

**Australian Computer Society
Constitutional Reform Working Group (CRWG)
Round 3 Consultation Document**

Alternative Governing Committee Models

Version of 12 June 2022

This document discusses the governance models considered, and explains which of them is being proposed, and why.

There are three other documents in the set:

- A 1-page, high-level Summary of the Proposal
- An 8-page Overview of Key Features
- The *Draft* Constitutional Document

How to Provide Your Comments on This Document

Web-forms are provided in the HTML version of this document. Each generates a posting to the Online Forum. You can respond in this way at any time. If you wish to read other people's responses, and the conversations, you need to login to that Forum (if you've already joined it), or register as a new participant in the Forum.

Alternatively, you can submit text or an attachment via the Submission Form, or participate in one of the discussion sessions organised by the Branches, national Committees and CRWG, as advertised on the landing-page.

Introduction

The Report Back to Members following Round 2, published 28 April 2022, contained a summary of what members said about this aspect of the matter during the consultation process. See ss. 5.1.1, 5.1.2, 5.1.3, 5.2.4, 5.3.1.

In designing the high-level governance structure of the Society, the objectives are:

- To motivate the Governing Committee (or similar name) to make decisions that are consistent with members' reasonable expectations of their professional society;
- To provide means whereby members can take action if the Governing Committee acts inappropriately, ranging from 'warning shots across the bow' through to removal of one or more Governing Committee members; and
- To thereby ensure that the Governing Committee manages the Society in an appropriate and suitably transparent manner, such that members have a justifiably high level of trust in the Governing Committee to act in the members' best interests.

After the broad model is decided on, it requires further articulation in relation to such aspects as size, spread of expertise, terms, election cycles, the filling of casual vacancies, term limitations, and retention of corporate memory.

The purpose of this document is to provide an outline of each of the three alternative structures that the CRWG has considered.

These are:

1. A Directly-Elected Governing Committee;
2. A Large, Representative Governing Committee plus an Executive Committee; and
3. A Large, Representative Congress and a Small Governing Committee.

Under Alternatives 1 and 2, it has proven difficult to configure the model in way that satisfies both the members' wishes and the desire for agile and efficient operations, and also achieves compliance with relevant regulatory requirements.

On the other hand, **the CRWG has concluded that the objectives can be achieved through careful structuring of Alternative 3.**

The other documents in the Round 3 Consultation Document-Set further articulate the model-outline provided in this document.

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Alternative 1: A Directly-Elected Governing Committee

During recent years, it has become the norm for each medium-sized and large not-for-profit organisation to be constituted as a company limited by guarantee (CLG). The commonly-available templates for a CLG Constitution are generally little different from those of a for-profit company limited by shares. They generally have the following features:

- (1) The members of the governing committee are directly elected by the members;
- (2) Almost all powers are placed in the hands of the governing committee and CEO; and
- (3) Any additional body that is representative of the membership is limited to an advisory role.

Each of those features creates difficulties for the Society:

(1) Direct Elections

Since its formation in 1965, ACS has comprised Branches organised along State lines. Because of the distribution of the Australian population, and of ICT activity, the two largest Branches typically have 55%-65% of the professional membership. The risk exists that the Governing Committee, the staff and the Society's operations would be attuned primarily to the interests of the two larger Branches, to the disadvantage of the smaller Branches.

To address this issue, the constitutional document has always provided a means of diluting the power of the two largest Branches. Consultation participants have made clear that they want some such protection to continue. However, it is very difficult to contrive such protection if members of the Governing Committee are directly elected by the members.

(An alternative to direct election is a feature of Alternatives 2 and 3).

(2) A Powerful Governing Committee

Consultation participants have made clear that they perceive their Society to be of the members and for the members. They have:

- (a) expressly rejected a corporatist model that involves members handing over almost all powers to the Governing Committee, and the Governing Committee then delegating a large proportion of those powers to the CEO;
- (b) called for effective accountability of the Governing Committee to the membership, not the merely nominal accountability measures found in commonly-available CLG templates; and
- (c) supported the existing arrangements whereby the CEO is responsible for operational management, but the Governing Committee takes responsibility for strategy and policy and delegates only relevant tasks to the CEO, not the strategic and policy functions as a whole.

Members' concerns about loss of control over their Society are not just theoretical. In addition to the Society's own experiences during 2018-20, some other associations with constitutional documents of such kinds, including CPA Australia, AICD and AIPM, have been at risk of being taken over by people willing to exercise their power to redirect the organisation.

