



ACT | Aboriginal and
Torres Strait Islander
Elected Body

Information for Scrutineers

Election 2021

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Instructions

Elections ACT will be conducting the election of seven members of the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB). The Elected Body represents Aboriginal and Torres Strait Islander people living in the ACT and will be an advocate for their interests.

This information is intended to summarise the electoral law relating to scrutineers for the ACT Aboriginal and Torres Strait Islander Elected Body (ATSIEB) election, but it is not a substitute for the law. Scrutineers and other interested persons are encouraged to consult the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (the ATSIEB Act) and the *Electoral Act 1992* as applied by the ATSIEB Act.

Election timetable

Date	Time	Action	Section of the ATSIEB Act 2008
Monday 17 May 2021	9am	Election start day Candidate nominations open	Section 29: 'the Monday, 47 days, before the polling start day'
Tuesday 1 June 2021	12noon	Nominations close	Section 29: '12 noon ON THE Monday, 33 days before polling'
Wednesday 2 June 2021	12noon	Nominations for candidates declared	Section 29: 'as soon practicable after 12noon on the day after the nominations close'
Wednesday 2 June 2021	After nominations declared	Order of ballot paper decided	Section 29: 'as soon as practicable after the nominations for candidates are declared'
Monday 21 June 2021	5pm	Electoral roll close	Section 29: '5pm on the Monday, 12 days before the polling start date'
Saturday 3 July 2021	9am	Polling start day	Section 29: 'either - (a) the Saturday immediately before the first Sunday in July, 3 years after the last ATSIEB election was held; or (b) if a day is determined under s29A – that day'
Saturday 10 July 2021	6pm	Polling close day	Section 29: 'the first Saturday after the polling start day'
Friday 16 July 2021	5pm	Postal Votes must be received by Elections ACT by	Section 179 (1B), <i>Electoral Act 1992</i> 'all completed declaration voting papers used for postal voting received by the commissioner before the end of the 6th day after the close of the poll'
Not before Wednesday 21 July 2021	-	Scrutiny commences	Section 29: 'Not earlier that 7 business days after the polling close' And after the Review Panel meets.
As soon as practicable after the scrutiny ends	-	Election result declared	Section 29: 'As soon as practicable after the scrutiny ends'

Scrutineers

Role of scrutineers

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

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

Appointment of scrutineers

Candidates may appoint scrutineers to represent them at every polling place. Candidates may also appoint scrutineers to represent them at every scrutiny centre at which votes are being counted or at which a "preliminary scrutiny" of declaration votes is taking place.

Preliminary scrutines, at which the decision is made to accept or reject a declaration vote for further scrutiny, can be conducted from the Monday prior to polling start day up to the completion of counting after polling close day.

Candidates must appoint scrutineers by supplying a signed 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 attempt to influence the vote of an elector and that he or she will not disclose any knowledge acquired concerning the vote of any elector.

On any polling day, scrutineers should present completed appointment forms to the officer in charge (OIC) of the polling place. For preliminary scrutines and the final scrutiny, count and determination of the result, the completed appointment forms should be provided to the person in charge of the scrutiny centre.

Limitations on numbers of scrutineers appointed

At a polling place the number of scrutineers representing a particular candidate may not exceed the number of officers responsible for issuing ballot papers at that place.

At a scrutiny centre the number of scrutineers representing a particular candidate may not exceed the number of officers present.

Scrutineers badge

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

Canvassing for votes during polling

Canvassing outside polling places

Canvassing for votes is banned within 100 metres of a polling place. Under the ban, it is an offence, within a polling place, or within 100 metres of the building containing a polling place, to:

- do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

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

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

How to vote cards

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

News media photographers

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

Electoral Commission Officers

Polling place officers

Each polling place is staffed by an officer in charge (OIC) and polling staff who will be issuing votes. There must at all times be a Liaison Officer (see below) present at each polling place during the hours of polling.

No counting of votes will take place at any polling place. All ordinary ballot papers will remain in the ballot box until the scrutiny commences, which is no earlier than 21 July 2021. Declaration votes will be returned to the Electoral Commissioner's office to enable the review of decisions of the Liaison Officer, where relevant – see also "Liaison Officers" below.

Liaison officers

Liaison Officers will be employed in each polling place to decide whether those voting are, on the balance of probabilities, an Aboriginal person or Torres Strait Islander.

Liaison Officers must:

- be an Aboriginal person or Torres Strait Islander; and
- be at least 18 years old; and
- be enrolled, or entitled to be enrolled, on the ACT electoral roll; and
- not be a candidate in the election.

