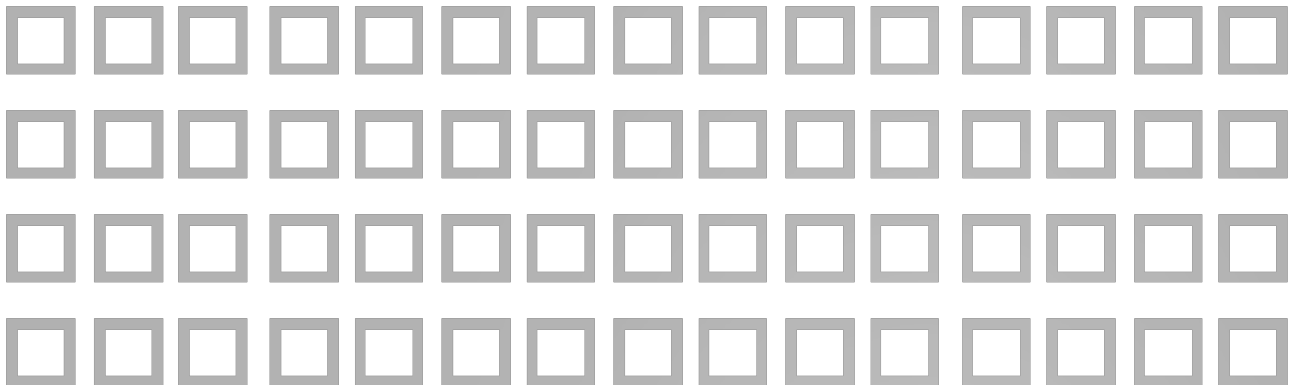


**ACT Legislative Assembly**  
**Casual vacancy**  
Following the resignation of  
**Ms Katy Gallagher, MLA for Molonglo**  
*Candidates information*



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## Introduction

This information booklet summarises the electoral law relating to candidates standing for a casual vacancy in the ACT Legislative Assembly, but it is not a substitute for the law. Candidates and other interested persons are encouraged to consult the *Electoral Act 1992*.

The Electoral Commissioner has received official notification of a casual vacancy in the ACT Legislative Assembly from the Speaker of the Assembly, Mrs Vicki Dunne MLA. Ms Katy Gallagher, MLA for Molonglo, formally resigned from the Assembly on Tuesday 23 December 2014.

### Timetable for filling the casual vacancy

Publication of notice in the <i>Canberra Times</i>	5 January 2015
Close of applications for the casual vacancy	15 January 2015 (12:00 noon)
Declaration of candidates contesting the vacancy	15 January 2015 (12:30 pm)
Scrutiny commences (anticipated date)	Shortly after the declaration of candidates
Declaration of the poll (anticipated date)	16 January 2015 (3:00 pm)

## Qualifications to stand for a casual vacancy

A person may apply to be a candidate for a casual vacancy if:

- the person was a candidate in the last election for the electorate in which the vacancy has occurred;
- the person was not elected; and
- he or she is an "eligible person".

A person is an "eligible person" if:

- the person is eligible to be a Member of the Legislative Assembly (MLA); or
- the person would be eligible to be an MLA but for the fact that the person holds an office or appointment under a Commonwealth, State or Territory law or is employed by the Territory, the Commonwealth, a State or another Territory, and the person is entitled to any remuneration or allowance (other than reimbursement of expenses reasonably incurred) in relation to the office, appointment or employment.

To be eligible to be an MLA, subject to the following exceptions, a person must be:

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

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

A person is not entitled to be an elector if:

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

A person is not eligible to be an MLA if:

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

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

- the person has been convicted of an offence related to bribery, violence or intimidation under the *Electoral Act 1992* or interfering with political liberty under the Commonwealth *Crimes Act 1914* or *Criminal Code* within the preceding two years.

