

## AUSTAT General Meetings – Treatment of Abstentions for Votes on Motions (Policy agreed at AUSTAT Council Meeting 376, Aug 9<sup>th</sup> 2020)

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### Summary

AUSTAT Council have agreed that, irrespective of past practice, for future General Meetings:

1. The total 'votes cast' on a poll or motion will be the sum of votes clearly marked as either 'for' or 'against'. Abstentions will not be included in this calculation.
2. Some members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained. Other members may oppose the motion and request that their opposition be noted.

Additionally, it is noted that the decisions as declared by the Chairperson at the February 2020 AUSTAT SGM, relying on previous precedent, are valid, and remain unaltered.

### 1. Introduction

At the AUSTAT Special General Meeting (SGM) held on 16th Feb 2020, a point of order was raised (part-way through the proceedings) which questioned the treatment of abstentions in the counting of votes cast on motions discussed at the Meeting.

The following is a summary of the research carried out by Council following the SGM, and the change in practice which will impact on future general meetings.

### 2. Legal Requirements – Ordinary and Special Resolutions

The NSW Associations Incorporation Act 2009 No 7 (Version dated 14 May 2020) defines a resolution at a General Meeting as either:

- an **Ordinary Resolution** if it is supported by more than half (i.e. >50%) of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution (Section 38), or
- a **Special Resolution** if it is supported by at least three-quarters (i.e. >=75%) of the votes cast by members of the association who, under the association's constitution, are entitled to vote on the proposed resolution (Section 39).

Whilst the NSW Fair Trading legislation refers to 'votes cast', it does not explicitly mention the treatment of abstentions.

AUSTAT is required to conform to these definitions. Many decisions require an Ordinary Resolution to pass, but some decisions (e.g. those that amend the AUSTAT Constitution) require a Special Resolution.

### 3. Past AUSTAT Practice at General Meetings

There has been a precedent at AUSTAT General Meetings, both Annual (AGM) and Special (SGM), of including ‘abstentions’ as part of the total number of votes cast for both Ordinary and Special Resolutions, i.e.:

*Method (A): Total votes cast = votes ‘for’ + votes ‘against’ + abstentions.*

The point of order raised at the February 2020 SGM referred to the NSW legislation, and contended that abstentions were not ‘votes cast’, because the members were “*abstaining from voting*”. In this case, the correct calculation of votes cast would instead be:

*Method (B): Total votes cast = votes ‘for’ + votes ‘against’.*

An example is shown here, demonstrating the difference in calculations for the two methods.

Method	Numbers ‘For’	Numbers ‘Against’	Numbers Abstaining	Total Votes Cast
(A)	70 70.0%	15 15.0%	15 15.0%	100 100%
(B)	70 82.4%	15 17.6%	15 -	85 100%

In this example, an Ordinary Resolution (>50%) would pass with either Method. However, a Special Resolution (>=75%) would pass only with Method (B), and would fail to pass with Method (A).

### 4. Decisions made at the AUSTAT SGM (February 2020)

At the Feb 2020 SGM, the Chairperson, relying on previous precedent in the treatment of abstentions, declared that Motion 3 had been carried by a sufficient majority as a Special Resolution, but that Motions 1 & 2 were not carried by sufficient majorities.

There is provision in the AUSTAT Constitution (Section 51f) for a poll to be demanded at a General Meeting on any matter. This was not called for at any time during the SGM, and hence it is taken that the members at the General Meeting accepted the Chairperson’s declarations on the three Motions. Additionally, a special resolution must be registered with NSW Fair Trading within 28 days of being passed<sup>1</sup>, which only occurred for Motion 3.

Consequently, the decisions on the three motions as declared by the Chairperson at the SGM are regarded as final.

<sup>1</sup> <https://www.fairtrading.nsw.gov.au/associations-and-co-operatives/associations/starting-an-association/about-the-constitution> as downloaded on 19th July 2020.

## 5. Practice Elsewhere (Australia and Overseas)

Whilst Wikipedia advises that *abstentions do not count in tallying the vote negatively or positively*<sup>2</sup>, this is not strictly true in all circumstances. *Roberts's Law* gives examples of different scenarios in the treatment of abstentions, where they would sometimes be counted in the total<sup>3</sup>. The Australian Senate has most decisions requiring a 'simple' majority of senators present for the vote, but some decisions require an 'absolute' majority of all possible votes<sup>4</sup>. Also, in October 2019 in the UK Houses of Parliament, a government-sponsored vote (to call an early general election) failed to be carried due to the number of abstentions from the opposition party<sup>5</sup>.

Nevertheless, it seems clear that, in most circumstances, abstentions are not included in the calculation of votes.

## 6. AUSTAT General Meetings – Future Practice

AUSTAT Council agree that, irrespective of past practice, for future General Meetings:

1. The total 'votes cast' will be the sum of votes clearly marked as 'for' or 'against'.
2. AUSTAT will adopt the policy on abstentions and opposing to motions as recommended by Justice Connect regarding abstaining from voting and opposing<sup>6</sup>:

*Some members may decide not to vote at all (that is, 'abstain from voting') and they may wish to have the secretary record their names in the minutes as having abstained. Other members may oppose the motion and request that their opposition be noted.*

3. To improve clarity for future meetings, the minutes of general meetings will record the total numbers of votes cast 'for' and 'against' a poll, and also (for information purposes) the numbers of recorded abstentions.

Signed: AUSTAT Secretary

Date: August 2020

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<sup>2</sup> <https://en.wikipedia.org/wiki/Abstention> as downloaded on 19th July 2020.

<sup>3</sup> <http://mrsc.org/Home/Stay-Informed/MRSC-Insight/April-2013/How-Are-Abstentions-Handled-When-Counting-Votes.aspx> as downloaded on 19th July 2020.

<sup>4</sup> [https://www.aph.gov.au/About\\_Parliament/Senate/Powers\\_practice\\_n\\_procedures/Brief\\_Guides\\_to\\_Senate\\_Procedure/No\\_3](https://www.aph.gov.au/About_Parliament/Senate/Powers_practice_n_procedures/Brief_Guides_to_Senate_Procedure/No_3) as downloaded on 19th July 2020.

<sup>5</sup> <https://www.theguardian.com/politics/2019/oct/28/boris-johnson-third-attempt-general-election-fails> as downloaded on 19th July 2020.

<sup>6</sup> *A guide to running an incorporated association in NSW, Part 5 Annual General Meetings, p.85 (May 2017, Justice Connect)*

[https://www.nfplaw.org.au/sites/default/files/media/Part\\_5\\_Annual\\_General\\_Meetings\\_Running\\_an\\_IA\\_in\\_NSW.pdf](https://www.nfplaw.org.au/sites/default/files/media/Part_5_Annual_General_Meetings_Running_an_IA_in_NSW.pdf) as downloaded on 19th July 2020.