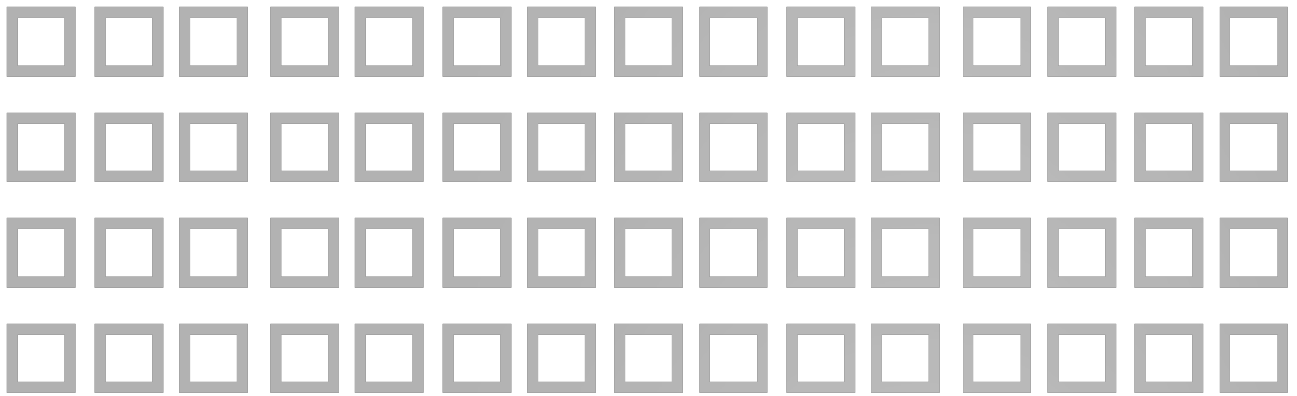


Elections ACT

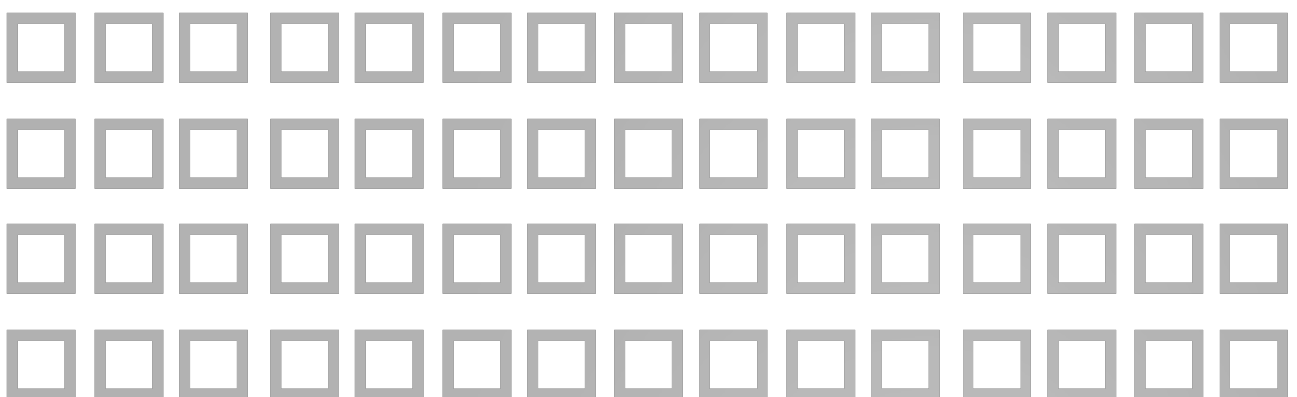
ACT ELECTORAL COMMISSION OFFICERS
OF THE ACT LEGISLATIVE ASSEMBLY



ACT Electoral Commission

Terms of Reference

October 2022



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Introduction

Background

The ACT Electoral Commission (the Commission) is an independent statutory authority established under the *Electoral Act 1992* (the Act) with responsibility for the conduct of elections and referendums for the ACT Legislative Assembly and for the provision of electoral advice and services. This includes administering the election funding, expenditure and financial disclosure scheme by the Commissioner.

From 1 July 2014 the members of the Commission became independent officers of the ACT Legislative Assembly, following amendments made to the Act by the *Officers of the Assembly Legislation Amendment Act 2013*. This reinforced the Commission's statutory independence from the Executive and altered the reporting lines set out in the Act.¹ Subject to the Act and other territory laws, a member of the electoral commission has complete discretion in the exercise of the member's functions.² The Commission does not have an operational reporting relationship with the Speaker of the Assembly or the Special Minister for State.

Aim

These Terms of Reference set out the organisational features and roles and responsibilities of the Commission, reflecting a range of legislated provisions and sound practices. It details the membership, appointment, tenure, powers and obligations of the Commission members and provides guidance on the Commission's operations and business processes.

The Commission

Organisation

The Commission comprises a part-time Chairperson, a full-time Electoral Commissioner (the Commissioner) and a part-time Member.

The Commissioner is assisted by staff employed under the *Public Sector Management Act 1994* and under the Electoral Act. The office of the Commissioner and the Commissioner's staff are referred to under the operating title of Elections ACT.

