

Recount Policy for House of Representatives Elections

April 2018

Contents

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

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Purpose of Policy

This policy is designed to provide a consistent national approach to the management and evaluation of recount requests in accordance with section 279 of the *Commonwealth Electoral Act 1918* (the Electoral Act).

Although recounts are not a common occurrence, there are three ways a recount can be triggered, these include:

1. an automatic recount if the margin between the two leading candidates is less than 100 votes;
2. a recount request from a candidate setting out the reasons for the request; and
3. if the Divisional Returning Officer, relevant Australian Electoral Officer, or the Electoral Commissioner determines that a recount is to occur.

Legislative background

Section 279 of the Electoral Act allows a candidate, at any time before the declaration of the result of a House of Representatives election, to request a recount of House of Representatives (House) ballot papers, or a recount may be ordered by a Divisional Returning Officer (DRO), Australian Electoral Officer (AEO) or the Electoral Commissioner (EC).

Scrutiny process for House of Representatives

There are three separate scrutinies undertaken as a normal part of the counting process, these are:

The first is at polling places and other counting centres on election night when ordinary ballot papers are sorted and counted by polling staff. This process is referred to as **first scrutiny**.

The second is at a scrutiny centre where the ballot papers are re-examined and counted under the control of the DRO, in the weeks following polling day, in a process that is referred to as **fresh scrutiny**. Fresh scrutiny involves a review of each ballot paper's formality, the assignment of first preference votes to candidates and a [Two Candidate](#)

[Preferred](#) (TCP) count. All declaration ballot papers that are admitted to the count are removed from their envelopes and also undergo first and fresh scrutinies.

The third scrutiny is undertaken to complete the full **distribution of preferences** for each House of Representatives election. This commences with scrutiny of the ballot papers for the candidate with the smallest number of first preference votes (the 'lowest ranked' candidate) to determine which of the remaining candidates have been allocated the next available preference. The votes are then distributed to the remaining candidates. Candidates are progressively excluded and their ballot papers are distributed to higher ranked candidates until all lower ranked candidates have been excluded and their ballot papers have been allocated to the leading two candidates for each division.

All three scrutinies are able to be observed by scrutineers who have been appointed to represent candidates. At subsection 266(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. In practice scrutinies in close seats tend to be observed by large numbers of scrutineers, and the count is slower to some extent. By the time a result has been determined, ballot papers have been fully counted and reviewed three times, therefore a significant sorting and/or counting error is less likely to remain undetected.

The results of each scrutiny are subsequently entered into the Australian Electoral Commission's (AEC's) Election Management System (ELMS). The results are entered progressively and are regularly uploaded to the AEC's website.

Detailed Policy Statement

1. AEC-initiated recounts

- 1.1. Section 279 of the Electoral Act, states that at any time before the declaration of the result of a House of Representatives election, the Divisional Returning Officer (DRO) may, on the request of any candidate setting forth the reasons for the request, or of the offer's own motions, and shall, if so directed by the Electoral Commissioner (EC) or the Australian Electoral Officer (AEO), re-count the ballot papers contained in any parcel or in any other category determined by the AEO or the EC.
- 1.2. The most common circumstance for an AEC initiated recount is where the result following the distribution of preferences triggers an automatic recount. There are also other circumstances where the DRO, AEO or the EC will determine a recount of votes is warranted.

Automatic recount

- 1.3. Where the margin of votes between the first and second-ranked candidates at the completion of the distribution of preferences for a House election is less than 100, a full recount of all formal and informal ballot papers will be undertaken as a matter of policy. An automatic recount involves a full fresh scrutiny and TCP count, followed by a full distribution of preferences. Candidates will be advised that a recount is to be undertaken and the arrangements for the recount as set out at section 279A of the Electoral Act.

Officer-initiated recount

- 1.4. The progress of the count in a close seat will be closely monitored by the DRO and senior state and national office executives. Based on an assessment of the progress and circumstances surrounding the count, the DRO, AEO or EC may form the opinion that a recount of votes is warranted.
- 1.5. The following matters, amongst others, should be considered in evaluating whether a recount is warranted and when the recount should commence:
 - The margin of votes between the first and second ranked candidates is such that it is highly likely an automatic recount will be required following the distribution of preferences.
 - 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 in the division by affecting the placement of more than the first and second candidates.
 - 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 in the division.
- 1.6. Where an officer-initiated recount is ordered, the recount direction (depending on the relevant matter raised in paragraph 1.5) 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. A recount does not include the rechecking of declaration vote certificates admitted or rejected from the further scrutiny.

2. Candidate-initiated recount request

Evaluating a request for a recount

- 2.1. 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 poll in that division.
- 2.2. The declaration of the poll in close seats will not occur until at least 24 hours after the distribution of preferences is completed.
- 2.3. 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 division; and
 - only one recount of any ballot papers will occur.

- 2.4. A request for a recount which does not plead any valid and specific grounds should be refused. Recount requests should also be refused where the 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, or
 - because the candidate did not have scrutineers in attendance at a particular scrutiny.

3. Consultation

- 3.1. In deciding whether to consider a request or initiate a recount, DROs must first consult with their Director Operations and the National Election Manager.
- 3.2. In deciding whether to direct a recount AEOs must first consult with National Election Manager.
- 3.3. If a request for a recount is refused by the DRO it is implicit in the Electoral Act that a candidate may lay their claims successively before the AEO and the EC.

4. Recount oversight and preparation

- 4.1. Where a recount is directed, senior state and national office executives will monitor progress to ensure that sufficient experienced support and resources are available to address resultant increases in stakeholder and media attention.
- 4.2. Prior to the commencement of the recount, scrutineers should be briefed by AEC staff on all relevant guidelines and how the recount will be undertaken. As new scrutineers attend the recount for the first time they must also be briefed prior to entering the scrutiny area.
- 4.3. During the recount AEC officials should be prepared to fully explain their reasoning on specific ballot paper formality rulings by reference to the [ballot paper formality guidelines](#).