

2011

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Attorney-General)

Electoral (Casual Vacancies) Amendment Bill 2011

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(As presented)

(Attorney-General)

Electoral (Casual Vacancies) Amendment Bill 2011

A Bill for

An Act to amend the *Electoral Act 1992*, and for other purposes

The Legislative Assembly for the Australian Capital Territory enacts as follows:

1 Name of Act

This Act is the *Electoral (Casual Vacancies) Amendment Act 2011*.

2 Commencement

This Act commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Legislation amended

This Act amends the *Electoral Act 1992*.

Note This Act also amends the *Aboriginal and Torres Strait Islander Elected Body Act 2008* (see sch 1).

**4 Definitions for pt 13
Section 190, new definition of *valid application***

insert

valid application means an application made under section 192 that has not been withdrawn under section 192 (3).

**5 Notice of casual vacancy
Section 191 (1)**

substitute

(1) The commissioner must publish a notice in a newspaper if—

(a) the Speaker tells the commissioner in writing that the seat of an MLA has become vacant other than because of—

(i) the dissolution of the Assembly; or

(ii) the expiry of the term for which MLAs were elected at an election; or

(iii) the failure or partial failure of an election; and

(b) the commissioner is satisfied that—

- (i) it is practicable to fill the vacancy under section 194; and
- (ii) if the former MLA's name appeared on the ballot paper for the last election as a party candidate—there is at least 1 other person who was a party candidate for that party at the election who may apply under section 192 to be a candidate.

6 Section 191 (4)

substitute

- (4) The commissioner must tell the Speaker in writing if the commissioner cannot fill the vacancy under section 194 because the commissioner is not satisfied of the matters mentioned in subsection (1) (b).

7 Section 192 heading

substitute

192 Application to be candidate for casual vacancy

8 Section 193

substitute

192A Publication of applicants' details

- (1) This section applies if—
 - (a) applications have closed under section 192 (2) (b); and
 - (b) the commissioner has received 1 or more valid applications.
- (2) The commissioner must, as soon as practicable after the close of applications—
 - (a) publicly produce each valid application; and

- 1 (b) if the former MLA's name appeared on the ballot paper for the
2 last election as a party candidate—state whether the
3 commissioner received at least 1 valid application from
4 someone who was a party candidate for that party at the
5 election.

6 **193 Declaration of candidates for casual vacancy**

- 7 (1) This section applies if—
8 (a) applications have closed under section 192 (2) (b); and
9 (b) the commissioner has received—
10 (i) 1 or more valid applications; and
11 (ii) if the former MLA's name appeared on the ballot paper
12 for the last election as a party candidate—at least 1 valid
13 application from someone who was a party candidate for
14 that party at the election.
15 (2) The commissioner must, as soon as practicable after the close of
16 applications—
17 (a) declare each person who made a valid application to be a
18 candidate; and
19 (b) publish details of each candidate (other than any suppressed
20 address).

21 **193A No candidates for casual vacancy**

- 22 (1) This section applies if—
23 (a) applications have closed under section 192 (2) (b); and
24 (b) the commissioner has not received—
25 (i) any valid applications; or

- (ii) if the former MLA's name appeared on the ballot paper for the last election as a party candidate—at least 1 valid application from someone who was a party candidate for that party at the election.
- (2) The commissioner must, as soon as practicable after the close of applications—
 - (a) declare—
 - (i) that there are no candidates; and
 - (ii) the reason why there are no candidates; and
 - (b) tell the Speaker in writing—
 - (i) that the commissioner cannot fill the vacancy because there are no candidates; and
 - (ii) the reason why there are no candidates.

