

Australian Computer Society
Constitutional Reform Working Group (CRWG)
Report Back to Members on the Round 3 Consultation
Version of 5 September 2022

Summary

This document is intended to provide ACS members with an appreciation of the input provided by participants during the third Round of consultation between late June and early August 2022.

To gain a full appreciation of the consultation process as a whole, it is recommended that this Report be read in conjunction with the Reports on the previous two Rounds, dated 5 December 2021 and 25 April 2022. Both of those Reports, and all other documents used during the consultation process, are available at <https://crwg.org>.

In this third Round, members were invited to comment on a draft constitution prepared by the CRWG to reflect the members' requirements, as communicated during the preceding 9 months.

The process was launched with an article in Information Age, and an email to members from the President, followed by advertisements of events, and reminder communications through various channels. These pointed to the web-site, which provided access to four documents. These offered participants varying levels of detail about the proposal, including the complete draft constitution. Web-forms in the HTML versions piped participants' comments directly to the Online Forum at <https://groups.io/g/CRWG-3>. Complementary submission channels were also made available.

The consultation was open for 6 weeks, and closed as scheduled. The input provided comprised 435 comments on particular elements, plus 363 votes, from about 100 participants. Over a dozen further communications were received too late to be included in the consolidation and formal analysis, but their content was considered by CRWG members. The number of contributions and of contributors was smaller than in previous Rounds. The CRWG considers this not to be problematic, because the content provided on the draft clauses was nonetheless considerable, and evidenced considerable consistency with the input previously provided on principles and features.

The content received through all channels was extracted, consolidated and analysed. The c.125 distinct elements on which input was invited attracted highly variable intensities of response, varying from zero in relation to a couple of dry, formal clauses, up to 70 items on cl.11 (The Governing Committee), 77 on cl.12 (Accountability of the Governing Committee) and 111 on cl.1 (the Organisation and its Nature and Values). All of the input that was received is published in the Annex to this Report.

The body of this Report identifies the more significant comments. The CRWG's preliminary view is that of the order of 100 changes will be made to the draft constitution, ranging from editorial improvements, via improved expressions to avoid ambiguities, adaptations to reflect alternatives and options strongly preferred by participants, and modest changes in substantive content, up to a small number of substantive improvements of some scale.

The CRWG's responsibility is to deliver to Congress a constitutional document that implements members' requirements, and that members will support when it is presented for adoption in General Meeting. Management Committee is to shortly make the decision as to whether the Society should remain an association, or change its form of incorporation to a company limited by guarantee. The CRWG will reflect that decision, together with further reviews of the draft from the viewpoints of governance and operational practicality, and further legal review and recommendations, and finalise its recommendations to Congress.

Introduction

In mid-2021, the ACS Congress formed a Working Group to conduct three rounds of consultation with the membership, and provide Congress with a replacement constitutional document that reflects the interests of members and has a high chance of being supported in a General Meeting.

The focus of the first consultation round in October 2021 was members' general requirements, establishing principles to guide the development of a new constitution.

The second Round in February-March 2022 moved the consultation into the conceptual design phase, with the focus on the key elements that make up an appropriate constitution. Elements were included primarily on the basis of the input provided by members during October-November 2021, but with an eye also to the requirements and norms of constitutional documents.

In the third Round, members were invited to comment on a draft constitution prepared by the CRWG to reflect the members' requirements, as communicated during the preceding 9 months. By the time Round 3 consultation commenced, the Management Committee was giving consideration to the advantages and disadvantages of the alternative forms of incorporation. The draft constitution was accordingly designed in such a way as to facilitate customisation to either conversion to a company limited by guarantee (CLG) or continuation as an association. This had the effect of making a couple of the clauses somewhat more complex than would otherwise have been the case.

The Process

The third Round was conducted between June and August 2022. It was launched with an article in Information Age, and an email to members from the President. These were reinforced by Branch-level emails and mentions in Branches' periodic newsletters.

As was the case in Round 2, a purpose-built web-site was used, at <https://crwg.org>. This made available introductory material in the forms of a slide-set and a pre-recorded video presentation. The web-site also provided links to four documents, each in both .pdf and HTML, comprising:

- A 1-Page Outline
- An Overview of Key Features (30 elements, 8pp.)
- The Alternative Governing Committee Models (9pp.)
- The full draft Constitutional Document

In the HTML version of each document, web-forms were available, with content piped directly to the Online Forum, automatically tagged to the appropriate topic. Channels for direct submission were also made available, and pseudonymous and anonymous comments were supported.

To stimulate interest, provide background information and enable discussion, a series of events was organised, across almost all Branches, and two Boards and the National SIG aSCSs also met. A reminder email was sent to all members (although some doubt exists about the proportion of members who received it). A separate email encouraging contributions was sent to all staff-members. In addition, some Branches ran reminders in their own newsletters.

