

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

Overview of the Proposed New Constitutional Document

Version of 12 June 2022

This document provides an overview of the proposed new constitutional document. Its primary focus is on the differences between the new proposal and the current Rules, but it also aims to deliver a complete picture by providing background on aspects that remain the same.

There are three other documents in the set:

- A 1-page Outline of Key Features
- A 9-page Discussion of Governing Committee Models
- The *Draft* Constitutional Document

The features are clustered into the following segments:

- A. The Organisation
- B. The Membership
- C. The Governing Committee
- D. The Congress
- E. The Governing Committee's Accountability to the Membership

In each case, a preliminary item provides a very brief statement, and subsequent items identify key features of the proposed new constitutional document, how those features satisfy members' expressed needs, and how they differ from the current Rules.

A very brief outline of the primary differences between this Proposal and the current Rules is as follows:

- Management Committee is replaced by a somewhat different Governing Committee
- Congress is changed in several important respects
- A set of additional measures is included, to achieve effective accountability of Governing Committee to the membership
- Boards are renamed Panels and their powers strengthened
- Branches' powers within their regional areas are strengthened

The Proposal has been designed with the intention of leaving open the question as to whether the Society will continue as an association, or reincorporate as a company limited by guarantee. As the constitutional features become clearer, that decision becomes easier to make. In addition, legal advice may affect a variety of aspects of the wording.

The terms '**Governing Committee**' and '**By-Laws**' are used, to reduce the scope for confusion between the new proposal and the existing Rules; and '**Panel**' is used to avoid confusion with the widespread usage of the term 'Board' for companies' governing committees. The **terms are provisional**. Definitions of all special terms used in these documents can be found in clause 15.1 of the draft Constitution.

Some of the detailed content in the current draft may later be moved to the By-Laws in order to streamline the constitutional document.

A. The Organisation

	<u>The New Constitutional Document</u>	<u>The Current Rules</u>
A0	<p>Clarity about the Society's Nature and Values Provisions make clear that the Society is not a vanilla-flavoured association but quite specifically the ICT professional society [cls.1-3].</p>	<p><i>The current ACS Rules fail to define the organisation's distinctive character, risking drift away from the mission, purposes and functions that its members expect it to perform.</i></p>
A1	<p>Formal Expression of the Society's Nature and Values Expressions of the Society's nature and values are variously explicit in the new constitutional document (Mission, Purposes) [cls.1.2-1.9], or read into the constitution from the By-Laws (Code of Ethics, Principles for Allocation of Surplus) [cls.1.10-1.11].</p>	<p><i>The current ACS Rules contain nothing that establishes the Society's nature and values, with the Objects in an external document, and the Code of Ethics mentioned but not applied.</i></p>
A2	<p>Powers The Society's powers are declared [cl.2].</p>	<p><i>No substantial differences.</i></p>
A3	<p>Not-for-Profit Provisions These are consolidated into a single clause [cl.3].</p>	<p><i>Updates have been variously necessary and advisable to reflect changes in the law since the Rules were last amended in 2010.</i></p>