(3) A Weak, Advisory-Only Congress

A parallel body to the Governing Committee can be established, which can provide channels for members to provide input, and can have features that balance influence between larger and smaller Branches.

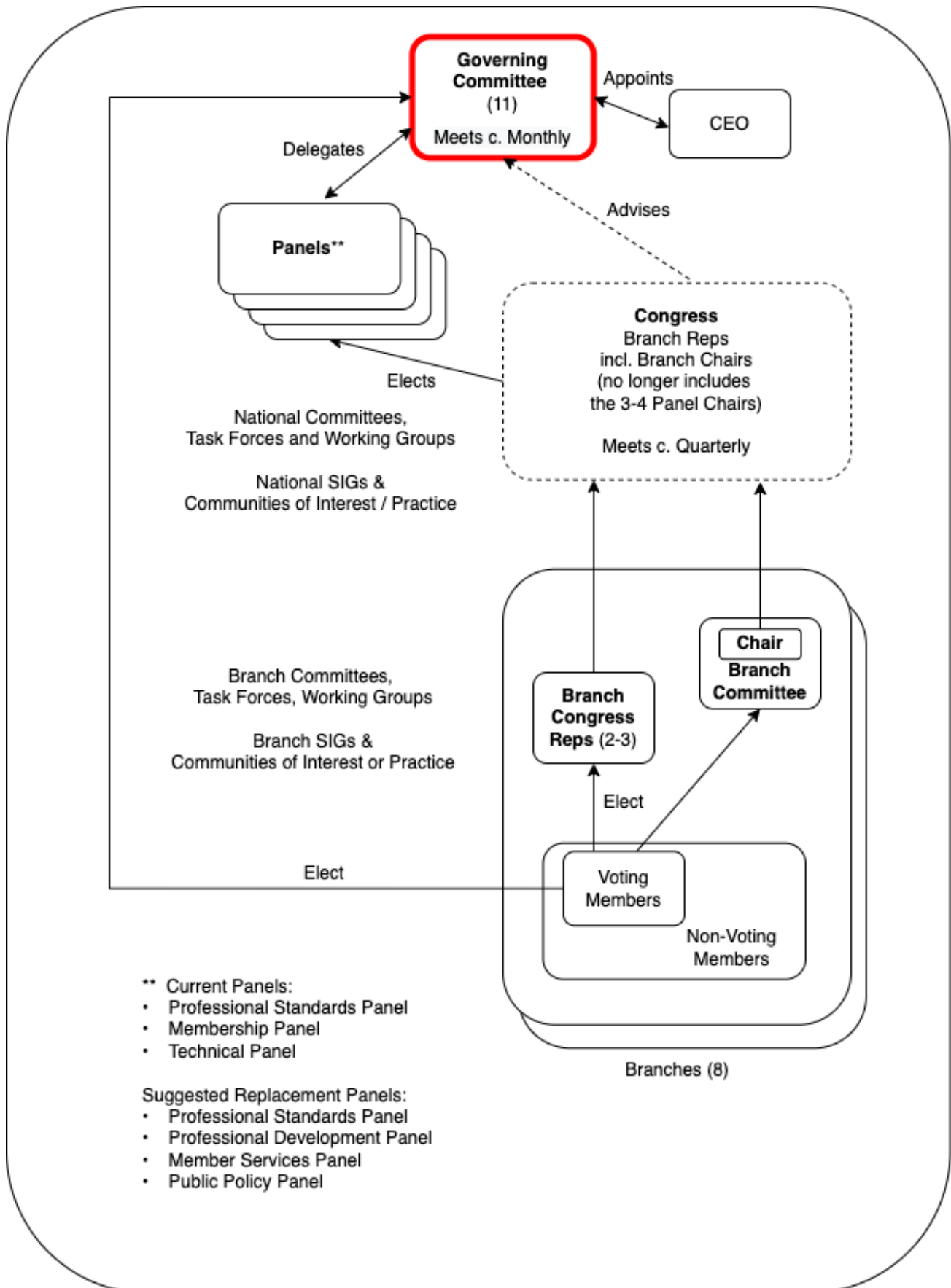
However, the for-profit corporate model, applied to not-for-profits in the form of a CLG, does not enable such a body to have any directive power over the Governing Committee.

Under the current Rules, ACS Congress has both an advisory role and a capacity to give directives to the Governing Committee (currently called Management Committee). Congress used that power in 2020 in order to overcome an impasse on the Management Committee.