The consultation was initiated on Thursday 23 June, and closed on Friday 5 August. In all, there were 435 individual comments on items, plus 363 votes (that is to say, uses of web-forms that communicated a choice but did not include any text in the comments field). The volume of contributions during the three Rounds was respectively c.2200, c.1100 and c.800. This gradual decline appears to reflect a combination of survey fatigue and satisfaction that the directions of discussion and development were consistent. There was strong support for those directions, and there was only a limited amount of opposition to the general framework being proposed.

A moderate number, but small proportion, of members participated: about 160 in Round 1, 170 in Round 2 and 100 in Round 3, with a total of a little over 250 unique contributors. There are nearly 5,000 Professional Division members and nearly a further 5,000 Associates with the right to vote. Statements in this Report about the level of support for particular elements of the constitution need

to be interpreted in light of both the small proportion of members who participated (c.2.5%), but also of the level of interest that is excited by detailed and lengthy discussions of constitutional questions.

In this Round, there were about 125 distinct elements on which members were invited to provide comments. A proportion of them were of course administrative in nature, had little or no capacity to affect members' interests, and understandably attracted few responses. A moderate number attracted a modest number of comments. A few generated a considerable amount of traffic.

After the consultation closed, all comments received from sources other than the web-forms were added into the Online Forum. The comments were then extracted into a single document, structured in the same manner as the four consultation documents. Votes were tabulated, and counts inserted into each element.

To facilitate analysis, the relevant text from the consultation documents was inserted. The comments were inspected, and passages highlighted that required particular consideration. This working document is published as an Annex, at <https://crwg.org/3/CRWG3-RptAnn.pdf>, to accompany the present Report, which is at <https://crwg.org/3/CRWG3-Report.pdf>.

The Comments

The main body of this document (pp.3-14) presents salient aspects of members' input. This Report does not recapitulate every point, but instead highlights feedback that affected CRWG's thinking in some way. Discussion has been omitted in the following circumstances:

- where the votes and comments were essentially confirmatory of the design;
- where comments needed to be considered by CRWG, but the point being made was already accommodated by the design;
- where members were indicating their choices among options and alternatives that were expressly identified in the consultation documents; and
- where comments gave rise to editorial-level corrections and refinements.

This section is structured as follows:

- A section for each of the first three documents in the consultation-set; followed by
- A long section for the draft constitution, with sub-headings corresponding to its clauses.

Doc 1: The 1-page Summary

Many participants took the opportunity to express general comments on the proposal as a whole, with 44 of the 63 votes cast in favour, 16 neutral, and 3 opposed. The negative comments did not directly dispute the proposition, with 2 comments questioning the capacity of members to reliably indicate preferences on the basis of the information provided, and 1 opposing (plus 1 supporting comment) expressing dissatisfaction with the presentation-style. See pp.2-5 of the Annex.

Doc 2: The 8-page Overview

This document identified 30 features of the draft constitution of particular significance, many of them materially different from the current Rules. Although 35 comments were made, they were brief and in most cases positive, and the topics were addressed in greater detail in responses to the clauses themselves. A total of 89 votes were submitted without comments, and these were 86 in favour, 2 neutral and 1 opposed. See pp.6-17 of the Annex.

Doc 3: The Alternative Governing Committee Models

Of the 5 participants, 1 said "Get rid of Congress", and argued in several comments that "The method of electing a governing body should be direct. Trust the properly informed members to choose their leadership. Don't impose any form of 'electoral college'", but impose one mandatory eligibility requirement on candidates: "willingness to undertake training in the duties and responsibilities of governance roles prior to taking office". The other 4 contributions supported the proposed Model 3, as did comments on the constitution itself. See pp.18-20 of the Annex.

Doc 4: The Draft Constitutional Document

The large majority of the votes and comments related to various aspects of the draft constitution itself, with particular emphasis on the major and in several cases lengthy clauses on the Society's Nature and Values (1), Members' Rights (5), General Meetings (6), Congress (10), Governing Committee (11) and Accountability (12). The summary below is in the same sequence as the constitutional clauses. See pp.21-160 of the Annex.

1. The Organisation and Its Nature and Values

The 11 sub-clauses were the subject of 54 comments, and 57 votes, cast 55 in support, 2 neutral. See pp.21-38 of the Annex.

Comments that required particular attention were:

- the lack of emphasis on service provision;
- the lack of a pathway grade towards professionalism (which was the function of the grade of Associate prior to changes made to the Rules in 2010);
- the need for two, tiered Grades of Fellow;
- the lack of clarity about the scope of 'ICT' (because of the near-invisibility of the CBOK, and the failure of the web-site to make clear which version is current)
- a preference for re-expression of 'the public good' to 'the well-being of society, the economy and the environment';
- the wording of the requirement for compliance with the Code of Ethics; and
- the apparent stalling of a recent process to revise the Code of Ethics.

The 11 comments from 7 participants that expressed opposition to clauses were concerned with:

- the large number of elements;
- the need for "a complete rename and rebrand of the ACS";
- the need for professional directors on the governing body;
- the apparent intention for the Society to influence only to its membership;
- the inclusion of value statements in the constitution rather than the strategic plan;
- the expressions "the public good", "the interests of the public" and "the benefit of the public";
- the inclusion of a mission statement;
- the mode of speech used in the current Objects (rebadged as Purposes);
- the lack of emphasis on the computer industry, wages growth and computer learning;
- the lack of boldness in the Objects/Purposes; and
- the proposal to define principles for allocating surplus from operations.

