

**Australian Computer Society
Constitutional Reform Working Group**

The Constitution Recommended to and Endorsed by Congress

Final Version of 14 February 2023

All Capitalised terms are defined in clause 15.1.
[Segments of embedded text in square brackets and italics are explanatory comments, and do not form part of the Constitution.]
[Text in Blue in cls. 11.3 and 16.2 requires determination.]

Contents

1. The Society and Its Nature and Values	2
2. Powers of the Society	3
3. Not-for-Profit Provisions	4
4. Society Membership	5
5. Rights of Society Members	7
6. General Meetings	9
7. By-Laws	14
8. Branches	15
9. Constitutional Standing Committees	17
10. Congress	18
11. The Governing Committee	23
12. Accountability of the Governing Committee	29
13. The Chief Executive Officer	31
14. Other Provisions	32
15. Definitions and Interpretation	35
16. Transitional Provisions	38
Schedule A – By-Laws Subject to Member Approval (cl.12.8)	41
Schedule B – By-Laws Subject to Governing Committee Approval	41

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1. The Society and Its Nature and Values

[This section draws together and embeds in the constitutional document expressions of what the Society is, and is about. It therefore represents guidance to the Governing Committee. It also establishes the criteria against which Congress and Society Members can assess the performance of the Governing Committee. The accountability of the Governing Committee and its members is expressly linked to these provisions by clauses 11.2(a) and 12.1.]

- 1.1 The name of the Society is the Australian Computer Society Incorporated.
- 1.2 The Society is not for profit.
- 1.3 The Society comprises grades of professional members and other members.
- 1.4 Professional membership grades are distinguished from other membership grade(s) by means of entry and promotion eligibility criteria that:
 - (a) are clearly expressed in the By-Laws;
 - (b) emphasise a core of professional, technical knowledge;
 - (c) reflect the specialisations within the Information and Communications Technology (ICT) professional domain;
 - (d) are updated on an ongoing basis, to address ongoing change, subject to approval by the membership; and
 - (e) preclude discrimination against applicants on any grounds other than factors related to professionalism.
- 1.5 The Governing Committee has the management of the Society.
- 1.6 The Foundational Value of the Society is commitment to the public good, by means of:
 - (a) the promulgation of professionalism in the field of ICT; and
 - (b) the provision of services to Society Members in order to assist them to develop, maintain and extend their professional expertise, for the benefit of the public.
- 1.7 The Society's Mission is to advance capabilities in, and applications of, ICT technologies and practices, for the benefit of the Australian public.

[This is a revised version of the current Principal Object, which is: "To promote the development of Australian information and communications technology resources".]
- 1.8 The Society's Purposes in support of its Mission are:
 - (a) To advance professional excellence in ICT;
 - (b) To encourage and further the study, science and application of ICT;
 - (c) To promote, develop and monitor competence in the practice of ICT by persons and organisations;
 - (d) To define and promote the maintenance of standards of knowledge of ICT for members;
 - (e) To promote the formulation of effective policies on ICT and related matters;
 - (f) To extend the knowledge and understanding of ICT in the wider community;
 - (g) To maintain and promote the observance of a Code of Ethics for members of the Society;
 - (h) To do such other related activities as are incidental or ancillary to the performance of that Mission.

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[This contains the (unchanged) text of the current Secondary Objects. It provides the basis for the Society's current standing with regulatory agencies, so any changes may require negotiations with them.]

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1.9 The Society is required to:

- (a) publish a Code of Ethics (the Code) as part of the By-Laws;
- (b) require all members to comply with the Code, and encourage compliance with, monitor the incidence of non-compliance with, and where appropriate enforce compliance of, the Code;
- (c) review the Code from time to time;
- (d) publish as part of the By-Laws the process and authority for amending the Code;
- (e) submit proposed revisions of the Code to the Voting Members for approval.

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[This establishes constitutional requirements in relation to the Code of Ethics. It keeps the Code outside the Constitution, but requires that the Code be part of the By-Laws, and subject to Member Approval. See also cl.7(c) and Schedule A.]

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1.10 The following parts of the By-Laws are integral parts of this expression of the Nature and Values of the Society:

- (a) The Society's Code of Ethics;
- (b) Supporting materials for the Society's Code of Ethics;
- (c) The Principles for Determining how Surplus from the Society's Operations is to be Allocated.

[This enables several elements of the expression of the Society's Values to be adapted more quickly than they could be if embedded in the constitutional document. Item (a) is subject to Member Approval, under cl. 7(c) and Schedule A. Item (b) is an expanded version of the Code of Ethics, and is subject to approval by the Governing Committee, under cl. 7(d) and Schedule C.]

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2. Powers of the Society

[This section ensures that the Society has the powers necessary to achieve its Mission and perform its functions. It also has to ensure that it achieves its purpose within the constraints set by the law.]

2.1 The Society's Powers

The Society has all of the powers of an individual and of an incorporated association under the Associations Incorporation Act 1991 (ACT) (the AIA).

2.2 Constraint on the Use of the Society's Powers

The Society may only use its powers in ways that are consistent with its Mission and Purposes as expressed in clauses 1.7 and 1.8.

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2.3 Funds

- (a) Subject to the law, this Constitution and the By-Laws, the funds of the Society are to be derived from fees and such other sources as the Governing Committee decides.
- (b) Subject to the law, this Constitution and the By-Laws, all cheques, drafts, bills of exchange, promissory notes and other negotiable instruments and

payments are to be signed by two signatories, subject to any delegations by the Governing Committee.

3. Not-for-Profit Provisions

[This section draws together the various elements that articulate the cl.1.2 declaration that the Society is a not-for-profit organisation. This is subject to a range of regulatory requirements.]

3.1 No Payment or Transfer to Society Members

All of the income and property of the Society is to be applied solely towards the promotion of the Purposes of the Society as set out in this Constitution. No portion of either income or property of the Society may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise to the persons who at any time are or have been Society Members.

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3.2 Payments in Good Faith

Notwithstanding clause 3.1, the Society may make payments in good faith for:

- (a) Reasonable remuneration to a Society Member who has entered into a contract of service to the Society;

[Sub-clause (a) ensures that employees who are also Society Members can be paid.]

- (b) Reasonable remuneration to a Society Member who has provided goods or services to the Society under arms-length, commercial terms of contract;

[Sub-clause (b) ensures that contractors who are also Society Members can be paid.]

- (c) Reimbursement to a Society Member for costs incurred, with the approval of the Society, in the course of providing services to the Society as an employee, contractor or volunteer; and

- (d) An honorarium to a Society Member for significant contributions provided to the Society without expectation of financial reward, subject to criteria and a process specified in the By-Laws.

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3.3 Contribution on Winding-Up

The liability of a Society Member to contribute to the payment of the debts and liabilities of the Society or the costs of the winding up of the Society is limited to the amount of any unpaid fees of that Society Member.

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3.4 Distribution of Property on Winding-Up

- (a) If, upon the winding-up or dissolution of the Society, and after the satisfaction of all its debts and liabilities, there remains any property, this property is not to be paid to or distributed among the Society Members.

- (b) Instead, this property is to be given or transferred to some other institution(s) and/or fund(s) having:

(i) if the Society is a registered charity under the ACNC Act, charitable purposes similar to the Mission and Purposes of the Society;

(ii) if the Society is not a registered charity under the ACNC Act, purposes similar to the Mission and Purposes of the Society; and

(iii) a constitution that prohibits the distribution of its income and property among its members to at least the same extent as imposed on the Society under this Constitution.

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- (c) The determination of an institution or institutions to which property is to be transferred is to be by:
- (i) a resolution of the Voting Members at or before the time of dissolution; or
 - (ii) if no such Special Resolution is passed, by a court of competent jurisdiction.
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4. Society Membership

[This section establishes the framework for the Society's membership provisions, and requires details to be specified in the By-Laws (to avoid undue difficulties in ongoing adaptation, and keep the constitutional document short), with key aspects subject to Member Approval under cl. 7(c), cl.12.8, and Schedule A.]

[Note that the terms 'member' and 'Member' are highly ambiguous. They are therefore avoided where possible, and where used always qualified (e.g. 'member of Congress').]

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4.1 Applications

Any natural person may apply to become a Society Member, the application must be considered in accordance with the By-Laws and, if a membership application is approved, the applicant's name is to be entered on the Membership Register.

4.2 Qualifications to be Admitted to Membership of the Society

- (a) Each Society Member is bound to comply with the terms of this Constitution, including the Values of the Society as expressed in clause 1, and is required to defend and promote those Values.
- (b) In particular, each Society Member is required to abide by the Code of Ethics.
- (c) Each Society Member is to provide and keep up-to-date one or more contact-points to which the Society can send notices.
- (d) Each Society Member is liable to the Society for fees, taxes and charges payable according to applicable fee schedules, including the Schedule of Membership Fees.
- (e) Each Society Member is to be subject to a Disciplinary Process:
 - (i) that is initiated by a complaint made against the Society Member that their actions in the course of their professional activities justify the taking of disciplinary action;
 - (ii) that includes provisions for written statements, notifications to the parties, discussions, and determination of the matter by a decision-maker appointed by the Governing Committee;
 - (iii) that may result in a determination involving expulsion, suspension, conditions imposed as to the carrying out of the Society Member's occupation, completion of specified courses of training or instruction, caution, or reprimand, but not in an award of compensation;
 - (iv) whose results are the subject of an appeals process; and
 - (v) whose procedural details are published in the By-Laws.

4.3 Professional Membership Grades

Professional membership Grades:

- (a) Are to be defined in the By-Laws in a manner compliant with clause 1.4;

- (b) Are to be updated on an ongoing basis, to address ongoing change, in a manner defined in a suitably-named part of the By-Laws;
- (c) Are subject to approval by the membership; and
- (d) Confer a right to use a specified postnominal.

4.4 Other Membership Grades

Other membership Grade(s):

- (a) Are to be defined in the By-Laws;
- (b) Are to be updated on an ongoing basis, to address ongoing change, in a manner defined in a suitably-named part of the By-Laws; and
- (c) Do not confer a right to use a postnominal.