The Commission, the Commissioner and Elections ACT have inter-related, complementary and some distinct roles and responsibilities.

Purpose

The Commission's purpose is to deliver the highest possible standard of trusted, transparent, secure and accessible electoral services.

¹ *Electoral Act 1992* Section 6A

² *Ibid* Section 6B

Roles and Responsibilities

Electoral Commission	Electoral Commissioner
<p>Executes responsibilities of the Commission under the <i>Electoral Act 1992</i> (see Annex A).</p> <p>Sets the strategic direction for the Commission and Elections ACT.</p> <p>Provide collegiate support to the Electoral Commissioner and his/her senior staff.</p>	<p>Executes responsibilities of the Commissioner under the <i>Electoral Act 1992</i> (see Annex A)</p> <p>Executes dual responsibilities as Chief Executive Officer of the Commission and a member of the Commission.</p> <p>Advises the Commission of matters relevant in development and provision of timely strategic guidance to Elections ACT.</p>
<p>Agrees budget proposals for the Commission to the ACT Government in accordance with the Assembly Budget Protocols.</p>	<p>Agency Head of Elections ACT, with responsibilities under the <i>Financial Management Act 1996</i> and the <i>Public Sector Management Act 1994</i>.</p>
<p>Provides guidance to and monitors performance and compliance of the Commissioner and Elections ACT.</p> <p>Sets the risk management framework (including risk appetite) for the Commission and monitors risk management practices of Elections ACT.</p> <p>Acts as the Audit Committee and agrees the Strategic Internal Audit program for Elections ACT.</p> <p>Establishes the Augmented Electoral Commission under the chair of the Chairperson in determination of final electoral boundaries and names in the four yearly ACT redistribution process.</p> <p>Provides advice to the ACT Assembly on electoral matters including provision of election and special reports.</p> <p>Acts as Review and Notification authority for internally reviewable decisions of the Commissioner.</p>	<p>Responsible for effective and efficient delivery of electoral services, including:</p> <ul style="list-style-type: none"> • Conduct of ballots for the ACT Legislative Assembly and other prescribed persons and organisations; • Registration of political parties; • Administering the election funding, expenditure and financial disclosure scheme; • Maintenance of the ACT electoral roll in conjunction with the AEC (joint roll); • Chair of the Redistribution Committee which provides an initial proposal for redistribution of electoral boundaries and names for consideration by the community and then the Augmented Electoral Commission; • Delivery of community electoral information and education services
<p>Provides an Annual Report to the Speaker for presentation to the Assembly.</p>	<p>Represents the Commission at Legislative Assembly committees and inquiries.</p> <p>Spokesperson for the Commission and in day-to-day operational dealings with ACT Government and other stakeholders.</p>

Appointment

The Speaker of the Assembly is responsible for appointing members of the Commission on behalf of the Territory in accordance with an open and accountable selection process and following consultation with ACT political leaders. The Commissioner is appointed on a full-time basis. The Chairperson and the Commission Member are appointed on a part-time basis. The term of appointment of members of the Commission is no longer than five years.³ Reappointments to the Commission are permissible under the Act.

Expertise

The Speaker must be satisfied that the Commissioner has extensive knowledge or experience in electoral systems or management, or in public administration. To be appointed as Chair or other member of the Commission, the person must have extensive knowledge or experience with electoral systems or management, public administration or another relevant area.

Eligibility

Eligibility requirements for appointment to the Commission preclude appointment of persons with recent political affiliations (five years) or Parliamentary activity (10 years). Specific requirements apply for appointment as the Chairperson, generally limited to those who have held very senior professional positions.⁴

Other Provisions

Other provisions related to resignation, retirement, suspension, ending of appointment and leave of absence for members of the Commission are detailed in Division 2.5 of the Act.

Remuneration

The members of the Commission are employed on terms and conditions determined by the ACT Remuneration Tribunal.

Legislative Framework

The Commission and the Electoral Commissioner are responsible for the conduct of elections and referendums and for the provision of electoral advice and services under the following legislation:

- *Aboriginal and Torres Strait Islander Elected Body Act 2008;*
- *Annual Reports (Government Agencies) Act 2004;*
- *Australian Capital Territory (Legislative Assembly) Act 2014;*
- *Electoral Act 1992;*
- *Electoral Regulation 1993;*

³ Ibid Section 13

⁴ Ibid Sections 12B and 12C

- *Magistrates Court (Electoral Infringement Notices) Regulation 2012;*
- *Proportional Representation (Hare-Clark) Entrenchment Act 1994; and*
- *Referendum (Machinery Provisions) Act 1994.*

Stakeholder Relationships

The Commission is committed to building and maintaining strong relationships with key stakeholders appropriate to the Commission's statutory independent authority and role, including members of the Assembly, the Speaker, political leaders and parties, Head of Service, supporting agencies, other electoral commissions and statutory authorities, candidates and the public. The Commission recognises and promotes the value of proactive and ongoing engagement with key stakeholders in provision of electoral information and advice under the Act.