2. Powers of the Society

This necessary but formulaic clause attracted no comments or votes. See p.39 of the Annex.

3. Not-for-Profit Provisions

There were 4 comments. These drew attention to two formal requirements that need to be checked. See pp.40-41 of the Annex.

4. Society Membership

The 8 sub-clauses were the subject of 22 comments, and 23 votes, with all votes cast in support. See pp.42-51 of the Annex.

Some of the discussion related to regulatory requirements in the event of transition to a company limited by guarantee.

Comments that required particular attention were:

- support for membership being limited to individuals;
- strong support for approval of membership By-Laws by the members;

- strengthening of the wording requiring members to abide by the Code of Ethics;
- the need to change the unqualified word 'fees' to 'membership fees'.

The 2 substantive comments from 2 participants that expressed opposition to clauses were concerned with the authorisation of increases in fees.

5. Rights of Society Members

The 8 sub-clauses were the subject of 44 comments, and 18 votes, 17 in support and 1 neutral. See pp.52-64 of the Annex.

Comments that required particular attention were:

- a question about the implications for non-members of the ACS who are involved in sub-organisations of ACS, specifically "ADMA members, IAPA members, innovation lab members or the members of future acquisitions";
- several concerns about the denial of voting rights to professional members who are non-citizens and do not have rights of permanent residence;
- several comments supporting the denial of voting rights in those circumstances;
- an expression of concern about why a non-ICT professional would pay to join an organisation, if they are permitted to attend and speak at a General Meeting, but not vote;
- the need to extend the scope of the dispute resolution procedure to encompass disputes between society members and staff including the CEO;
- the need to ensure that provisions relating to communications to members, and communications among members, are not too detailed and prescriptive, given the rapid change in technologies, laws and societal expectations;
- the need for mis-use of the privilege of communications among members to be within the jurisdiction of the disciplinary committee;
- the need for a high standard to be required for security, reliability and confidentiality of online voting.

The 3 comments from 2 participants that expressed opposition to clauses were concerned with:

- the inclusion of the provision regarding dispute resolution under 'Rights of Society Members', coupled with the assertion that "Dispute Resolution must uphold the interests of ACS";
- an expression of concern that the provisions relating to the facilitation of communications among members could conflict with the desires of a member who "might simply want to join the ACS but not communicate with other members or reveal any details about themselves";
- more specifically, a concern that the communications arrangements not be in breach of privacy law.

6. General Meetings

The 13 sub-clauses were the subject of 44 comments, and 22 votes, 21 in support, 1 neutral. See pp.65-82 of the Annex.

Comments that required particular attention were:

- from a CFO's perspective, the longer the time allowed to finalise financial statements the better;
- a preference for publication of financial statements "as soon after the end of the Society's financial year as possible, but in any event no later than 5 months after";
- a preference for a materially shorter period of notice for Special General Meetings (SGMs);
- a proposal for SGMs to be able to be also called by "the majority of BEC chairs" or "20 members representing at least 2 branches";
- the need for the Society to provide leadership by demonstrating the feasibility of supporting full attendance at General Meetings by remote participation;

- a proposal for a change to the requirements of an AGM agenda, by replacing [the conventional wording] "the general nature of the meeting's business" with "an agenda defining exactly what will be discussed";
- suggestions relating to the election of a Meeting Chair at a General Meeting;
- two proposals to harmonise the processes of calling for constitutional change and for calling Special General Meetings.

The 11 comments from 7 participants that expressed opposition to clauses were concerned with:

- "allowing a small group of 100 members to call a general meeting on behalf of 50,000 members is obviously that it opens the possibility to abuse by a small number of activists. Shareholder / member activism is one of the increasing challenges faced by governing bodies";
- "electronic voting should be the norm for all General Meetings. There appears to be no option given in this section". [The enablement of electronic voting is in another clause];
- "allow all voting ACS members to vote on vacancies, not just members of Congress (to prevent nepotism)";
- "Congress should have the power to elect and remove a member from the chair of the governing committee. I don't believe that voting members will really add any value choosing the chair as congress have already chosen the governing committee";
- opposition to the alternative offered of members electing Governing Committee members;
- a proposal that "vacancies on the governing committee be filled by a ballot of all members rather than as part of a general meeting";
- delete the sub-clause enabling a simple majority of the Financial Voting Members present to call for adjournment of a General Meeting, "because there might only be 20 voting members present and 11 members (simple majority) deciding the fate of a society with 50,000 members opens the door to abuse by activists";
- a proposal that "amendments [to the constitutional document] be approved by a ballot of all members rather than as part of a general meeting";
- the threshold for a member-driven vote on a constitutional amendment (50 members) "is too low a threshold and is not a representative cohort of a Society with 50,000 members, which leaves open the possibility of abuse by activists";
- "the governing body should be allowed to decide whether or not to proceed to a special general meeting";
- "the decision about whether [Members' Resolutions and Statements] proceed from suggestion to inclusion on a meeting agenda should rest entirely with the governing body. Again, the priority should be to protect the ACS organisation from member activists controlling the agenda".

