was questioned. The AEC summarised the decision of the High Court in *Roberts v Bass* as follows:

"2.17 *Roberts v Bass* also concerned defamation, although the significance of this case resides in the relationship between defamation law and the regulation of speech in political matters. *Roberts v Bass* is important because of the High Court's application of pre-existing case law relating to (a) speech protected by 'qualified privilege' and (b) an implied right to freedom of communication in political matters guaranteed by the Australian Constitution.

2.20 The basis of the High Court decision was that attempting to injure the political credibility of a candidate in the midst of an election campaign was defensible on the grounds of qualified privilege."

Following the 2004 ACT election, the Commission sought the advice of the Department of Justice and Community Safety on the suitability of section 300.

The Department of Justice and Community Safety advised that, for a number of decades, the criminal law has retreated from involvement in defamation actions. While some criminal provisions remain, they tend not to be used, because of the technical complexity of melding what is essentially a civil law action, highly dependent on procedural law, into criminal proceedings.

The department advised that it is doubtful whether section 300 could be used to secure a conviction. Similarly, it is doubtful whether a candidate would get relief within a relevant period using the injunction provision in subsection 300(4). Both parts of the section overlook the many ordinary defences that exist at common law and in statutory form. Both parts of the section would rely on extensive borrowings from the civil law – in terms of meaning – but the necessary civil infrastructure to litigate the issues that arise in defamation proceedings does not exist within the provision.

Accordingly, in its review of the 2004 election, the Commission recommended the repeal of the defamation offence in section 300. The ACT Government initially accepted this recommendation and included an amendment to this effect in the Electoral Amendment Bill 2007. However, following opposition to this amendment from non-government Members of the Legislative Assembly, this amendment was removed and section 300 was retained unchanged.

In debate in the Assembly, the following arguments were put in favour of retaining the offence of defamation of a candidate in section 300.

The argument has been put that there are defamation laws already in place and that should be sufficient. But candidates who put themselves forward in an election are more vulnerable than others to defamatory claims. Without the protection of having an offence of defaming a candidate, it would be too often possible to substantially and detrimentally derail someone's campaign by circulating defamatory material about them. If we just rely upon the laws of defamation as they stand in the civil courts, the problem is that it takes a very long time for those matters to come to court. And the recompense under the new regime is somewhat modest. In the process, a person who, for instance, has been a member of this Assembly but has been substantially defamed by something which turns out to be untruthful—and maliciously untruthful—may have already lost their seat as a result of the material being distributed and may have to wait some substantial period of time for what are now very modest damages, because there are now severe limitations on damages. [Mrs Vicki Dunne MLA, 8 May 2008]

The problem there [with repealing the defamation offence] basically was it would take a great length of time for a person who had been defamed to take a person to court—defamation actions go on for years—whereas the current provision, which now looks like being retained, at least has a possible deterrent effect and enables quick action to be taken under the criminal law to prevent further acts at the very least. We have had situations in the territory where candidates have been unfairly defamed. At least this provision and others will deter the people defaming them from taking further actions to damage the candidates. I think in one instance about six suburbs were letterboxed before the people who were doing the defaming pulled their heads in. Without a provision like this, there would be nothing really to stop someone letterboxing the whole of Canberra. It would take two or three years through the civil law—far too late for the poor candidate who had been unfairly defamed. [Mr Bill Stefaniak MLA, 6 May 2008]

To date, no prosecution action has ever been taken in court under the ACT's section 300 or under the Commonwealth's former section 350.

During the 2008 ACT election a complaint was received from the representative of a candidate alleging defamation and seeking redress under section 300 of the Electoral Act. Following advice from the Director of Public Prosecutions the matter was referred to ACT Policing for advice on an investigation. At the time of writing this report ACT Policing was yet to formally reply to the referral. Given that more than 9 months has passed since the alleged defamation occurred, and the matter is yet to be resolved one way or the other, the argument that having a specific provision in the Electoral Act will give rise to a more timely resolution in an election period is not persuasive.

While the concerns expressed in the Legislative Assembly have merit, it would appear from the fact that section 300 has never led to prosecution action that the value of section 300 on the statute books is arguably just a comfort factor rather than an usable provision. The Commonwealth experience in the High Court, as described in the AEC submission, would indicate that any attempt to prosecute section 300 in the ACT would be likely to fail on constitutional freedom of communication in political matters grounds.

Given this likelihood, and the fact that there are alternative avenues for pursuing defamation action, the Commission **recommends** that the offence of defamation of a candidate in section 300 of the Electoral Act be repealed.

Election night and the tally room

The tally room for the 2008 ACT Legislative Assembly election was again located in the gymnasium and surrounding rooms of the Reid campus of the Canberra Institute of Technology (CIT).

The operation of the tally room is a significant discrete task for Elections ACT during the election period. For the 2008 election, the Elections ACT information and education officer was appointed as tally room manager, a role that occupied most of that officer's time in the lead-up to polling day. Features of the tally room included a significant media presence, with ABC radio and television constructing substantial broadcast sets, and more modest facilities provided to other radio, television and newspaper organisations. Members of the public were welcome at the tally room, and the 2008 tally room was well attended by the public, as at previous elections. A large screen and a powerful projector were used to display updated electronic results in the tally room. Computer terminals displaying the Elections ACT website election results were also provided for the public, staffed by Elections ACT officers who were available to display and interpret the results. Political parties were also allocated dedicated space in the tally room. Official visitors from other Australian electoral authorities and other ACT agencies also attended the tally room. For the first time at an ACT election, a wireless internet connection was made available in the tally room for the media and party representatives to enable them to access the internet.

The tally room requires significant staff and computer resources. While the CIT generously provided the venue free of charge and also provided excellent support and cooperation throughout the set-up and pull-down phases of the operation, the staffing and IT components of the tally room are considerable. Extensive IT facilities, including computers, cabling and internet connections, were installed by InTACT. The overhead projector was provided by a specialist contractor. The Election Night System (ENS) used to record the vote count and display the results in the tally room and on the Elections ACT website was redeveloped for the 2008 election by a contractor.

At a time when several other Australian State jurisdictions are considering not having a tally room at their general elections, the Commission is of the view that the ACT tally room continues to be a popular and worthwhile event. While the operation of the tally room involves considerable effort and expense, the Commission considers that its popularity with the public, the media and election candidates warrants its continued operation at the 2012 election. However, the Commission will need to ensure that its election budget is sufficient to permit the tally room to continue.

The count of votes on election night in 2008 began after the close of each polling place at 6 pm. At each polling place the ballot boxes containing ordinary votes were opened and ballot papers sorted to the first preference for each candidate. Ballot papers for all 3 electorates were counted and sorted to candidates in each polling place; however, where the total number of votes counted in an electorate was less than 20, these ballot papers were not sorted to candidates to preserve the secrecy of the ballot. These "under 20" votes were transferred unsorted to the Elections ACT counting centre for inclusion in an amalgamated count under the central scrutiny category. Any ballot papers that were ruled as informal, or for which formality was not clear, were categorised as informal and reserved for further checking after polling day.

Once the count to first preferences was complete, the OIC of the polling place phoned the result through to tally room operators who then entered the result in the ENS. These results were then accumulated by electorate and displayed on a large screen in the public area of the tally room. The information was also made available through the Commission's virtual tally room on the internet. The statistical information made available on-line included vote totals for candidates and parties at the polling place and electorate level, as well as summary information by party at the electorate and ACT level.

Results from ballot papers cast by computer voting at the pre-poll voting centres were also entered into the ENS on polling night. These results included an indicative distribution of preferences based on the computer votes. The results of the counting of 35,728 electronic votes cast at the 5 pre-poll voting centres were entered into ENS and available in the tally room and on the website at around 6.15 pm. These results gave an indication of the possible result of the election very early on polling night. The electronic voting results from the votes cast on polling day were also entered into the ENS early in the night, with first preference data phoned through from 4 of the polling places. The fifth electronic voting polling place, Gungahlin, had difficulty in transferring its results onto CD-ROM as required, and the server for Gungahlin was transported to the tally room where the Electoral Commissioner and other Elections ACT staff witnessed a computer contractor diagnose and fix the problem (which was simply a faulty CD-ROM, rather than a fault with the server). The results from this server were then extracted by Elections ACT staff and entered into ENS.

After phoning through the first preference count in each electronic voting polling place (available on-screen on the electronic voting servers), the polling place OICs copied the electronic voting ballot information onto CD-ROMS, which were then transported to the tally room. These electronic votes were then combined with the results from the pre-poll voting centres, and updated preference distribution results for all 3 electorates were posted on the Elections ACT website at around 8.50 pm.

Of the 17 candidates indicated as elected on election night using the 42,668 formal electronic votes, 16 of them were ultimately elected. Only one candidate indicated as elected on election night was not ultimately elected – Canberra Liberals candidate Giulia Jones was incorrectly indicated as elected on election night. After the full distribution of all preferences, the last position in Molonglo was taken by ACT Greens candidate Caroline Le Couteur. This result mirrored the outcomes in 2001 and 2004, when in each case 16 of the 17 elected candidates were correctly identified on election night using the interim distribution of preferences from the electronic vote count.

On election night the ENS database unexpectedly ceased operating for approximately 45 minutes from around 9 pm. During this time the display of results on the tally room projector screen was not shown. However, the internet results pages and the information available to the ABC results system remained available, albeit not updated during this outage. These internet results were also available to observers in the tally room on the terminals available on the tally room floor. The problem was rectified and data entry recommenced around 9.45 pm. The count continued as normal for the remainder of election night.

Temporary outages of the election night results computer systems frequently occur in Australian elections. A similar outage occurred at the 2004 ACT election. As a result of that experience, the ENS system used at the 2008 election was substantially rewritten in a more robust database environment with the intention of eliminating any outages. Unfortunately the 2008 ENS again succumbed briefly to the intense scrutiny received on election night.

Elections ACT asked for and received additional budget funding in the lead-up to the 2012 election to upgrade its election IT systems. The ENS is to be redeveloped for the 2012 election using accepted project tools and methodology, with the aim of making the system more robust. It is intended that the redevelopment will be carried out well in advance of the 2012 election to allow for extensive testing. Another option also being considered, following early discussion with the Australian Electoral Commission, is the possibility of using the AEC's virtual tally room to display the election results. Further discussion will be required to determine its suitability for adaptation to the ACT's electoral system.

The count of preferences

Scanning scrutiny system

For 2008 the Commissioner contracted the SEMA Group to develop a ballot paper scanning system that would read the preferences on each ballot paper and interpret the number with as close to 100% accuracy as possible. SEMA developed a system using a combination of available scanning, imaging and Intelligent Character Recognition software and specific to purpose software to cater for the ACT election scrutiny rules. The development took place over 2007 and 2008, being tested and independently audited in time for the 2008 election scrutiny.

The computerised scrutiny was completed on the Saturday afternoon following polling day. The final result was made public that evening. This was the earliest that the final result has been made known in any ACT election. This achievement was a direct result of the ballot paper scanning scrutiny system.

The scanning scrutiny system replaced the system used in 2001 and 2004 that required a team of up to 30 data operators twice keying the preferences on ballot papers, with a further team of 10 error-correction supervisors.

The implementation of the scanning scrutiny system was one of the major successes in the operation of the election, constituting a major leap forward in electoral administration.

While the scanning system provided by SEMA was based on existing software, the system was significantly modified to suit the requirements of the ACT election according to specifications developed by Elections ACT. The aim of the system was to achieve 100% accuracy by use of a range of strategies designed to eliminate errors in the count. Two key principles were adopted. The first involved ensuring that every interpretation of a number was to be confirmed at least twice. In the simplest case, that of a ballot paper showing a correct sequence of numbers correctly interpreted by the ICR scanning software, these numbers would be interpreted once by the software and once by a human operator. In those cases where an operator changed a number or interpreted a number differently from the ICR software, a second operator was required to verify the changed number. If that second operator disagreed with a change made by the first operator, a third operator would be required to agree with changes made by the second operator, and so on until at least two operators were in agreement with the final interpretation.