4.5 Membership Fees

- (a) Each Society Member must pay such membership fee as is set out in the Schedule of Membership Fees from time to time.
- (b) The Society is to establish and maintain By-Laws in relation to membership fees payable by or in respect of Society Members, including:
 - (i) Principles Underlying the Schedule of Membership Fees, including discounted and gratis memberships; and
 - (ii) the Schedule of Membership Fees.
- (c) The membership fees payable may vary by Grades, groups or categories of Society Members.
- (d) Each fee payable by or in respect of each Society Member in accordance with the Schedule of Fees must be paid in a manner and by the time specified in that Schedule.
- (e) The non-receipt of a notice of a membership fee, or the accidental omission to give notice, does not invalidate the fee, but, in determining the consequences, the Society must take into account the non-receipt of, or omission to give, notice.
- (f) The Governing Committee may revoke or postpone a membership fee, extend the time for payment of a fee, suspend a fee, or waive the payment of a fee.
- (g) The Governing Committee may at any time adjust any membership fee in a manner that does not exceed the change in the Consumer Price Index during the period since the last change to that fee.

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4.6 Register of Society Members

The Society is to maintain a Register of Society Members compliant with s.67(2) of the AIA.

4.7 Cessation of Society Membership

- (a) A person ceases to be a Society Member when that person:
 - (i) resigns by giving the Society notice in writing;
 - (ii) dies;
 - (iii) does not have Legal Capacity;
 - (iv) is removed from the Membership Register as a result of the person having had outstanding fees for longer than the maximum period permitted by the By-Laws; or
 - (v) is expelled from the Society, in accordance with the criteria and process specified in clause 4.2(e) and the relevant By-Law.

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- (b) A person who ceases to be a Society Member remains liable to pay, and must immediately pay, to the Society all amounts that at date of cessation were payable by the person to the Society as a Society Member.
- (c) The Society may waive any or all of its rights pursuant to sub-clause (b), and shall do so in respect of cessation due to causes (a)(ii) and (iii).

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4.8 Member Administration

The Society is to establish and maintain By-Laws relating to all key aspects of the administration of Society membership, including application, assessment, admission, fees, payment, deregistration, reinstatement and disciplinary structures and processes.

5. Rights of Society Members

[This section establishes the rights of members, but delegates to By-Laws aspects that may need to adapt over time.]

5.1 Voting Rights

- (a) A Society Member has the right to attend and speak at General Meetings of the Society.
- (b) The right to vote at General Meetings of the Society, in Branch Meetings and in all forms of Online Voting, is available to each Voting Member, being a Society Member who, at the time of the vote taking place, is in a Grade in the Professional Division.
- (c) The right to vote of a Society Member is suspended if, at the time of the vote, they are not a Financial Society Member.
- (d) A Financial Society Member is entitled to only one vote on any question.

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5.2 Member Services

A Society Member has the right to enjoy services provided by the Society in fulfilment of the Society's Foundational Value, Mission and Purposes.

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5.3 Dispute Resolution

Each Society Member may use the Society's dispute resolution procedure to resolve disputes:

- (a) between one or more Society Members and the Society;
- (b) among two or more Society Members, on a matter that arises in the context of the Society; or
- (c) between one or more Society Members and a staff-member of the Society.

5.4 Communications with the Society

The Society has an obligation to provide, and Society Members have a right to, the following:

- (a) In relation to governance matters, communications channels that enable communications from the Society to Society Members, and from Society Members to the Society. The Society must not permit any Society Member to opt out of receipt of such communications, and must make reasonable efforts to ensure that each address for Notices remains valid;

- (b) A choice of communications channels for governance matters including at least the physical post and at least one readily accessible Electronic Means;
- (c) Subject to clause 14.5, the sending of Notices by the Society to Society Members according to the communications channel preference recorded in each Society Member's profile at the time the Notice is despatched, or, if the person has not recorded a preference, then, at the Society's discretion, by electronic transmission to an address the Society Member has provided, or delivery by post or in person;
- (d) The sending of all documents to Society Members whose addresses for Notices are not within Australia by air-mail, air courier or Electronic Means;
- (e) In relation to matters other than governance, communications channels that ensure effective communications from the Society to Society Members, and from Society Members to the Society, but that provide members with the choice as to whether they receive publicity and marketing material from the Society, and from any other organisations.

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5.5 Inter-Member Communications

Subject to the law, this Constitution and the By-Laws, the Society has an obligation to provide, and Society Members have a right to, the following:

- (a) Enablement of access by Society Members to **public** profile information of all other Society Members, subject to control by each Society Member over what data does and does not appear in their public profile, and with privacy-sensitive defaults in place;
- (b) Enablement of discovery by Society Members of other Society Members with particular public profile attributes;
- (c) Enablement of communications by Society Members to sub-sets of other Society Members, subject to assurance that each Society Member can choose whether their contact-points are visible;
- (d) Facilitation of communication by any Society Member to any other Society Member, by passing a message to the recipient on the sender's behalf, but subject to a discretion to the Society to decline to do so where it has reasonable grounds for believing the communication to be inappropriate;
- (e) Enablement of the establishment by any one or more Society Members of *ad hoc* online fora, and invitation to enrolment in them by other Society Members;
- (f) Articulation of these obligations and rights in the By-Laws so as to ensure operation of the services in an orderly manner.

5.6 Transferability of Rights

The rights arising from Society Membership are not transferable.

5.7 Online Voting

- (a) The Society is to conduct Open Votes and Secret Ballots by Online Voting, subject to the law, this Constitution and the By-Laws, provided that the security, reliability and confidentiality of the process are of a standard no lower than those readily attainable by manual means in a single place of meeting, subject to any By-Law that specifies such standards.
- (b) Sub-clause (a) applies whether or not the vote or ballot is conducted entirely or partially by Online Voting, and whether or not the Voting Members are present in any particular place when casting their vote.
- (c) The Society is to ensure the availability of suitable infrastructure, and establish and maintain By-Laws expressing the procedures for Online Voting by Voting

Members, and by members of the Governing Committee, Congress and other organs.

['Online' is intended to encompass 'electronic', 'technology-enabled', and 'technologically-supported', and both 'remote' and 'in-room' facilities.]

5.8 Access to the Register of Society Members

Subject to the law, including ss.67A and 67B of the AIA and data protection and privacy laws, this Constitution and the By-Laws:

- (a) The Society is to facilitate inspection by Society Members of parts of the Membership Register, for purposes relevant to the operations of the Society, including confirmation or denial of a person's membership and/or voting rights, and of the numbers of Society Members; and
- (b) The data made available in respect of each Society Member is to include their name, Branch, membership grade, financial status as a member, town or suburb, and other such descriptive data as is appropriate. However, the data made available for inspection is not to include data of an unduly sensitive nature.

[Note that cl.5.5 obliges the Society to enable inter-member communications, subject of course to applicable laws. Inspection of the Register is not an appropriate vehicle for that purpose.]

6. General Meetings

[This section contains largely mainstream provisions, but with some custom aspects that carry over existing rights, or implement features requested by participants during the consultation process.]

6.1 Calling of General Meetings

- (a) The Governing Committee:
 - (i) may convene a General Meeting at any time; and
 - (ii) is to convene an Annual General Meeting every year, as soon after the end of the Society's Financial Year as practicable, but in any event no later than 5 months after the end of the Society's Financial Year, unless an extension has granted under the AIA;
- (b) The calling of a General Meeting must be performed in accordance with the law, this Constitution and the By-Laws.
- (c) The Governing Committee must convene a General Meeting if requested by:
 - (i) at least 50 Voting Members from at least 2 Branches, but with no more than 70% of those Voting members being members of a single Branch;
 - (ii) a 2/3rds majority of Congress members; or
 - (iii) a 2/3rds majority of Branch Chairs.
- (d) A request from Voting Members for a General Meeting may or may not contain a proposed resolution, and must:
 - (i) provide a statement explaining the reason for the Meeting, and containing not more than 1,000 words;
 - (ii) be signed by the Society Members making the request; and
 - (iii) be lodged with the Society.

- (e) A request from Voting Members for a General Meeting may consist of several documents in the same form, each signed by one or more of the Voting Members making the request.
- (f) The Society does not need to convene a General Meeting, and does not need to send the members' statement to Society Members, if:
 - (i) the request has been submitted less than 21 days prior to a previously-scheduled General Meeting;
 - (ii) the Governing Committee provides evidence that the statement contains factual errors or is not consistent with the Society's Nature and Values, or provides written legal advice that it is unlawful or contains defamatory material; or
 - (iii) a resolution within the statement relates to a matter that may not be properly considered at a General Meeting, is otherwise not a valid resolution that can be put to the Voting Members, or would give rise to inconsistencies within the constitutional provisions.

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If the Governing Committee exercises its powers under this sub-clause, it is required to explain the reasons for that decision, with supporting evidence, within 30 days of receipt. Nothing in this clause prevents the subsequent submission of an amended request.

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- (g) If the Governing Committee fails to convene a General Meeting within 30 days after the date on which a request by Voting Members for a General Meeting is lodged with the Society in a manner compliant with this clause, any 2 or more of the Voting Members who signed the request may convene a General Meeting to be held not later than 3 months after the date on which the request was lodged with the Society.

6.2 Form of General Meetings

General Meetings are to be convened in a manner consistent with clause 14.1.

6.3 Notice of General Meetings

- (a) Subject to cl.6.9(d), the Governing Committee is to give not less than 21 days' written notice of a General Meeting to the Society Members, the Members of the Governing Committee and the Auditor.

[The effect of this clause is that the minimum period of notice is 21 days, except when an amendment to the Constitution is on the Agenda, in which case the minimum period of notice is 3 months.]

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- (b) The notice is to specify the following information:
 - (i) the day and the hour of Meeting, any physical place or places in which the Meeting is to be held, and, if the Meeting is to be supported by technology that enables remote participation, the relevant details of the facilities that are to be used;
 - (ii) the general nature of the Meeting's business;
 - (iii) the details of any Special Resolutions to be proposed at the Meeting; and
 - (iv) details on how Voting Members can appoint a proxy.