7. By-Laws

The single clause was the subject of 4 comments, and 3 votes, 2 in support and 1 neutral. See pp.83-84 of the Annex.

A comment that required particular attention was:

- a clear statement [is needed] about the authority for approving changes to By-Laws. None of the various clauses (6.9, 12.8, 12.9 or Schedules A-C) give express authority to the Governing Committee, not even for Schedule C items.

No comments expressed opposition to any aspect.

8. Branches

The 8 sub-clauses were the subject of 18 comments, and 4 votes, all cast in support. See pp.85-91 of the Annex.

Comments that required particular attention were:

- "the notion of "funds accumulated" is problematic, because it would force painstaking allocation of all relevant revenue and costs to Branches, to compute a formal Branch surplus/deficit figure each year";
- "National Special Interest Groups (SIGs) - e.g. the Australian Safety Critical Systems Association, should be allowed to have both ACS and non ACS members as members of the SIG";
- amend the funds control expression to "the right to retain and use funds accumulated by the Branch at their sole discretion";
- "make it explicit that the Branches have the right to access the list of members in their jurisdiction and to communicate with them";
- "I could not agree that "all SIG Members be ACS members". Part of the value of SIGs is as feeder to ACS";
- "my understanding of equity is to create an environment where all members (including members of the smaller branches) have the same opportunities. That requires larger branches having to subsidise smaller branches. I understand use of 'inequitable' to be misplaced here".

The 5 comments from 3 participants that expressed opposition to clauses were concerned with:

- "I do not support [permitting non-citizens and non-permanent residents to vote]";
- "I do not support the option to discretionarily assign overseas members to a branch";
- use of the term 'cross-subsidisation' to refer to additional budget allocations for small Branches;
- "all members of a SIG must by definition also be a member of the ACS", because otherwise they cannot be held legally accountable;
- cross-subsidy "is inherently unfair and inequitable to the members of the larger branches who will have to subsidize the smaller branches, and thereby receive a lower per capita funding".

9. Panels

The 5 sub-clauses were the subject of 7 comments, and 1 vote, cast in support. See pp.92-94 of the Annex.

Comments that required particular attention were:

- "I think it is reasonable that members approve significant changes in terms of reference for Panels, but I take the point that it would be onerous for minor wording changes / corrections and may not be maintained as a result of being too burdensome to deal with the membership";
- fulfilment of the requirements should be expressed as being the responsibility of the Governing Committee;
- "I recommend that the new Constitution recognises 2 types of committees: ... ad hoc committees established by the Governing Committee as proposed in the draft constitution and ... three standing committees that report to the Governing Committee on Finance, Governance and Membership";
- "I support the constitutional recognition of a fourth standing committee - the council of BEC Chairs. This committee would differ from the first three in that it would be chaired by a BEC Chair selected by their peers. It would also be inclusively in only having BEC Chairs as its members".

The 2 comments from 2 participants that expressed opposition to clauses were concerned with:

- "I think the Society 'may' establish panels ... but should not be 'required' to";
- "I do not support [the Option of submitting to the Voting Members for Approval proposed revisions to Panels' Terms of Reference and Procedure] because it reduces agility".

10. Congress

The 4 sub-clauses were the subject of 47 comments, and 10 votes, all cast in support. See pp.95-112 of the Annex.

Comments that required particular attention were:

- "I agree that Members of Congress be entitled to sit as observers on meetings of the Governing Committee, but ... participation should be up to the Governing Committee";
- in 10.1(a)(vi), "members" should be "Society Members";
- invited participation by Congress members in Governing Committee meetings is the practical way to achieve visibility to Congress;
- "I don't see the need to include a measure to remove the Chair but retain the person on the committee";
- "there is a separate case for Congress to have the power to revoke the role of any person voted by Congress into any position";
- "I do not support a role for Congress in appointing the Chair of any committee created by the GC";
- "I strongly recommend that the Chair of any GC standing committee be a member of the GC so there is at least one advocate for that committee's recommendations sitting on GC";
- "the Chair of any ad hoc committee raised by GC (or Congress) should be based on merit and expertise and should be tied to the tenure of the commissioning body ...";
- "I do support at least one member of Congress being elected by Congress to serve on all GC committees ...";
- "GC [should be] obligated to provide the necessary financial and staff resources for the proposed outcome to be achieved in the proposed timeline";
- re disclosure of "any material conflict of interest, actual or apparent", replace "apparent" with "perceived";
- "each member of Congress must seek the views of their constituents on upcoming Congress votes and report back to them on matters discussed at Congress";
- "why is there a constraint on members voting after they have left the Society's employment? Perhaps ", and have not been at any time in the 2 years immediately prior," should be deleted?";
- it may be better to simply say "Voting is to use the optional preferential voting method";
- "don't make Branch VC & Secretary ex-officio Congress members; they should stand for election if they have the time & interest to do another role";
- "my thinking is that if you hold a position of power in a branch (as voted by the membership base), then that gets you a seat at the table of congress";
- "the relevant branch should appoint a replacement, and I agree casual vacancies probably aren't worth doing a by-election for";
- "I do not support larger branches having more representatives than other branches, based on the rule that a branch constitutes an entire state or territory";
- "add that any [Congress Rep] must have had experience within the previous five (seven?) years on a Branch Committee or a National Board/Panel [because] to participate in Congress my view is that knowledge of the workings of the Society is essential. Without some experience of operations and governance of the ACS it would be difficult to execute the role";
- "I support Option 3 without the addition of any weighting for the larger branches, i.e. all Branches have the same number of Congress representatives (Senate model)";
- "I do not support reserving a Congress position for BEC Chairs given that they will also be represented on the Council of BEC Chairs (as a standing committee if my suggestion is taken up);