If the Liaison Officer believes that a voter is not an Aboriginal person or a Torres Strait Islander and challenges the voter's right to vote, the voter may elect to cast a 'Declaration Vote' (see below).

Review panel members

A Review Panel will review the decisions of the Liaison Officer where they have challenged the eligibility of a person to vote, and that person has completed a declaration vote.

The Review Panel consists of three people each of whom are:

- an Aboriginal person or Torres Strait Islander; and
- at least 18 years old; and
- enrolled, or entitled to be enrolled, on the ACT electoral roll; and who are
- not a candidate in the election.

The Electoral Commissioner

The Electoral Commissioner has statutory responsibility for the conduct of ATSIEB elections. The Electoral Commissioner has final authority over all other officers appointed as OICs and may affirm or vary any decision made by any other officer, other than the specific decisions of the Review Panel.

Scrutineers during polling

Scrutineers' rights

A scrutineer has the right to:

- enter and leave the polling place at any time and be replaced by a properly appointed and relieving scrutineer, but only one scrutineer for each candidate at each issuing point can be present in the polling place at any one time;
- observe all voting procedures except the elector actually voting (unless the elector is being assisted by an Electoral Commission officer);
- observe the OIC sealing each empty ballot box before the polling commences and the sealing of each ballot box at the conclusion of each day's polling;
- observe the questioning of voters by the liaison officer;
- observe voting if a voter has requested that a polling official assist them with the marking of their ballot paper because they are incapable of marking the ballot without assistance. However, such a voter may appoint another person (not a polling official) to enter the voting compartment with him or her to mark, fold and deposit the ballot paper. In this case neither a polling official nor a scrutineer may accompany the elector into the voting compartment); and
- observe the conduct of preliminary scrutines of declaration votes (preliminary scrutines may commence on the 5th day before polling start day).

Scrutineers must not:

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

Voting

Electoral rolls

Before polling begins, the OIC is supplied with an up-to-date certified copy of the electoral roll for the ACT. This roll is called a certified list of electors. The certified list of electors provided to the OIC may be in an electronic format, for example it may be loaded onto a laptop computer.

Ballot paper

An elector is entitled to receive one ballot paper for the ATSIEB election.

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

Spoilt ballot papers

A voter who claims to have spoilt a ballot paper must be given a fresh ballot paper, but only after handing back the original to a polling official. The voter's name will not be marked again on the list of voters. When the original ballot paper is handed back, it must not be looked at by the polling official to see how it has been marked. The following steps will be followed by the polling official:

- Cancel the spoilt ballot paper by writing "spoilt" on the back;
- In full view of the voter, place the spoilt ballot paper in a spoilt or discarded ballot paper envelope and seal it;
- Tick the spoilt box on the envelope;
- Tick the ordinary or declaration voter box, as appropriate; and
- Issue a new ballot paper to the voter.

Types of votes

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

- ordinary voting at a polling place;
- declaration voting at a polling place;
- voting by post; and
- assisted voting.

Ordinary voting at a polling place

Ordinary votes are issued in polling places on each polling day to any elector whose name is on a certified list and whose eligibility is not challenged by a liaison officer. "Silent" electors whose addresses are suppressed on the electoral roll for reasons of personal or family safety are able to cast ordinary votes.

When issuing an ordinary vote, the issuing officer must:

- turn to the certified list for the ACT and ask the elector for his or her full name and address (note that a "silent" elector is not required to state his or her address), find the name in the certified list and mark the certified list (the certified list for this election will be held on a laptop computer);
- issue the elector with a ballot paper.

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

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

Declaration voting at a polling place

Declaration votes are issued at a polling place if:

- the Liaison Officer challenges an elector's right to vote on the grounds that they are not an Aboriginal person or Torres Strait Islander and the elector still wishes to vote;
- an elector's name cannot be found on the certified list of electors for the electorate; or
- an elector's name has been marked on the certified list of electors as having already voted at the polling place.

When a declaration vote is being issued:

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

Liaison Officer challenge

If a Liaison Officer challenges a voter they must;

- tell the voter about their right to cast a declaration vote;
- tell the issuing officer about the challenge; and
- record the details on the Liaison Officers' Objections Register and sign the record.

If the voter elects to cast a declaration vote, the Liaison Officer must give the voter a written notice about the challenge which informs the voter that:

- notice of the Liaison Officer's decision will be given to a Review Panel; and
- the voter's ballot paper will only be counted if the Review Panel decides that the voter is an Aboriginal person or Torres Strait Islander.