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6.4 Voting during General Meetings

- (a) Each Special Resolution is to be decided by Secret Ballot.
- (b) Each ordinary item of business submitted to a General Meeting may be decided by an Open Vote of the Financial Voting Members or their proxies or attorneys present, unless a Secret Ballot has been called for in a manner consistent with sub-clause (d) prior to the item of business being concluded.

[Note that the capitalised terms are defined in cl.15.1 Definitions.]

[An Open Vote is simple and quick, and is commonly the default means of determining a vote. A Secret Ballot requires organisation, effort, facilities and time, and is commonly adopted only where a perception exists that an Open Vote may result, or may have resulted, in undue influence on voters' choices, which may lead to a result different from the will of those present.]

- (c) If a call is made for a Secret Ballot in relation to a Procedural Motion, the Meeting Chair is empowered to ask the member calling for the Secret Ballot to state their reasons, and may call for a seconder, and may call an Open Vote to determine whether the call for a Secret Ballot should be accepted.
- (d) The Meeting Chair or any Financial Voting Member present, whether in person or by proxy or attorney, may demand a Secret Ballot before, or on the declaration of the result of, an Open Vote.
[The effect of this is that conventional motions at an AGM remain subject to a Secret Ballot if any Financial Voting Member calls for it.]
- (e) A Secret Ballot is to be taken in a manner compliant with the law, this Constitution and the By-Laws.
- (f) A demand for a Secret Ballot may be withdrawn.
- (g) If there is a dispute as to the admission or rejection of a vote, the Meeting Chair finally determines that dispute, subject to the law, this Constitution and the By-Laws.
- (h) The Meeting Chair does not have a casting vote.
- (i) The result of a Secret Ballot is the resolution of the Meeting at which the Secret Ballot was demanded.
- (j) A declaration by the Meeting Chair, consistent with the results of the relevant Open Vote or Secret Ballot, that a resolution has been passed or lost is conclusive evidence that the resolution has been passed or lost, whether or not the number or proportion of the votes in favour of or against the resolution is recorded.

6.5 Business at General Meetings

The ordinary business of an Annual General Meeting must include the consideration of:

- (a) the annual financial report;
- (b) the Governing Committee's report; and
- (c) the Auditor's report.

[Under cl. 10.1, the GC members are elected by Congress rather than by the members, so the AGM does not include any elections.]

6.6 The Meeting Chair

- (a) If the Governing Committee has elected one of their number as Chair of the Governing Committee under clause 11.4(b), that person is also entitled to be the Meeting Chair at General Meetings.
- (b) If a General Meeting is held and:
 - (i) a Chair of the Governing Committee has not been elected by the Governing Committee; or
 - (ii) the Chair of the Governing Committee is not present within 15 minutes after the starting time of the Meeting or is unable or unwilling to act;

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then the following persons may preside as chairperson of the meeting (in order of precedence):

- (iii) a Vice Chair; or
- (iv) a Financial Voting Member elected by the Financial Voting Members present in person or by proxy or attorney.

6.7 Quorum

- (a) The quorum for a General Meeting is 20 Financial Voting Members, present themselves, or by proxy or attorney.
- (b) Unless a quorum is present, no business may be transacted at any General Meeting except for the adjournment of the Meeting.
- (c) If a quorum is not present within half an hour from the time appointed, then if the Meeting was convened on the requisition of Voting Members, the Meeting may be dissolved or rescheduled.
- (d) At an adjourned Meeting convened by the Governing Committee, if a quorum is not present within fifteen minutes from the time appointed for holding the Meeting, the Financial Voting Members present constitute a quorum.

6.8 Adjournment

- (a) The Meeting Chair of a General Meeting may adjourn the Meeting to another time, and **another** place if appropriate:
 - (i) if within half an hour from the time appointed a quorum is not present;
 - (ii) with the consent of the Financial Voting Members present; or
 - (iii) if directed to do so by a simple majority of the Financial Voting Members present.
- (b) At any Meeting resumed after an adjournment of a General Meeting, only unfinished business may be transacted.
- (c) Where a General Meeting is adjourned for one month or more, new notice of the adjourned Meeting is to be given.

6.9 Amendments to the Constitution

- (a) Amendments to the Constitution may be proposed by the Governing Committee or by Congress.
- (b) Subject to clause 6.9(c), the Society may by Special Resolution amend this Constitution.
- (c) While the Society is a registered charity under the ACNC Act, the Voting Members must not pass a Special Resolution that amends this Constitution if passing it would cause the Society to no longer be a charity.
- (d) The Governing Committee must send written notice of each proposed amendment to the Constitution to each Society Member at least 3 months before the General Meeting at which the resolution is to be put.

[The current Rules require c.90 days plus at least the minimum 21 days' notice of meeting (which it appears has to follow the completion of the 3 months' notice period). That anomaly is avoided by the expressions used here and in cl.6.3(a).]

- (e) The written notice under sub-clause (c) must include:
 - (i) the wording of the Special Resolution to effect the proposed amendment;
 - (ii) a document clearly communicating the current clauses that it is proposed be changed, the changes, and the impact of the changes;

- (iii) a memorandum of no more than 1,000 words, prepared by proponents of the proposed amendment, which sets out the case in favour of the proposed amendment; and
- (iv) a memorandum of no more than 1,000 words, which sets out the case against the proposed amendment. The Governing Committee is required to make best efforts to have this prepared by opponents of the proposed amendment, failing which it must make best efforts to identify and articulate each aspect that may concern Society Members.

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6.10 Amendments to the Constitution Proposed by Voting Members

- (a) Amendments to the Constitution may be proposed by Voting Members, but only by the means specified in this clause.
- (b) The proposal is to be initiated by providing to the Society:
 - (i) the wording of the resolution to effect the proposed amendment;
 - (ii) a document clearly communicating the current clauses that it is proposed be changed, the changes, and the impact of the changes;
 - (iii) a memorandum of no more than 1,000 words, which sets out the case in favour of the proposed amendment; and
 - (iv) a list of at least 50 Financial Voting Members supporting the proposed amendment.

- (b) The Governing Committee must process amendments proposed under this clause in the manner prescribed in cl.6.9(b) et seq.

[The purpose of sub-clause (b) is to avoid duplication and inconsistency, by stipulating that the procedure for amendments proposed by the membership is only different from that for amendments proposed by Governing Committee and Congress to the extent actually necessary.]

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- (c) The obligation of the Governing Committee under sub-clause (b) is subject to the following provisos, and any relevant provisions in the By-Laws:

- (i) the Governing Committee may respond to the Voting Members who have proposed the amendments and enter into discussion with them on the intent and/or wording of the amendments, on any grounds including a risk of the proposed amendments being illegal or materially detrimental to the Society's interests, and subject to any relevant provision in the By-Laws;
- (ii) the Governing Committee must comply with its obligation to process the amendments within a reasonable time, and in any case within the time-limits specified by any relevant provision in the By-Laws; and
- (iii) the Governing Committee must treat any submission of a materially changed proposal in the same manner as it must treat an initial proposal.

[The purpose of sub-clause (c) is to address the problem of insufficiently considered proposals being placed before the Voting Members, while preventing Governing Committee from blocking initiatives.]

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6.11 Proxies

- (a) Any Financial Voting Member may appoint a Financial Voting Member as a proxy to vote on that member's behalf and may direct the proxy to vote either for or against each or any resolution.
- (b) There is no limit to the number of proxies that any Financial Voting Member may hold and exercise.

- (c) The Society is to specify in each notice of Meeting where, and by what date and time, the instrument appointing a proxy is to be received, in a manner consistent with the law, this Constitution and the By-Laws.
- (d) An instrument appointing a proxy is to be in a form, and to require the provision of information in a manner, consistent with the law, this Constitution, and the By-Laws.
- (e) If the instrument appointing a proxy specifies the way in which the proxy is to vote for a particular resolution, the proxy must vote on the resolution as specified in the instrument.
- (f) An instrument appointing a proxy is valid for any adjournment of the Meeting to which it relates, unless the contrary is stated on the proxy or the member revokes the proxy in the meantime.
- (g) A proxy may be revoked by the appointing Member at any time by notice in writing to the Society.
- (h) If the principal attends a Meeting and votes on a resolution, the proxy is revoked in respect of that vote.
- (i) An instrument appointing a proxy confers authority to demand or join in demanding a Secret Ballot and, except to the extent to which the proxy is specifically directed to vote for or against any proposal, includes power to act generally at the Meeting for the person giving the proxy.

6.12 Appointment of an Attorney

Any Society Member may, by duly executed power of attorney, appoint an attorney to act on the Society Member's behalf at all or certain specified Meetings of the Society. A copy of that power of attorney is to be made available for inspection by the Society.

7. By-Laws

[This clause establishes the requirement for By-Laws, and specifies a minimum (and substantial) set of documents. Many of these exist and are carried over by Transitional Provisions in cl. 16.7. However, all existing documents (National Regulations and others) require review and adaptation, and some may need to be created.]

- (a) Subject to sub-clauses (b), (c) and (d), the Governing Committee may from time to time by resolution make and rescind or alter By-Laws, which are binding on the Society Members, for the management and conduct of the business of the Society.
- (b) The Governing Committee is to ensure that the Society has, ~~maintains~~ and publishes By-Laws as required by any provision of this Constitution, including the Schedules;
- (c) By-Laws included in Schedule A are subject to Member Approval in accordance with cl.12.8;
- (d) By-Laws included in Schedule B are subject to approval by a two-thirds majority of the Governing Committee.

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8. Branches

[This clause establishes the basis for and powers of Branches and Branch Committees, and ensures that the relevant By-Laws are subject to Member Approval.]

The Governing Committee is required to:

- (a) Establish and maintain a set of Branches, such that:
 - (i) Each region of Australia is the responsibility of one and only one Branch; and
 - (ii) Each State or Territory is generally the responsibility of a separate Branch; but
 - (iii) Branches may agree to assign responsibility for a sub-region within their State or Territory to another Branch where this is agreed to benefit members.

[Note that current National Regulation 7 requires amendment, to reflect the transfer of Riverina+ area from NSW to Canberra Branch, which occurred some years ago. Consider also Broken Hill, Albury-Wodonga, Tweed-Coolongatta ...]