B. The Membership

	<u>The New Constitutional Document</u>	<u>The Current Rules</u>
B0	<p>The Centrality of the Professional Members</p> <p>This is established as part of the Nature of the Society [cls.1.4-1.7]. The role and rights of members are reinforced by a series of further provisions [cls.4-5].</p>	<p><i>Under the current Rules, most of the provisions relating to members are concerned with exercising control over them [Rules 2.2, 3-7].</i></p>
B1	<p>Eligibility to Stand for the Governing Committee</p> <p>A candidate must be in a grade in the Professional Division, financial, and must neither have exceeded the maximum term nor be a current or recent employee [cl. 11.3(b)]. An OPTION is to require candidates for Chair to have understanding of ACS governance, through recent experience on Congress or Governing Committee [cl.11.4(b)(iA)].</p>	<p><i>Under the current ACS Rules, there are very tight limitations on candidates, in particular requiring recent service on Congress, resulting in perhaps 1% of Professional Division members being eligible (although Congress has the power to permit others to nominate). The limitations on candidacy for President are even tighter, and only a handful of people are eligible [Rule 8.4.3].</i></p>
B2	<p>The Right to Vote</p> <p>The right to vote is restricted to members in a grade in the Professional Division, who are citizens or permanent residents of Australia and who are not Students [cl.5.1(a), (b)]. [Under review!]</p> <p>The existing voting rights of Associates at the date the constitutional document comes into effect are preserved [cl. (c)]; but the voting rights of staff-members are suspended if they have the right to vote solely because of that provision [cl. (d)].</p>	<p><i>The current ACS Rules are silent on members' rights, but the effect of the wording in the National Regulations is that all Associates have the right to vote [National Regulations 2.13].</i></p> <p><i>(This derives from the original use of Associate for the entry level within the Professional Division, and the decision taken not to withdraw the right to vote when the eligibility criteria were removed – resulting in a constitutional anomaly).</i></p>
B3	<p>Authority to Change By-Laws</p> <p>Some By-Laws require the approval of members through online voting, some require a ratification process, and others are subject to approval by the Governing C'tee [cls. 7, 12.8, 12.9, Schedules A-C].</p>	<p><i>Under the current ACS Rules, all By-Laws (currently called National Regulations) are subject to approval solely by the Management Committee [Rules 1.1, 18].</i></p>
B4	<p>Communications Channels Among Members</p> <p>Communications among members must be facilitated [cl.5.5].</p>	<p><i>Under the current ACS Rules, no such requirement or right exists.</i></p>
B5	<p>Branches</p> <p>Branches' existence, powers and resourcing are clearly and firmly expressed [cl.8].</p>	<p><i>Under the current ACS Rules, they are expressed less clearly and less firmly, and in 2018-21 the powers of Branches to manage activities in their regions were neutered [Rules 1.1, 12].</i></p>
B6	<p>Boards / Panels</p> <p>The term 'Board' is replaced by 'Panel' (to avoid confusion with the Governing Committee). Panels' existence, powers and resourcing are directly expressed [cl.9].</p>	<p><i>Under the current ACS Rules, the powers of Boards are expressed less clearly and less firmly, and during 2018-21 the Boards were reduced to a purely advisory role [Rules 1.1, 11.1].</i></p>

C. The Governing Committee

	<u>The New Constitutional Document</u>	<u>The Current Rules</u>
C0	<p>A Governing Committee Attuned to Members' Interests The Governing Committee is elected by the Congress, whose members are directly elected by the membership. Any professional member can be a candidate [cls.11-14]. The provisions also reflect regulatory changes since the current Rules were established 2012.</p>	<p><i>The Management Committee has substantial powers, the process to elect its members is two levels removed from the membership as a whole, and few people are eligible to stand [Rules 10-11, 8].</i></p>
C1	<p>The Society's Strategy and Policies The CEO is expressly responsible to the Governing Committee for the day-to-day management of the Society [cl.13.2]. On the other hand, the Society's strategy and policies are expressly the responsibility of the Governing Committee, and delegations to the CEO and staff are required to be specific not general [cl. 13.3].</p>	<p><i>Under the current ACS Rules, the delegations relate only to "day-to-day management of the Society" [Rule 10.3.2], but the Management Committee, in the recent past at least, has implicitly delegated de facto authority to the CEO, consultants and staff.</i></p>
C2	<p>The Governing Committee The Governing Committee comprises 9-11 members, with no role-titles other than Chair (and possibly a Vice-Chair) [cl. 11.3(a)].</p>	<p><i>Under the current ACS Rules, all 11 positions on Management Committee have explicit roles: President, 3 Vice-Presidents, Treasurer, 4 National Congress Reps (NCRs), and the Immediate Past President and CEO ex officio [Rules 8.2-8.4, 10.2].</i></p>
C3	<p>Supplementary Members of Governing Committee OPTION: The Governing Committee has a tightly defined capability to make short term appointments for up to 2 external members of Governing Committee with important complementary expertise to the members of the then Governing Committee [cl. 11.3(d)].</p>	<p><i>Under the current ACS Rules, no such power exists.</i></p>
C4	<p>The CEO and the Governing Committee The CEO is present for most items at Governing Committee meetings, and has the right to speak and be heard, but is not a member of Governing Committee and has no right to move or second motions or to vote [cls.13.4-13.5].</p>	<p><i>Under the current ACS Rules, the CEO is a member of Management Committee [Rule 8.2].</i></p>
C5	<p>Terms of Members of the Governing Committee Each is elected by Congress for a 3-year term, with 3-4 vacancies arising each year [cl. 11.3(c)].</p>	<p><i>Under the current ACS Rules, 2 members are ex officio, and 9 are elected for 2-year terms, with 4-5 vacancies each year [Rules 8.4.5, 8.4.6, 10.5].</i></p>