The second key principle adopted was that any ballot papers that appeared to fail one or more of a series of business rules was to be verified and corrected if necessary by at least one human operator at a senior level. This approach gave special attention to ballot papers that appeared to have a number missing or duplicated, or that appeared to be informal, or that appeared to contain writing in ballot squares that were not numbers. Ballot papers that appeared to contain only a single preference and no other preferences were also subject to special attention (even though such a ballot paper would be formal), to ensure that the scanning software was not incorrectly interpreting random marks as a number 1. The scanning software also identified any ballot papers that had a declaration stamp on them where they were placed in an ordinary ballot box, as such a ballot paper would be classed as informal regardless of the preference numbering.

As a further quality control measure, all challenged or doubtful preference interpretations were referred to the Electoral Commissioner or the Deputy Electoral Commissioner before committal to the counting database. Where it was difficult to interpret the voter's intention using the black and white scanned image of a ballot paper on screen, the original ballot paper was retrieved and used to make a final ruling.

The Electoral Commissioner or the Deputy Electoral Commissioner also personally rechecked every ballot paper set aside as informal by polling place staff on election night. This process, also followed at all previous ACT elections, served to make a final ruling on all identified informal ballot papers, leading in some cases to ballot papers initially ruled as informal being ruled as formal and incorporated in the count through the scanning system. Scrutineers representing candidates were always present during this process.

The adoption of the scanning system required some changes to normal operating procedures.

After all polling places had finalised the count of preferences, all material, including the completed ballot papers, was returned to the Commission's election headquarters. OICs were asked to batch all ballot papers into bundles of 50 or fewer by candidate and for a batch header card to be placed at the front of each bundle. The batch header was pre-printed with a barcode for each polling place and electorate. The OIC was to insert the candidate name and the number of ballot papers in the batch.

Two scanning machines were installed by SEMA in the Commission's scrutiny centre at Griffith, along with 30 PCs provided by InTACT. A third scanner was later installed to ensure that all ballot papers would be scanned within the 7 days after polling day. Each batch of ballot papers was scanned and an image taken of each ballot paper. Each image was then read by ICR software and the written numbers interpreted. The interpretations were displayed on PCs for operators to verify as correct, or highlight where it was not clear that a correct interpretation could be made. The interpretation of every preference on every ballot paper was checked at this first verification point (V1).

All ballot papers verified as correct at V1 and whose preferences were in a sequence commencing with a single 1, and having at least one other number without a break in sequence or a duplicated number, were passed through the scrutiny and were not subject to further scrutiny.

All ballot papers that were marked as having an unclear preference number, or numbers, were examined by another operator at verification point 2 (V2). The V2 operator could check the interpretation and change it.

The operators at V1 and V2 were instructed not to consider whether a ballot paper was formal, or to consider whether preferences were missing or duplicated. They were simply asked to ensure that the image of the preference number had been correctly interpreted.

All ballot papers that had been changed at the V2 stage or that had a single number 1, or had missing or duplicated preferences, were then examined by operators at the final verification stage (V3). V2 and V3 operators were experienced electoral staff. It was at stages V2 and V3 that scrutineers took most interest.

V3 operators had the facility to not only view the preferences interpreted or inserted by V2 operators, but to also see the image of the ballot paper on the same screen. These operators would consider the image and the flow of preferences, and decide what each preference number was. If this differed from the number already allocated, then a second operator would be required to verify the change. At this stage, any change made must be agreed by two operators. In some cases the operator may have needed to call for the actual ballot paper. This was particularly necessary where the voter had written over numbers, or crossed numbers out. The actual ballot paper was also called where scrutineers requested to see it.

As the scanning process used was an Australian first and had never been used in a “live” situation at a parliamentary election, improvements to the workflow were identified as the count proceeded over the week after polling day. A number of operational issues that arose in the process were addressed to improve productivity.

It became clear early in the scrutiny that the decision taken to batch into bundles of no more than 50 ballot papers and to batch by candidate was slowing the scanning and V1 process considerably. It was also clear that it made no difference whether there were ballot papers for more than one candidate in the one batch. Batches were subsequently combined into bundles of up to 200 ballot papers for an electorate, eliminating small batches wherever possible. This alone made a considerable difference to the speed of the scrutiny.

Some batch header cards were poorly completed at polling places and the counts in some batches were incorrect. An incorrect count recorded on the batch header card generated a fail state when the batch was scanned. Batches that failed at this point were recounted, slowing the scanning process. This check count was a mechanism to ensure ballot papers were not missed during the scanning phase. Accuracy at this point is vital to a smooth operation. At the 2012 election, consideration will be given to undertaking the batching at a central point, rather than in each polling place.

Consideration will be given to workflow of the V2 stage and V3 stage, to determine whether this process can be improved. It appeared that there was some unnecessary duplication of effort at the V2 stage.

The functionality of the V3 stage will also be examined to determine if it can be improved, although it did operate effectively. The improvements that have been considered are relatively minor, such as minimising the need to scroll around the screen, but would make the operation flow more smoothly, for example by cutting keystrokes and therefore time.

After all of the ballot papers in a batch had been verified as correct, they were ready to be committed to the counting program. In order to ensure that published interim results were not misleading, polling place results for a particular electorate were not committed to the counting program until all the batches for the polling place were complete and ready to be committed.

From the Tuesday to the Friday after polling day, an interim set of preference distribution results was calculated using those polling places that had been completely scanned and verified. At the end of each day, the preferences were copied to disk and transferred to the Hare-Clark counting program included in eVACS®. This enabled an updated interim distribution of preferences to be loaded on the Elections ACT website each evening. This feature enabled scrutineers, candidates, the media and other interested persons to follow the course of the scrutiny and served to reduce the uncertainty of the final outcome as figures were incrementally included in the count.

The bulk of the scanning was complete by the Friday after polling day, which was the last day on which postal votes could be received and included in the count. The scanning of the last postal ballot paper batches and final verification of the remaining unverified scanned ballots was completed early in the afternoon of the Saturday after polling day. Several hours were then taken to verify that the final output of the counting system matched the records of votes issued and counted in the polling places and the central scrutiny centre. This process was used as a final quality control check to ensure that all ballots had been correctly scanned and input.

The final distribution of preference result sheets were posted on the Elections ACT website at around 5.30 pm on Saturday 25 October 2008, just under 7 days after the close of the poll at 6.00 pm on 18 October 2008.

The Commission is confident that the count of preferences using the scanning system was conducted at a very high level of accuracy. The various quality control measures built into the process were designed to achieve as close to 100% accuracy as possible, given the limitations of interpreting handwritten numbers on ballots. Testing of the system before the election, where scanned counts were compared with hand counts, confirmed that the scanning system was capable of achieving 100% accuracy after human verification was complete.

The Commission will examine the feasibility of conducting a sample audit of the images of the scanned ballot papers to verify the accuracy of the system. If the Commission determines such an exercise is feasible, the sample audit will be undertaken in one of the next two financial years, subject to available resources.

Electronic counting using eVACS®

Following the 2004 election, there were a number of minor enhancements made to the electronic counting component of eVACS®. These included:

- ◇ Simplified reporting of first preferences by polling place;
- ◇ Enabling the import of votes from the scanning of ballot papers system; and
- ◇ Removing hard coding of electorate names.

Enhancements were also made to the data entry aspects of the counting system to improve functionality. However, with the deployment of the scanning of ballot papers system, these enhancements were not used, although they were in place and available to be used as a backup system.

At the end of voting each day at computer voting pre-poll centres, and computer voting polling places on polling day, the vote data was copied to write-once-only CD Rom disks, and duplicate disks made. The disks were then returned to the Elections ACT office and stored in a safe until the close of polling on polling day. As the data copied each day was an accumulation of all data from each day, only the latest disk was required for input to the counting system.

After the close of polling at pre-poll centres on the Friday evening before polling day, Elections ACT staff removed the voting servers from the pre-poll centres and replaced them with servers for polling day use. This replacement strategy enabled the data from pre-poll centres and from polling places to be recorded separately. In redeveloping eVACS®, Elections ACT will give consideration to the separation of pre-poll and polling day voting data without the need to change voting servers.

After the close of the poll on polling day, the data from the disks holding pre-poll voting data and the disks holding the voting data from polling day were entered into the eVACS® counting system. The first preference data was included in the tally room displays and the virtual tally room on the internet.

An interim distribution of preferences was undertaken for each electorate based on the computer votes and also displayed at the tally room and on the internet.

As noted above, at the end of each day of the scrutiny of the ballot papers undertaken through the scanning of ballot paper system (from the Tuesday after polling day), the verified data from each day was transferred to disk and then input to the eVACS® counting system, enabling an updated interim distribution of preferences to be loaded to the internet each evening.

This counting system component of eVACS® worked faultlessly, providing speedy results and reports each day of the count.

Election staff

Staffing

For the 2008 election Elections ACT supplemented its small number of ongoing staff by employing experienced casual electoral staff in temporary positions to manage various processes in the lead-up to, through and following the election. Elections ACT also employed a number of casual electoral staff to undertake a range of tasks throughout the election period, including staffing the many polling places on polling day.

There were over 800 staff employed to work on polling day alone. These officers must be selected, made an offer of employment, have employment confirmed, have details entered to the staffing system, and be trained and paid. Payments are made in the week following polling day for all polling staff.

Elections ACT maintains a register of people suitable for employment as polling officials and election casuals. Where possible, staff who have been employed previously and who were rated as suitable are asked to work again at the election.

The ACT Government's Shared Services unit was engaged under contract for the election to facilitate the payment of all election casuals. The payment information was maintained and processed on the Elections ACT employment database and payment details transferred to Shared Services for payment. In general this arrangement worked well. Elections ACT will be reviewing the detailed arrangements for the next election in order to further streamline what is currently a very labour intensive operation.

The following table sets out the staff employed by Elections ACT to conduct the 2008 election. As some employees worked in more than one capacity, these employees may be listed in more than one category in this table.

Table 21 – Staff employed during the 2008 election

Staff category	No.
Statutory officer holders	3
Permanent Public Sector Management Act staff	4
Contract Public Sector Management Act staff	6
Senior casual staff – head office	10
Casual staff – head office	68
Polling area managers	7
Officers in charge of polling places	79
Seconds in charge of polling places	83
Other polling day polling officials	519
Mobile polling officials	6
Pre-poll voting officials	55
Bilingual educators	6
Total	846

Training

The training of polling officials and casual staff is undertaken before every election.

For the first time, at the 2008 election all polling staff received their training manuals and workbooks on an interactive CD ROM. Hardcopy training manuals were still available for those without the required computer equipment. As with the 2004 election, the training workbooks were completed on-line enabling staff to receive instant feedback and Elections ACT to receive performance data.

Senior polling staff received face-to-face training in the weeks before polling day. The sessions were conducted by experienced Elections ACT staff. Sessions were tailored to the roles the polling staff would undertake, with an emphasis on practical exercises. The sessions were regarded highly by participants.

All polling staff who did not attend a face-to-face training session were provided with a briefing on polling day prior to commencing duties.

Elections ACT will review the training sessions, on-line workbooks and the CDROM and hardcopy manuals for the next election, as well as exploring other options such as the availability of training tools on the internet.

Election equipment

The conduct of a Legislative Assembly election is essentially a large logistical exercise that, while planned during the period between elections, can only come together in a short time, and to an immutable deadline. The scale of the exercise is made greater by the fact that Elections ACT has only 6 permanent staff members, including the Commissioner.

Many of the items used at an election cannot be finalised until well into the election period, particularly those that require inclusion of polling place addresses or candidate names. Included in this category is the audio for computer voting by the blind and vision impaired as it includes the names of candidates. The final professional recording of the candidate names, the set-up of the audio into the computer voting system and the installation of that system in the 5 pre-poll centres must be completed between the declaration of nominations and the opening of pre-poll voting, a period of 3½ days, including a weekend. During this same period, the ballot papers for the election must be typeset, proof-read and printed. This task is made more complex by the fact that there are 60 Robson rotation versions of each of the Brindabella and Ginninderra ballot papers, and 420 versions of the Molonglo ballot paper.