Voter's name not found on the certified list

In the case of a voter's name not being on the certified list of electors, the voter must provide evidence of their living in the ACT to the commissioner. This can be achieved in one of two ways:

- the voter can provide evidence to the issuing officer who will record the details of the evidence on the declaration envelope; or
- the voter can provide evidence of their address to the Electoral Commissioner within three business days after the 10 July 2021 polling close day (that is by 14 July 2021).

Evidence of living in the ACT can be in the form of a driver's licence, vehicle registration, purchase or lease papers, utility statements, student card etc.

If evidence of living in the ACT is provided, then the person is taken to be enrolled for the purpose of the scrutiny. If evidence is not provided, then the ballot paper will not be admitted to the count.

Postal voting

Eligible voters for the ATSIEB election may have a postal vote if:

- they expect to be unable to attend a polling place between 3 July and 10 July 2021; or
- their address details are suppressed on the ACT electoral roll.

Applications for a postal vote are processed by Elections ACT and a ballot paper and Postal Vote Certificate envelope are sent to the voter. The Postal Vote Certificate envelope with the completed ballot paper enclosed is sent by the voter back to Elections ACT. To be admitted to the count the postal voting papers must be post marked before the close of polling and must be received by Elections ACT by close of business Friday 16 July 2021. Postal voting papers may also be handed in to the Officer in Charge of a polling place before the close of the polling period, that is by 5pm on Saturday 10 July 2021.

Electors can apply for a postal vote on-line at the Elections ACT website, over the phone by calling Elections ACT or by sending an email to elections@act.gov.au. Application forms can also be obtained from the office of the ACT Electoral Commission and may be printed from the Commission's website at www.elections.act.gov.au.

Applications from electors **in Australia** must be received by the Commission by no later than **5pm on Thursday 8 July 2021** to allow time to post material to the elector and for the elector to have their vote in the post before polling close day.

Applications from electors **outside Australia** must be received by the Commission by no later than **5pm on Friday 25 June 2021** to allow time to post material to the elector overseas and for the elector to have their vote in the post before polling close day.

On receipt of a postal vote application, the Commission will send to the elector postal vote material, which comprises a Postal Vote Certificate envelope and a ballot paper.

Assisted voting

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

Scrutiny

The Hare-Clark electoral system will be used for the 2021 ATSIEB election (see Attachment A for an explanation of this system).

There are several different stages to the scrutiny of votes:

- the preliminary scrutiny of declaration votes, when the decision is made to admit or reject a declaration vote for further scrutiny; at this preliminary scrutiny the ballot papers themselves remain sealed in the declaration envelope;
- the initial count of first preference votes which will commence not before 21 July 2021 at the scrutiny centre located at the ACT Electoral Commission, Level 6, 221 London Circuit, Canberra. Admitted declaration envelopes are opened at this scrutiny;
- Directly following the initial count, the distribution of preferences will take place; and
- recounts (if necessary) at the direction of the Electoral Commissioner or the Electoral Commission.

Scrutineers' rights during the scrutiny

A scrutineer may:

- observe preliminary scrutines of declaration votes;
- inspect the condition of and observe the opening of ballot boxes by the OIC of the scrutiny centre;
- observe the counting of ballot papers including the scrutiny of admitted postal and declaration votes, and any recount of ballot papers;
- object to the admission or rejection of a ballot paper, in which case the officer conducting the scrutiny decides whether the vote is formal or informal and marks the ballot paper "admitted" or "rejected" (the officer may reject a ballot paper as informal even if no scrutineer has objected to it as informal); at a recount, a scrutineer may request that a ballot paper be reserved for the decision of the Electoral Commissioner; and
- countersign endorsements on any parcels of ballot papers, and statements showing votes for each candidate and the number of informal ballot papers.

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

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

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

Formality rules

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

Authenticity checks

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

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

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

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

Formality checks

An authentic ballot paper is informal where:

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

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

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

Except as provided for above, a ballot paper is formal and effect shall be given to the elector's intention so far as that intention is clear. In particular, a preference may be validly marked outside a candidate square so long as the elector's intention is clear.

The initial scrutiny at the scrutiny centre

Ordinary votes cast at polling centres will be kept in secure storage until they are ready for counting. These votes will be counted at the scrutiny centre not before 21 July 2021.