- "I recommend each Branch have 2 rather than 3 representatives. This reduction in meeting size will increase the time available for all delegates to have the opportunity to speak to agenda items";
- "I recommend that all SIGs have the opportunity to elect 2 members on Congress to represent their collective interests";
- "I recommend that members of the GC who are not Congress representatives and the CEO are given observer status at Congress meetings and as such do not vote on any resolution put to Congress";
- "all nominees will have their status as eligible financial members independently scrutinised so asking for proposers (and seconders) does not achieve any tangible governance benefit to the process. Also, from my understanding the requirement for proposers and seconders is archaic and arose when it was necessary to attest to the bonafides of a candidate in a time when centralised records were not readily accessible";
- "for consistency I recommend that the rules of tenure for the Chair of Congress be consistent with the rules for the Chair of the GC";
- "the term 'reasonable' has a subjective definition in law and literally requires a jury to determine it";
- "I recommend changing the wording for calls for meeting (iii) to do so within the timeframe and by the means given in the By-laws";
- in cl.10.4(b)(iii), "if Members of Congress are not present together in one place at the time of the conference", replace "conference" with "meeting";
- "my vote is for three members of congress [needed to call a meeting,] to moderate a noisy single member";
- "I would want to see at least four gazetted meetings of congress, with the option for extras to be called by "any three members of Congress";
- "I support that a meeting [of Congress] may be called by a delegation of Congress members representing at least 3 Branches".

The 1 comment from 1 participant that expressed opposition to a clause was concerned with:

- "MC should appoint its advisory committees (Panels)", not Congress. [The clause proposed that Congress appoint the Chair only. Under the By-laws, MC appoints the Panel-members].

11. The Governing Committee

The 6 sub-clauses were the subject of 47 comments, and 23 votes, all cast in support. See pp.113-133 of the Annex.

Comments that required particular attention were:

- "the term-length [for GC] is 3 years ... The current term for MC members is 2 years. What's the reason for changing?";
- "I think there is a need for a non member professional, possibly a lawyer or accountant to be part of the governing committee";
- "the election process is the place and time to determine if the candidate has the necessary experience (and ability) to be an effective member of the GC";
- "[the perceived need for supplementary GC members] would be best addressed by employing a contractor for a specific task";
- "I support the requirement of at least 1 year of previous service on the branch committee is a good idea to make sure the governing committee is appropriately experienced";
- "I support the proviso that the chair remains eligible to stand for a third term as I feel retention of key experience could be important";
- "is it appropriate to restrict voting rights to supplementary appointments to prevent "jobs for mates" packing out a voting block in the governing committee?";
- "I support the limit of 7 years in the previous 9 year period";

- "I support the term dates being between Feb 1 and Jan 31";
- "I oppose reserving a position on the GC for the immediate past president";
- "Chair of MC should be elected by MC members";
- "MC members should not be on Congress, as it is the role of Congress to elect and hold to account the MC members and to provide advice to MC, so dual roles weaken Congress";
- "Governing Committee to elect its Chair";
- "I support allowing the Chair to be reelected when their term expires";
- "I strongly support that the governing committee members become ineligible for congress. That's a neat way to reduce the conflict of interest";
- "I see no real benefit of allowing any of the governing committee [to retain] their seat at congress while they are on the governing committee, and vice versa";
- "I'm not sure what specific value the members would add choosing a chair if all the governing committee members are already chosen by congress anyway";
- "I'm not sure about a specific benefit in having more than one vice chair elected ... or vices for other roles";
- "I support that congress must elect a replacement [for a casual vacancy] from among the then members of the governing committee. We're really only talking about a partial term";
- "a person cannot be simultaneously a member of Congress and Governing Committee";
- "the Chair of the Governing Committee should be elected by the voting members of the society";
- "I support Congress electing the President who by virtue of their office becomes the Chair of the GC";
- "I support the direct election of VCs by Congress so their number needs to be fixed (at 2)";
- "I don't agree that GC should be "required" to host compatible professional societies. It should be qualified by something like "where it is deemed in the interests of the Society to do so";
- "replace the term 'arena' (undefined and not used elsewhere) with 'profession'";
- "I favour requiring 2 members to convene a meeting";
- "there should be one clause in the Constitution covering how meetings of all bodies are to be conducted";
- "I support meeting at least 6 times per calendar year";
- "Any two members of the governing committee should be able to call a meeting of the governing committee to moderate a noisy individual";
- "I recommend that a Vice-President (Vice-Chair) takes over as the chair of a GC meeting in the absence of the President";
- "The term 'reasonable' has a subjective definition in law and is not defined in the constitution. So without a formal definition to set the bounds on this term it is wise to replace it with a qualitative measure that will withstand independent scrutiny and not lead to dispute";
- "I recommend changing the wording for calls for meeting (a)(iii) to do so within the timeframe and by the means given in the By-laws".