The table of election expenditure on page 76 gives an indication of the scale of the task of equipping an ACT Legislative Assembly election.

Disclosure of political donations and expenditure

The ACT's scheme for disclosure of political donations and expenditure requires submission of both annual returns and election returns by various political participants. As of 1 July 2008, all disclosure thresholds were reduced to \$1000.

Following the 2008 election, election returns outlining donations received and expenditure on electoral matter were received from all candidates, and election returns outlining details of electoral expenditure were also received from all registered political parties, except Free Range Canberra as that party did not contest the election. Returns from donors to candidates were received from 5 donors. Returns detailing expenditure on electoral matter were received from 3 third parties to the election. Another return by a third party showed gifts received by that third party. Election disclosure returns outlining details of those who bought electoral advertising were received from 3 publishers and 9 broadcasters.

All election returns received before the due publication date were made available for public inspection on 6 April 2009. A small number of late returns were made available as they were received. Returns are made available at the office of the Electoral Commissioner and on the Elections ACT website.

The Commission considers that a regulatory system such as the ACT's disclosure scheme requires regular compliance audits if the community is to be assured that disclosure is being made in accordance with the law. It has been Commission policy to conduct audits of compliance with the disclosure provisions at least once in the life of each parliament. The last audit was conducted after the 2004 election. The Commission intends to conduct an audit of compliance with the disclosure provisions for the period leading up to and including the 2008 election. However, the Commission is concerned that budgetary constraints are limiting the Commission's ability to adequately resource audits of this nature, as the Commission does not have the specialist auditing skills required to conduct audits in-house, and has in the past engaged professional auditors for this task. The Commission intends to raise this resource issue with government.

There are currently 2 processes underway that could impact on the ACT's disclosure provisions. The Parliamentary Agreement between the ACT Government and the ACT Greens includes a clause that commits the parties to pass legislation that will require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis.

Secondly, the Commonwealth has issued an Electoral Reform Green Paper on Donations, Funding and Expenditure. The Green Paper may lead to reform of the Commonwealth disclosure scheme in the near future. One aspect of the Commonwealth's reform agenda is to seek "harmonisation" of Commonwealth, State and Territory electoral laws, particularly disclosure laws.

The Commission **recommends** that these two issues (the proposal to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis; and proposals that may arise resulting from the Commonwealth Electoral Reform Green Paper on Donations, Funding and Expenditure) be considered, perhaps by a Legislative Assembly parliamentary committee, once the outcome of the Commonwealth review is known.

To assist consideration of the issue of timely publication of disclosure returns, the following discussion examines the current ACT requirements.

Disclosure returns are required from relevant participants in the electoral process as specified in the following table.

Table 22 – Summary of Election and Annual disclosure return lodgement and display requirements

	Parties	MLAs	Associated entities	Candidates	Donors	Broadcasters and publishers	Political participants
Annual returns due	16 weeks after end of financial year	16 weeks after end of financial year	16 weeks after end of financial year	NA	20 weeks after end of financial year, except in an election year when it is 24 weeks	NA	NA
Annual returns made public	Beginning of February in following year	Beginning of February in following year	Beginning of February in following year	NA	Beginning of February in following year	NA	NA
Election returns due	15 weeks after polling day	NA	NA	15 weeks after polling day	15 weeks after polling day	8 weeks after polling day	15 weeks after polling day
Election returns made public	25 weeks after polling day	NA	NA	25 weeks after polling day	25 weeks after polling day	25 weeks after polling day	25 weeks after polling day

The various deadlines for submitting disclosure returns were based on the deadlines that applied under the Commonwealth Electoral Act when the ACT’s disclosure scheme was established. As the ACT has now broken the nexus with the Commonwealth disclosure scheme, it is timely for the ACT to re-examine the disclosure deadlines in order to achieve more timely publication of disclosure returns. In particular, it would be desirable to bring forward the various disclosure deadlines in order to publish as much information as possible before the polling period for an election, to allow voters to be aware of donation details in the period leading up to polling day.

There are two broad approaches that could be adopted to achieve earlier disclosure. One way would be to bring forward the deadlines for the current regime of annual returns and election returns. Another approach could be to provide for on-line lodgement and disclosure within a short period of time of transactions occurring, as suggested in the ACT Parliamentary Agreement.

Looking first at retaining the current annual return and election return model, it can be noted that annual returns fall due 16 weeks after the end of the financial year. In an election year this due date falls in the week after polling day. This is a problematic time for electoral participants and Elections ACT alike. Further, the information disclosed in annual returns is not made public until the first day of February the following year. In the age of electronic record-keeping, it would be unusual for participants not to be in a position to provide the disclosure information much earlier, perhaps as early as 4 weeks after the end of the financial year, and for disclosure to occur within say 8 weeks.

While the deadline for donors' annual returns is currently after the deadline for the submission of party and MLA returns, to allow Elections ACT time to contact any donors identified in party returns, it would arguably be reasonable to require donors to submit annual returns at the same time as parties and MLAs, given that parties and MLAs are required to inform their donors of their obligation to submit a return. Such a change would also require a change to the deadline for parties and MLAs advising donors of the need to submit a return, to say no later than 1 week after the end of the financial year.

Similarly, the deadlines for lodgement of election disclosure returns appear to be unnecessarily late, and there appears to be no logical reason for an earlier deadline for broadcasters and publishers. The deadline for reporting for all participants could be say 30 days after polling day and for publication of the returns, say 60 days. Currently, the extended deadlines for lodgement of returns appear to lead to a propensity for those obliged to submit returns to overlook their obligation. The task of follow-up of those required to complete returns by Elections ACT then becomes problematic as the distance from the election, or the end of financial year, becomes greater. This is especially relevant to donors and independent candidates.

An alternative approach to simply shortening the current deadlines for annual returns and election returns would be to provide for continual disclosure, with deadlines determined by the date of transactions. This could be achieved by adopting an automated system where those responsible for lodging returns would complete their returns on-line. Elections ACT would then subject those returns to compliance checks and then publish them on its website. A possible difficulty with this approach would be ensuring compliance. To make such a scheme work effectively, it is likely that Elections ACT would need to undertake frequent audits of compliance, particularly early on. The Commission would need additional funding in order to take such a compliance regime on.

With regard to the Parliamentary Agreement's proposal to require all political donations to be disclosed within 1 month of receipt and, in an election period, on a weekly basis, the Commission has recommended above that this proposal be considered in the light of the Commonwealth's Green Paper reform process. It would be desirable to maintain consistency with the Commonwealth disclosure scheme if possible to minimise the amount of duplicated effort that would be required, particularly for political parties active at both the Commonwealth and ACT levels.

Public funding

Registered political parties and non-party candidates who receive a specified minimum number of formal votes are eligible to receive public funding.

To qualify, a group of candidates endorsed by a registered party in an electorate must receive at least 4% of the formal first preference votes counted in that electorate. Each candidate that is not endorsed by a registered political party must also receive 4% of the formal first preference votes counted in that electorate to qualify.

The ACT scheme for public funding is a formula based direct entitlement scheme, involving automatic payments to parties and candidates calculated by multiplying the total number of first preference votes received by a prescribed amount, adjusted each six months by the all groups consumer price index issued by the Australian Bureau of Statistics. The prescribed amount for the 2008 election was 147.722 cents per eligible vote.

The public funding payments made with respect to the 2008 ACT election are provided in the following table.

Table 23 – Public funding at the 2008 election

Party / candidate name	Public funding amount
Australian Labor Party (ACT Branch)	\$116,886.51
Australian Motorist Party	\$11,968.44
Liberal Party of Australia (A.C.T. Division)	\$98,759.54
Pangallo Independents Party	\$6,281.14
The ACT Greens	\$48,832.46
The Community Alliance Party (ACT)	\$7,133.50
Mark Parton – Independent	\$5,591.28
TOTAL	\$295,452.86

The Commonwealth Electoral Reform Green Paper on Donations, Funding and Disclosure discusses the relative merits of the existing Commonwealth and ACT schemes, which are direct entitlement schemes involving the automatic payment of set amounts, compared to reimbursement schemes, where payments are only made up to the set entitlement to reimburse specified electoral expenditure.

The Commission notes that the direct entitlement scheme was adopted in the ACT in the light of the Commonwealth experience with an earlier reimbursement scheme. Under a reimbursement scheme, considerable effort must be expended to prove expenditure up to the level of entitlement, particularly for smaller parties and independents with smaller budgets. The justification put forward for reimbursement schemes is that such schemes would prevent parties or candidates from making a profit from the public funding scheme.

In practice, however, it is rare for parties and candidates to achieve the significant milestone of 4% of the vote without having expended significant amounts of money. The Commission notes that all the 2008 election ACT parties and candidates that received public funding reported spending more on their campaigns than the public funding they received. In this light, the Commission considers that the large additional burden that would be imposed on parties, candidates and Elections ACT by a reimbursement scheme would not be warranted.

Compulsory voting

Voting is compulsory for ACT elections. It is an offence for an enrolled elector to fail to vote at an election without a valid and sufficient reason.

There were 23,452 electors who apparently did not vote at the 2008 election.

The 2008 election saw an increase in the number and percentage of apparent non-voters compared to the 2004 election, although the difference is minor when compared to the 2001 figure. The following tables show the percentage of apparent non-voters for ACT elections since 1995 and for federal and State elections over a similar period.

Table 24 - Percentage of non-voters at ACT elections

2008	2004	2001	1998	1995
9.6%	7.2%	9.1%	8.1%	10.5%

Note that the federal and ACT elections were held within 3 weeks and one week of each other in 2001 and 2004, respectively, and were 12 months apart in 2007/2008.

Table 25 - Percentage of non-voters at federal elections

	2007	2004	2001	1998
National	5.2%	5.7%	4.6%	5.0%
ACT	4.2%	5.1%	4.5%	4.4%
QLD	5.6%	6.3%	4.6%	5.8%
WA	6.7%	7.2%	5.0%	5.3%

Table 26 - Percentage of non-voters at Queensland State elections

2009	2004	2001
9.1%	8.6%	7.4%

Table 27 - Percentage non-voters at Western Australian State elections

2008	2005	2001
13.5%	10.2%	9.4%

By subtracting the number of votes counted from the total enrolment, a total of 23,452 electors had apparently failed to vote at the 2008 election. However, this calculation does not take account of electors who attempted to vote and had their votes rejected (such as postal voters who did not sign their declaration) or of declaration voters whose names were not included on the roll but whose votes were admitted to the count. A total of 8,119 electors had notified Elections ACT of a valid and sufficient reason for failing to vote before failure to vote notices were sent. On 27 November 2008 Elections ACT sent 16,647 notices to apparent non-voters.

On 6 February 2009 Elections ACT sent reminder notices to the 7,124 apparent non-voters who had failed to reply by that time. On 3 April 2009 Elections ACT sent notices of possible prosecution to the 5,083 apparent non-voters who had failed to reply to the reminder notice. This third notice was sent by registered mail, requiring the recipient to sign an acknowledgment of receipt.

At the time of preparing this report, Elections ACT has been liaising with the ACT Magistrates Court for the issue of summonses to the 495 electors who have failed to reply to the notice of possible prosecution, and to those electors who provided a reason that was taken not to be valid and sufficient and who have not subsequently paid the failure to vote penalty.

The following table outlines the replies received up to 5 August 2009, compared with the total replies for the 2004 election. Non-voter processes will continue in the 2009/2010 year.