- (b) Publish as part of the By-Laws:
 - (i) Terms of Reference for Branch Committees;
 - (ii) Operational Procedures for Branch Committees, including appropriate accountability mechanisms;
 - (iii) Procedures for Elections for Branch Committee and Congress Representative roles;
 - (iv) The provisions that terms for positions on Branch Committees and for Congress Representative roles run for 2 years from 1 July to 30 June, and that about half of the Committee positions and half of the Congress Representative positions fall vacant in each year of the 2-year cycle;

[The purpose of running all Branch Committees from 1 July is to align all Branch elections to a common pattern, greatly simplifying their administration.

[The downside is that this will require 6 Branches to change from their current pattern. Switching the other 2 Branches to calendar-year terms instead would force 8 Branch elections plus the Governing Committee election to be all held in the Oct-Dec quarter. That would be draining for those few of the Society's staff with governance expertise.]

[The purpose of running the terms of Congress Members from 1 July is to ensure that all Congress members are in place at the time that elections of Governing Committee members take place.

[MC elections are currently run in the Oct-Dec quarter, and the arrangement is effective. It is therefore desirable to hold elections of Congress Reps in the Mar-Jun quarter.]

- (c) Ensure that each Branch Committee is delegated sufficient powers to perform all functions as may be required to enable it to control and manage its Branch, including the following:

[The wording of (c) is drawn from current National Regulation 8, and the sub-clauses articulate that general requirement.]

- (i) provision to each Branch Committee of responsibilities and powers in relation to Society activities within its region;
- (ii) delegation to each Branch Committee of the primary responsibility for all Society activities in its region that have a large member-services component;

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- (iii) requirement of all national organs and all national staff to make each Branch aware of, and involve the Branch in an appropriate manner in, all relevant activities that they undertake or cause to occur in its region;

[The purpose of (i)-(iii) is to ensure that Branch Committees are not caught out by ACS activities taking place within their region without their knowledge.]

- (iv) requirement of the Governing Committee to consider advice provided to it by each Branch Committee in relation to its region;

- (v) provision to each Branch Committee of resources to perform its functions, including:

- (A) the power to give lawful instructions to staff working in the Branch, while leaving human resource management aspects of staff-members' relationship with the Society with the Chief Executive Officer;

[There's a need to carefully balance two requirements:

- enshrine the provision that Branch Committees can give reasonable instructions to Branch staff; and
- ensure that responsibility for such matters as WHS is clearly not with Branch Committee (not least, to avoid additional insurance premiums).]

- (B) the ability to retain control over, and the ability to use, funds accumulated by the Branch. For the purposes of this sub-clause, "funds accumulated by the Branch" is to be interpreted so as to enable retention of project-based surplus arising from Branches' own efforts (deriving from such sources as events, sponsorship, and State, Territory and local government grants), and to enable Branches to negotiate transfer of allocated funding between financial years while avoiding painstaking revenue- and cost-allocation processes; and

- (C) subject to the law, this Constitution and the By-Laws, access to relevant information, including contact information, about members of the Branch and about members in relevant geographical regions within the Branch; and

- (vi) provision to each Branch Committee of the power to establish, manage and disestablish:

- (A) Branch Chapters to serve sub-regions of its geographical region; and

- (B) organs, such as Special Interest Groups and Communities of Interest or Practice, to serve functional specialisations within its geographical region;

- (d) Review from time to time Branch Committee Terms of Reference and Procedures;

- (e) Submit to the Voting Members for Approval proposed revisions to Branch Committee Terms of Reference and Procedures.

- (f) Establish and maintain an Overseas Group;

- (g) Allocate each Society Member to a Branch or Overseas Group, in accordance with the following criteria:

- (i) if the person is not at that time a resident of Australia, to the Overseas Group, but subject to a discretion whereby a person who applies for allocation to a particular Branch may be so allocated;

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- (ii) otherwise, in accordance with that Society Member's express wishes, if any; and
- (iii) by default, according to the address as recorded on the Membership Register;
- (h) Financially support any Branch or Chapter that is challenged by a lower population density, larger physical distances to events or higher costs per member relative to the Society average.

9. Constitutional Standing Committees

[This clause establishes and empowers Constitutional Standing Committees, with particular powers for the category of Standing Committees currently called 'Boards'.]

The Governing Committee is required to:

- (a) Establish and maintain Standing Committees (by whatever title) that have responsibilities to it in relation to each of the following:
 - (i) professional standards; and
 - (ii) risk and audit.
- (b) Establish and maintain a category of Standing Committees (by whatever title), each of which:
 - (i) has responsibilities in defined areas of the Society's activities;
 - (ii) is empowered to advise the Governing Committee in those areas;
 - (iii) is empowered to perform delegated functions in those areas on behalf of the Governing Committee; and
 - (iv) is subject to appropriate accountability mechanisms;

each of whose Chair is a member of Congress, and which together:

 - (v) have responsibilities that encompass all key functions performed by the Society, with only such overlap among responsibilities as is unavoidable, and subject to coordination mechanisms;

[This sub-clause consolidates the existing arrangements fulfilled by the Professional Standards, Membership Advisory and Technical Advisory Boards.]

- (c) Establish and maintain a Branch Chairs Forum that is subject to the following provisions:
 - (i) there is no requirement for regular Meetings;
 - (ii) any two Branch Chairs can call a Meeting of all Chairs at relatively short notice; and
 - (iii) Meetings are generally to be by remote conferencing methods, in order to minimise the time-demands on the incumbents, but with the power and access to resources to enable face-to-face Meetings when warranted.

[This sub-clause institutionalises an existing practice, providing a direct channel of communication from Branch Committees to the Governing Committee, whenever the need is felt.]

- (d) Ensure that, in relation to each Standing Committee:
 - (i) sufficient powers are delegated, and sufficient resources are provided, including support from the Society's staff-members, to enable it to perform its functions;
 - (ii) with the exception of the Branch Chairs Forum, it meets at least once per annum; and

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- (iii) in relation to its composition:
 - (A) appointments to it are skills-based;
 - (B) appointees to it satisfy a fit-and-proper-person test; and
 - (C) with the exception of the Branch Chairs Forum, a member of the Governing Committee is appointed, to facilitate communications between the Standing Committee and the Governing Committee.
- (e) Publish as part of the By-Laws:
 - (i) each Standing Committee's Terms of Reference;
 - (ii) each Standing Committee's Procedures for Appointments and Elections;
 - (iii) each Standing Committee's Operational Procedures;
- (f) Review from time to time each Standing Committee's Terms of Reference and Procedures.

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10. Congress

[This clause contains the provisions necessary to establish and empower the Congress.]

10.1 Powers

- (a) The Congress has the powers to:
 - (i) elect members of the Governing Committee;
 - (ii) remove a member of the Governing Committee in accordance with cl. 12.6;
 - (iii) elect as Chairs of the category of Standing Committees referred to in clause 9(b) suitable Financial Voting Members in Grades in the Professional Division, subject to the limitation that a candidate must not have served as a Chair of a Standing Committee of that category for more than 7 years in the previous 9-year period;
 - [This sustains the current arrangement, whereby the Board Directors are elected by the Congress.]
 - (iv) monitor the performance of the Governing Committee;
 - (v) represent the interests of Society Members to the Governing Committee;
 - (vi) provide advice to the Governing Committee on any matter, whether on request by the Governing Committee or on its own volition;
 - (vii) perform such other functions as are authorised by law, this Constitution or the By-Laws.
- (b) The Congress may establish and disestablish organs of Congress, such as standing and *ad hoc* committees, task forces and working groups. The Meetings and proceedings of such organs are subject to the law, this Constitution and the By-Laws.
 - [These organs of Congress are distinct from the organs that are created by this Constitution, and by the Governing Committee under cl.11.1(b), all of which are organs of the Governing Committee.]
- (c) The Congress may, as it thinks fit, subject to the law, this Constitution and the By-Laws, delegate:
 - (i) any of its powers other than its power to delegate, and may vary and may withdraw any delegation,
 - (ii) to individual members of the Congress, or to Voting Members, or to organs of the Congress.

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- (d) Any individual or organ in receipt of a delegation from the Congress is to comply with any direction by the Congress in the execution of the delegated powers.
- (e) Chairs of the category of Standing Committees referred to in clause 9(b) are entitled to attend and speak at Congress Meetings, but not to move, second, or vote on motions. They are also eligible to stand as candidates for Congress Representative positions.
- (f) The Chair of Congress, or the Chair's delegate, attends as an observer at Meetings of the Governing Committee, and may participate in particular items at Governing Committee Meetings.

[This is one of the mechanisms designed to ensure constructive interaction between Congress and Governing Committee. See also the provisions for the Chair of the Governing Committee in relation to Congress meetings, in cl.11.1(e).]

- (g) The Governing Committee can invite any Congress member, and any Congress member can request an invitation, to participate in any particular Governing Committee Meeting or any particular item at a Governing Committee Meeting.

[This is one of the mechanisms designed to ensure constructive interaction between Congress and Governing Committee. See also the complementary provision for members of Governing Committee in relation to Congress meetings, in cl.11.1(f).]

10.2 Duties

- (a) Each member of the Congress must represent the interests of members, including by monitoring the performance of the Governing Committee in relation to its obligations under clauses 11 and 12, and where appropriate proposing to Congress that it exercise its powers of removal under clause 10.1(a)(ii).
- (b) Each member of the Congress must disclose to the other members of Congress the nature and extent of any material conflict of interest, actual or apparent, in a relevant matter.
- (c) Subject to the provisions of this clause, each member of the Congress who has a material personal interest in a relevant matter is not to:
 - (i) be present at the Meeting while the matter is being discussed; nor
 - (ii) vote on the matter.
- (d) Notwithstanding the previous sub-clause, a member of the Congress may still be present, speak and vote on a matter, under the conditions recognised by the law, or considered by the other members of the Congress, to render the conflict of interest manageable in the circumstances.