C6	<p>The Balance of Branch Power in the Governing Committee</p> <p>Governing Committee members are elected from the membership as a whole and do not represent their Branches. Branch representation is a byproduct of the elections across a 3-year cycle [cl. 11.4(a)].</p>	<p><i>Under the current ACS Rules, NSW and Victoria are each assured a member of Management Committee [Rule 10.4.1], but otherwise Branch representation is a byproduct of elections across a 2-year cycle. (The current ratio is 6 from small Branches and 4 from NSW and Victoria, plus the CEO).</i></p>
C7	<p>Chair of the Governing Committee</p> <p>The Chair of the Governing Committee will be elected OPTION: { by Congress or the Governing Committee or the Voting Members } [cl. 11.4(b)].</p> <p>A further OPTION is to require candidates for Chair to have understanding of ACS governance, through recent experience on Congress or Governing Committee [cl.11.4(b)(iA)].</p>	<p><i>Under the current ACS Rules, the person elected as President by Congress is Chair of both Management Committee and Congress [Rules 8.9.4, 10.9.4].</i></p>
C8	<p>Joint Membership of the Congress and the Governing Committee</p> <p>A member of Governing Committee OPTION: { may be precluded from being a member of Congress at the same time OR may be permitted to be a member of both, as at present } [cl. 11.4(a)(vi)].</p>	<p><i>Under the current ACS Rules, the members of Management Committee make up 11 of the 26 Congress members. This both creates a conflict of interest between the two roles, and enables Management Committee to dominate Congress.</i></p>

D. The Congress

	<u>The New Constitutional Document</u>	<u>The Current Rules</u>
D0	<p>A Congress that Directly Represents the Membership</p> <p>An effective Congress is established, distinct from the Governing Committee, and with sufficient powers to enable it to act in the event that the Governing Committee's behaviour is not consistent with the Society's Nature and Values, or with member expectations [cl.10].</p> <p>One function of the Congress is to act as an electoral college for the Governing Committee, to ensure that the interests of the 6 smaller Branches are not dominated by the large numbers of members in the 2 largest Branches.</p>	<p><i>Under the current ACS Rules, the 11 current members of the Management Committee are among the 26 members of Congress. As a result, the effectiveness of Congress can be undermined if the Management Committee members and/or the CEO use their numbers and standing to dominate the agenda [Rule 8].</i></p>
D1	<p>Congress</p> <p>Congress comprises c.26 people, all of whom are Congress Representatives (CRs) elected by the membership of each Branch [cl. 10.3(a)]. OPTION: Add the Chair of the Governing Committee.</p>	<p><i>Under the current ACS Rules, Congress comprises c.26 people: 12 Branch CRs, 4 who are both a Branch CR on Congress and a National CR on Management Committee, 3 Board Directors, 6 office-bearers on Management Committee, the CEO [Rules 8.2-8.4].</i></p>
D2	<p>Branch Representation on Congress</p> <p>Each 'small' Branch elects 3 CRs to Congress, and each 'large' Branch elects 4 CRs. A 'large' Branch is one with >20% of the Professional Division membership – currently NSW and Vic – but with a third numerically possible [cl. 10.3(a)].</p>	<p><i>Under the current ACS Rules, each Branch elects 2 Branch CRs to Congress [Rules 8.4.1]. In addition, each 'large' Branch (with >25% of the Professional Division membership), viz. NSW and Vic, is assured that 1 of its Branch CRs will also be a National CR on Management Committee [Rule 10.4.1].</i></p>
D3	<p>Election of Congress Representatives (CRs)</p> <p>Each Branch Chair is <i>ex officio</i> a CR, and the others are separately elected by the Branch [cl.10.3(a) Option 1], or are other Branch office-bearers elected by the Branch members [Option 2].</p>	<p><i>Under the current ACS Rules, Branch members elect members of the Branch Executive Committee (BEC), and the BEC elects the Branch CRs. This results in distance between Management Committee members and the membership as a whole [Rules 8.4.1, NatReg 8.4].</i></p>
D4	<p>The Balance of Branch Power in Congress</p> <p>The 6 small Branches have 18 votes to the 2 large Branches' 8 votes. (This could change to 5 Branches with 15 with the other 3 having 12, if Queensland or Canberra ever achieves 20%). The purpose of this is to avoid dominance by the majority of professional members who are in NSW and Victoria Branches (typically 55%-65%) [cl. 10.3(a)].</p>	<p><i>Under the current ACS Rules, the ratio has generally been about 12 + c.5 from small Branches, and 4 + c.4 from large Branches; so about 17 to 8. The current ratio is small:large 16:9, plus the CEO.</i></p>
D5	<p>Chair of the Congress</p> <p>The Congress elects its own Chair [cl. 10.3(b)].</p>	<p><i>Under the current ACS Rules, the elected President is Chair of both Management Committee and Congress [Rules 8.9.4, 10.9.4].</i></p>