Declaration votes (including all postal votes) must undergo a "preliminary scrutiny" to determine whether the person making the declaration is eligible to vote, before the envelopes can be opened and the ballot papers inside are counted (see below). (Postal votes may be received by the Electoral Commission until Friday 16 July 2021.)

Scrutiny of declaration votes

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

- **the preliminary scrutiny** of postal vote certificates or declaration envelopes containing postal or other declaration votes to determine whether the claimant is entitled to a vote (preliminary scrutines may commence from Monday 28 June 2021); and
- **the further scrutiny** when the ballot papers admitted to the scrutiny are treated in the same way as ordinary ballot papers (further scrutines may not commence before 21 July 2021).

Preliminary scrutiny of declaration votes

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

A declaration vote ballot paper will be accepted for further scrutiny if the OIC is satisfied that:

- the elector is an Aboriginal person or Torres Strait Islander. In the case of a challenge by a Liaison Officer the OIC will make this decision based on the determination of the Review Panel;
- the elector is enrolled (or entitled to be enrolled) for the ACT. Similarly in the case of a postal voter the OIC will make this decision based on the determination of the Review Panel;
- his or her signature on the declaration vote certificate is genuine and properly witnessed; and
- the vote contained in the envelope was recorded prior to the close of the poll.

The date of birth shown on the declaration will be compared with the elector's date of birth as shown on the electoral roll (if available) as an aid to determine the elector's authenticity. A postal declaration vote dated after the close of polling will not be admitted for further scrutiny.

Further scrutiny of declaration votes

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

The distribution of preferences

The distribution of preferences cannot commence until the count and recheck of all first preferences shown on all ballot papers has been completed.

The final day for receipt of postal votes is Friday 16 July 2021. The preliminary scrutiny of postal voting papers is expected to be completed by close of business Tuesday 20 July 2021 to allow admitted postal votes to be included in the count after this date.

The scrutiny process uses the Hare-Clark method set out in the *Electoral Act 1992*.

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

Recounts

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

A candidate may request a recount of election ballot papers in writing to the Electoral Commissioner, setting out the reasons for the request. The Commissioner will only conduct a recount if he or she thinks fit. If the Commissioner refuses to conduct a recount on the request of a candidate, that candidate may appeal to the full Electoral Commission for a review of that decision. The Commissioner is not permitted to take part in any decision of the full Commission in relation to an appeal against a decision of the Commissioner not to conduct a recount.

Before recounting any ballot papers, the Commissioner will notify each candidate of the date, time and place fixed for the recount.

An electoral officer conducting a recount has the same powers as if the recount was the original scrutiny and may reverse any decision made in an earlier scrutiny.

Electoral offences

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

Definition of “electoral matter”

Several offences relate to the treatment of published “electoral matter”:

“Electoral matter” is matter that is intended or likely to affect voting in an election. Matter is taken to be intended or likely to affect voting in an election if it contains an express or implicit reference to, or comment on:

- the election;
- the performance of the Government, the Opposition, a previous Government or a previous Opposition;
- the performance of an ATSIEB member or former ATSIEB member;
- the performance of a political party, a candidate or a group of candidates in the election; or
- an issue submitted to, or otherwise before, the electors in connection with an election.

However, a publication of the Legislative Assembly, including a Committee of the Assembly, is not electoral matter.

Value of a penalty unit

The maximum fines that may be imposed for the offences listed in this section are given in penalty units. Under the ACT’s *Legislation Act 2001*, the value of a penalty unit is—

- \$160 if the person charged is an individual; or
- \$810 if the person charged is a corporation.

Offences related to postal voting and other forms of declaration voting

In this section references to “declaration voting” also refer to “postal voting”.

Witnessing electoral papers (s315)

A person shall not witness a signature shown on an electoral paper unless:

- the paper is signed by the signatory;
- he or she has seen the signatory sign the paper;
- he or she is satisfied as to:
 - the identity of the signatory; and
 - the truth of any statements made in the paper by the signatory; and
- he or she is able to sign his or her own name.

Penalty: 10 penalty units.

For the purposes of paragraph (c) above, a witness may satisfy himself or herself on the basis of:

- personal knowledge of the signatory;
- inquiries made of the signatory; or
- any other reasonable means.

A candidate may not be a witness for the purposes of postal voting or assisted voting.

Soliciting applications for postal votes (s143)

A person commits an offence if the person applies for declaration voting papers for postal voting for an election for someone else and does not have the other person's consent to make the application.

Penalty: 30 penalty units.