Members are therefore unlikely to be willing to permit an unfettered Governing Committee.

In short, it does not appear that the currently conventional governance model for medium-sized and large not-for-profits is a fit to the needs of the ACS.

Figure 1: A Directly-Elected Governing Committee



Alternative 2: A Large, Representative Governing Committee plus an Executive Committee

A further possibility is to designate the large representative body as the Governing Committee.

To ensure a suitably balanced form of representation, the Governing Committee could be structured in a similar manner to the current Congress. For example, in each Branch, Branch members could elect the Branch Chair and 2-3 Branch Reps directly to the Governing Committee. Governing Committee would thereby comprise c.26 members.

The Governing Committee would elect its Chair. This large Governing Committee would meet approximately quarterly.

In order to achieve a sufficient degree of agility, a smaller Executive Committee could be established (of 5-9 members), which would meet approximately monthly.

The Governing Committee would give general and specific delegations to the Executive Committee. The Governing Committee would elect the members of the Executive Committee. Candidacy could be:

- limited to current members of the Governing Committee;
- open to any Professional Division member; or
- open to any member who has been a Professional Division member for at least, say, 3 years and has served at least, say, 1 year on the Governing Committee during the last 5 years.

The Governing Committee would elect the Chair of the Executive Committee.

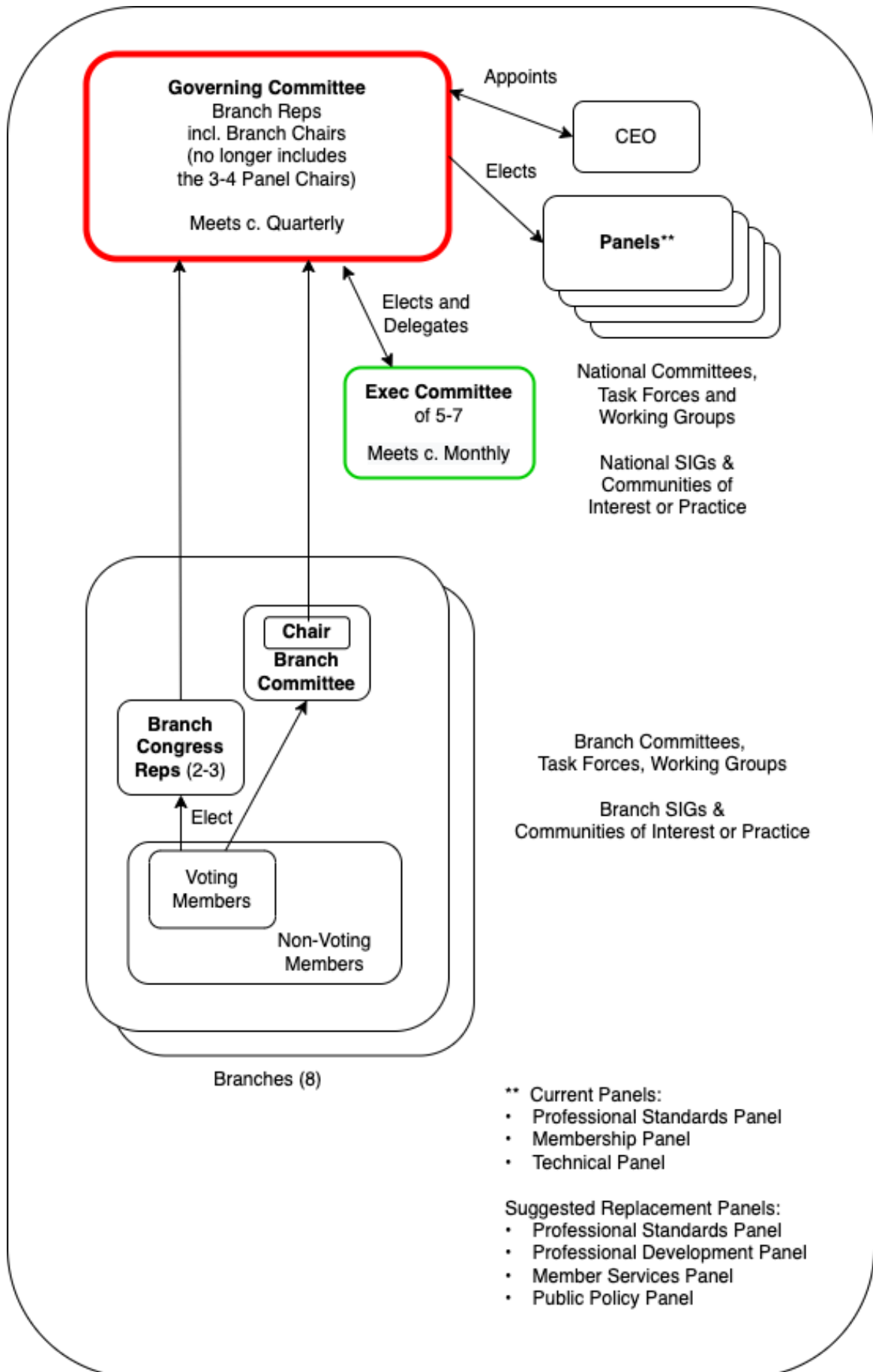
Candidates elected to the Executive Committee could:

