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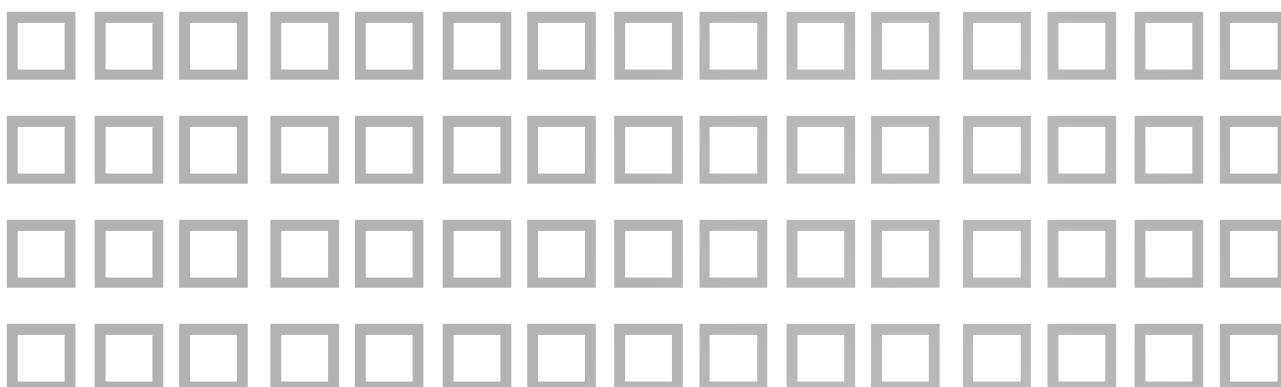
ACT ELECTORAL COMMISSION OFFICERS
OF THE ACT LEGISLATIVE ASSEMBLY



ACT Legislative Assembly Casual Vacancy

Following the resignation of
Mr Johnathan Davis MLA
Member for Brindabella

Candidates information manual



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Produced by the
ACT Electoral Commission
PO Box 272, Civic Square ACT 2608.
Phone: 02 6205 0033
Web: www.elections.act.gov.au
Email: elections@act.gov.au

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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 ACT Electoral Commissioner has received official notification of a casual vacancy in the ACT Legislative Assembly from the Speaker of the Assembly, Ms Joy Burch MLA. Mr Johnathan Davis MLA formally resigned from the Assembly on, Sunday 12 November 2023.

Timetable for filling the casual vacancy

Publication of notice in the <i>Canberra Times</i>	17 November 2023
Close of applications for the casual vacancy	27 November 2023 (12:00 noon)
Declaration of candidates contesting the vacancy	27 November 2023 (12:30 pm)
Scrutiny commences (anticipated date)	Shortly after the declaration of candidates
Declaration of the poll (anticipated date)	28 November 2023 (3:30 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 ACT Electoral Commissioner before 12:00 noon on 27 November 2023. Applicants are strongly encouraged to submit their application via email at elections@act.gov.au or to apply in person.

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 ACT 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 27 November 2023). 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 ACT 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 ACT 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 "countback" 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 2020 ACT 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 scanned, combined with preferences cast electronically 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.

In most cases at ACT elections, successful candidates are elected after the distribution of preferences from excluded candidates and from other elected candidates. Therefore, a typical elected candidate received ballot papers at several "counts" during the scrutiny, with some of those ballot papers received with a transfer value of 1, and with other ballot papers received with a fractional transfer value.

The first step in a casual vacancy count is to isolate those ballot papers that contributed to the election of the vacating MLA. Some of those ballot papers will have finished the scrutiny still allotted to the vacating MLA. These ballot papers will be subdivided according to the count at which they were received by the vacating MLA. Other ballot papers, those received by the vacating MLA at the count at which he or she exceeded the quota to be elected, will have been transferred to other candidates as the vacating MLA's "surplus". These 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—Blue, 2—Vacating MLA", 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).

Ballot papers keep the transfer value that they had when they were received by the vacating MLA throughout the count, with the exception of those ballot papers received at the count at which the vacating MLA was elected. Those ballot papers are allocated a new transfer value according to a complex formula set out in the Electoral Act, which has the effect of giving them a vote value equivalent to the amount of votes needed by the vacating MLA at that count to bring his or her vote total up to the quota for election.

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 numbers of ballot papers counted to contesting candidates for each particular transfer value are

multiplied by the relevant transfer value to give the numbers of votes allotted to each candidate. The total number of votes allotted to each candidate is calculated by adding together the votes received for each particular transfer value.

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 at their respective transfer values. 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 1992*.

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 scanned. This same ballot information, combined with the electronic votes, will be used for the casual vacancy count.

The source code used to build the computer program for the counting of casual vacancy scrutinies is available upon request and upon the signing of a confidentiality deed. Data files showing the preferences recorded on each ballot paper at the 2020 ACT election can 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 ACT 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 is 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 ACT Electoral Commissioner or as directed by the ACT 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 ACT Electoral Commissioner.

A candidate may request a recount in writing to the ACT 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 ACT 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 1992* 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 172, Civic Square, ACT 2608, or email elections@act.gov.au, or visit the ACT Electoral Commission's office at Nara Centre, 3 London Circuit, Canberra City or see the ACT Electoral Commission's website at www.elections.act.gov.au.