Operations and Business Processes

Commission Meetings

The Commission will meet quarterly or as determined by the Chairperson to align with key electoral events or reporting milestones under the procedures detailed in Section 19, 21 and 302 of the Act.

The Deputy Commissioner has a standing invitation to attend the Commission meetings to provide reports and advice on specific matters related to the Commission's responsibilities.

The Chief Financial Officer (external consultant) will be invited as required to provide reports and advice on financial matters related to the Commission's responsibilities.

The EA to the Commissioner will provide secretariat services for the conduct of meetings. The agenda as approved by the Chairperson and related papers will be distributed to the members 10 business days ahead of scheduled meetings. Minutes will be circulated for review and signature by all members not more than 20 business days following each meeting.

Periodic Review

This Terms of Reference will be reviewed by the Commission every four years from the date of adoption.

Annex A - ACT Electoral Commission/Commissioner Responsibilities under the *Electoral Act 1992* (extract)

The Electoral Commission

The Electoral Commission is responsible under the Act for the following electoral functions:⁵

- to advise the Assembly on matters relating to elections;
- to consider, and report to the Assembly on, matters relating to elections referred to it by the Assembly;
- to promote public awareness of matters relating to elections and the Assembly by conducting education and information programs and by any other means it chooses;
- to provide information and advice on matters relating to elections to:
 - the Assembly,
 - the Executive,
 - the Head of Service,
 - Directors-General,
 - statutory office holders,
 - territory authorities,
 - territory instrumentalities,
 - political parties,
 - Members of the Legislative Assembly (MLAs), and
 - candidates at elections;
- to conduct and promote research into matters relating to elections or other matters relating to its functions;
- to publish material on matters related to its functions;
- to provide, on payment of the determined fee (if any), goods and services to persons or organisations, to the extent that it is able to do so by using information or material in its possession or expertise acquired in the exercise of its functions;
- to conduct ballots for prescribed persons and organisations; and
- to exercise any other function given to it under the Act or another Territory law.

(The Act permits delegation of the above electoral functions to the Commissioner, as detailed in the draft Instrument of Delegation at Annex B.⁶ The Commission will generally retain its functions related to advisory or reporting, and cannot delegate its functions under Part 4 Electorates or Part 15 Notification and Review of Decisions of the Act.)

The Commission's key responsibilities under the Act largely relate to advisory or reporting functions to the Assembly, the Executive and other key stakeholders (Part 2), final determination of electoral boundaries and names as the Augmented Electoral Commission in the redistribution process (Part 4), and acting as the Review and Notification authority for internally reviewable decisions of the Commissioner (Part 15). Other lesser functions include determination of fees for electoral services (Section 340B), and declaration of a person as a property developer or otherwise (on application) for the purpose of enactment of the ban on gifts by property developers (Section 222K).

⁵ Ibid Section 7

⁶ Ibid Section 33B

The Electoral Commissioner

The Electoral Commissioner is responsible under the Act for the following electoral functions:⁷

- the Chief Executive Officer of the Commission;
- the functions given to the Commissioner under the Act or another Territory law (including those functions of the Commission delegated to the Commissioner); and
- giving of written directions to officers and members of the staff of the Commission in relation to the exercise of their functions under the Act or another Territory law.

Much of the Commissioner's responsibilities under the Act relate to the conduct of elections and the provision of electoral services including the initial proposal for redistribution of electoral boundaries and names as part of the redistribution process (part 4), roll management (Parts 5 and 6), registration of political parties (Part 7), detailed arrangements for elections, voting, scrutiny, and casual vacancies (Parts 9 to 13, and Part 19), administration of the funding, expenditure and disclosure scheme (Part 14), and electoral offences and enforcement proceedings (Parts 17 and 18).

⁷ Ibid Section 11

Annex B - ACT Electoral Commission Delegation Instrument

Australian Capital Territory

Electoral (Delegation of Electoral Commission functions to the Electoral Commissioner) Delegation 2022 (No 1)

Delegation No 1 of 2022

made under the

Electoral Act 1992, s 33B (Delegation by electoral commission)

1 Name of instrument

This instrument is the *Electoral (Delegation of Electoral Commission functions to the Electoral Commissioner) Delegation 2022 (No 1)*.

2 Commencement

This instrument commences on XX October 2022.

3 Revocation

This instrument revokes Delegation No 1 of 2015.

4 Delegation

The ACT Electoral Commission delegates the Commission's functions under the *Electoral Act 1992* and all other Territory laws, other than providing advice and reports to the Assembly on matters relating to elections, to:

- The Electoral Commissioner; and
- Officers or members of the Commission's staff working under the Electoral Commissioner's direction.
Note: staff may only exercise this delegation subject to the ACT Electoral Commission Governance Framework and any written or oral directions of the Electoral Commissioner.

However, this instrument does not delegate the Commission's functions under part 4 (Electoral Commission) or part 15 (Notification and Review of Decisions) of the Electoral Act to the Electoral Commissioner or an officer or a member of the Commission's staff.

Chairperson

Electoral Commissioner

Member

XX October 2022