E. The Governing Committee's Accountability to the Membership

	<u>The New Constitutional Document</u>	<u>The Current Rules</u>
E0	<p>Effective Accountability</p> <p>Means are established whereby the membership can encourage the Governing Committee to run the organisation in ways consistent with the Society's Nature and Values, but with means available to take decisive action if the Governing Committee does otherwise [cl.12].</p> <p>It is necessary to include specific mechanisms in the constitutional document because (a) regulatory agencies have proven to be unwilling and ineffective in relation to enforcement, and (b) courts have a discretion to ignore even quite substantial breaches of organisations' constitutions, and have a long history of exercising that discretion.</p>	<p><i>Under the current ACS Rules, such powers as are available to Congress and the members have on occasions proven to be inadequate to ensure alignment of the Management Committee's behaviour with the Society's values and the members' expectations.</i></p>
E1	<p>The Society's Nature and Values Bind the Governing Committee</p> <p>The Society's Nature and Values are declared in the new constitutional document to be the basis on which the Governing Committee is to operate and against which its performance is to be assessed [cls. 12.1-12.2].</p>	<p><i>Under the current ACS Rules, this is at best implicit, through mentions of the Objects as a reference-point. This has failed to provide a sufficient basis for exercising control.</i></p>
E2	<p>Removal of a Member of the Governing Committee by Congress</p> <p>Congress has the express power to remove a Governing Committee member, by a 2/3rds vote in a properly constituted meeting of Congress [cl. 12.4(a)].</p>	<p><i>The current ACS Rules include powers to remove any of the 5 office-bearers [Rule 8.6(f)(i)] and any of the 4 National Congress Representatives [10.6.1(h)], but there is no such provision in relation to the 2 ex-officio members of Management Committee (Immediate Past President and CEO).</i></p>
E3	<p>Removal of a Member of the Governing Committee by the Members</p> <p>Members have the express power to remove a Governing Committee member, by a 2/3rds vote in a properly constituted General Meeting [cl. 12.4(b)].</p>	<p><i>The current ACS Rules create no express power. An implicit power may exist.</i></p>
E4	<p>Removal of a Member of the Governing Committee by Branch Committees</p> <p>A majority of Branch Committees acting in concert have the power to remove a Governing Committee member [cl. 12.6(c)].</p>	<p><i>The current ACS Rules create no such power.</i></p>

E5	<p>Member-Initiated General Meetings and Motions</p> <p>Members have practical means to ensure that a General Meeting is held and to ensure that a motion is put. The means include a stipulation that the Society must facilitate communications among members, hence enabling arguments to be put and signatures to be gathered [cls. 5.5, 6.12].</p>	<p><i>Under the current ACS Rules, the means available were ineffectual [Rules 13.1.5, 13.2.2-13.2.4], and were seriously hampered by the ability of the Management Committee to prevent communications among members.</i></p>
E6	<p>Member Input to Strategy and Policies</p> <p>The Governing Committee is obliged to enable member input [cl.1.6]. However, this needs to be further articulated in the By-Laws.</p>	<p><i>Under the current ACS Rules, such provisions are weak or absent. [See also National Regulation 2.13]. For some years, Boards and Committees have been reduced to advisory roles, and the Management Committee's de facto delegation to the CEO has resulted in consultation processes with Congress being highly structured and controlled, and no meaningful engagement being conducted with members.</i></p>
E7	<p>Minutes of Governing Committee and Congress Meetings</p> <p>Minutes are required to be published to the members [cl. 12.7].</p>	<p><i>The current ACS Rules are silent. The relevant law requires only that a summary of the Minutes be made available, and even then only on request, and by each individual [AI Act (ACT) s.35(1)].</i></p>
E8	<p>Transparency and Engagement</p> <p>The constitutional document includes the express requirement that the Governing Committee be transparent to the members and engage with them on major issues [cl. 12.6-12.7].</p>	<p><i>Under the current ACS Rules, transparency and engagement are at best implicit requirements, and were ignored during the period 2018-21.</i></p>