The 9 comments from 3 participants that expressed opposition to clauses were concerned with:

- "I do not support the 'Panel' terminology. As such I recommend changing the wording in 11.1(b) to explicitly exclude standing committees and committees created by Congress from the dissolution powers of the GC. This point is irrelevant if the three standing committees I outlined under Section 9 are in the constitution";
- I oppose (c) (With the exception of Committees formed expressly to report to Governing Committee, all such sub-organisations are to be assigned to a Panel for the purposes of budgeting, reporting and supervision), "in that I see it serves no purpose. In my understanding committees will be created by the GC, Congress or a BEC. As such there is no rationale to have a 'Panel' involved";

- "I disagree [with the optional eligibility options regarding prior service on a Branch Committee, and possibly also term limitations, and prohibition on an employee as a Committee member]";
- "consideration must be given to the constituencies of the various GC board positions. ... My preference is for a GC of 10 composed of the President, 2 x Vice-Presidents, Treasurer, 3 Congress representatives and 3 BEC Chairs appointed by their peers";
- "all members of GC must have previously served on a BEC - to gain some understanding of the inner workings of the ACS";
- "I oppose the GC appointing external 'members'. Instead, I support the GC being able to appoint external (including non ACS members) 'observers' who may mentor and advise the GC but not put, or vote on resolutions (similar to the CEO as an observer). Appointing external 'observers' rather than 'members' also offers a clearer rationale as to why these observers are paid for their expertise and time";
- "Governing Committee chair, and other positions, are determined solely by the Governing Committee";
- "if a member is elected to the GC as a Congress representative, they can only fulfil this role if they are also a member of Congress. I support giving the President membership of Congress. All other members of the GC, if they are not Congress representatives or already Congress members, should be given automatic observer status";
- "Currently restrictions on eligibility have unreasonably reduced the pool of eligible candidates so I oppose the insertion of [an eligibility requirement for the Chair of the Governing Committee of prior service on Governing Committee or Congress]".

12. Accountability of the Governing Committee

The 9 sub-clauses were the subject of 39 comments, and 38 votes, all cast in support.

See pp.134-145 of the Annex.

Comments that required particular attention were:

- "Some of the clause drafting ... seems overly focused on provisions to facilitate members wishing to catch out or impede management and Management Committee, rather than provisions to facilitate the management and leadership of the society";
- "I consider Section 12 to be the most important part of the new constitution because it has the potential to impose a discipline in management process that will improve 'corporate memory', desensitise the ACS from undue influence from vested interests and personal agendas and reduce internal governance disputes';
- "I strongly recommend that Section 12 be extended to mandate that the GC must respond meaningfully to lawful resolutions passed by Congress, and a majority of BECs within the timeframes given in the By-laws";
- "There must also be mandated consequences if the GC does not comply";
- "I have a preference for putting detail into the By-laws [but] subject to member approval and so they would be included in Schedule A";
- "[The wording of cl.12.1] is cumbersome and I recommend replacing with The Governing Committee is responsible for ensuring that its decisions ...";
- "I recommend changing the wording of cl.12.3(c) to respond to requests for information from Congress or any BEC or SIG (based on my proposed model) within the time frame outlined in the By-laws. Members can apply to their BECs for endorsement of their information requests and have it passed on to the GC under the auspices of the BEC";
- "Similar to the use of 'reasonable' in 12.3, the term 'significant' is not defined in the constitution. So without a formal definition to set the bounds on this term it is wise to replace it with qualitative measures that will withstand independent scrutiny and not lead to dispute. Measures may include the size of the financial commitment, the risk undertaken, the type of agreement sought or the type of asset to be purchased or leased";
- "I recommend changing the wording of [cl.12.5](b) to 'In the case of the type of commitments outlined in the By-laws , to do so prior to entering into these commitments'";