Table 28 – Non-voter statistics for the 2004 and 2008 elections

Details	2004	2008
Total enrolment	226,098	243,471
Votes counted	209,749	220,019
Number of apparent non-voters	16,349	23,452
Valid reason for not voting provided before notices sent ¹	7,029	8,119
Number of electors sent non-voters notice ²	11,396	16,673
Elector claimed to have voted	873	307
Elector unable to vote due to mental incapacity or being infirm	107	120
Elector deceased	18	15
Other valid and sufficient reason provided	4,210	5,291
\$20 penalty paid	1,953	3,422
Elector moved permanently interstate or overseas	793	1,518
Letter returned undelivered	2,775	5,481
No valid and sufficient reason provided and penalty not paid	17	23
No reply	650	496

Note 1: Includes electors whose postal or declaration votes were not admitted to the count, electors who provided valid reasons in person or by telephone, letter or email, and electors who transferred their enrolment interstate before notices were sent.

Note 2: The number of notices sent and the number of valid reasons provided before notices were sent do not sum to the total number of apparent non-voters because some voters provided reasons but nevertheless voted.

These statistics indicate some notable results. As discussed under **Electoral rolls**, after the 2004 election, 873 electors who were sent non-voter notices claimed to have voted, compared to 307 such electors in 2008. This appears to indicate that the number of errors by polling officials made using the PDAs in 2008 was less than the number of errors evident after the 2004 election, when hand-marked certified lists were electronically scanned.

The fact that 5,481 non-voter notices were returned undelivered after the 2008 election, compared to 2,775 notices returned undelivered after the 2004 election, would appear to support the conclusion that the AEC's change in policy regarding retaining names on the electoral roll for longer before removing people on the ground on non-residence had led to the roll being somewhat inflated by retaining the names of electors who had left the ACT.

A total of 3,422 electors paid the \$20 penalty for failure to vote in 2008, thereby generating \$68,440 in revenue, a marked increase on the 1,953 electors who paid the penalty in 2004. By comparison, as at the time of writing this report the cost to Elections ACT for conducting the processing of non-voters was around \$69,000 in 2008/2009, including printing, postage and casual staff costs, but not including permanent staff costs or costs still to be incurred related to printing, posting and serving court summonses, including costs to be incurred by the ACT courts.

It is possible that the marked increase in the number of non-voters choosing to pay the \$20 penalty for failing to vote may be due at least in part to the low value of the penalty. For some electors, it may be that the \$20 penalty is not a sufficient incentive to encourage them to vote. It is noteworthy that only the ACT, Western Australia and the Commonwealth currently have a \$20 penalty. For federal elections, the \$20 penalty has remained unchanged since the electoral reforms of 1984. The penalty notice fines in other jurisdictions range from \$24 in Tasmania to \$50 in Queensland and \$54 in Victoria. The Western Australia penalty also increases to \$50 if the elector fails to reply to the first notice and is sent a second notice. The penalty in New South Wales and the Northern Territory is \$25 and in South Australia the penalty is \$30.

The Commission also notes that the ACT Government announced in the 2009/2010 budget that it intends to increase penalty units for Territory offences by 10%.

Given the above considerations, the Commission **recommends** that the penalty notice fine for failing to vote at ACT Legislative Assembly elections should be increased to, say, \$25.

Multiple voting

Following the detailed examination of certified lists of voters used at polling places and used to mark those who had voted by post or had had declaration votes, and after culling for polling official error, Elections Act concluded that 72 names had been marked twice on the certified lists without an apparent explanation. Of these 21 names were of Brindabella electors, 18 of Ginninderra electors and 33 of Molonglo electors.

Correspondence with the 72 electors indicated that many of them had appeared to have voted only once, and that many involved a probable mix-up with other electors with the same or a similar name (for example, a father and son) by polling officials. While it cannot now be proven or quantified, evidence suggests that some of the instances of the wrong elector being marked relate to people who were not enrolled being issued a vote in the name of a person who is on the roll.

One way of reducing the possibility of the incorrect elector being marked as voted where names are the same or similar is to include electors' age and gender on the certified lists of electors.

Of the 72 people sent correspondence, 2 did not respond and 4 have admitted to voting twice. Of those who did not respond, there was 1 elector in each of the electorates of Ginninderra and Molonglo. Of those who admitted to voting twice, 3 were electors in Brindabella and 1 was an elector in Ginninderra.

Of the 4 who have admitted to voting twice, in all cases the electors had mitigating circumstances. None of these cases disclosed evidence of an intention to deliberately vote more than once. As a result, the Commissioner decided that prosecution action in these cases was not warranted.

Elections ACT does not consider that this level of apparent multiple voting is indicative of any organised attempt to fraudulently influence the result of the election. Further, given that the number of apparent multiple votes in each electorate was smaller than the smallest margin in each electorate, Elections ACT also considered that the identified level of apparent multiple voting was not sufficient to have the potential of altering the outcome.

Ballot paper surveys

After every ACT election, the Commission conducts surveys of the marking of informal and formal votes to determine whether any patterns of behaviour can be deduced in order to inform future election information campaigns.

Informal vote survey

For the first time since the 1995 election the informal rate of voting increased from the previous election. The informal rate for the 2008 election was 3.8%, up from 3.0% in 2004. However, the rate remains below the level of every other election since the first election in 1989. The following table provides a comparison of the rate of informality since 1989.

Table 29 - Informal voting in the ACT

2008	2004	2001	1998	1995	1992	1989
3.8%	3.0%	4.0%	4.3%	6.7%	6.5%	5.7%

The following tables provide the results of a survey of all informal ballot papers, categorised by the reason for their informality, and summarise the breakdown of informal votes cast using paper and electronic ballots.

Table 30 – Breakdown of informal papers ballot by reason for informality – 2008 election

Reason for informality	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
Ballot papers that identify the elector	0	0.0%	1	0.0%	3	0.1%	4	0.1%
Ballot papers totally blank	651	27.6%	607	27.1%	760	29.0%	2018	28.0%
Ballot papers informal because the voter has "written in" a candidate	49	2.1%	48	2.1%	39	1.5%	136	1.9%
Ballot papers with numbers but no number 1	42	1.8%	47	2.1%	58	2.2%	147	2.0%
Ballot papers with a first preference in every box	68	2.9%	43	1.9%	35	1.3%	146	2.0%
Ballot papers containing marks, writing, lines or scribbles/slogans/stickers only	504	21.4%	408	18.2%	531	20.3%	1443	20.0%
Ballot papers containing ticks, crosses or some numbers, but no unique first preference	1039	44.0%	1080	48.3%	1183	45.2%	3302	45.7%
Apparent "above the line" votes	2	0.1%	1	0.0%	7	0.3%	10	0.1%
Ballot papers issued for the wrong electorate	2	0.1%	2	0.1%	3	0.1%	7	0.1%
Others	3	0.1%	1	0.0%	1	0.0%	5	0.1%
Total informal paper ballots	2360	100.0%	2238	100.0%	2620	100.0%	7218	100.0%

Table 31 – Breakdown of informal electronic ballots – 2008 election

	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
Informal ballots cast using electronic voting	317	75.1%	225	84.9%	315	67.7%	857	74.4%
Electronic ballots "discarded"	105	24.9%	40	15.1%	150	32.3%	295	25.6%
Total informal and discarded ballots using electronic voting	422	100.0%	265	100.0%	465	100.0%	1152	100.0%

Table 32 – Summary of informal ballots – 2008 election

	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
Total informal paper ballots	2360	84.8%	2238	89.4%	2620	84.9%	7218	86.2%
Total informal and discarded ballots using electronic voting	422	15.2%	265	10.6%	465	15.1%	1152	13.8%
Total informal ballots in the election	2782	100.0%	2503	100.0%	3085	100.0%	8370	100.0%
Total ballots in the election	66116		62552		91351		220019	
Proportion of informal to total ballots		4.2%		4.0%		3.4%		3.8%

For the first time the survey includes informal electronic votes cast and the number of discarded electronic vote barcodes. The informal electronic ballots all fall within the ballot papers totally blank category, but for the purposes of the table have been listed separately. There were 295 barcodes discarded in electronic polling places. As the barcode enables a vote to be entered, it is considered to be equivalent to a “ballot paper” for voting purposes. In the cases of discarded barcodes, the equivalent ballot paper is included here with the informal electronic ballot papers. In total there were 1,152 informal electronic votes. The following table compares the informal rate of paper and electronic ballots. More detailed tables showing the numbers of electronic votes cast are included at Appendix 1.

Table 33 - Comparison of rate of informal voting – paper v electronic ballots

	Brindabella		Ginninderra		Molonglo		ACT Total	
	Number	%	Votes	%	Votes	%	Votes	%
Informal paper ballots	2360	4.5%	2238	4.4%	2620	3.6%	7218	4.1%
Total paper ballots	52893		50980		72326		176199	
Informal electronic ballots	422	3.2%	365	3.2%	465	2.4%	1152	2.6%
Total electronic ballots	13223		11572		19025		43820	
Total Informal ballots	2782	4.2%	2503	4.0%	3085	3.4%	8370	3.8%
Total ballots	66116		62552		91351		220019	

It is not clear whether the discarded barcodes and other electronic (totally blank) ballots represent an intentional action by the voter, or if there has been an unintentional or incorrect use of the electronic voting system by the voter. There is no way of determining the voter’s intention in these cases, other than through a small number of calls made to Elections ACT during and after polling that suggested those voters were uncertain that they had correctly completed their electronic vote. Inadvertent informal voting using the electronic system will be considered as part of the review of the electronic voting system. However, it can be said that in the case of the 857 votes electronically recorded on the electronic voting system, a screen was displayed warning the voter that, if they proceeded to swipe their barcode, their vote would be officially recorded as informal. It could reasonably be concluded that the great majority of informal electronic votes were deliberately cast.

By contrast, the paper ballots that are left blank, as well as those with only writing, lines and scribbles, or "written in" candidates could be considered to be intentionally informal - these categories account for 3,597 or 49.8% of informal paper ballots. In addition, it is arguable that the majority of the informal ballots that have numbers but no first preference or a first preference in every box are intentional - these categories account for a further 293 or 4.1% of informal paper ballots.

Over 45% of informal voters used ticks or crosses or some numbers but no unique first preference. Although it is likely that some of these are intentionally informal, it is probable that some are not, particularly those that have numbers 1 to n, in each column, where n is the number of candidates in the column. It is possible that these voter believed that they needed to vote for candidates starting with 1 in each column. This is an area that will be examined further, to determine whether this outcome can be improved through better voting instructions.

It is noteworthy that the proportion of informal votes cast by electronic voters were significantly less than the proportion of informal votes cast by voters using paper ballots. This followed the trend evident at the 2001 and 2004 elections. This outcome continues to show that voters using the electronic voting system are less likely to cast an informal vote. This in turn is an argument for extending the electronic voting system to as many voters as possible.

Formal vote survey

An examination of the formal votes cast can provide useful and interesting data on voting patterns. In particular the length of sequence of numbering of votes may provide some insight into the way voters interpret the instructions on the ballot paper, in Elections ACT information brochures and party and candidate canvassing material. It also provides an indication of the impact of the number of candidates, and the possible impact of computer voting.

The fact that the preferences shown on all formal ballot papers are now recorded electronically means that, since the 2001 election, it has been feasible to tabulate a range of statistics that show how all electors have numbered preferences on their ballot papers.

Tables 57-59 - Length of sequence shows for each electorate in 2008 the length of sequence of each ballot paper, recording how far each elector indicated preferences in an unbroken sequence.

Around 97% of all formal voters in 2008 followed the instructions on the ballot papers and indicated at least as many preferences as there were vacancies in the electorate. This result indicates that the instructions provided to voters were effective. Around 71% of formal voters indicated only as many preferences as there were vacancies in the electorate. That is, 5 preferences in Brindabella and Ginninderra and 7 preferences in Molonglo.

Around 25% of formal voters showed more than the instructed minimum number of preferences. Between 5.5% (in Molonglo with 40 candidates) and 11.8% (in Brindabella with 19 candidates) of formal voters marked preferences for every candidate (with 8.5% in Ginninderra with 27 candidates). These results indicate that, while around 7 out of 10 voters are inclined to cast "the recommended minimum" number of preferences, another 1 in 4 of voters take the opportunity to show more preferences than the recommended minimum.