A person shall not do anything for the purpose of inducing someone else to complete an application form for postal voting papers and to return the completed form to an address other than an address authorised by the Electoral Commissioner.

Penalty: 30 penalty units.

A person shall not do anything to induce someone else to complete an application form for postal voting papers that is not a form approved for the purpose by the Electoral Commissioner.

Penalty: 30 penalty units.

Transmission of applications for postal votes (s144)

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

Penalty: 10 penalty units.

Soliciting completed declaration votes (s146)

A person shall not, without reasonable excuse, do anything for the purpose of inducing an elector to give to the person completed declaration voting papers.

Penalty: 30 penalty units.

Interference with declaration voting (s145)

Except at the request of the elector, a person shall not, without reasonable excuse:

- communicate with an elector while he or she is casting a declaration vote;
- interfere with an elector's casting of a declaration vote;
- do anything to find out how an elector voted by declaration vote; or
- enable any other person to find out how an elector voted by declaration vote.

Penalty: 30 penalty units.

Giving completed ballot papers to the Commissioner (s318A)

A person who accepts completed ballot papers to be given to the Electoral Commissioner must give them to the commissioner as soon as practicable.

Penalty: 10 penalty units.

Transmission of completed declaration votes (s147)

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

Penalty: 10 penalty units.

Opening envelopes containing ballot papers (s318B)

Unless authorised under the Electoral Act as applied by the ATSIEB Act, a person must not open a ballot box, or an envelope, that appears to contain completed ballot papers.

Penalty: 5 penalty units.

Opening envelopes containing declaration votes (s148)

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

Penalty: 5 penalty units.

Interference with voting (s286)

A person must not interfere with the casting of a vote by an elector, do anything to find out how an elector voted, or allow anyone else to find out how an elector voted. This does not apply to a person assisting an elector to vote.

Penalty: 30 penalty units.

Influencing votes of hospital and nursing home patients (s287)

The proprietor of a hospital or nursing home, or an employee or agent of such a proprietor, shall not, without reasonable excuse, do anything for the purpose of influencing the vote of a patient or resident of the hospital or nursing home.

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

Protection of rights

Violence and intimidation (s288)

A person shall not, by violence or intimidation, hinder or interfere with the free exercise of a right under the Electoral Act or the free performance of a function under the Electoral Act.

Penalty: 30 penalty units.

Influencing of votes by officers (s317A)

An officer, including a liaison officer, must not do anything to influence someone else's vote.

Penalty: 30 penalty units.

Bribery (s285)

A person shall not offer, solicit, or accept an electoral bribe.

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

For the purposes of the above offence:

“bribe” does not include a declaration of public policy or a promise of public action;

“electoral bribe” means a bribe for the purpose of:

- a) influencing the vote of an elector;
- b) influencing the candidature of a person in an election;
- c) otherwise influencing the course or result of an election;
- d) inducing a person not to apply, or to withdraw an application, to be a candidate for a casual vacancy; or
- e) inducing a person not to apply, or to withdraw an application, to dispute the validity of an election.

There are also a range of generic bribery offences contained in the ACT’s *Criminal Code 2002*. For further detail, see Part 3.7 of the Criminal Code.

Discrimination on grounds of political donations (s289)

A person shall not discriminate against another person on the ground of the making by the other person of a donation to a political party or a candidate in an election.

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

For the purposes of the above offence:

“discriminate against”, in relation to a person, means:

- a) deny the person access to membership of any trade union, club or other body, whether incorporated or not;
- b) not allow the person to work or to continue to work;
- c) subject the person to any form of intimidation or coercion; or
- d) subject the person to any other detriment.

Employees’ right to leave of absence for voting (s290)

Upon notification from an employee before a polling day, the employer shall allow the employee, without penalty or any disproportionate deduction of pay, to take any necessary leave (not exceeding 2 hours) for the purpose of voting.

Penalty: 10 penalty units.

The above offence does not apply if the absence of the employee from employment could endanger any person, animal, or thing, or cause substantial loss to any person.

An employee shall not notify an employer that he or she wishes to take leave for the purposes of voting if he or she does not have a genuine intention of voting during the period of the leave to be granted for the purpose of voting.

Penalty: 5 penalty units.

Campaigning offences

For the purposes of the following campaigning offences:

“disseminate”, in relation to electoral matter (whether in printed or electronic form), means print, publish, distribute, produce or broadcast;

“news publication” means a newspaper or periodical and includes an electronic publication of a similar kind.