10.3 Members of Congress

(a) Election of Members

- (i) Each Branch elects 2 Congress Representatives. *[The arrangements have an (intentionally) heavy bias in favour of small Branches. Under the old Rules, however, the two largest Branches had the assurance of 1 member on the Governing Committee. That feature has been a time-honoured and accepted balancing act, but it disappears under the new arrangements.]*
- (ii) Each Congress Representative holds office for the term specified in cl.8(b)(iv). They are not thereby ineligible for re-election.

[Congress Representatives have 2-year terms, whereas GC members have 3-year terms commencing 6 months later – an arrangement designed to ensure that election procedures for the Governing Committee are orderly and practical.]

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(i) - Each Branch Committee elects 2 Congress Representatives, unless, at the date prescribed in the By-Laws, the Branch has in excess of 20% of the Professional Division members, in which case it elects instead 3 such Representatives. -
[With a 20% threshold, the bias against large Branches is adjusted back to about the same position as it's in at present, with NSW and Vic qualifying, and hence an 18-member Congress.]
POSSIBLE CHOICES FOR CONGRESS: -
(1) - Each Branch elects 2 Congress Representatives, forming a Congress of 16 -
(2) - Each Branch elects 2 Congress Representatives, -
but Branches with >20% of the professional membership elect an extra 1, - forming a Congress of 18 (+1 for NSW and Vic) -
FURTHER POSSIBLE CHOICE FOR CONGRESS: -
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- (iii) Where the person was elected to a casual vacancy, they hold office until the expiry of the term of the person whose retirement gave rise to the casual vacancy.

[The purpose of this sub-clause is to sustain a steady election cycle, as defined in cl.8(b)(iv). This is consistent with the current Rules.]

- (iv) A candidate may be elected as a Congress Representative if, at the time at which the election commences, they:

- (A) are a current Financial Voting Member of the Society;
- (B) are currently in a Grade in the Professional Division;
- (C) have not served on Congress for more than 7 years in the previous 9-year period. In the case of initial election to a casual vacancy, the time spent in the role prior to the next election does not count towards their maximum time in the role; and

[The effect of the provision is to set a term-limit of 4 consecutive 2-year terms.]

- (D) are not at the time an employee of the Society.

- (v) Any candidate who is elected as a Congress Representative and who is not at that time a member of the Branch Committee is *ex officio* a member of the Branch Committee without voting rights while in that position.

- (vi) Each person nominating must submit a signed nomination in compliance with the By-Laws.

[There appears to have been no Rule or By-Law requiring proposers and seconders for positions on Management Committee or Congress, and the practice is that neither a proposer nor a seconder is required. Currently, nominations for Branch Executive Committee require a proposer but no seconder (NR 8.4.4). This clause requires neither a proposer or seconder.]

- (vii) If the number of nominations is equal to or fewer than the number of vacancies, the nominee(s) must be declared elected.

- (viii) If the number of nominations exceeds the vacancies, a Secret Ballot must be conducted, in a manner compliant with the law, this Constitution and the By-Laws.

- (ix) Voting is to be by means of the Optional Preferential Voting method

(b) Election of the Chair of Congress

- (i) The Congress must elect one of its members as the Chair of Congress.
- (ii) The term of the Chair of Congress is 2 years, but on completion of their term the person is not thereby ineligible for re-election.
- (iii) When a vacancy arises, the Congress must elect a replacement.
- (iv) A replacement serves the remainder of the term of the position.
- (v) A member of Congress is not eligible to be elected as Chair if they have served more than 4 years in that role during the preceding 6 years. In the case of initial election to a casual vacancy, the time spent in the role prior to the next election does not count towards their maximum time in the role.

[The effect is to permit a maximum of 3 full 2-year terms.]

(c) Cessation

A person ceases to be a member of Congress when that person:

- (i) resigns from that position by giving the Society notice in writing;
- (ii) dies;
- (iii) does not have Legal Capacity;

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- (iv) is removed from Congress in accordance with the law or this Constitution;
- (v) is removed from the Membership Register as a result of the person having had outstanding fees for longer than the maximum period permitted by the By-Laws;
- (vi) is expelled from the Society, in accordance with the criteria and process specified in clause 4.2(e) and the relevant By-Law;
- (vii) without leave of Congress, is absent from Meetings of Congress for three consecutive Congress Meetings, unless Congress makes a resolution to the contrary;
- (viii) becomes ineligible under any provision of law; or
- (ix) is removed from the position of Congress Representative by a majority vote of the relevant Branch Committee.

(d) **Casual Vacancies**

When a vacancy arises on Congress, due to the cessation of a member under any provision of cl. 10.3(c), the relevant Branch Committee must appoint a replacement, by means of a process that complies with any relevant By-Laws, who must satisfy the eligibility requirements in cl.10(3)(a)(iv), and who serves the remainder of the current term of that position.

[The By-Law provision expressly enables Governing Committee to stipulate a process, e.g. requiring notice to members, or requiring an election by the Branch Committee.]

[Election of replacements within the 2-year cycle would be likely to be seen as onerous and may be unpopular. Members would appear likely to be comfortable with Branch Committee appointing a replacement for the remainder of the term. For short-term vacancies, sub-clause (e) is also relevant.]

(e) **Alternative Members**

The relevant Branch Committee may appoint an alternative member for a period of time not exceeding the remainder of the incumbent's term:

- (i) where a Congress Representative elected by that Branch indicates their unavailability to attend a particular Meeting of Congress; or
- (ii) any of that Branch's Congress Representative positions or the Branch Chair is vacant.

An alternative member must satisfy the eligibility requirements in cl.10(3)(a)(iv), but need not be a member of the Branch Committee.

[This feature:

- *avoids Branches being disenfranchised when a Congress Representative cannot attend a meeting;*
- *enables Branches to provide prospective Congress Representatives with the experience of attending and participating in Congress meetings; and*
- *where the Branch Chair is a Congress Representative, may be used to relieve the Branch Chair, who has considerable demands on their time, of the obligation to attend every Congress Meeting.]*

10.4 Proceedings of Congress

(a) **Meetings**

- (i) Congress may meet together for the despatch of business, adjourn and otherwise regulate its Meetings as it thinks fit, subject to the law, this Constitution and the By-Laws.
- (ii) Congress is to meet at least three times per calendar year.

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- (iii) Any number of members of Congress from at least three Branches may cause a Meeting of the members of Congress to be called, but must include in the notice the purposes of the Meeting, and the names of the members of Congress who have called it.
 - (iv) The accidental omission to give notice of a Meeting to, or the non-receipt of a notice of Meeting by, a member of Congress does not invalidate proceedings at a Congress Meeting.
 - (v) The quorum for Meetings of Congress is a majority of members of Congress at the time the Meeting takes place.
 - (vi) No item of business may be dealt with at a Meeting of Congress unless a quorum is present during the time the Meeting is considering the item.
- (b) **Form of Meetings**
Meetings of Congress are to be convened in a manner consistent with clause 14.1.
- (c) **The Meeting Chair**
- (i) The Chair of Congress is entitled to be the Meeting Chair.
 - (ii) The members of Congress present at a Meeting of Congress are to choose a member of Congress present to be the Meeting Chair for that Meeting or part thereof if:
 - (A) there is no Chair of Congress;
 - (B) that Chair is not present at any time after the time set for commencement of the Meeting; or
 - (C) that Chair is present but says they do not wish to act as the Meeting Chair of the Meeting.
- (d) **Secretary or Governance Officer**
Congress is to appoint at least one Secretary, who may be a member of Congress, or a Governance Officer, who is responsible to Congress for preparing the agendas and maintaining the minutes and other records of Congress Meetings.
- (e) **Resolutions**
- (i) A resolution is passed if a majority of the votes cast by members of Congress present and entitled to vote on the resolution is in favour of the resolution.
 - (ii) Each Member of Congress present is entitled to one vote.
 - (iii) The Meeting Chair does not have a casting vote. If the votes are equal, the motion lapses.
 - (iv) Congress is to cause minutes of the proceedings and resolutions of all Meetings of members of Congress and committees formed by Congress, including Circular Resolutions, to be:
 - (A) made;
 - (B) signed by the Meeting Chair;
 - (C) made available to Society Members within a reasonable time, and in any case within the time-limits specified by any relevant provision in the By-Laws, subject to Congress-approved in-confidence information being recorded in closed Appendices; and
 - (D) stored in a suitably secure and accessible manner.
 - (v) A minute that is recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proven.

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- (vi) Notwithstanding that no Meeting has been held, Congress can pass a resolution by means of a Circular Resolution.

11. The Governing Committee

[This clause contains the provisions necessary to establish and empower the governing committee.]

11.1 Powers

- (a) The Governing Committee has the power to manage the business of the Society and may exercise all powers of the Society, except those required to be exercised by the Society in General Meeting or by Congress, subject to the law, this Constitution, and the By-Laws.
- (b) The Governing Committee is empowered, subject to the law, this Constitution and the By-Laws, to establish and disestablish organs including additional Standing Committees, national Special Interest Groups and national Communities of Interest or Practice, and task-specific and /or time-limited or *ad hoc* task forces and working groups, and to delegate its powers to them, and to vary those delegations.

[Further requirements exist, particularly in relation to the Professional Standards organ and the risk and audit organ (cl.9(a)), the category of Standing Committees currently called Boards (cl.9(b)), and the Branch Chairs Forum (cl.9(c)). In addition, the Governing Committee cannot amend the Terms of Reference of the Professional Standards organ without an Online Vote of the Members (cls.7(c), 12.8, Schedule A).]

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- (c) With the exception of Committees formed expressly to report to the Governing Committee, all such organs are to be assigned to one of the special categories of Standing Committee for the purposes of budgetting, reporting and supervision.
- (d) The Governing Committee is to provide resources to all organs created by the Governing Committee or Congress, to enable the performance of their functions.

[This provision applies in the same manner as GC's obligations to provide "resources to perform [their] functions" to Branches (cl.8(c)(v)), and to Standing Committees (cl.9(d)).]

- (e) The Chair of the Governing Committee, or the Chair's delegate, attends as an observer at Meetings of Congress, and may participate in particular items at Congress Meetings.

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[This is one of the mechanisms designed to ensure constructive interaction between Congress and Governing Committee. See also the complementary provision for the Chair of Congress in relation to GC meetings, in cl.10.1(f).]

