

Casual vacancies

What is a casual vacancy?

A casual vacancy in a parliament can be caused by the resignation or death of a member. In single-member electorate systems, when a casual vacancy occurs, a by-election is usually held. When a casual vacancy occurs in a multi-member electorate system, the casual vacancy can be filled either by recounting the votes received by the vacating member or, if that is not possible, by appointment of a replacement member by the parliament.

How is a casual vacancy for the ACT Legislative Assembly filled?

Under the ACT's Hare-Clark electoral system any vacancies arising in the Legislative Assembly are filled (where possible) by recounting the ballot papers that were received by the vacating Member of the Legislative Assembly (MLA), to determine which candidate was the next most favoured candidate chosen by the voters who elected the vacating MLA. Only those candidates who contested the original election and who indicate that they wish to contest the casual vacancy are considered in this process.

In most cases at ACT Legislative Assembly elections, successful candidates are elected after the distribution of preferences from excluded candidates and from other elected candidates. Therefore, a typical elected candidate receives 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. In some cases successful candidates are elected on first preference votes with more votes than the quota. In these cases all of the candidate's ballot papers will have been distributed to other candidates at a fractional transfer value.

Step 1

The first step in a casual vacancy recount is to identify those ballot papers that contributed to the election of the vacating MLA. Some of those ballot papers may have finished the scrutiny still allotted to the vacating MLA. The 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.

Step 2

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

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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.

Where the vacating MLA was NOT elected with a quota of votes on first preferences, ballot papers keep the transfer value that they had when they were received by the vacating MLA throughout the count back, 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 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.

Step 3

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.

Step 4

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.

Step 5

The fifth step is 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.

Using a computer program for casual vacancy recounts

From the 2001 ACT Legislative Assembly election onwards, the distribution of preferences has been 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 in 2001 and 2004. In 2008, 2012 and 2016, the ballot papers were scanned electronically and the preferences again stored in a database. This means that the recount 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

calculates the outcome and prints the result. The program follows the same steps that would occur in a manual count of ballot papers.

This program was used for the first time in February 2003 to conduct the recount following the resignation of Mr Gary Humphries MLA. It has continued to be used for subsequent casual vacancies.

If it is not possible to fill a casual vacancy by recounting ballot papers

If it is not possible to fill a casual vacancy by recounting ballot papers (for example, if no candidates from the election come forward wishing to contest the 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 this party. 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.

Casual vacancies in the ACT Legislative Assembly

| Assembly | Vacating member | Date of notification | Replacement member | Date elected |
|----------------|-------------------|----------------------|---|------------------|
| First | Paul Whalan | 30 April 1990 | Terry Connolly | 1 May 1990 |
| Second | Lou Westende | 25 July 1994 | Bill Stefaniak | 23 August 1994 |
| Third | Terry Connolly | 19 February 1996 | Marion Reilly | 21 March 1996 |
| | Rosemary Follett | 12 December 1996 | Simon Corbell | 9 January 1997 |
| | Tony De Domenico | 30 January 1997 | Louise Littlewood | 13 February 1997 |
| Fourth | Kate Carnell | 13 December 2000 | Jacqui Burke | 18 January 2001 |
| Fifth | Gary Humphries | 24 January 2003 | Jacqui Burke | 10 February 2003 |
| | Kerrie Tucker | 14 September 2004 | Not filled as 2004 pre-election period had commenced. | |
| Sixth | Ted Quinlan | 21 March 2006 | Andrew Barr | 5 April 2006 |
| Seventh | Jon Stanhope | 16 May 2011 | Chris Bourke | 1 June 2011 |
| Eighth | Zed Seselja | 11 June 2013 | Nicole Lawder | 26 June 2013 |
| | Katy Gallagher | 23 December 2014 | Meegan Fitzharris | 16 January 2015 |
| | Mary Porter | 19 February 2016 | Jayson Hinder | 7 March 2016 |
| | Brendan Smyth | 15 July 2016 | Val Jeffery | 29 July 2016 |
| Ninth | Steve Doszpot | 25 November 2017 | Candice Burch | 13 December 2017 |
| | Meegan Fitzharris | 8 July 2019 | Deepak-Raj Gupta | 23 July 2019 |