“reportage or commentary”, in relation to a news publication, means everything in the news publication except:

- a) advertisements; and
- b) letters to the editor.

Dissemination of unauthorised electoral matter (ss292-295)

A person commits an offence if the person disseminates electoral matter and the matter does not include-

- the name of the person who authorised the matter or its author; and
- a statement to the effect that the named person authorised, or is the author of, the matter; and
- if the matter is published for a registered party, a candidate for election or a person who has publicly indicated that he or she intends to be a candidate for election – a statement to the effect that the matter is published for the party, candidate or person.

Penalty: 10 penalty units.

The requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in reportage or commentary in a particular news publication if the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in reportage or commentary in the publication.

Further, the requirement to authorise electoral matter does not apply to the dissemination of electoral matter contained in a letter to the editor in a particular news publication if:

- a) the author’s name and the place where the author lives are stated at the end of the letter; and
- b) the publication includes a statement to the effect that a person named in the statement has authorised publication of all electoral matter contained in letters to the editor in the publication.

For the purposes of paragraph (a) above, it is sufficient to identify where the author lives by reference to

- the suburb or town of, or nearest to, the author’s residence; and
- if the residence is outside the ACT - the State, other Territory or other country of that residence.

The requirement to authorise electoral matter does not apply to electoral matter on any of the following items, unless the item includes a representation of a ballot paper:

- a letter from an ATSIEB member that includes the name of the member and an indication that he or she is an ATSIEB member;
- a press release published by or for an ATSIEB member that includes the name of the ATSIEB member and an indication that he or she is an ATSIEB member;
- a report under the Annual Reports (Government Agencies) Act 2004;
- a publication of a government agency that includes-
 - the name of the agency; and
 - the City of Canberra Arms; and
 - the words "Australian Capital Territory", "Australian Capital Territory Legislative Assembly", "ACT Legislative Assembly", "Australian Capital Territory Government" or "ACT Government";
- a business or visiting card that promotes the candidacy of a person in an election;
- a letter or card on which the name of the sender appears;
- a T-shirt, badge, button, pen, pencil or balloon; or
- an item prescribed by regulation.

"Advertorials" (s296)

An electoral "advertorial" is an advertisement in a news publication that appears to be reportage or commentary and includes electoral matter.

Where an electoral advertorial is published, the proprietor of the news publication must ensure the word "advertisement" is included, in legible form, as a headline to the advertisement on each page on which the advertisement appears.

Penalty: 10 penalty units.

Misleading or deceptive electoral matter (s297)

A person shall not disseminate, or authorise to be disseminated, electoral matter that is likely to mislead or deceive an elector about the casting of a vote.

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

It is a defence to a prosecution for this offence if it is established that the defendant did not know, and could not reasonably be expected to have known, that the electoral matter was likely to mislead or deceive an elector about the casting of a vote.

Misleading electoral advertising (s297A)

A person commits an offence if the person disseminates, or authorises the dissemination of, an advertisement containing electoral matter; and the advertisement contains a statement of fact that is inaccurate and misleading to a material extent.

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

It is a defence to a prosecution for this offence if the person took no part in deciding the content of the advertisement; and could not reasonably be expected to have known that the statement was inaccurate and misleading.

Inducement to illegal voting—representations of ballot papers (s298)

A person shall not disseminate, or authorise to be disseminated, electoral matter including a representation of a ballot paper, or part of a ballot paper, likely to induce an elector to mark his or her vote otherwise than in accordance with the directions on the ballot paper.

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

Graffiti (s299)

A person shall not, without reasonable excuse, mark any electoral matter directly on any building, footpath, hoarding, roadway, vehicle, vessel or any public or private place (whether on land or water or in the air) without the consent of:

- in the case of a place—the lessee or lawful occupier of the place; or
- in the case of an object—the owner or lawful possessor of the object.

Penalty: 10 penalty units.

Defamation of candidates (s300)

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.

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

It is a defence to a prosecution for this offence if it is established that the defendant believed on reasonable grounds that the relevant statement was true.

A person who makes a false and defamatory statement in relation to the personal character or conduct of a candidate may, at the suit of the candidate, be restrained by injunction from repeating the statement or any similar false and defamatory statement.

Publication of statements about candidates (s301)

A person shall not, without the written authority of the candidate, publish, or authorise to be published, on behalf of a body (whether incorporated or unincorporated) a statement:

- expressly or impliedly claiming that a candidate in an election is associated with, or supports the policy or activities of, that body; or
- expressly or impliedly advocating that a candidate should be given the first preference vote in an election.