The formality rules accept as formal ballot papers that indicate at least a unique first preference, even if the instructed minimum number of preferences is not shown. Around 1.9% of electors in Brindabella, 1.7 % in Ginninderra and 3.3% of formal voters in Molonglo failed to number at least as many preferences as there were vacancies in the electorate. It is impossible to know how many of these votes were cast in the knowledge that these votes were not complying with the recommended minimum, but were nevertheless formal votes, and how many of these votes were the result of a failure to understand or follow the instructions. Whatever the reason, the number of ballot papers concerned is significant enough to make it worth keeping the current formality rules, while maintaining the general instruction to number at least as many candidates as there are vacancies in the electorate.

Table 60 – Sequence breaks in formal ballot papers shows the number of formal ballot papers that omitted a preference number or duplicated a preference number, thereby breaking the sequence of preferences that can be taken into account in a Hare-Clark count. A total of 1,142 ballot papers contained a repeated number, and a total of 863 ballot papers missed a number in the sequence. Under the ACT's Hare-Clark system, these ballot papers are still counted as formal, as they had a unique first preference. However, they could not be given full effect, with regard to any preferences shown after the break in sequence.

Most breaks in sequence occurred early in the sequence, with the number of mistakes tailing off as the number of preferences increases. This is to be expected, since two thirds of all formal voters only showed the recommended minimum number of preferences.

It is possible that some of these breaks in sequence were deliberate, as some people may have thought "Langer style" voting applied in the ACT – that is, that a minimum number of preferences had to be shown, but that a deliberate break in sequence would render later preferences inoperative (for example, voting 1, 2, 2, 2, 2). However, the large variation in the points where sequence breaks occur would appear to indicate that most of these sequence breaks were unintentional.

These results, and the level of unintentional informal voting, point to the inherent problem with paper ballots – some voters have difficulty in marking sequential preferences without making mistakes. A solution to this problem would be to maximise the use of the electronic voting system, which automatically constrains preferences chosen by the voter to ensure that they follow a correct sequence. It is noteworthy that the results in 2008 show significantly fewer voters making errors in their preference sequences compared to the 2001 (when these statistics were last reported), when 1,725 ballot papers contained a repeated number, and 1,141 ballot papers missed a number in the sequence. This outcome presumably is related to the increase in the number of voters using electronic voting in 2008.

Following this analysis, the Commission supports the retention of the existing ballot paper instructions and the existing formality rules.

2008 election budget

The Commission's total expenditure in 2008/2009 was around \$3,195,000, including the cost of the 2008 election. The election itself, excluding ongoing staff and administration costs, cost around \$2,187,000. This result indicated that the Commission overspent its budget allocation in 2008/2009 by around \$260,000.

This result was primarily attributable to some election costs increasing by a greater amount than anticipated. These included:

- ◇ Advertising costs;
- ◇ ICT services costs, particularly the costs charged to Elections ACT by InTACT for project management;
- ◇ Public funding paid to political parties and candidates, which increased from \$246,931 in 2004 to \$295,453 in 2008; and
- ◇ Polling place hire costs.

The Commission's 2008/2009 Annual Report will include more detail on the Commission's budget outcome for the year.

The following table shows a breakdown by major areas of expenditure undertaken by the Commission in the conduct of the 2008 election. This table does not include costs attributable to the Commission's ongoing operations, including joint roll costs, permanent staff costs and normal administration costs. While the great majority of expenditure occurred in 2008/2009, this table also includes some election costs incurred in the 2006/2007 and 2007/2008 financial years. All election staff costs are included under the staff entry.

Table 34 – 2008 election expenditure

Expenditure	Cost \$ (GST excl)
Electronic electoral rolls (PDAs)	44,951
Electronic voting and counting	77,921
Information campaign	265,134
InTACT project management & other ICT costs	160,875
Materials & non-ICT equipment	65,984
Non-voters processing	31,547
Postal voting	53,787
Printing, including ballot papers and barcodes	132,338
Public funding of parties and candidates	295,453
Scrutiny, including scanning	156,618
Staff	771,472
Tally room	45,167
Venue hire	85,893
Total	2,187,140

Casual vacancy provisions

Casual vacancies in the ACT Legislative Assembly are filled by conducting a count-back of the ballot papers used to elect the vacating member. The most recent casual vacancy count-back occurred in April 2006, following the resignation of sitting MLA Mr Ted Quinlan.

This method of filling casual vacancies is fast and cost-effective, particularly now that all preferences on all ballot papers are captured electronically, enabling count-backs to be determined at the push of a button. Importantly, the count-back method of filling casual vacancies serves to preserve the integrity of the proportional representation aspect of the ACT's Hare-Clark system, as it enables the voters who elected the vacating member to choose that member's replacement. In practice, this has always meant that a vacating member of a particular political party has been replaced by a member of the same party, thereby retaining the party balance in the Assembly, which in turn reflects the will of the electorate at the relevant general election.

However, the count-back method will only operate as intended to preserve the proportional outcome of the original general election where there is at least one candidate of the vacating member's party available to contest the vacancy. Should a party member resign, and at least one unsuccessful candidate from that same party is not available to contest the vacancy, under the current law that vacancy would be filled by a candidate from a different party, or by an independent candidate. Arguably, such an outcome would not deliver a representative result, and might serve to alter the balance of power in the Legislative Assembly.

As discussed above in the **Ballot papers** section, both the Australian Labor Party and the Liberal Party announced, in the lead-up to the 2008 election, that they were intending to nominate 6 candidates in at least one of the 5 member electorates. (In the event, both parties changed their view and neither party, nor any other, nominated more candidates than the number of vacancies in any electorate.) It is presumed that a major factor in the parties' consideration of this issue was the desire to ensure that the party had enough candidates available to fill any casual vacancies that arose in the life of the Assembly.

As discussed above, it would be unfortunate if a tactical decision dictated by the method of filling casual vacancies by count-back was to unduly complicate a general election by encouraging parties to stand more candidates than the number of vacancies. Rather than addressing this issue by nominating more candidates than the number of vacancies, it might be desirable to re-examine the casual vacancy process to determine whether there might be a better way of filling casual vacancies where a party vacancy occurs and a nominee from that party is not available to contest the vacancy.

For the Tasmanian House of Assembly, which is also elected using the Hare-Clark system, there is special provision made for this case. Under section 232 of the *Tasmanian Electoral Act 2004*, if a casual vacancy occurs and none of the candidates who were included in the same registered party group as the vacating member are available to contest the vacancy, the registered officer of that registered party may, by notice in writing to the Commissioner no later than 24 hours after the close of nominations for the recount, request that a by-election be held to fill the vacancy. (Note that this provision has never needed to be invoked.)

As can be seen from the discussion above, this provision if invoked in the ACT would run the risk of altering the balance of power in the Assembly. The holding of a by-election would also involve considerable expense and disruption to both the taxpayer and to the political parties and candidates. Therefore the Commission suggests that it would not be the best option for the ACT Legislative Assembly to adopt.

Section 195 of the ACT's Electoral Act currently provides for the situation where a casual vacancy occurs and it is not practicable to fill the vacancy by count-back at all. Such a situation could arise either because of a technical difficulty (such as, in the days before electronic counting, where some or all of the ballot papers were destroyed by accident) or because no candidates applied to contest the vacancy. Under section 195, if a vacancy cannot be filled by count-back, there is a mechanism for the Assembly to appoint a replacement member from the same party of the vacating member, where the vacating member belonged to a party, or to appoint a candidate with no party affiliation where the vacating member was not elected as a party candidate. This method is similar to the Senate casual vacancy rules which, like the ACT's count-back rules, are designed to preserve the proportionality of multi-member election outcomes.

This model could be extended in the ACT to cater for the situation where a party vacancy occurs and a nominee from that party is not available to contest the vacancy. The Commission suggests that this option would be the best one to adopt, should the Assembly consider that this issue needs to be addressed. The Commission notes that this situation has never occurred in practice in the ACT or Tasmania, and suggests that the likelihood of it occurring would be expected to be rare.

Therefore, the Commission **recommends** that consideration be given to whether it would be desirable to amend the Electoral Act to provide that, where a casual vacancy arises and the vacating member was elected as a party candidate, and no unsuccessful candidates from that party apply to contest the vacancy, then the vacancy would be filled by the appointment method set out in section 195 of the Electoral Act.

The size of the Legislative Assembly and the number of members to be elected in each electorate

On 17 June 2009 the Legislative Assembly passed a resolution calling for a joint ACT/ Commonwealth review of the *Australian Capital Territory (Self-Government) Act 1988* and related matters to determine whether it continues to provide the best model for effective and democratic self-government for the ACT. This call for a review included, among other matters, consideration of the most appropriate way to lift the restriction on the Legislative Assembly determining its own size.

Should this review result in a handover by the Commonwealth to the Assembly of the power to determine its own number of members, this will raise a number of issues that will impact on the Electoral Act and the operation of the Commission.

In its submission to the Standing Committee on Legal Affairs regarding its *Inquiry into the appropriateness of the size of the Legislative Assembly for the ACT and options for changing the number of members, electorates and any other related matter*, the Commission canvassed a wide range of issues related to increasing the number of members elected to the Assembly.

The issues canvassed in that submission will not be repeated here. The submission is on the Commission's website at www.elections.act.gov.au/publications/pubsub.html. The Commission stands by the conclusions it reached in the submission.

In analysing the possible impacts of changing the number of members of the Assembly, and in particular changing the numbers of members to be elected in some or all electorates, or changing the total number of electorates, the Commission identified a set of guiding key principles. These principles are aimed at preserving the integrity of the ACT's Hare-Clark electoral system by ensuring fairness and equity.

The principles identified by the Commission were:

- ◇ Each electorate should have at least 5 Members;
- ◇ Each electorate should have an odd number of Members;
- ◇ Electorates should each return the same number of Members; and
- ◇ The total number of Members should be an odd number and accordingly there should be an odd number of electorates.

The Commission considers that these principles should be used to guide the Assembly's consideration of any proposals to increase the number of members elected to the Assembly.

Any change to the size of the Assembly will require legislative change at the Commonwealth level and amendments to the ACT's Electoral Act. The Commission notes that a redistribution of the ACT's existing 3 electorates is due to commence as soon as practicable after the third Saturday in October in 2010. If the size of the Assembly is to change before the 2012 election, it would be highly desirable for the necessary legislative changes to be in place before October 2010. This would prevent the commencement of a redistribution based on the existing size of the Assembly, while ensuring that there would be sufficient time to conduct the redistribution in advance of the election in 2012.

An important consideration if the size of the Assembly is to change will be to allow sufficient time between the conclusion of the redistribution process and the election period in order to inform the public of the changes and to allow political participants to adjust to the changed circumstances, particularly in relation to the preselection process for party candidates. Changing the number of members to be elected will also require changes to the Commission's operational systems, particularly its IT systems, and changes to the Commission's information and education material. These changes will need to be made well in advance of the election period.

Accordingly, the Commission **recommends** that, if the size of the Assembly is to be changed prior to the 2012 election, all necessary legislative changes should be made by October 2010.

Legislative Assembly electoral matters committee

Several other Australian parliaments, including the Commonwealth and the States of New South Wales, Victoria and Queensland, have advanced electoral reform in their jurisdiction through ongoing parliamentary committees tasked with routinely examining electoral matters.

After every general election for the ACT Legislative Assembly, the Electoral Commission provides a detailed report on the conduct of the election, of which this report is the latest in this series. In the past, reports such as this one have been considered by the government of the day, and in most cases the government has brought forward legislation as a result of the Commission's recommendations (although not, of course, always agreeing with the Commission). The Commission's election reports have not, in the past, been routinely referred to an Assembly committee.

This has meant that generally the first occasion on which the non-government members of the Assembly have publicly considered the reports and recommendations of the Commission has been in the course of the debate on electoral amendments advanced by the government.