- (f) Congress can invite any Governing Committee member, and any Governing Committee member can request an invitation, to participate in any particular Congress Meeting or any particular item at a Congress Meeting.

[This is one of the mechanisms designed to ensure constructive interaction between Congress and Governing Committee. See also the complementary provision for members of Congress in relation to GC meetings, in cl.10.1(g).]

- (g) The Governing Committee, as the Governing Committee thinks fit, subject to the law, this Constitution and the By-Laws, may:

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- (i) delegate any of its powers other than its power to delegate, and may vary and may withdraw any delegation,
- (ii) to individual members of the Governing Committee or Voting Members, or to organs.

[Members of the Governing Committee do not thereby escape any of their responsibilities.]

- (h) Any such individual or organ is to comply with any direction by the Governing Committee in the execution of the delegated powers.
- (i) The Governing Committee may, by power of attorney, appoint any person whether nominated directly or indirectly by the members of the Governing Committee to be an attorney or attorneys of the Society. Such appointment may be for any purposes, and with powers, authorities and discretions not exceeding those vested in and exercisable by the Members of the Governing Committee under this Constitution, and for periods and subject to such conditions as they determine. A power of attorney may contain such provisions for the protection and convenience of persons dealing with the attorney as the members of the Governing Committee determine.
- (j) An act done in good faith by any Meeting of the Governing Committee or of any committee formed by the Governing Committee, or by any person acting as a member of the Governing Committee, is not invalidated by reason of:
 - (i) any defect in the election, appointment or tenure of a member of the Governing Committee or person acting on any such committee; or
 - (ii) the disqualification of any of them.

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11.2 Duties

- (a) The members of the Governing Committee are jointly and severally responsible for managing and directing the activities of the Society to fulfil its Mission and Purposes, in a manner compliant with clause 1 of this Constitution.
- (b) Each member of the Governing Committee is subject to the duties of members of the Governing Committee under the law, including the AIA and the ACNC Act, and this Constitution.
- (c) Each member of the Governing Committee must disclose the nature and extent of any material conflict of interest, actual or apparent, in a relevant matter:
 - (i) to the other members of the Governing Committee; and
 - (ii) if all of the members of the Governing Committee have the same conflict of interest, to the members at the next General Meeting, or at an earlier time if it is appropriate to do so.
- (d) Subject to the provisions of this clause, each member of the Governing Committee who has a material personal interest in a relevant matter is not to:
 - (i) be present at the Meeting while the matter is being discussed, or
 - (ii) vote on the matter.
- (e) Notwithstanding the previous sub-clause, a member of the Governing Committee may still be present, speak and vote on a matter, under the conditions recognised by the law, or reasonably considered by the other members of the Governing Committee, to render the conflict of interest manageable in the circumstances.

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11.3 Members of the Governing Committee

(a) **Number**

- (i) The number of members of the Governing Committee is to be { 9, 10, 11 or 12 }.

[Size recommendations range between 7 and 11. The role represents a substantial, unremunerated 'second job', so having 11 spreads the workload further. Having 9 or 12 enables a 'neat-looking' 3 or 4 vacancies each year.]

[Some concern has been expressed that an even number may increase the occurrence of deadlock, particularly given that there is no appetite for a Chair's casting vote. On the other hand, under cl.11.6(e)(i), as under the law of meetings, a deadlocked vote is determined in the negative. In addition, an even number can arise because of an absence or an abstention.]

CHOICES FOR MANAGEMENT COMMITTEE:

- (1) 9 members (3 elected p.a.)
- (2) 11 members (4, 3, 3 elected in each year of a 3-year cycle)
- (3) 12 members (4 elected p.a.)

- (ii) If the number of members of the Governing Committee is fewer than 5, or such lesser minimum as is stipulated by law, the Congress may, and must, act to temporarily increase the number of members of the Governing Committee to at least that minimum, and to implement the provisions of this Constitution to elect sufficient members of the Governing Committee to again be compliant with the law and this Constitution, but for no other purpose.

[The purpose of this sub-clause is to ensure that the Society's governance structure remains viable even if the number of members of the Governing Committee falls below the legal or constitutional minimum. The power of the remaining members and those they appoint is constrained, however, by stipulating that only those actions can be taken that will recover the Governing Committee in a manner, and to a form, consistent with the Constitution.]

(b) **Eligibility**

A candidate may be elected to the Governing Committee if they, at the time that the election commences:

- (i) are a current Financial Voting Member of the Society;
- (ii) are currently in a Grade in the Professional Division;
- (iii) have served on a Society Committee for at least 1 year during the previous 5 years;

[This is a gentle means of addressing the risk of inexperienced and uncommitted members who don't appreciate the considerable demands of the role taking up time in election processes and even space on the Governing Committee.]

- (iv) have not served on the Governing Committee for more than 7 years in the previous 9-year period. In the case of initial election to a casual vacancy, the time spent in the role prior to the next election does not count towards their maximum time in the role, subject to the proviso that a member of the Governing Committee who is Chair at the time their third 3-year term as a member of Governing Committee expires is eligible to stand for a fourth consecutive term on the Governing Committee; and

[The purpose of this is to enable contributors to serve moderately long periods on Governing Committee, but to establish an upper bound. The formulation

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here permits a person to be elected to a third term, and to serve it out, hence serving as long as 3 x 3-year terms. (Should they have filled a casual vacancy shortly prior to their first term, their maximum term could exceed 9 years). Each person regains eligibility 2 years later. The current Rules provide for a maximum of 6 consecutive years for the 4 National Congress Representatives, but enable very long terms to be served if a person switches around among the four roles of Vice-President and Treasurer.]

[In practice, it is common for members to become Chair only after some years on Governing Committee, and hence a 9-year limit will on occasions force the retirement of a senior member who has relatively recently commenced as Chair. This proviso enables Congress, if it so wishes, to take advantage of the experience of an incumbent.]

- (v) are not at the time, and have not been at any time in the 2 years immediately prior, an employee of the Society.

(c) Term

- (i) Each elected Member of the Governing Committee holds office from 1 January until 31 December of the third year following their most recent election. They are not thereby ineligible for re-election.

[This continues the current calendar-year cycle. Congress positions are filled on 1 July each year (cl.8(b)(iv)), so that Congress is ready to perform its electoral college function for Governing Committee positions late in each calendar year.]

- (ii) Where the person was elected to a casual vacancy, they hold office until the expiry of the term of the person whose retirement gave rise to the casual vacancy.

(d) Payments

No elected member of the Governing Committee may be paid a fee for services performed as a member of the Governing Committee, but may be reimbursed for expenses properly incurred in performing their functions.

11.4 Election, Appointment and Cessation of Members of the Governing Committee

(a) Election of Members of the Governing Committee

- (i) Any member who satisfies the eligibility criteria under cl. 11.3(b) may nominate for election as a member of the Governing Committee.
- (ii) A nomination is to be submitted in compliance with the By-Laws and signed by the nominated person and their proposer and seconder, each of whom must be a Financial Voting Member at the time at which the election commences.
- (iii) If the number of nominations is equal to or fewer than the number of vacancies, the Chair of Congress must declare the nominees elected. If the number of nominations is fewer than the number of vacancies, a casual vacancy must be declared, and dealt with in accordance with clause 11.4(a) and (e)(i).
- (iv) If the number of nominations exceeds the vacancies, the Congress is to conduct a Secret Ballot, in a manner compliant with the law, this Constitution and the By-Laws.
- (v) Voting is to be by means of the Optional Preferential Voting method.
- (vi) During the period while a person is a member of the Governing Committee, they are ineligible for a position as a Congress Representative. Where this gives rise to a casual vacancy for a Congress

Representative, the relevant Branch is to elect or appoint a replacement for the duration of the incumbent's term.

[The purpose of making members of the Governing Committee ineligible to be members of Congress at the same time is to remove the conflict of interest that arises from having two different roles, and to reduce the degree of influence that GC exercises over Congress, which has demonstrably given rise to difficulties under the existing Rules.]

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(b) **Election of the Chair**

- (i) The Governing Committee must elect as the Chair of the Governing Committee one of the members of the Governing Committee.
- (ii) The term of the Chair of the Governing Committee is 3 years, subject to them remaining an elected member of the Governing Committee and to the casual vacancy provision in clause (e)(ii), but on completion of their term the person is not thereby ineligible for re-election.

[When a casual vacancy occurs, the new Chair is elected for the remainder of the previous Chair's term.]

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(c) **Election of Vice-Chairs**

The Governing Committee may elect as Vice-Chairs of the Governing Committee up to three of the members of the Governing Committee other than the Chair for 3-year terms, subject to each remaining an elected member of the Governing Committee.

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[The Constitution is designed to avoid a vacancy in the Chair, or a temporary absence of the Chair (e.g. on holidays or during short-term illness), having any effect on the operations of the Governing Committee. It does not appear that the law creates any difficulties because, during such periods, it is open to the Governing Committee to appoint an Acting Chair, not only as Meeting Chair, but also more generally.]

(d) **Cessation**

A person ceases to be a member of the Governing Committee when that person:

- (i) resigns from that position by giving the Society notice in writing;
- (ii) dies;
- (iii) does not have Legal Capacity;
- (iv) is removed from Governing Committee in accordance with the law or this Constitution;
- (v) is removed from the Membership Register as a result of the person having had outstanding fees for longer than the maximum period permitted by the By-Laws;
- (vi) is expelled from the Society, in accordance with the criteria and process specified in clause 4.2(e) and the relevant By-Law;
- (vii) without leave of the Governing Committee, is absent from Meetings of the Governing Committee for three consecutive Governing Committee Meetings, unless the Governing Committee makes a resolution to the contrary; or
- (viii) becomes ineligible under any provision of law.

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(e) **Casual Vacancies**

- (i) When a vacancy arises on the Governing Committee due to the cessation of an elected member, Congress must elect a replacement, who serves the remainder of the current term of that position.

- (ii) When a vacancy arises in the Chair of the Governing Committee the Governing Committee must elect a replacement from among the then members of the Governing Committee, who serves the remainder of the current term of that position.