9 Determination of candidate to fill vacancy Section 194 (1) and (2)

substitute

- (1) If there is only 1 person declared to be a candidate for a casual vacancy under section 193 (2) (a), the commissioner must declare the candidate elected.
- (2) If there are 2 or more people declared to be candidates for a casual vacancy under section 193 (2) (a), the commissioner must conduct a recount in accordance with schedule 4, part 4.3

- 1 **10 Assembly nominees**
2 **Section 195 (1) (a)**
- 3 *omit*
4 193 (2)
5 *substitute*
6 section 193A (2)
- 7 **11 New section 195A**
- 8 *insert*
- 9 **195A Declaration of election**
- 10 (1) This section applies to an MLA declared elected under—
11 (a) section 194 (1) or (4); or
12 (b) section 195 (1).
13 (2) The commissioner must—
14 (a) publicly declare the name of the elected MLA; and
15 (b) tell the clerk of the Assembly in writing the name of the
16 elected MLA.
- 17 **12 Dictionary, definition of *candidate*, paragraph (b)**
- 18 *substitute*
19 (b) in part 13—a person declared to be a candidate under
20 section 193 (2) (a) (Declaration of candidates for casual
21 vacancy).

**Schedule 1 Aboriginal and Torres Strait
Islander Elected Body Act
2008—Consequential
amendments**

(see s 3)

**[1.1] Schedule 1, part 1.5
New modification 1.72A**

insert

[1.72A] Section 190, definition of *valid application*

omit

**[1.2] Schedule 1, part 1.5
New modification 1.74A**

insert

[1.74A] Section 191 (4)

substitute

- (4) The commissioner must tell the ATSIEB chair (or, if there is no chair, the Minister) in writing if the commissioner is not satisfied that it is practicable to fill the vacancy under section 194.

- 1 **[1.3] Schedule 1, part 1.5**
2 **Modification 1.75**
- 3 *substitute*
- 4 **[1.75] Sections 192A, 193 and 193A**
- 5 *substitute*
- 6 **193 Publication of candidates' details**
- 7 (1) If at least 1 person has applied to be a candidate under section 192,
8 the commissioner must, as soon as practicable after the close of
9 applications—
- 10 (a) publicly produce all the applications; and
- 11 (b) declare each person who applied to be a candidate; and
- 12 (c) publish details of each candidate (other than the candidate's
13 address).
- 14 (2) If there are no candidates for a casual vacancy, the commissioner
15 must—
- 16 (a) declare that there are no candidates; and
- 17 (b) tell the ATSIEB chair (or, if there is no chair, the Minister) in
18 writing that there are no candidates.

1	[1.4]	Schedule 1, part 1.5
2		Modification 1.76
3		<i>substitute</i>
4	[1.76]	Determination of candidate to fill vacancy
5		Section 194 (1) and (2)
6		<i>substitute</i>
7	(1)	If there is only 1 candidate for a casual vacancy, the commissioner
8		must declare the candidate elected.
9	(2)	If there are 2 or more candidates for a casual vacancy, the
10		commissioner must, after making a declaration under
11		section 193 (1) (b), conduct a recount in accordance with
12		schedule 4, part 4.3.
13	[1.76A]	Section 194 (4)
14		<i>substitute</i>
15	(4)	The commissioner must—
16	(a)	declare the successful candidate elected; and
17	(b)	tell the ATSIEB chair (or, if there is no chair, the Minister) in
18		writing about the election of the successful candidate.
19	[1.5]	Schedule 1, part 1.5
20		Modification 1.77 heading
21		<i>substitute</i>
22	[1.77]	Sections 195, 195A and 196

Schedule 1 Aboriginal and Torres Strait Islander Elected Body Act 2008—
Consequential amendments

Amendment [1.6]

- 1 **[1.6] Schedule 1, part 1.11**
2 **New modification 1.102A**
- 3 *insert*
- 4 **[1.102A] Definition of *candidate*, paragraph (b)**
- 5 *substitute*
- 6 (b) in part 13—a person declared to be a candidate under
7 section 193 (Publication of candidates' details).
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Endnotes

- 1 **Presentation speech**
Presentation speech made in the Legislative Assembly on 2011.
- 2 **Notification**
Notified under the Legislation Act on 2011.
- 3 **Republications of amended laws**
For the latest republication of amended laws, see www.legislation.act.gov.au.
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