Penalty: 30 penalty units.

Disruption of election meetings (s302)

A person shall not, without reasonable excuse, disrupt an election meeting.

Penalty: 5 penalty units.

For the purposes of this offence:

“election meeting” means a lawful public meeting held during a pre-election period in association with the relevant election.

The chairperson of an election meeting may request a police officer to remove from the meeting any person who, in the opinion of the chairperson, is disrupting the meeting. Upon a request from the chairperson, a police officer may take reasonable action to remove from the meeting the person disrupting the meeting. A person who has been so asked to leave a meeting shall not, without reasonable excuse, return to the meeting without the authority of the chairperson after leaving it or being removed from it.

Penalty: 10 penalty units.

Prohibition of canvassing near polling places (s303)

‘defined polling area’ in relation to a polling place, means the area within the building where the polling place is located, and within 100m of the building.

‘polling hours’ means for a polling place where a vote may be made before an officer – any time when the place is open for the acceptance of votes.

A person shall not, during polling hours within the defined polling area in relation to a polling place:

- (a) do anything for the purpose of influencing the vote of an elector as the elector is approaching, or while the elector is at, the polling place;
- (b) do anything for the purpose of inducing an elector not to vote as the elector is approaching, or while the elector is at, the polling place; or
- (c) exhibit an electoral notice other than a notice authorised by the Commissioner for display there.

Penalty: 5 penalty units.

An officer may, if directed by the Commissioner, remove or obliterate a notice which is exhibited in breach of this offence. A person shall not obstruct an officer exercising or attempting to exercise this function.

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

Badges and emblems (s304)

An officer or scrutineer shall not wear or display in a place where voting is taking place a badge or emblem associated with a candidate or political party.

Penalty: 10 penalty units.

How-to-vote material in polling places (s305)

A person shall not, except for the purposes of lawfully assisting another person to vote, exhibit or leave in a polling place any printed electoral matter.

Penalty: 5 penalty units.

Electoral papers—defacement etc. (s313)

A person shall not fraudulently deface, remove, mutilate, or destroy an electoral paper.

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

Ballot Paper – Photographs (s315A)

A person commits an offence if the person takes a photograph of a ballot paper used by the person or another elector for voting in an election and the photograph shows, or would be likely to show, how the person or elector voted in the election if the person knows the identity of the elector or it would be possible for the person or someone else to find out the identity of the elector.

The definition of photograph includes a video recording.

Penalty: 10 penalty units

Voting fraud (s307)

A person shall not supply a ballot paper unless authorised to do so.

Penalty: 20 penalty units

A person commits an offence if the person dishonestly obtains a ballot paper.

Penalty: 20 penalty units

A person must not mark a ballot paper unless the person is an elector or assistant assisting the elector under the provisions of the Electoral Act as applied by the ATSIEB Act.

Penalty: 30 penalty units.

A person commits an offence if the person casts a ballot and the person is not entitled to vote.

Penalty: 30 penalty units.

Electoral papers

For the purposes of the following offences:

“electoral paper” means any document or form provided for or required under the Electoral Act.

Electoral papers—forgery

There are a range of generic forgery offences contained in the ACT’s *Criminal Code 2002*. These offences would include, for example, the offence of forging an electoral paper. (For further detail, see Part 3.6 of the Criminal Code.)

Penalty (for forgery): 1000 penalty units or imprisonment for 10 years, or both.

Electoral papers—false or misleading statements

There are a range of generic offences related to the making of false and misleading statements contained in the ACT’s *Criminal Code 2002*. These offences would include, for example, the offence of making a false and misleading statement in an electoral paper. (For further detail, see Part 3.4 of the Criminal Code.)

Penalty (for making a false and misleading statement): 100 penalty units or imprisonment for 1 year, or both.

Electoral papers—unauthorised possession (s311)

A person shall not, without reasonable excuse, except for the purposes of the Electoral Act:

- possess an electoral paper; or
- possess an instrument designed or adapted particularly for producing an electoral paper, or an official mark on an electoral paper.

Penalty: 30 penalty units.

Identification of voters and votes (s318)

Except as authorised under the Electoral Act, a scrutineer (or a person who has been, but is no longer, a scrutineer) shall not, directly or indirectly, disclose any information acquired in the performance of his or her functions which would be likely to enable it to be known how an identified voter has voted.

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

A person must not, without reasonable excuse, destroy or interfere with any device or computer program that is used, or intended to be used, for counting votes electronically.