- "In cl.12.6, I do not support adding clause (c) (removal by a majority of Branches). This should be covered already by (a)";
- "I support Congress, not [Option (c)] Branches [to remove members of the Governing Committee]";
- "The optional clause 12.6 c however does seem to be a little challenging to restrict as it is congress, not the branches, that appoints the governing committee";
- "I support the inclusion of a sub-clause (c) however I recommend that the wording is changed to: 'Motions to that effect carried by a majority of BECs within a 3 month period'";
- "I support option 3 where we publish KPI's of major national committees, panels, CEO and senior executives, etc. I know that might be considered overreach, but I see this as establishing the transparency required to continue the trust that is being rebuilt now";
- "I support as proposed (with out the options or sub options proposed) [i.e. Minutes, not KPIs]";
- "I recommend that KPI's are published for each major national Committee and each Panel. KPI's should not be published to Society Members for senior executives. It is not appropriate for general membership to review senior executives' performance. That is the responsibility of the CEO and Governing Committee";
- "The term 'timely' has a subjective definition in law and is not defined in the constitution. So without a formal definition to set the bounds on this term it is wise to replace it with a qualitative measure that will withstand independent scrutiny and not lead to dispute. I recommend changing the wording for (a) to do so within the timeframe and by the means given in the By-laws";
- "I support ... [restricting access to staff KPIs to the CEO]";
- "I support [publishing the other KPIs] however I would change the wording to: 'publish to Society Members the annual performance reports against the Key Performance Indicators of:'";
- "I do not support the optional sub-clause (iii) (member approval re non-professional grades);
- "I agree with most of clause 12.8, but I don't agree that (d)(iii) should be included, and I am neutral on (d)(iv) (Schedule A) though I think *some* (but not all) of the documents in Schedule A (eg Code of Ethics) should be subject to a referendum of voting members";
- "I support the wording that requires member approval for some critical foundational elements of our society (i.e. any document listed in schedule A)";
- "we should also be seeking approval from the voting members when making manifest changes to non-professional membership grades too, as ultimately all non-professional membership grades (in my humble opinion) are just stepping stones on a pathway to becoming a professional member";
- "I support OPTION: sub-clause (iii) (member approval re non-professional grades)";
- "I support the wording that requires member ratification for some critical foundational elements of our society (i.e. any document listed in schedule B)";
- "The use of 'ratification' in its legal sense implies that the GC is not authorised to make the relevant changes and requires member approval to do so. However the preamble for 12.9 clearly shows that the GC has this authority and is seeking to gauge the amount of member support for their decision without being bound to comply with it.
"I recommend the following wording for the relevant parts of 12.9:
12.9 Member Support for Governing Committee Decisions
In respect of the categories of decision listed in clause 12.9(c):
(a) The Governing Committee is required to conduct a plebiscite in which all Financial Voting Members are entitled to use an Online Voting facility to vote on the proposal that the Voting Membership supports the decision;.....".

The 12 comments from 6 participants that expressed opposition to clauses were concerned with:

- "confusing terms of nature, values, mission, purposes. Replace with (single) Purpose and Values";
- "[in cl.12.2(a)], replace 'Purposes' by 'Value Generation Objectives'";

- "delete [cl.12.2](b) (support by generating surplus) - this should be covered by (a)";
- "the term 'reasonable' has a subjective definition in law and is not defined in the constitution"
- "I oppose [cl.12.4](b) as there is no definition of 'major' decisions";
- "there are too many parallel powers to remove MC members (Congress, BECs and members). This has potential for a small group of disaffected members to be very disruptive by initiating multiple actions if opposed to a legitimate MC decision. We should apply the normal checks and balances for stable governance";
- "only Congress to appoint and remove Governing Committee members. Delete (b) (Members) and (c) (Branches)";
- "Option[cl.12.6](c) ... numerically allows a lower number of members in a majority of smaller branches to remove a GC member, than by the number of members in a Congress Meeting. It is numerically and procedurally unfair, nor does it give the GC Member the opportunity to address the motion it members n a meeting of Congress";
- "Absolutely this [cl.12.7, but possibly only Options 1-3?] is micro-management gone crazy, to have a clause like this in the Constitution! If a national committee or Panel aren't transparent, Congress and/or members should use their powers in this constitution. Executives are the responsible and accountable to the CEO - if the CEO isn't holding them accountable, then we change the CEO";
- "12.7(a) I support (Minutes), but not (b) or (c) (KPIs). GC has the responsibility by virtue of an earlier clause (eg 10.1(v)) for monitoring the performance of its committees, etc, and that should appear in its Minutes, so that should be sufficient. I agree that otherwise there is too much micro-management";
- "KPI's have tried before in the ACS for branch and national staff and managers. They were an administrative nightmare, and deceptive as they were easily able to hide the real performance of the person. They turned out to be more trouble than they were worth, and were also a source of great staff dissatisfaction";
- "I have some sympathy for some of [the categories in cl.12.9 Ratification], but overall no. If Governing Committee does not act appropriately, change the Governing Committee".

13. The Chief Executive Officer

The 7 sub-clauses were the subject of 13 comments, and 1 vote, cast in support. See pp.146-148 of the Annex.

Comments that required particular attention were:

- "important that the CEO is not a congress member or member of the governing committee";
- "only option I agree with is 13.6(a) (Governing Committee and Congress required to invite the CEO to participate in all relevant items of their meetings)";
- "I support 13.6(a) with the replacement phrase "all items of their meetings other than ... " ";
- "re 13.6 b: I think it's reasonable to exclude the CEO from motions or votes from congress or governing committee";
- "re 13.6(a) (CEO participation in meetings of Governing Committee and Congress,) I'm happy with all items of the meetings other than those in which the CEO has a personal interest";
- "in 13,3 and 13.4, I support retaining the term 'instructions' to the CEO";
- "in 13.6, I support the inclusion of the option (participation, except items in which the Chief Executive Officer has a personal interest) however I recommend changing 'personal interest' to 'conflict of interest' as this latter terminology is used elsewhere and has a broader scope".