The Commission suggests that consideration be given to tasking an Assembly committee with a specific standing brief to consider and report on the conduct of each Legislative Assembly general election, and other relevant electoral matters.

Statutory independence

On 27 May 2009 the ACT Electoral Commission made a submission to the Standing Committee on Administration and Procedure in relation to its Inquiry into the appropriate mechanisms to coordinate and evaluate the implementation of the Latimer House Principles in the governance of the ACT. A copy of that submission can be found at www.elections.act.gov.au/publications/pubsub.html.

The submission discusses the importance of independence to electoral commissions and examines the strengths and weaknesses of the ACT Electoral Commission's statutory independence. Those arguments are not repeated here; the reader's attention is drawn to the submission.

The Commission made the following **suggested** changes to legislation in its submission:

- ◇ That the Electoral Act be amended to provide that the Commission and the Commissioner are not subject to the direction or control of the Executive in respect of the performance or exercise of their functions or powers other than as explicitly provided in relevant legislation;
- ◇ That the Electoral Act be amended to explicitly provide that the Electoral Commissioner has all the powers of a chief executive under the Public Sector Management Act in relation to the staff employed to assist the Commissioner; and
- ◇ That relevant legislation be amended to facilitate allocation of funds directly to the office of the Electoral Commissioner and to give direct responsibility to the Commissioner for monies spent by the Commissioner.

Appendix 1 – Summaries of first preference vote counts, including electronic votes and paper votes

This Appendix shows details of the total votes cast at the 2008 ACT election, and details of votes cast at the electronic voting polling places, including votes cast using electronic voting and votes cast using paper ballots.

Table 35 – Summary of all first preference votes

Party	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
ALP	23123	36.5%	24119	40.2%	31884	36.1%	79126	37.4%
AMP	4418	7.0%	3684	6.1%	2451	2.8%	10553	5.0%
CA	4829	7.6%	1897	3.2%	1004	1.1%	7730	3.7%
CL	22364	35.3%	16683	27.8%	27808	31.5%	66855	31.6%
Greens	8600	13.6%	8350	13.9%	16107	18.2%	33057	15.6%
LDP	0	0.0%	0	0.0%	774	0.9%	774	0.4%
PI	0	0.0%	0	0.0%	4252	4.8%	4252	2.0%
RMCP	0	0.0%	0	0.0%	2341	2.7%	2341	1.1%
Other	0	0.0%	5316	8.9%	1645	1.9%	6961	3.3%
Formal	63334	95.8%	60049	96.0%	88266	96.6%	211649	96.2%
Informal	2677	4.0%	2463	3.9%	2935	3.2%	8075	3.7%
Discarded	105	0.2%	40	0.1%	150	0.2%	295	0.1%
Informal & Discarded	2782	4.2%	2503	4.0%	3085	3.4%	8370	3.8%
Total	66116	100.0%	62552	100.0%	91351	100.0%	220019	100.0%
Enrolment	71394		68358		103719		243471	
Total votes as % of enrolment		92.6%		91.5%		88.1%		90.4%
E-votes as % of total votes		20.0%		18.5%		20.8%		19.9%

Table 36 – Summary of all first preference votes at e-voting polling places

Party	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
ALP	5212	34.9%	5669	38.9%	7793	34.8%	18674	36.0%
AMP	977	6.5%	839	5.8%	672	3.0%	2488	4.8%
CA	1175	7.9%	450	3.1%	285	1.3%	1910	3.7%
CL	5508	36.8%	4163	28.6%	7528	33.6%	17199	33.1%
Greens	2078	13.9%	2125	14.6%	3687	16.5%	7890	15.2%
LDP	0	0.0%	0	0.0%	247	1.1%	247	0.5%
PI	0	0.0%	0	0.0%	1105	4.9%	1105	2.1%
RMCP	0	0.0%	0	0.0%	576	2.6%	576	1.1%
Other	0	0.0%	1315	9.0%	480	2.1%	1795	3.5%
Formal	14950	96.5%	14561	96.7%	22373	97.1%	51884	96.8%
Informal	440	2.8%	461	3.1%	527	2.3%	1428	2.7%
Discarded	105	0.7%	40	0.3%	150	0.7%	295	0.6%
Informal & Discarded	545	3.5%	501	3.3%	677	2.9%	1723	3.2%
Total	15495	100.0%	15062	100.0%	23050	100.0%	53607	100.0%
Total votes from all sources	66116		62552		91351		220019	
Total votes at e-voting centres as % of total votes		23.4%		24.1%		25.2%		24.4%

Table 37 – Summary of electronic first preference votes at e-voting polling places

Party	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
ALP	4441	34.7%	4314	38.2%	6456	34.8%	15211	35.6%
AMP	860	6.7%	691	6.1%	601	3.2%	2152	5.0%
CA	969	7.6%	334	3.0%	232	1.3%	1535	3.6%
CL	4673	36.5%	3209	28.4%	6163	33.2%	14045	32.9%
Greens	1858	14.5%	1738	15.4%	3166	17.1%	6762	15.8%
LDP	0	0.0%	0	0.0%	206	1.1%	206	0.5%
PI	0	0.0%	0	0.0%	870	4.7%	870	2.0%
RMCP	0	0.0%	0	0.0%	451	2.4%	451	1.1%
Other	0	0.0%	1021	9.0%	415	2.2%	1436	3.4%
Formal	12801	96.8%	11307	97.7%	18560	97.6%	42668	97.4%
Informal	317	2.4%	225	1.9%	315	1.7%	857	2.0%
Discarded	105	0.8%	40	0.3%	150	0.8%	295	0.7%
Informal & Discarded	422	3.2%	265	2.3%	465	2.4%	1152	2.6%
Total	13223	100.0%	11572	100.0%	19025	100.0%	43820	100.0%
Total votes at e-voting centres	15495		15062		23050		53607	
E-votes as % of total votes at e-voting centres		85.3%		76.8%		82.5%		81.7%

Table 38 – Summary of paper first preference votes at e-voting polling places

Party	Brindabella		Ginninderra		Molonglo		ACT Total	
	Votes	%	Votes	%	Votes	%	Votes	%
ALP	771	35.9%	1355	41.6%	1337	35.1%	3463	37.6%
AMP	117	5.4%	148	4.5%	71	1.9%	336	3.6%
CA	206	9.6%	116	3.6%	53	1.4%	375	4.1%
CL	835	38.9%	954	29.3%	1365	35.8%	3154	34.2%
Greens	220	10.2%	387	11.9%	521	13.7%	1128	12.2%
LDP	0	0.0%	0	0.0%	41	1.1%	41	0.4%
PI	0	0.0%	0	0.0%	235	6.2%	235	2.5%
RMCP	0	0.0%	0	0.0%	125	3.3%	125	1.4%
Other	0	0.0%	294	9.0%	65	1.7%	359	3.9%
Formal	2149	94.6%	3254	93.2%	3813	94.7%	9216	94.2%
Informal	123	5.4%	236	6.8%	212	5.3%	571	5.8%
Discarded	0	0.0%	0	0.0%	0	0.0%	0	0.0%
Informal & Discarded	123	5.4%	236	6.8%	212	5.3%	571	5.8%
Total	2272	100.0%	3490	100.0%	4025	100.0%	9787	100.0%
Total votes at e-voting centres	15495		15062		23050		53607	
Paper votes as % of total votes at e-voting centres		14.7%		23.2%		17.5%		18.3%

Appendix 2 – Market research findings on voter awareness and Elections ACT services

This Appendix shows detailed findings of the market research into voter awareness and satisfaction with polling place voter services and Elections ACT public awareness programs undertaken for the 2008 ACT election.

Results are shown compared to the equivalent results obtained from similar surveys undertaken during the 1998, 2001 and 2004 elections.

There were some minor variations in the wording of the questions used in the 2008 survey compared to earlier surveys. The questions listed are those asked in 2008.

Table 39 – Information sources used to locate an ACT polling place

Q: In which of these ways did you find out about the location of this polling place?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
TV, radio and newspaper (news or advertisements)	34	14	12	14
Elections ACT brochure (letterbox or newspaper insert)	7	8	7	11
Through relatives/friends	8	11	10	15
Elections ACT website	-	1	3	4
Voted where always vote	65	57	55	57
Other (expected polling place to be at local school or hall)	-	15	15	8
Miscellaneous	2	3	6	6

The clear conclusion is that most people vote where they usually attend to vote. However, the media and the Elections ACT information brochures also play an important role. The increase in usage of the Elections ACT website will be an area that is likely to increase further.

Table 40 – Usage and satisfaction with the Elections ACT website

Q: Did you access the elections ACT website to gain any information about the 2008 ACT election? If yes, how useful was this site in giving you information about the 2008 ACT election?

		2001	2004	2008
		N = 500	N = 500	N = 545
		%	%	%
Yes		4	7	14
No		96	93	86
If Yes:				
	Very useful	26	35	32
	Useful	37	54	57
	Neither useful nor not useful	5	3	5
	Not useful	16	3	3
	Not useful at all	11	-	3
	Unsure/don't know	5	5	-

Respondents were also asked what information they were seeking. Key information sought included the address of polling places (41%), explanation of electorates and numbers of members (22%) and explanation of Hare-Clark voting system (11%).

These findings show a string level of voter satisfaction when using the Elections Act website and for most users the information sought was found.

Table 41 – Awareness and use of the 2008 Elections ACT brochure

Q: Did you or your household receive a copy of this brochure from the ACT Electoral Commission which explained this ACT election and its procedures? (the brochure was shown to each respondent). If yes, did you read the brochure?

		1998	2001	2004	2008
		N = 500	N = 500	N = 500	N = 545
		%	%	%	%
Yes		69	70	81	69
No		22	22	12	23
Cannot remember		10	7	7	9
If Yes:					
	Yes, read it thoroughly	19	27	21	23
	Yes, read parts needed to	19	15	17	21
	Yes, read & talk to others about it	3	1	1	1
	Yes, glanced at it quickly	23	27	30	23
	No, did not look at it at all	34	27	30	23
	No, lost it or threw it away	2	3	7	6
	Don't know	-	-	-	1

The above findings show that most voters (69%) in 2008 could recall receiving the household letterbox delivered brochure or The Canberra Times insert brochure from Elections ACT, and that the brochure was widely read. In 2008 almost 7 in 10 (68%) of voters receiving the brochure claimed to have read the brochure – this equates to over 4 in 10 (43%) of all voters reading the household brochure. Similar results emerged in the 1998 and 2001 ACT elections, but a decline occurred from 81% to 69% of recall of household brochure receipt from 2004 to 2008. However, this can be offset by more electors accessing the Elections ACT website to gain information.

A question was also asked to identify which sections of the brochure were useful. The findings suggest that while most sections were useful, the sections most useful were the explanation that numbers are required for valid vote, explanation of electorates and number of Members, and address of polling places.

Table 42 – Awareness of exclusion of handing out how-to-vote cards within 100 metres of polling places

Q: Before you came to vote today were you aware that how-to-vote cards were no longer given out within 100 metres for an ACT election polling place?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Yes	81	74	66	64
No	17	26	33	35
Unsure/don't know	1	-	1	1

These findings show a long term decline (from 81% in 1998 to 64% in 2008) in voter awareness that how-to-vote card distribution was not available within 100 metres from a polling place.

Table 43 – Problems caused by lack of easy accessibility of how-to-vote cards

Q: Did you find it a problem that how-to-vote cards were not available today? If yes, what problems did you have?

	2001	2004	2008
	N = 500	N = 500	N = 545
	%	%	%
Yes	15	9	13
No	84	89	86
Unsure/don't know	1	1	1
If Yes: (multiple responses possible)	N = 500	N = 500	N = 545
	%	%	%
Disagree with ban on how-to-vote cards	40	49	29
Did not know who to vote for	41	62	52
New resident to the ACT & did not know what to do	NA	4	7
Other	37	2	15

Around 1 in 10 (13%) of voters in 2008 found it a problem due to the difficulty of getting access to how-to-vote cards, and for around half of these voters the problem was that they did not know who to vote for. Similar results emerged in 2001 and 2004.