11.5 Proceedings of the Governing Committee

(a) Meetings

- (i) The Governing Committee may meet together for the despatch of business, adjourn and otherwise regulate its Meetings as it thinks fit, subject to the law, this Constitution and the By-Laws.
- (ii) The Governing Committee is to meet at least six times per calendar year.
- (iii) Any two members of Governing Committee may cause a Meeting of the members of Governing Committee to be called, but must include in the notice the purposes of the Meeting, and the names of the members of the Governing Committee who have called it.
- (iv) The accidental omission to give notice of a Meeting to, or the non-receipt of a notice of Meeting by, a member of the Governing Committee does not invalidate proceedings at a Governing Committee Meeting.
- (v) The quorum for Meetings of the Governing Committee is a majority of members at the time the Meeting takes place.
[That is to say 7 of 12; 6 of 11 or 10; 5 of 9 or 8; 4 of 7 or 6; and 3 of 5.]
- (vi) No item of business may be dealt with at a Meeting of the Governing Committee unless a quorum is present during the time the Meeting is considering the item.

(b) Form of Meetings of the Governing Committee

Meetings of the Governing Committee are to be convened in a manner consistent with clause 14.1.

(c) The Meeting Chair

- (i) The Chair of the Governing Committee is entitled to be the Meeting Chair at Governing Committee Meetings, failing which, a Vice-Chair present at the Meeting is so entitled.
- (ii) The members present at a Governing Committee Meeting may choose a member present to be the Meeting Chair for that Meeting or any part thereof if:
 - (A) no Meeting Chair has been nominated under sub-clause (i);
 - (B) no person entitled under sub-clause (c)(i) to be Meeting Chair is present within 15 minutes after the starting time set for the Meeting; or
 - (C) 1 or more persons entitled under sub-clause (c)(i) to be Meeting Chair is present but says they do not wish to act as the Meeting Chair.

[The intention is that a meeting is able to be conducted, in an orderly manner, even if none of the Chair group is present, able and willing to chair the meeting or any part of it.]

(d) Secretary or Governance Officer

The Governing Committee is to appoint at least one Secretary, who may be a member of the Governing Committee, or a Governance Officer, who is responsible to the Governing Committee for:

- (i) ensuring the maintenance of the Membership Register; and

- (ii) preparing the agendas and maintaining the minutes and other records of General Meetings (including notices of Meetings), of Governing Committee Meetings including Circular Resolutions, and of committees of the Governing Committee.
- (e) **Public Officer**
The Governing Committee is to appoint a public officer, in fulfilment of section 34 of the AIA, and the Income Tax Assessment Act 1936 (Cth).
- (f) **Resolutions**
 - (i) A resolution is passed if a majority of the votes cast by members of the Governing Committee present and entitled to vote on the resolution is in favour of the resolution.
 - (ii) Each Member of the Governing Committee present is entitled to no more than one vote.
 - (iii) The Meeting Chair does not have a casting vote. If the votes are equal, the motion lapses.
 - (iv) The Governing Committee is to cause minutes of the proceedings and resolutions of all General Meetings of the Society, Meetings of members of the Governing Committee including Circular Resolutions, and committees of the Governing Committee, to be:
 - (A) made;
 - (B) signed by the Meeting Chair; and
 - (C) stored in a suitably secure and accessible manner.
 - (v) A minute that is recorded and signed is evidence of the proceeding or resolution to which it relates, unless the contrary is proven.
 - (vi) Notwithstanding that no Meeting has been held, the Governing Committee can pass a resolution by means of a Circular Resolution.

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made available to Society Members within a reasonable time, and in any case within the time-limits specified by any relevant provision in the By-Laws, subject to justifiably in-confidence information being recorded in closed Appendices; and -
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12. Accountability of the Governing Committee

[This clause contains provisions establishing the means whereby the governing committee will be effectively, not merely nominally, accountable to the membership.]

12.1 Consistency with the Nature and Values of the Society

The Governing Committee is responsible for ensuring that its decisions, and decisions made on behalf of the Society under delegation, are consistent with the Nature, Values, Mission and Purposes of the Society, as expressed in this Constitution.

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12.2 Criteria for Society Activities

The Governing Committee must ensure that all activities of the Society contribute to the achievement of the Society's Purposes.

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12.3 Transparency

The Governing Committee is required to:

- (a) be transparent to Society Members about its activities, including those relating to financial matters, strategy and risk;
- (b) provide explanations of the reasons for its major decisions; and
- (c) respond to a request for information from any Society Member that has been endorsed and forwarded to the Governing Committee by their Branch

Committee, within a reasonable time, and in any case within the time-limits specified by any relevant provision in the By-Laws.

12.4 Engagement

- (a) The Governing Committee is required:
 - (i) to engage with Society Members about its activities; and
 - (ii) in the case of major decisions, to consult with Congress prior to entering into material commitments, including giving due consideration to the results of the vote(s) under sub-clause (b).
- (b) In the case of major decisions:
 - (i) Congress members are to conduct an advisory vote on the proposal that Congress supports the decision of Governing Committee; and
 - (ii) Congress may, if it considers it appropriate, seek the views of the membership by means of an advisory vote on the proposal that members support the decision of Governing Committee.
- (c) For the purposes of all sub-clauses of clause 12, a decision is major if:
 - (i) it materially affects the personal interests of Society Members, in particular in relation to their professional recognition;
 - (ii) it involves investment or divestment that is substantial as indicated by the Society's investment policy, or otherwise substantial in terms of expense, contingent losses or risk, whether of a financial or non-financial nature; or
 - (iii) it is arguably materially inconsistent with the Society's nature or values or otherwise creates reputational risk.

[The term "engagement" is milder than "consultation", and is satisfied by (a) enabling members to comment, and (b) considering comments received, without the necessity of a formal consultation process.]

12.5 Branch Committee Communication of Dissatisfaction

In the event that any Branch Committee resolves to communicate to the Governing Committee a Motion of Concern, or a Motion of Serious Concern, the Governing Committee is required to:

- (a) receive and debate the Branch Committee resolution; and
- (b) respond to the Branch Committee within a reasonable time, and in any case within the time-limits specified by any relevant provision in the By-Laws.

12.6 Removal of Governing Committee Members

Any member of the Governing Committee may be removed on the grounds that they have performed in a manner materially inconsistent with any of their duties under the law or the Constitution, including under clauses 12.1 to 12.4. The process of removal must respect due process and procedural fairness, and is to be by means of a motion at a properly constituted Meeting of Congress supported by two-thirds of the Congress members voting on the motion.

12.7 Publication of Minutes

The Governing Committee is required to:

- (a) publish the Minutes of its Meetings to Society Members in a timely manner, and in any case within the time-limits specified by any relevant provision in the By-Laws, but subject to justifiably in-confidence information being recorded in closed Appendices; and

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[The law may or may not provide member access to the minutes, and the law can be changed at any time to not provide that right. Further, regulators, tribunals and courts have a discretion to ignore breaches of such provisions, and routinely do so. Providing the right in the Constitution enables members to themselves enforce it (absent an actual legal prohibition on member access being enacted).]

- (b) publish to Society Members annual reports by each Standing Committee and other major national organ against their Terms of Reference.

12.8 Member Approval of Governing Committee Decisions

In respect of the categories of decision listed in clause 12.8(d):

- (a) The Governing Committee, if required by 50 Voting Members to do so, is to conduct a referendum in which Congress is to vote on the proposal that the Voting Membership approves the decision;
- (b) The threshold for approval of a proposal is 50% of the votes cast;
- (c) In the event that a proposal does not achieve the required threshold, the Governing Committee is not permitted to proceed with the proposal;
- (d) The categories of decision to which this clause is applicable are:
 - (i) creation, material modification or disestablishment of any Grade of membership;
 - (ii) material modification to the qualifications for entry to and retention of any Grade of membership in the Professional Division;
 - (iii) material modification to the criteria for entry to and retention of any non-professional Grade of membership; and
 - (iv) those that make any material change to any document listed in Schedule A to this Constitution.

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13. The Chief Executive Officer

[This clause contains the provisions necessary to establish and empower the CEO.]

- 13.1 Subject to the law, the Constitution and the By-Laws, the Governing Committee may appoint a Chief Executive Officer, for such period and on such terms as Governing Committee resolves.
- 13.2 The Chief Executive Officer is responsible to the Governing Committee for the day-to-day management of the Society.
- 13.3 The Governing Committee may provide instructions to the Chief Executive Officer from time to time in relation to tasks in support of strategy and policy.
- 13.4 The Governing Committee may revoke or vary any instructions to the Chief Executive Officer.

13.5 The Chief Executive Officer is a member of the Governing Committee.

13.6 If a Chief Executive Officer is removed from the Governing Committee in accordance with clauses 10.1(a)(ii) and 12.6, the Chief Executive Officer ceases to be a member of the Governing Committee unless and until a subsequent meeting of the Governing Committee votes to reinstate the Chief Executive Officer as a member of the Governing Committee by a minimum 75% majority.

13.7 The Chief Executive Officer may not be a member of any organ of the Society other than the Governing Committee.

13.8 In relation to Meetings of Congress:

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CHOICES FOR CONGRESS: -
(1) . Do not permit the CEO to be a member of the Governing Committee .
(2) . Permit the CEO to be a non-voting member of the Governing Committee .
(3) . Permit the CEO to be a full member of the Governing Committee .

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- (a) Congress is required to invite the Chief Executive Officer to participate in all items of its Meetings other than those in which the Chief Executive Officer has a personal interest; and
- (b) When present, the Chief Executive Officer has the responsibility to participate, and has the right to speak and be heard on all items, but not to move, second, or vote.

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[The intention is that:

- the Chief Executive Officer have and exercise considerable powers in relation to the Society's ongoing operations, and to interact with on an ongoing basis and in a meaningful and constructive manner;

but also that:

- the Chief Executive Officer not have the inherent conflict of interest involved in also being a part of the Society's internal governance structures.]

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- 13.9 The Chief Executive Officer 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.

