

Recount policy

NSW State Elections

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1. Abbreviations and definitions

Abbreviations

DOP	Distribution of preferences
Electoral Act	<i>Electoral Act 2017</i> (NSW)
Electoral Commissioner	Electoral Commissioner for NSW

Definitions

Candidate	A person nominated for election in accordance with the Electoral Act.
Court of Disputed Returns	The Supreme Court of New South Wales is the Court of Disputed Returns for the purposes of the Electoral Act.

2. Introduction

2.1. Section 172 of the Electoral Act provides:

At any time before the declaration of an election result, the Electoral Commissioner may, if he or she thinks fit, on the request of any candidate in the election which sets out the reasons for the request, or on the Electoral Commissioner's own motion, re-count the ballot papers.

2.2. Accordingly, there are two ways in which a recount can occur under the Electoral Act, namely:

- a recount request from a candidate setting out the reasons for the request, accepted by the Electoral Commissioner; or
- on the Electoral Commissioner's own motion.

3. Purpose

- 3.1. This policy is designed to provide a consistent approach to the management and evaluation of recount requests in accordance with s 172 of the Electoral Act.
- 3.2. Recount requests will only be considered after the completion of the full distribution of preferences (**DOP**), however, all requests must be received, considered and actioned before the declaration of the poll for which the recount request was received.

4. Scope

Recount requests

- 4.1. Any request for a recount must be made by the candidate prior to the Electoral Commissioner declaring the result of an election. The NSW Electoral Commission will publish the expected date and time at which the result will be declared.
- 4.2. The request must set out the reasons why a recount is being requested, identifying the specific error or irregularity that it is alleged could potentially affect the election result.

4.3. The preferred way to lodge a recount request is by email to both:

- (i) The relevant district's Election Manager; and
- (ii) The NSW Electoral Commission at candidates@elections.nsw.gov.au.

Requestors should also follow up in person or by telephone with the Election Manager to confirm their email request has been received.

Consideration of whether a recount will occur

4.4. The Electoral Commissioner will consider any matter that may be relevant at the time to the exercise of the discretion to order a recount, however, the following factors will be considered for each request:

- the level of detail provided in the request about why there is a need for a recount of specific ballot papers (or class of ballot papers); and/or
- whether any identified counting process errors or irregularities in relation to the identified ballot papers could have potentially changed the result of the election; and/or
- the likelihood that a recount could change the result of the election.

4.5. A small margin of votes between candidates is highly unlikely, of itself, to be considered a sufficient reason for conducting a recount. Counting in a close election, however, will be closely monitored and, based on an assessment of the progress and circumstances surrounding that count, the Electoral Commissioner may determine that a recount of votes is required in a particular case.

4.6. Requests that do not address the factors noted in paragraph 4.4 above are likely to be refused. Examples of requests that are likely to be refused also include where it appears the only reason for seeking a recount is:

- dissatisfaction with the result;
- to boost the first preference votes of a candidate for public funding purposes;
- to avoid forfeiture of a nomination deposit; or
- because the candidate did not have scrutineers in attendance at a particular scrutiny.

4.7. The Electoral Commissioner will also consider the time available to complete the recount and declare the result prior to the deadline to return the writ for the election.

Recount process

4.8. A delegate of the Electoral Commissioner will conduct any recount.

4.9. All candidates for the relevant election will be advised that a recount is to be undertaken and the arrangements for the recount.

4.10. The Electoral Commissioner may stipulate for a recount:

- (i) checking of all ballot papers previously scrutinised; or
- (ii) that only a particular candidate's or group's ballot papers, the informal ballot papers, or the ballot papers from a particular voting centre or count are to be rechecked and recounted.

4.11. If the Electoral Commissioner agrees to a recount after the request of a candidate, only one recount will be conducted with respect to that request.

4.12. The delegate conducting the recount may, or at the request of a scrutineer will, reserve a ballot paper for the Electoral Commissioner's decision whether it is to be allowed and admitted or disallowed and rejected.

Court of Disputed Returns

- 4.13. A candidate, a voter or the Electoral Commissioner may within 40 days of the return of the writ by the Electoral Commissioner to the Governor, petition the Court of Disputed Returns in accordance with the provisions of Part 8, Division 2 of the Electoral Act.
- 4.14. A decision of the Electoral Commissioner during a recount on whether a ballot paper reserved for the Commissioner's decision is to be allowed and admitted or disallowed and rejected, is subject only to review by the Court of Disputed Returns if it is hearing such a petition.

5. Policy details

Guiding principles

- 5.1. The NSW Electoral Commission exercises its compliance and enforcement powers independently from executive government, in the public interest and with reference to the objects of its governing legislation.
- 5.2. Relevant objects of the Electoral Act include, but are not limited to:
- promoting and maintaining an electoral system characterised by accessibility, integrity and fairness that provides for the election of members of the Parliament of New South Wales; and
 - facilitating and protecting the integrity of representative government in New South Wales; and
 - facilitating the fair and transparent conduct of elections in New South Wales.

6. Roles and responsibilities

The following table outlines the nature of the commitment expected from NSW Electoral Commission staff and the way that commitment should be implemented:

Who	Commitment	How
Electoral Commissioner	Determine whether a recount in accordance with the Electoral Act is to take place.	<ul style="list-style-type: none">• Taking into account all available information, determine if a recount should occur.• Determine how the recount is to be conducted.• Determine who should conduct the recount.• Decide whether any ballot paper reserved by the delegate conducting the recount is to be allowed and admitted or disallowed and rejected, and endorse that decision on the ballot paper.

Who	Commitment	How
Results Management Team	<ul style="list-style-type: none"> • Provide analytical data in relation to any count the Electoral Commissioner is considering for a recount. • Support the delegate nominated by the Electoral Commissioner to conduct the recount. 	<ul style="list-style-type: none"> • Prepare reports to assist the Electoral Commissioner in the decision process. • Ensure the computer count system(s) are ready for the conduct of the recount • Update the virtual tally room to reflect a recount is in progress. • Provide advice and support to the delegate conducting the recount.
Candidates Team	<ul style="list-style-type: none"> • Advise relevant candidates if a recount is to take place. 	<ul style="list-style-type: none"> • Advise all candidates who nominated for the electoral contest being recounted.
Delegate of the Electoral Commissioner conducting a recount	<ul style="list-style-type: none"> • Conduct a recount as directed by the Electoral Commissioner. 	<ul style="list-style-type: none"> • Conduct a check count in accordance with the directions of the Electoral Commissioner and Standard Operating Procedures and Manuals. • May reserve any ballot paper for the decision of the Electoral Commissioner, or • At the request of any scrutineer, reserve any ballot paper for the decision of the Electoral Commissioner. • Support the Election Manager in the conduct of the Distribution of Preferences using the computer count system.

7. Monitoring, evaluation and review

- 7.1. This Policy is to be reviewed by the date being 3 years from anniversary of approval unless reviewed earlier in response to post-implementation feedback or as necessary prior to an election.

8. Associated documents

- Determination of Election Results policy EL.565
 - Counting and Results Recount manual SE.011
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9. Relevant legislation

- *Electoral Act 2017*
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10. Document control

Document management

Approved by:	Signature:	Date approved:
John Schmidt Electoral Commissioner		16 February 2023
Executive Director Review:	Signature:	Date approved:
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