## **Do public servants or public office holders have to resign before contesting a casual vacancy?**

A person who holds public office or employment is eligible to apply to contest a casual vacancy but is not eligible to be an MLA. Therefore, a candidate who holds public office or employment should resign from that office or employment before the official declaration of the election result if, following the counting of votes, that candidate is to be declared elected.

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

## **When can a candidate apply to contest a casual vacancy?**

Applications must reach the Electoral Commissioner before 12 noon on 15 January 2015.

## **How to apply to contest a casual vacancy**

To contest a casual vacancy, a person must complete an application on the approved form provided by the ACT Electoral Commissioner.

Each candidate must sign a statement on the application form to the effect that the candidate consents to be an MLA if elected and declares that he or she is eligible to contest the vacancy.

### **Can an application be rejected?**

Yes. The Electoral Commissioner will reject an application if (and only if) an application form has not been correctly completed in accordance with the Electoral Act. If an application is rejected, the Commissioner will give the person whose application is rejected a written notice setting out the reasons for the rejection.

### **Can an application be withdrawn?**

Yes, an application can be withdrawn up until the time applications close (12:00 noon on 15 January 2015). After that time an application cannot be withdrawn.

Any person who has applied to be a candidate may withdraw his or her application by giving the Electoral Commissioner a written notice of withdrawal.

### **What happens if more than one candidate applies to contest a vacancy?**

If more than one candidate applies to contest a vacancy, the Electoral Commissioner will conduct a count of the vacating MLA's ballot papers to determine the elected candidate.

### **What happens if only one candidate applies to contest a vacancy?**

If only one candidate applies to contest a vacancy, the Electoral Commissioner will declare that candidate elected. A count does not need to be undertaken in this case.

### **What happens if no candidate applies to contest a vacancy?**

If no candidate applies to contest a vacancy, the Assembly may choose a person to fill the vacancy. If the vacating Member was elected as a member of a registered political party, the new Member chosen to fill the vacancy must be a member of the same party as the vacating Member. If there is no member of the relevant party available to be chosen, or if the vacating Member was elected as an independent, the person chosen to fill the vacancy cannot be a person who has been a member of a registered political party within the 12 months preceding the filling of the vacancy.

## How does the casual vacancy count process work?

A candidate is elected to fill a casual vacancy in the ACT Legislative Assembly by conducting a “count-back” of those ballot papers that contributed to the election of the vacating MLA, under the ACT’s Hare-Clark electoral system. Schedule 4 of the [Electoral Act 1992](#) includes the provisions relating to the count of preferences for an election and for a casual vacancy.

At the 2012 election, the distribution of preferences was conducted using a computer program. To facilitate this process, all of the preferences shown on all ballot papers were data-entered and stored in a database. This means that the count to fill any casual vacancies can also be conducted using a computer program.

Using this program, the result of any casual vacancy can be known within minutes. When the program is started, it will prompt Electoral Commission staff to indicate which candidates are contesting the vacancy. After these names have been entered into the computer, the program will calculate the outcome and print the result.

The computer program follows the same steps that would occur in a manual count of ballot papers. These steps are outlined below.

The first step in a casual vacancy count is to isolate those ballot papers that contributed to the election of the vacating MLA. Where the vacating MLA was elected with a quota of votes on first preferences, the MLA’s ballot papers will have finished the scrutiny allotted to other candidates or will have been set aside as exhausted. These various groups of ballot papers will be identified by the computer program.

The second step is to distribute the ballot papers of the vacating MLA to those candidates who have indicated they wish to contest the vacancy, according to the first available preference on each ballot paper. For example, a ballot paper that was marked “1—Vacating MLA, 2— Blue”, would be counted to “Blue” (if “Blue” is contesting the vacancy). Similarly, a ballot paper that was marked “1—Vacating MLA, 2—Black, 3—Blue”, would be counted to “Blue” (if “Blue” is contesting the vacancy but “Black” is not).