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

Responses to official questions (s319)

A person shall not, in answer to an official question, make a statement that is false or misleading in a material particular.

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

It is a defence to a prosecution for the above offence if it is established that the defendant did not know, and could not reasonably be expected to have known, that the relevant statement was false or misleading in a material particular.

For the purposes of the above offence:

“official question” means a question asked by an officer in the performance of his or her functions.

Control of behaviour at voting centres (s320)

A person shall not, without reasonable excuse, disrupt an activity at a voting centre.

Penalty: 10 penalty units.

A person at a voting centre shall not, without reasonable excuse, disobey a lawful direction given by the OIC.

Penalty: 10 penalty units.

A person shall not, without reasonable excuse, enter or remain at a voting centre without the permission, express or implied, of the OIC.

Penalty: 10 penalty units.

The above offence does not apply:

- to an officer;
- to a scrutineer who is entitled to be on the premises; or
- if the voting centre is a polling place—to a voter who enters the place for the purpose of voting and remains no longer than is necessary and reasonable for that purpose.

A person who contravenes this section may be removed from the premises by a police officer or by an authorised officer.

For the purposes of the above offences:

“OIC”, in relation to a voting centre, means the officer in charge of the centre;

“voting centre” means:

- a) a place where a vote may be taken before polling day;
- b) a place where mobile polling is taking place;
- c) a polling place on polling day; or
- d) a scrutiny centre.

Improper influence—members of Electoral Commission etc (s316)

A person shall not do anything improper for the purpose of influencing a member of the Electoral Commission, an augmented Commission or a Redistribution Committee.

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

Legal proceedings

Court of Disputed Elections

The validity of an election may only be disputed by application to the Supreme Court sitting as the Court of Disputed Elections after the result of the election is declared.

If any of the following matters in relation to an election is called into question, the validity of the election is to be taken to be in dispute:

- a decision by a liaison officer or review panel in relation to an elector's claim to be an Aboriginal person or Torres Strait Islander;
- a decision by a review panel in relation to an elector's claim to live in the ACT;
- 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;
- 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 the admission or rejection of declaration votes by an officer at the preliminary scrutiny.

The following persons are entitled to dispute the validity of an election:

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

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

Injunctions

Where a person has apparently breached or proposes to breach a law of the Territory in relation to elections, a candidate or the Electoral Commissioner may apply to the Supreme Court for an injunction restraining that person from engaging in such unlawful conduct or requiring that person to do a particular act or thing, as the case requires. Any candidate wishing to apply to the Supreme Court for an injunction should consult their own legal advisers.

Attachment A: How the Hare-Clark system works — an example

How votes are counted

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

In the table on page 33, the count of first preference votes is shown at “count 1”. The table is split into two halves. The left half shows ballot papers counted to each candidate, and the right half shows the numbers of votes those ballot papers represent. At count 1, the number of ballot papers is equal to the number of votes counted to each candidate.

How the quota for election is calculated

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

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

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

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

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

Surplus votes

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

$$\frac{\text{number of surplus votes}}{\text{total number of ballot papers with further preferences}}$$

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

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

Excluded candidates

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

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

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

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

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

Filling the final vacancy in our example

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

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

Hare-Clark election — Scrutiny Sheet

No. of vacancies: 3

No. of formal ballot papers: 24000

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

Count no.	Ballot Papers							Votes											
	Blue	Red	Brown	Pink	Grey	Green	Total ballot papers	Transfer value	Votes transf'd	Blue	Red	Brown	Pink	Grey	Green	Loss by fraction	Total votes	Comments	
1	10000	750	4000	2750	1500	5000	24000	1	24000		10000	750	4000	2750	1500	5000		24000	Blue elected
2		6000			4000		10000	0.3999	3999		-3999	2399		1599		1			Blue's surplus distributed
3		1750	500		500		2750	1	2750		6001	3149	4000	2750	3099	5000	1	24000	Pink excluded
4		1500	500				2000	1	2000		6001	4899	4500	0	3599	5000	1	24000	Grey being excluded
5			1750				4000	0.3999	1599		6001	6399	5000	0	1599	5000	1	24000	Red elected
6			1250			2250	4000	0.3999	1599		6001	6399	5699	0	-1599	899	1	24000	Grey excluded
						250	1500	0.2653	398		6001	-398	331	0	66	1			Red's surplus distributed
											6001	6001	6030	0	5965	3	24000		Brown elected