Table 44 – Awareness of Robson rotation method

Q: Were you aware of the Robson rotation method of printing ballot papers printed so that the candidate names are listed in a different order on different ballot papers?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Never heard of Robson rotation system	46	49	41	48
Have heard of Robson rotation but know nothing about it	13	14	10	7
Know some things about Robson rotation	23	26	22	20
Know all about Robson rotation	18	12	28	25

About 45% of voters claimed some knowledge of the Robson rotation system in 2008.

Table 45 – Voter awareness of the name of their electorate

Q: Can you tell me the name of your electorate?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Brindabella	27	24	27	31
Ginninderra	26	26	24	22
Molonglo	40	39	38	35
Fraser	1	1	3	1
Canberra	-	1	-	-
Other	-	-	1	1
Don't know	6	9	8	10

This shows that around 9 in 10 (88%) voters knew their electorate in 2008. This has remained consistent since 1998.

Table 46 – Voter awareness of how many Members will be elected in their electorate

Q: Can you tell me how many Members are to be elected in your electorate?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
One	2	1	1	2
Five	39	31	33	36
Seven	28	28	28	24
Other	3	7	5	6
Don't know	28	33	33	34

Only 6 in 10 voters knew how many Members were elected in their electorate. This has also remained relatively consistent since 1998. For voters aware of the number of Members of their electorate, analysis of the actual suburb location of each respondent and their understanding of the ACT electorate where they voted for Members identified the following:

Table 47 – Knowledge of number of Members 2008 election

N = 545	1 Member	5 Members	7 Members	Other numbers	Don't know
	%	%	%	%	%
Brindabella	1	60	2	7	30
Ginninderra	3	61	1	4	31
Molonglo	1	4	65	6	24

The conclusion regarding voter awareness is that knowledge of the name of a voter's electorate remains high (at 88%), but the knowledge of Robson rotation and the number of members elected in the voter's electorate remain relatively low at 52% and 60%, respectively. These findings suggest that for future elections, continued emphasis will need to be placed on these two issues.

Table 48 – Voter perception of adequacy of instructions on ballot papers

Q: How adequate were the instructions you were given by the ACT Electoral Commission on how to fill out your ballot paper for this election?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Very adequate	36	36	38	54
Adequate	51	54	55	36
Neither adequate nor inadequate	8	5	2	3
Inadequate	3	3	3	2
Very inadequate	1	1	1	2
Unsure/don't know	-	2	1	3

Since 1998 voter satisfaction with the instructions given to explain how to fill out the ballot paper has been strongly positive, being around 90% satisfaction throughout.

Table 49 – Voter satisfaction with service delivery provided by ACT polling places

Q: Having just voted which of these comments best describes the service provided by the people running this polling place, that is, those inside the school/hall etc?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Helpfulness				
Very helpful	51	49	48	63
Helpful	43	45	46	31
Neither helpful nor unhelpful	6	5	6	6
Unhelpful	-	1	-	-
Very unhelpful	-	-	-	-
Efficiency				
Very efficient	55	47	55	67
Efficient	38	47	42	30
Neither efficient nor inefficient	6	4	3	3
Inefficient	1	2	1	-
Very inefficient	-	-	-	-
Friendliness				
Very friendly	53	48	52	67
Friendly	42	48	44	30
Neither friendly nor rude	5	4	4	3
Rude	-	-	-	-
Very rude	-	-	-	-

These findings show clear outcomes for 2008 that voters felt polling staff were helpful, efficient and friendly. Similar results occurred in 1998, 2001 and 2004.

Table 50 – Voter inconvenience at the polling place

Q: When you voted today, what, if any, inconvenience did you experience? [multiple response possible]

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Queuing	1	1	2	1
Entrance to polling place was blocked	-	-	-	1
Staff in attentiveness	-	-	1	1
Booth layout	-	-	1	1
Instructions on ballot paper not clear	1	-	-	1
Instructions for computerised voting not clear	NA	1	-	1
Disabled access facilities	NA	-	-	1
Other	8	7	5	6
No inconvenience	89	91	91	90

Table 51 – Voter satisfaction with queuing

Q: looking at this card, which of these best describes how you found the queuing here today?

	1998	2001	2004	2008
	N = 500	N = 500	N = 500	N = 545
	%	%	%	%
Unacceptable long	-	-	-	1
Long but acceptable	2	4	2	2
Not very long and acceptable	9	11	3	6
Not a real problem	88	85	95	92

The findings from these two questions show that most voters (over 9 in 10) in 2008 said they experienced no inconvenience with the voting process or with queuing.

Table 52 – Voter awareness and usage of ACT election computerised voting procedures

Q: the 2008 election allowed computerised voting. Were you aware of the possibility to undertake computerised voting?

	2001	2004	2008
	N = 500	N = 500	N = 545
	%	%	%
Yes	69	64	65
No	30	34	33
Unsure/don't know	1	2	2

Table 53 – Voter usage of electronic voting

Q: If computerised voting available at the polling place: Did you vote today using computerised voting or the normal ballot paper method?

	2001	2004	2008
	N unknown	N = 74	N = 74
	%	%	%
Yes, used computerised voting	59	73	81
No, used paper ballot method	41	27	19

Table 54 – Voter satisfaction with electronic voting

Q: If you used the computerised voting system, did you find it...?

	2001	2004	2008
	N unknown	N = 54	N = 60
	%	%	%
Easy to use	89	86	85
Fast and efficient	70	88	90
Had clear instructions	81	83	79
Easy in card swiping	NA	86	66
Queuing length was satisfactory	NA	91	97

These findings show a decline in the awareness of the availability of computerised voting, but a strong growth in its use where it was available. Voters using computerised voting advised that it was easy to use, fast and efficient and the queuing was satisfactory. However, the satisfaction level for clear instructions and ease in card swiping both declined. In particular, the satisfaction with card swiping declined from 86% to 66%.

Table 55 – Reason why some voters at computerised voting polling places did not vote using the computerised methods

	2004	2008
	N = 20	N = 14
	%	%
Don't trust computer voting	5	14
Don't use or don't like computers	20	21
Too many people queuing for computer voting	5	-
Prefer paper ballot	65	64
Other reasons	5	-

Note these results are based on small sample sizes.

Table 56 – Voter interest in computerised voting at polling places where it was not available

Q: Polling places where computerised voting was not available: Computerised voting facilities were only available at certain places in the ACT. If this polling place had computerised voting do you think you would have used computerised voting or use the normal paper ballot method?

And, if the paper ballot method is preferred or unsure/Don't know: Why did, or why would you choose not to use computerised voting?

	2001	2004	2008
	N unknown	N = 426	N = 471
	%	%	%
Computerised voting	55	50	49
Paper ballot method	32	38	42
Unsure/don't know	13	12	9
If paper ballot preferred or unsure/don't know:			
Don't trust this method	17	31	29
Don't use or like computers	25	30	27
Paper ballot is easier	NA	35	44
Other	58	5	-

About half of voters attending at places that did not have computerised voting expressed an interest in using it if it were available. Voters without a desire to use computerised voting mostly advised that they found voting using paper ballots easier, or preferred to see their vote on a paper ballot.

Appendix 3 – Preference sequences on formal ballot papers

This Appendix shows details of preferences shown on formal ballot papers at the 2008 ACT election.

Table 57 – Length of sequence – Brindabella

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	Total
AUSTRALIAN LABOR PARTY																				
BURCH, Joy	33	12	11	14	3716	113	370	48	47	51	12	29	3	23	6	0	4	8	465	4965
GENTLEMAN, Mick	21	5	8	18	3413	100	289	50	47	47	8	44	6	18	5	3	3	10	517	4612
HARGREAVES, John	43	8	13	23	5457	125	427	57	61	57	8	44	5	24	5	0	2	11	668	7038
MACKEY, Tracy	20	7	20	10	3008	90	279	42	30	40	9	27	3	17	1	0	4	6	417	4030
SIEVERS, Wayne	22	4	5	4	1886	40	159	30	23	27	2	20	2	13	1	0	2	4	234	2478
AUSTRALIAN MOTORIST PARTY																				
DOBLE, Ben	10	4	4	3	695	20	27	9	12	17	2	14	1	4	2	0	3	2	101	930
DOBLE, Burl	10	0	3	2	841	21	23	6	4	24	3	18	2	8	1	0	2	2	113	1083
McACHLAN, Brian	10	3	2	1	664	19	26	5	8	26	2	6	1	3	2	1	3	0	91	873
RAKE, Geoff	3	1	0	2	542	19	18	4	8	16	3	10	0	7	1	0	2	2	95	733
RITCHIE, Bruce	4	4	2	3	598	10	20	5	8	24	2	4	2	5	0	0	0	2	106	799
CANBERRA LIBERALS																				
DOSZPOT, Steve	36	7	12	11	3764	126	204	43	41	78	12	68	7	38	1	1	8	7	516	4980
MORGAN, David	25	4	2	5	2439	85	103	22	23	46	10	35	2	17	5	3	3	7	391	3227
PRATT, Steve	18	13	8	13	3015	94	158	33	38	67	3	41	5	47	5	3	7	7	403	3978
RAY, Audrey	19	4	8	5	1307	27	58	8	17	35	1	23	3	11	0	0	4	3	188	1721
SMYTH, Brendan	48	19	19	22	6333	229	374	59	90	111	19	95	6	57	9	6	5	6	951	8458
COMMUNITY ALLIANCE																				
JEFFERY, Val	68	71	19	23	2562	166	189	52	78	35	4	51	8	35	3	4	7	30	704	4109
SIZER, James	5	14	2	2	446	19	32	8	29	4	2	10	2	4	1	3	0	0	137	720
THE GREENS																				
BRESNAN, Amanda	24	109	24	9	3181	140	493	67	122	44	12	44	7	63	4	4	1	14	898	5260
ELLERMAN, Sue	34	95	13	14	2120	73	289	27	69	17	7	31	1	27	7	1	3	6	506	3340
Totals	453	384	175	184	45987	1516	3538	575	755	766	121	614	66	421	59	29	63	127	7501	63334
Percentage	0.72	0.61	0.28	0.29	72.61	2.39	5.59	0.91	1.19	1.21	0.19	0.97	0.10	0.66	0.09	0.05	0.10	0.20	11.84	
Progressive totals	63334	62881	62497	62322	62138	16151	14635	11097	10522	9767	9001	8880	8266	8200	7779	7720	7691	7628	7501	
Progressive percentage	100.00	99.28	98.68	98.40	98.11	25.50	23.11	17.52	16.61	15.42	14.21	14.02	13.05	12.95	12.28	12.19	12.14	12.04	11.84	