The 4 comments from 2 participants that expressed opposition to clauses were concerned with:

- "do not agree with 13.7 (The CEO may attend any meeting of any Committee of the Society, and has the right to speak and be heard, but not to move, second, or vote). It seems I am an outlier on this one. I think the CEO should be part of the governance of the Society, and if the CEO has a (significant) proposal voted down, that indicates a loss of confidence in the CEO";

- "The Chief Executive Officer does not have the right to attend Governing Committee meetings, but may be invited to do so";
- "The Chief Executive Office must be invited to attend all Governing Committee, Congress, Panel and Branch Committee meetings";
- "In 13.1, I oppose the Option to involve Congress in the appointment of the CEO".

14. Other Provisions

The 5 sub-clauses were the subject of 5 comments, and 1 vote, cast in support. See pp.149-151 of the Annex.

Comments that required particular attention were:

- "in cl.14.1(a), "financial records" are included, but "budgets" are not. They're of importance, not least because they represent authority for expenditure";
- "[in cl.14.1(a),] "The Society is to keep.... computer-based & written records that correctly record its operation";
- "14.3(b)(ii) (definition of Officer) should include all members of all duly constituted Committees and volunteers duly authorised to be engaged in Society business".

The 1 comment from 1 participant that expressed opposition to a clause was concerned with:

- "[in cl.14.5(a),] jurisdiction should remain in the ACT".

15. Definitions and Interpretation

The 2 sub-clauses were not the subject of any comments, but were of 1 vote, cast in support. See pp.152 of the Annex.

16. Transitional Provisions

The 9 sub-clauses were the subject of 10 comments, and 19 votes, 15 in support, 3 neutral, and 1 opposed. See pp.153-157 of the Annex.

Comments that required particular attention were:

- "if the decision is ever made, I do not believe these current provisions are sufficient to enable the ACS to transition to a CLG without further changes to this constitution";
- "a check is needed that, on the date the switch occurs, all elements of the current National Regulations have been carried over into the new By-Laws";
- "16.9(a)(ii) should read "is not a Student Member" or some such";
- "I strongly support the removal of voting rights from associate (non-professional) members except in conditions where these voting rights are grandfathered for legal reasons and are subject to the same restrictions as of citizenship and residency as professional members";
- "I strongly support the restrictions of voting rights from ACS staff members. If they feel strongly enough that they wish to vote on society matters, then great, become a professional member".

The 3 comments from 2 participants that expressed opposition to clauses were concerned with:

- "[cl.16.2] is] unnecessary as Governing Committee composition is covered by 16.3 Interim Governing Committee Members";
- "[I oppose cl.16.5 because] existing internal organs should be subject to review as a part of this exercise";
- "[I oppose cl.16.9 because] only professional members should have the right to vote".

The Schedules

The 3 Schedules were the subject of 3 minor comments, and 9 votes, 8 in support, 1 neutral. See pp.158-160 of the Annex.

Conclusions and Next Steps

Participants have delivered CRWG a substantial body of information. The comments and votes in Round 3 evidence very high levels of support for the majority of features of the draft constitutional document. It is also clear that a high degree of consistency exists between the comments in Round 3 and participants' input in previous Rounds of the consultation process. Because of the cumulative nature of the views across the three Rounds, the Working Group judges that (with qualifications documented above) it has appropriately interpreted members' requirements and preferences, and appropriately reflected them in the draft.

CRWG's next step is to fully assimilate the comments, and reflect them in revisions to the draft constitutional document. In a relatively small proportion of elements, there are differing and even opposing views, so it will not be possible to satisfy all participants' preferences. CRWG's aim in these circumstances will be to do what it can to balance the design, and deliver a cohesive, effective and workable constitutional document.

The revised draft will then be evaluated from the perspectives of governance and operational practicality. A further round of legal advice will then be acquired on the statutory and other regulatory requirements. These involve a cluster of agencies including ACNC, the ACT Registrar-General and/or ASIC, and the ATO. The final Recommendations of CRWG will of course need to accommodate all of these sources of information.

One major dependency remains. Management Committee needs to decide very soon whether the Society is to remain an association or convert to a company limited by guarantee. A secondary decision, also of some significance, relates to the Society's charity status, given that the law has changed materially since the last time the Rules were amended.

The members of CRWG thank ACS members for their energetic contributions across the three Rounds of the consultation process. CRWG's final steps in fulfilment of its remit is to express a set of recommendations, and present the results of its work to Congress in written and verbal form.

It is intended that, subject to Management Committee moving with the necessary speed, the CRWG will complete its work before the end of 2022. CRWG envisages that the recommendations and the final version of the constitutional document will be published shortly after submission, and that members will be asked to approve the new constitution in General Meeting in the first half of 2023.