- (a) Remain eligible for a position on the Governing Committee; or
- (b) Become ineligible for a position on the Governing Committee, instead having observer status at Governing Committee meetings.

However, this Alternative has a number of significant disadvantages:

- Large bodies are unwieldy, with logistics difficult and expensive, and the considerable scope for scheduling clashes ensuring that attendance percentages are not high;
- The air-time available for each member would be limited;
- Some doubts exist about the extent to which general delegations by the Governing Committee to an Executive Committee are legally feasible, given that the members of the Governing Committee cannot escape their responsibilities at law;
- Any member of the Executive Committee who was not also a member of Governing Committee would, if the Society is incorporated as a CLG, be subject to the 'shadow director' provisions, which have the effect of imposing the same responsibilities on them as those applying to Governing Committee members.

Figure 2: A Large Governing Committee and a Small Executive Committee



Alternative 3. A Large, Representative Congress and a Small Governing Committee

This alternative has similarities to the existing governance structure, with a Congress formed from Branch delegates, which elects the members and Chair of the Governing Committee. However, it appears feasible to configure the arrangements to achieve the objectives and manage the risks.

The composition of the Congress would be determined as follows:

- In each Branch, Branch members would elect 3-4 Representatives directly to the Congress. Each Branch with in excess of 20% of Professional Division members would have a 4th Rep. (Currently NSW and Victoria qualify. One of Queensland or Canberra might reach that level). The positions could be filled in one of the following **ALTERNATIVE** ways:
 - (a) the Branch Chair and 2-3 Branch Representatives not necessarily on Branch Committee, all elected by the Branch members; **OR**
 - (b) the Branch Chair, Vice-Chair and Secretary, as elected by the Branch members, would be *ex officio* Congress members; **OR**
 - (c) any professional-grade Branch member can nominate, and the Congress Representatives are elected from among them by the Branch Committee.(Currently, Branch members elect the Branch Committee, and the Branch Committee elects 2 Representatives. So this provides a more direct link from the membership to the Congress);
- Unlike the present Congress, it would not include Board Directors / Panel Chairs *ex officio*. Congress would therefore comprise c.26 members, all of them representing the members;
- Congress would elect the Chair of Congress. (Currently the President chairs both Congress and the Governing Committee);
- Congress would determine its own meeting-cycle, but meet approximately quarterly.

The composition of the Governing Committee would be c.11 members, with no designated roles other than Chair.

The Congress would act as the electoral college for the Governing Committee, as follows:

- Any Professional Division member could stand as a candidate for the Governing Committee. (Currently there are eligibility criteria that place considerable limits on the field);
- Once a person is elected to Governing Committee, they **ALTERNATIVES**:
 - (a) Remain eligible for a position on Congress; or
 - (b) Become ineligible for Congress.The purpose of option (b) is to make Congress membership disjunct from that of Governing Committee.
- Governing Committee members would have observer rights at Congress, and, as with the CEO, an obligation to attend and speak when requested to do so. (Currently, Management Committee members sit on both bodies, with a conflict of interest between two roles);
- The Chair of the Governing Committee would be elected by one of these **ALTERNATIVES**:
 - (a) Congress;
 - (b) Governing Committee; or
 - (c) the Voting Members.
- The Governing Committee would determine its meeting-cycle, approximately monthly.

The Governing Committee would exercise all powers of the Society, in line with the current conventions. However, the Governing Committee would be subject to custom-designed accountability mechanisms expressed in the constitutional document.