Where the vacating MLA was elected with a quota of votes on first preferences, all the ballot papers used in the recount that show further preferences will have the same transfer value.

Some ballot papers may be exhausted at this stage if they do not show a valid preference for a contesting candidate.

The third step is to calculate the number of votes received by each contesting candidate.

The fourth step is to determine whether a candidate has enough votes to be elected. To be elected, a candidate must obtain 50% plus 1 (an absolute majority) of the number of votes counted to all the contesting candidates remaining in the count (excluding exhausted votes). If a candidate has an absolute majority, that candidate is successful and the scrutiny is complete.

The fifth step is only carried out if no candidate has an absolute majority. In this case, the candidate with the fewest votes is excluded, and his or her ballot papers are transferred to the remaining candidates. New vote totals are calculated for each remaining candidate.

The fourth and fifth steps are repeated until a candidate receives an absolute majority of votes.



## Scrutineers

### Role of scrutineers

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

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

As the counting process for casual vacancies is now carried out by computer, the opportunity for scrutineers to observe the scrutiny is restricted to observing the operation of the computer program. However, scrutineers were present while the ballot papers from the election were data-entered. This same ballot information will be used for the casual vacancy count.

Scrutineers are entitled to inspect copies of the source code used to build the computer program for the counting of casual vacancy scrutines. This code can be downloaded from the Elections ACT website. Data files showing the preferences recorded on each ballot paper at the 2012 election can also be downloaded from the Elections ACT website.

### Appointment of scrutineers

Candidates may appoint scrutineers to represent them at the scrutiny.

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

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

### Limitations on numbers of scrutineers appointed

During the scrutiny, the number of scrutineers representing a particular candidate shall not exceed the number of officers conducting the scrutiny. At a computerised casual vacancy count, only one officer will be “conducting the scrutiny”, by operating the computer system. Consequently, candidates will only be able to appoint one scrutineer each to observe a computerised casual vacancy count.

### Scrutineers Information Handbook

More detailed information concerning the rights, duties, powers and functions of scrutineers during the scrutiny are contained in the [Scrutineers Information Handbook](#). This handbook also explains the method of voting, matters relating to formality and informality of ballot papers, and the scrutiny process.

## Recounts

Recounts usually occur when the result of an election is very close, either at the discretion of the Electoral Commissioner or as directed by the Electoral Commission. A recount can be held at any time before the official declaration of an election result. A “recount” should not be confused with the routine rechecks of votes automatically carried out by the Electoral Commissioner.

A candidate may request a recount in writing to the Electoral Commissioner, setting out the reasons for the request. The Commissioner will only conduct a recount if he or she thinks fit. If the Commissioner refuses to conduct a recount on the request of a candidate, that candidate may appeal to the full Electoral Commission for a review of that decision.

Before recounting any ballot papers, the Commissioner will notify each candidate of the date, time and place fixed for the recount. An electoral officer conducting a recount has the same powers as if the recount was the original scrutiny, and may reverse any decision made in an earlier scrutiny.

## **Court of Disputed Elections**

The validity of an election or a casual vacancy count may only be disputed by application to the Supreme Court sitting as the Court of Disputed Elections after the result of the count is declared. If any of the following matters in relation to an election or casual vacancy count is called into question, the validity of the election or casual vacancy count is to be taken to be in dispute:

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

The following persons are entitled to dispute the validity of an election or casual vacancy count:

- a candidate in the election;
- an elector entitled to vote at the election; and
- the Electoral Commissioner.

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

## **More information**

For more information on ACT Legislative Assembly elections, please contact the ACT Electoral Commission on (02) 6205 0033, or write to PO Box 272, Civic Square, ACT 2608, or email [elections@act.gov.au](mailto:elections@act.gov.au), or visit the Commission's office at Ground floor, North Building, Civic Square, London Circuit, Canberra City or see the Electoral Commission's website at [www.elections.act.gov.au](http://www.elections.act.gov.au) .