

Recount Policy for Senate Elections

April 2018

Contents

Date Last Reviewed	2
Purpose of Policy.....	2
Legislative background	2
Scrutiny process for Senate.....	2
Detailed Policy Statement	3
1. AEC-initiated recounts.....	3
2. Candidate-initiated recount request.....	3
3. Consultation	4
4. Recount oversight and preparation.....	5

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Purpose of Policy

The purpose of this policy is to provide a consistent national approach to the management and evaluation of Senate recount requests in accordance with section 278 of the *Commonwealth Electoral Act 1918* (the Electoral Act).

This policy does not cover the recount that takes place following a double dissolution election as set out in section 282 of the Electoral Act.

Legislative background

Subsection 278(1) of the Electoral Act allows a candidate, at any time before the declaration of the result of a Senate election, to make a written request to the Australian Electoral Officer (AEO) for a recount of Senate ballot papers. If an AEO refuses the request of a candidate, subsection 278(2) of the Electoral Act specifically provides for an appeal to be made to the Electoral Commissioner (EC) and sets out the EC's discretion either to direct a recount or refuse to direct a recount.

Subsection 278(1) of the Electoral Act also allows, at any time before the declaration of the result of a Senate election, for the AEO, by their own motion, to direct or conduct a recount.

Scrutiny process for Senate

Every marked Senate ballot paper must be scrutinised and counted at the Central Senate Scrutiny (CSS) centres. The scrutiny must be able to be viewed in full by candidates' scrutineers.

The AEO for the state or territory is responsible for the scrutiny of ballot papers at the CSS.

The AEC has implemented a semi-automated approach to the Senate count and scrutiny, and references in this policy to 'ballot papers' should be read to include digital 'ballot paper images'.

At the CSS, all ballot papers are processed, the Senate scrutiny is undertaken and informal ballot papers rejected.

The Senate scrutiny is able to be observed by scrutineers who have been appointed to represent candidates, and who have signed an undertaking under subsection 202A(1) of the Electoral Act. At subsection 265(2) of the Electoral Act, it is made clear that during a scrutiny, the scrutineers must be allowed to inspect, in addition to the preference votes being counted in the scrutiny, any other preference vote given for a candidate unless, in

the opinion of the ARO, DRO or AEO, as the case may be, this would unreasonably delay the scrutiny.

The full distribution of preferences is conducted electronically by applying the requirements of the Electoral Act to elect the successful candidates.

The final results are published to the AEC's website.

The electronic system is certified, by an independent testing authority, as correctly applying the Senate scrutiny rules contained in the Electoral Act.

Detailed Policy Statement

1. AEC-initiated recounts

- 1.1. Subsection 278(1) allows the AEO at any time before the declaration of the result of a Senate election to, of the officer's own motion, direct or conduct a recount of the ballot papers in any parcel or in any other category determined by the AEO.
- 1.2. Based on an assessment of the progress and circumstances surrounding the count, the AEO may form the opinion that a recount of votes is warranted.
- 1.3. Without limiting the discretion of the AEO, the following matters, amongst others, should be considered in evaluating whether a recount of the AEO's own motion, is warranted and when the recount should commence:
 - The time available to complete the recount and declare the result prior to the return of writ deadline.
 - The likelihood that the recount could change the result of the election.
 - Allegations/incidents regarding the conduct of the scrutiny have been raised and indicate valid and specific grounds for supposing that it could change the result of the election.
 - The size of the margin between the two lowest-ranked candidates and the number of votes to be distributed at that exclusion point may be relevant considerations in any decision to accept or reject a recount request.
- 1.4. Where an officer-initiated recount is ordered by the AEO, the recount direction (depending on the relevant matter raised above) may stipulate the checking of all ballot papers previously scrutinised, or that only a particular candidate's ballot papers, the informal ballot papers, or the ballot papers from a particular polling place or declaration vote count are to be rechecked and counted. Candidates must be advised that a recount is to be undertaken and the arrangements for the recount.

2. Candidate-initiated recount request

Evaluating a request for a recount

- 2.1 Subsection 278(1) of the Electoral Act makes clear that at any time before the declaration of the result of a Senate election, a candidate may provide a written request to the AEO setting forth the reasons for a request to direct or conduct a recount.

- 2.2 Recount requests will only be considered after the completion of the distribution of preferences, however all requests must be received, considered and actioned before the declaration of the result in that state or territory.
- 2.3 The declaration of the result will not occur until at least 24 hours after the distribution of preferences is completed.
- 2.4 Without limiting the discretion of the AEO, the following matters should be considered in evaluating recount requests by candidates:
 - whether valid and specific grounds (such as in response to a specific allegation or incident) for determining the need for a recount of specific ballot papers, such as those from a specific polling place or those in a declaration vote count, have been provided;
 - whether specific ballot-papers and associated significant counting process errors or irregularities have been identified sufficient to potentially change the result of the election in the state or territory;
 - The size of the margin between the two lowest-ranked candidates and the number of votes to be distributed at that exclusion point may be relevant considerations in any decision to accept or reject a recount request from a candidate.
- 2.5 The onus is on the candidate requesting a recount to demonstrate that the result of the election would have been different in the circumstances described. The AEC will not undertake such modelling on a candidate's behalf.
- 2.6 Where the AEO has actual and/or reasonable grounds to suspect that a recount could change the result of an election, or where there are specific grounds for determining the need for a recount of specific ballot papers, it is within the discretion of the AEO to direct a recount, regardless of the margins involved.
- 2.7 A request for a recount that does not outline any specific reasons in support of the request should be refused.
- 2.8 Without limiting the discretion of the AEO, recount requests could also be refused where the stated purpose is:
 - to boost the first preference votes of a candidate to at least 4% for public funding purposes, or
 - to avoid forfeiture of a nomination deposit.
- 2.9 Another relevant consideration may be the time available to complete the recount and declare the result prior to the return of writ deadline.

3. Consultation

- 3.1 In deciding whether to direct a recount or in considering a request for a recount, AEOs must first consult with the National Election Manager.
- 3.2 If a request for a recount by a candidate is refused by the AEO, the candidate may appeal to the EC to direct a recount (see subsection 278(2) of the Electoral Act).
- 3.3 A close margin as described in the previous paragraphs will not, of itself, be sufficient to justify a recount.

4. Recount oversight and preparation

- 4.1 Where a recount is agreed or directed, senior state and national office executives will monitor progress, to ensure that sufficient experienced support and resources are readily available to address the inevitable and appropriate increase in stakeholder and media attention that arises in close elections.
- 4.2 If a recount request is agreed to, the recount should be conducted using the same procedures as the original scrutiny (to the extent relevant). Any variations to procedures will need to be determined and agreed by the NEM on a case-by-case basis specific to the circumstances prior to the commencement of the recount.
- 4.3 Prior to the commencement of the recount, scrutineers should be briefed on all relevant guidelines and how the recount will be undertaken. This would include for any new scrutineers who are attending the recount for the first time, that they must also be briefed prior to entering the scrutiny area, and provide a signed undertaking as required by subsection 202A(1) of the Electoral Act. During the recount officials should be prepared to fully explain their reasoning on specific ballot paper formality rulings by reference to the [ballot paper formality guidelines](#).