Table 58 – Length of sequence – Ginninderra

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	Total	
AUSTRALIAN LABOR PARTY																													
BOURKE, Chris	8	3	3	2	1092	43	97	19	14	21	4	13	4	4	5	1	3	0	0	0	2	2	0	1	1	1	88	1431	
CIRSONI, Adina	15	7	2	10	2128	75	174	59	20	38	13	25	6	4	8	3	4	0	0	3	1	4	2	0	0	1	195	2797	
PEEBLES, David	16	6	9	12	2040	94	164	53	18	44	14	22	4	5	12	0	4	2	3	2	1	8	1	0	1	4	172	2711	
PORTER, Mary	18	11	9	12	2720	123	270	63	23	65	14	30	9	12	9	4	8	4	1	2	0	4	3	1	0	9	295	3719	
STANHOPE, Jon	81	31	34	22	9841	416	1207	227	93	254	44	127	24	34	43	10	17	8	7	12	6	18	2	15	5	12	871	13461	
AUSTRALIAN MOTORIST PARTY																													
HANNIGAN, Deborah	5	1	6	3	371	10	33	7	3	12	2	6	1	1	1	0	1	0	0	0	0	3	0	0	1	0	46	513	
SEDDON, Chris	6	4	1	2	518	25	23	7	4	25	3	10	6	0	1	1	1	0	0	2	0	0	1	0	0	3	51	694	
SIMINGTON, Andrew	6	4	3	5	590	39	31	17	3	20	8	11	7	3	6	0	2	0	0	1	1	2	0	1	0	3	72	835	
WALFORD, Denis	15	2	3	3	714	33	35	13	7	49	12	11	3	2	6	2	5	1	2	1	0	1	2	1	3	3	91	1020	
WHITING, Wayne	3	3	1	7	463	18	20	7	5	22	0	8	1	3	2	2	2	0	1	1	1	1	2	3	0	2	44	622	
CANBERRA LIBERALS																													
COE, Alistair	25	13	9	3	4451	223	178	99	50	113	32	53	20	16	15	4	21	5	9	23	2	18	4	3	15	15	466	5886	
DUNNE, Vicki	19	8	9	5	3164	174	143	76	58	96	33	41	11	9	16	4	11	3	0	14	2	4	4	4	8	4	317	4237	
MYERS, Jacqui	18	4	5	5	1851	101	97	31	14	56	6	23	1	5	10	3	9	0	1	11	0	7	1	1	3	6	191	2460	
TOKAJI, Andrea	16	3	4	2	1966	84	78	41	23	39	13	25	8	6	3	1	5	2	1	16	3	5	1	3	4	2	199	2553	
WATTS, Matthew	16	3	0	3	1228	44	40	24	8	43	2	8	2	6	6	0	1	1	1	3	0	4	0	2	0	3	99	1547	
COMMUNITY ALLIANCE																													
GROWTHER, Mike	1	0	6	1	185	9	12	10	7	9	2	4	3	0	5	1	1	1	0	3	0	1	0	0	0	0	2	61	324
NICOLL, Roger	6	2	10	1	461	38	27	40	12	29	5	8	2	4	10	1	5	1	0	3	0	5	1	2	3	3	112	791	
TULLIS, Jane	7	1	10	2	485	37	18	39	15	24	1	7	7	3	6	2	7	0	0	2	3	2	0	1	1	1	101	782	
THE GREENS																													
HIGGINS, James	15	44	15	4	1425	49	234	35	24	43	17	25	7	13	14	4	10	1	2	4	0	8	2	1	3	7	240	2246	
HUNTER, Meredith	23	99	20	14	3534	185	805	139	84	142	44	67	20	23	29	13	28	2	6	8	4	24	1	7	2	13	768	6104	
UNGROUPED																													
CHURCHILL, Darren	3	1	2	0	100	10	9	6	6	1	2	7	5	1	0	0	3	0	0	1	0	0	0	0	0	1	1	33	192
HIRD, Harold	15	2	4	10	463	50	23	12	9	13	3	5	3	1	2	5	4	0	1	1	3	1	0	0	3	3	76	712	
McLHONEY, Cathy	6	1	2	6	153	10	11	2	6	2	4	3	2	1	3	1	1	0	1	0	1	0	0	0	0	0	0	31	247
PARTON, Mark	68	14	11	34	2528	233	119	77	53	55	39	40	11	16	21	7	11	1	2	8	0	10	1	3	3	9	411	3785	
SARKIS, Eddie	3	0	0	0	56	6	5	1	1	2	1	0	0	0	1	0	0	0	0	0	0	0	0	1	0	0	15	92	
SMITH, Barry	2	0	3	0	76	3	3	3	0	3	0	2	1	0	0	0	1	1	0	2	0	1	0	0	0	1	16	118	
VERWEY, Adam	0	1	2	2	87	8	8	4	1	3	3	4	2	2	2	0	2	0	0	0	0	0	0	0	0	1	38	170	
Totals	416	268	183	170	42690	2140	3865	1111	561	1223	321	585	170	174	236	69	167	33	38	123	30	133	28	50	57	109	5099	60049	
Percentage	0.69	0.45	0.30	0.28	71.09	3.56	6.44	1.85	0.93	2.04	0.53	0.97	0.28	0.29	0.39	0.11	0.28	0.05	0.06	0.20	0.05	0.22	0.05	0.08	0.09	0.18	0.849		
Progressive totals	60049	59633	59365	59182	59012	16322	14182	10317	9206	8645	7422	7101	6516	6346	6172	5936	5667	5700	5667	5629	5506	5476	5343	5315	5285	5208	5099		
Progressive percentage	100.00	99.31	98.86	98.56	98.27	27.18	23.62	17.18	15.33	14.40	12.36	11.83	10.85	10.57	10.28	9.89	9.77	9.49	9.44	9.37	9.17	9.12	8.90	8.85	8.77	8.67	8.49		

Table 60 – Sequence breaks in formal ballot papers

Highest preference counted	Missing next consecutive number				Repeated next consecutive number			
	Brin	Ginn	Molo	Total	Brin	Ginn	Molo	Total
1	22	25	35	82	43	34	71	148
2	21	25	41	87	28	37	84	149
3	19	22	64	105	19	26	92	137
4	24	19	55	98	21	18	82	121
5	43	49	36	128	7	11	55	73
6	5	7	21	33	28	45	41	114
7	7	13	51	71	8	16	23	47
8	2	9	9	20	8	9	33	50
9	5	5	5	15	9	10	27	46
10	6	10	23	39	4	2	10	16
11	3	7	4	14	4	8	15	27
12	2	2	4	8	4	7	12	23
13	5	1	12	18	2	5	13	20
14	8	2	15	25	2	2	4	8
15	3	1	4	8	1	3	9	13
16	4	2	3	9	4	6	8	18
17	3	4	5	12	5	2	1	8
18	3	2	0	5	0	2	4	6
19		6	6	12		3	4	7
20		5	1	6		6	12	18
21		4	8	12		5	3	8
22		5	2	7		0	4	4
23		5	2	7		1	5	6
24		3	1	4		2	7	9
25		4	2	6		1	8	9
26		2	5	7		0	4	4
27			4	4			6	6
28			0	0			4	4
29			1	1			6	6
30			0	0			5	5
31			2	2			9	9
32			3	3			3	3
33			4	4			7	7
34			4	4			2	2
35			0	0			6	6
36			0	0			1	1
37			4	4			3	3
38			2	2			1	1
39			1	1			0	0
Totals	185	239	439	863	197	261	684	1142

Appendix 4 – Australian Electoral Commission submission on defamation

This Appendix is a copy of an extract of the Australian Electoral Commission *Supplementary submission [No. 198] to The Joint Standing Committee On Electoral Matters' Inquiry Into The 2001 Federal Election*, 24 April 2003

Defamation and section 350 of the Act

2.6 Late in 2002 the High Court delivered two judgments that have a significant bearing on defamation litigation, particularly in cases relating to election campaigns. The two judgments were *Dow Jones & Company Incorporated v Gutnick*, and *Roberts v Bass*.

2.7 Of significance is that both judgments contain elements suggestive of significant changes in defamation law. There is an increasing complexity in the relationship between constitutional provisions concerning political communication (or more accurately, 'speech attracting privilege') and disputes about the alleged defamation of a candidate during election campaigns. As a result the AEC has some concerns about the relevance of maintaining the defamation provision, section 350, in the Act.

2.8 Section 350 of the Act states:

(1) A person is guilty of an offence if the person makes or publishes any false and defamatory statement in relation to the personal character or conduct of a candidate.

(1A) Subsection (1) does not apply if the person proves that he or she had a reasonable ground for believing, and did believe, the statement to be true.

(2) Any person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate in contravention of this section may be restrained by injunction at the suit of the candidate aggrieved, from repeating the statement or any similar false and defamatory statement. 2.9 In essence, the section provides for an offence for defamation of a candidate, a defence to the offence, and provides for a candidate to seek an injunction to restrain any person from repeating a defamatory statement.

2.10 According to the Director of Public Prosecutions' (DPP's) records, there has not been any prosecution for defamation under section 350 of the Act.

2.11 The AEC received six formal written complaints about breaches of section 350 of the Act during the 2001 federal election. Of the six complaints received by the AEC, five were referred to the DPP for legal advice. Of the five complaints referred to the DPP, none of the complaints were considered to disclose an offence under section 350. No referrals relating to section 350 of the Act were forwarded to the DPP during the 1998 Federal election.

2.12 The fact that there has been no prosecution under this provision is explained by the fact that the threshold necessary to disclose an offence in criminal defamation matters is such that the DPP must be able to establish beyond reasonable doubt that the content was defamatory.

2.13 Further, a majority of States have repealed common law criminal libel by enacting relevant legislation. Hence, candidates concerned about defamation can seek relief through civil proceedings within the relevant jurisdiction.

Cases

2.14 The issue that arose in *Dow Jones & Company Inc v Gutnick* concerned the publication of a story in an on-line version of *Barron's* magazine published by Dow Jones & Company Incorporated. The on-line version of *Barron's* dated 28 October 2000 carried an article which made several references to Mr Joseph Gutnick, a leading Australian businessman. Mr Gutnick complained that the references to him in the article defamed him.

2.15 The primary legal issue in the *Gutnick* case concerned where an alleged defamatory matter had been published. Mr Gutnick's Counsel contended that the defamation occurred in Victoria (where Mr Gutnick lives and where the headquarters of his businesses are located), as the on-line edition of *Barron's* was available to readers in Victoria via the World Wide Web. Accordingly, Mr Gutnick sought relief for the alleged defamation through Victoria's courts.

2.16 The High Court determined that Mr Gutnick could seek relief through Victoria's courts because the article was available to people in Victoria and by implication, where Mr Gutnick had a reputation that could be damaged. This has a direct bearing on the enforcement of section 350 as it is now conceivable that the AEC will be asked, during an election period, to act upon material published on the internet.

2.17 *Roberts v Bass* also concerned defamation, although the significance of this case resides in the relationship between defamation law and the regulation of speech in political matters. *Roberts v Bass* is important because of the High Court's application of pre-existing case law relating to (a) speech protected by 'qualified privilege' and (b) an implied right to freedom of communication in political matters guaranteed by the Australian Constitution.

2.18 *Roberts v Bass* concerned the publication and distribution of electoral material in the seat of Florey during the State election in South Australia held in October 1997, for which Mr Sam Bass was the sitting member and endorsed candidate of the Liberal Party.

2.19 By majority, the High Court upheld an appeal by Mr Roberts and Mr Case (who distributed the material) from a judgment in the Supreme Court of South Australia.

2.20 The basis of the High Court decision was that attempting to injure the political credibility of a candidate in the midst of an election campaign was defensible on the grounds of qualified privilege. The implication for the AEC is that an offence against section 350 will become even more difficult for the AEC to demonstrate.

2.21 In light of the *Gutnick* decision, the AEC is concerned that there may be a high degree of ambiguity, related to identifying the relevant jurisdiction and thus identifying relevant defamation law, surrounding the operation of section 350 with respect to material 'published' on the internet.

2.22 In terms of the *Roberts v Bass* decision, the AEC is concerned that section 350 of the Act will be rendered a 'dead' provision. That is, that the DPP will be unlikely to prosecute any matters arising under section 350 unless they disclose such a high level of criminal intent as to disclose an offence attracting a criminal sanction. Previous experience suggests that this is unlikely.

2.23 Moreover, given the amount of attention devoted to the relationship between the Commonwealth Constitution, statute and the common law (for example in the discussion of the *Lange* decision within the *Roberts v Bass* case), the AEC is of the view that in the unlikely event that proceedings did arise under section 350, constitutional issues relating to the implied guarantee of freedom of political communication would arise.

2.24 Finally, removing section 350 from the Act would not prevent people from seeking redress for defamation during election periods through civil proceedings in their relevant jurisdictions.

2.25 Consequently, the AEC recommends that the JSCEM consider amending the Act to remove section 350.

Recommendation 2:

That the JSCEM recommend the Act be amended to remove section 350.