The other functions of the Congress would be as follows:

- Congress would elect the Panel Chairs. (Currently, Congress elects the Board Directors);
- Congress would:
 - monitor the performance of the Governing Committee;
 - represent the interests of members; and
 - provide advice to the Governing Committee on any matter;
- In order to be compliant with contemporary regulatory norms, Congress would not have directive powers over the Governing Committee. However, provisions in the constitutional documents would provide means for members, directly, through Branches, and through Congress, to rein in any excesses by the Governing Committee, including the power to remove any member of the Governing Committee.

Figure 3A: A Large Congress and a Small Governing Committee – Governance

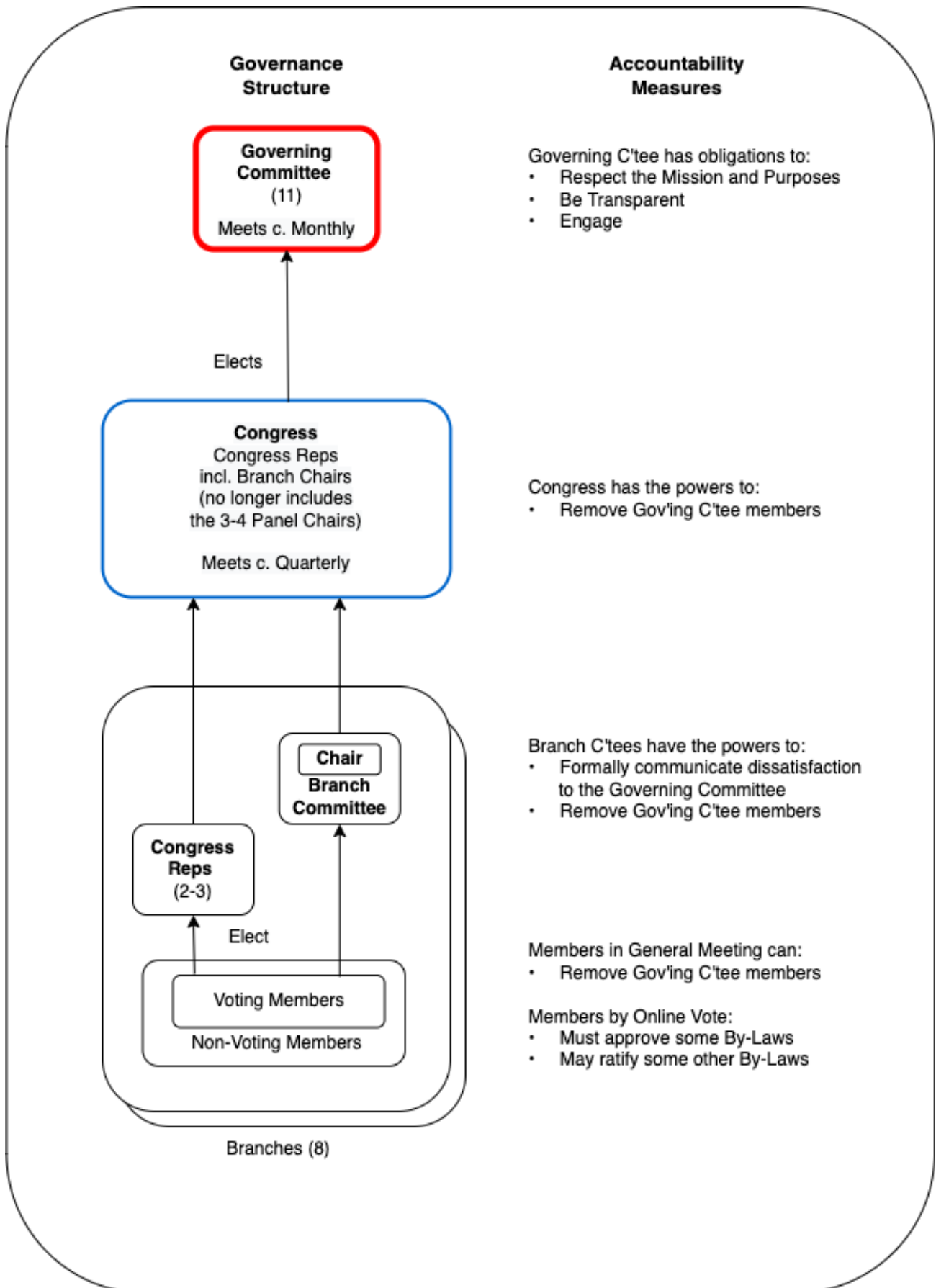


Figure 3B: A Large Congress and a Small Governing Committee – Delegations