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14. Other Provisions

14.1 Form of Meetings

- (a) This clause applies to all Meetings by all organs of the Society, including General Meetings of the Society, and Meetings of the Governing Committee and Congress.
- (b) Each Meeting is to be convened:
- in a manner that enables those entitled to participate to do so, including to hear, to be heard, and to vote;
 - in a manner that enables remote participation in all aspects of the Meeting if it is feasible, practicable and economic to do so; and
 - in a manner compliant with the law, this Constitution and the By-Laws.
- [The Governing Committee can exclude any particular technology at any particular time if its use would deny, to any person entitled to participate, a reasonable opportunity to do so, in particular because the technology in question is unavailable at their location.]
- (c) Subject to sub-clause (b), a Meeting may be convened:
- in a physical place;
 - in two or more physical places connected synchronously using technology;
 - in a place or places but also using technology that enables remote participation; or
 - entirely by technology that enables remote participation.
- [The expression 'technology' is intended to encompass not only relatively sophisticated video-and-audio services but also simpler forms such as a phone-call, an SMS vote, and an app for voting.]
- (d) A person who participates in a Meeting using any of the means specified in sub-clause (c) is taken to be present in person at the Meeting, subject to any relevant By-Laws that empower the Meeting Chair to confirm that the person is using the technology to participate in the Meeting at any relevant time.

[The purposes of the qualification are to ensure quorum, and to ensure that votes are only cast where the person is actually participating in the meeting.]

- (e) A resolution passed during a Meeting, whether or not the Members of Congress are present together in one place at the time of the Meeting, is deemed to have been passed at that Meeting on the day and at the time the Meeting was held, relative to the location of the Meeting Chair.

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[The intention of this clause is to create a default of online or hybrid meetings, subject to conditions being fulfilled, but to also permit entirely physical meetings if circumstances arise in which those conditions cannot be fulfilled. Note that General Meetings may be subject to further limitations arising from relevant legislation.]

14.2 Financial and Other Records

- (a) Subject to the law, the Governing Committee is to ensure that:
- (i) The Society makes and keeps written financial records that:
 - (A) accurately and comprehensively record and explain its budgets, and its transactions and financial position; and
 - (B) enable true and fair financial statements to be prepared and to be audited;
 - (ii) The Society keeps written records that correctly record its operations;
 - (iii) The Society retains its records for at least 7 years, or for such longer period as may be required by law, this Constitution or the By-Laws;
 - (iv) Steps are taken to keep the Society's records safe and accessible; and
 - (v) The records are kept at the registered office or such place or places as the Members of the Governing Committee think fit and are to be open to the inspection of the Members of the Governing Committee during usual business hours.
- (b) A Member, other than a Member of the Governing Committee, does not have the right to inspect any document of the Society except:
- (i) as provided by the law, this Constitution or the By-Laws;
 - (ii) as determined by the Governing Committee from time to time; or
 - (iii) as authorised by the Members in General Meeting, subject to the law and this Constitution.

[The purpose of (iii) is to ensure that the Society Members remain confident that the GC is fulfilling its obligations in relation to the Society's activities, and to transparency and engagement, under cls. 12.1-12.4.]

14.3 Auditor

- (a) The Society is to observe the provisions of the law in relation to the appointment, removal and resignation of an Auditor.
- (b) The Auditor is entitled:
- (i) to attend any General Meeting of the Society;
 - (ii) to receive all notices of and other communications relating to any General Meeting which a Society Member is entitled to receive; and
 - (iii) to be heard at any General Meeting which the Auditor attends on any part of the business of the Meeting which concerns the Auditor in that capacity, irrespective of whether the Auditor retires at that Meeting or a resolution to remove the Auditor or the agent from office is passed at that Meeting.

14.4 Indemnity

- (a) The Society indemnifies each officer of the Society out of the assets of the Society, to the relevant extent, against:
 - (i) all liabilities incurred by that person as an officer of the Society; and
 - (ii) all legal costs incurred in defending or resisting (or otherwise in connection with) proceedings, whether civil or criminal or of an administrative or investigatory nature, in which the person becomes involved because of that capacity.

(b) In this clause:

- (i) 'officer' means a Member of the Governing Committee, Congress, a Branch Committee, or any duly constituted committee of the Society, and a Secretary, and includes a former officer, but does not include an auditor or agent of the Society; and
- (ii) 'to the relevant extent' means:
 - (A) to the extent that the Society is not precluded by law from doing so; and
 - (B) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person, including an insurer under an insurance policy.

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14.5 Notices

- (a) The Society may serve notice on any Society Member:
 - (i) personally;
 - (ii) by sending it through the ordinary post to the Society Member's address in the Register;
 - (iii) by leaving it at the Society Member's address in the Register in an envelope addressed to the Society Member; or
 - (iv) by sending it by Electronic Means nominated by the Society Member, which may include sending sufficient information by Electronic Means to enable the recipient to access the document electronically.

(b) A notice of Meeting sent by Electronic Means is taken to be served on the business day after it is sent.

(c) Any notice sent by post is taken to be served three days after the day it is posted. In proving such service, it is sufficient to prove that the envelope containing the notice was properly addressed and deposited as a prepaid letter at the post office or in some postal receptacle.

(d) A certificate in writing signed by the Secretary or Governance Officer or any other officer of the Society that the envelope containing the notice was properly stamped, addressed and posted, or that the electronic communication was properly addressed and sent, is conclusive evidence of the service of such notice.

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[Note that notices, and service of notices, may be subject to further limitations arising from relevant legislation.]

14.6 Enforcement

- (a) Each Society Member submits to the non-exclusive jurisdiction of the courts of New South Wales, the Federal Court of Australia and the courts competent to determine appeals from those courts with respect to any proceedings that may be brought at any time relating to this Constitution.

- (b) If at any time any provision of this Constitution is or becomes illegal, invalid or unenforceable in any respect pursuant to the law of any jurisdiction, then that does not affect or impair:
- (i) the legality, validity or enforceability in that jurisdiction of any other provision of this Constitution; or
 - (ii) the legality, validity or enforceability pursuant to the law of any other jurisdiction of that or any other provision of this Constitution.

14.7 Common Seal

The Society does not have a common seal.

15. Definitions and Interpretation

15.1 Definitions

AIA means the Associations Incorporation Act 1991 (ACT)

ACNC Act means Australian Charities and Not-for-profits Commission Act 2012 (Cth)

Annual General Meeting means a meeting of the Society held under s.69 of the AIA.

Auditor means the auditor or auditors of the Society.

Branch means an organ within the Society that manages activities within a geographical territory defined in accordance with clause 8 and the By-Laws.

Branch Chair means the member of a Branch Committee elected to perform the function of chairing that Committee in accordance with clause 8 and the By-Laws.

Branch Committee means a body of the kind specified in clause 8.

By-Law includes provisions that are binding on the Society Members, contained in any instrument of the Society that is in effect at the appropriate time, whether or not made by the Governing Committee in accordance with clause 7, and whether called By-Laws, National Regulations, or by any other term.

Chapter means an organ within a Branch that manages activities within a geographical region within that Branch's geographical territory, as determined by the relevant Branch Committee from time to time.

Chief Executive Officer means the person appointed to that position in accordance with clause 13.

Circular Resolution refers to an arrangement whereby each of the members of an organ of the Society signs a document containing a statement that they are in favour of a resolution set out in that document, which resolution is deemed to have been passed at a meeting held on the day and time of the signing by the last member. A Circular Resolution may consist of several documents in identical terms, each signed by one or more members.

Code of Ethics means the Code required under clause 1.9.

Community of Interest or Practice means an organ within the Society that manages activities and services:

- (a) within a topic-area, as determined by the Governing Committee or the Voting Members from time to time; or
- (b) within a topic-area and region, as determined by the relevant Branch Committee from time to time.

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Congress means the body specified in clause 10.

Constitution means this constitutional document.

Electronic Means, in relation to the service of notices, means the service of notices by the use of any technology that achieves appropriate levels of reliability of delivery, and of evidence of delivery.

Extraordinary Meeting means a General Meeting of Society Members other than an Annual General Meeting.

Financial, in respect of a Voting Member, means a Voting Member who has no fees outstanding at the relevant time, in particular shortly before the commencement of a General Meeting or of a Vote using Online Voting.

Financial Year, in relation to the Society, means the year ending on 30 June.

General Meeting means an Annual General Meeting or an Extraordinary Meeting of the Society.

Governing Committee means the body specified in clause 11, which performs the function of the governing body of the Society as recognised by relevant legislation.

[*Alternative terms are 'the committee of the association' and 'the board'.*]

Grade means a category of Society Membership defined in accordance with clauses 4.3 and 4.4 and the By-Laws.

Legal Capacity means, in relation to an individual, that:

- (a) the individual is at least 18 years of age;
- (b) in the Governance Committee's reasonable assessment, the individual is capable of understanding the nature and effect of their participation in the Society's affairs without the need of special assistance or explanation;
- (c) in the Governance Committee's reasonable assessment, the individual is able to receive and understand communications and express their will in relation to the Society's affairs; and
- (d) their person or estate is not liable to be dealt with under the laws relating to mental health:
 - (i) on a permanent or ongoing basis;
 - (ii) in an involuntary manner; or
 - (iii) on a court ordered basis.

Meeting includes any organised assembly of members of any organ of the Society.

Meeting Chair means the person who, at any given time, is performing the function of chairing any particular Meeting of any particular organ of the Society.

Member is not used alone in this Constitution, because, under the By-laws, it refers to a person in the Grade of Society Members called 'Member' who meets the applicable qualifications for that Grade. See instead **Society Member**.

Member Approval means agreement by the Voting Members in accordance with cl. 12.8.

Membership Register means the register of Society Members kept pursuant to the provisions of the AIA.

Motion of Concern means a resolution of a Branch Committee whose purpose is to communicate to the Governing Committee dissatisfaction of members in relation to particular matters, which motion need not have been published to the members.

Motion of Serious Concern means a resolution of a Branch Committee whose purpose is to communicate to the Governing Committee dissatisfaction of members in relation to particular matters, which motion is for publication to the members.

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Non-Voting Member means a Society Member who does not have a right to vote under either clause 5.1 or clause 16.9.

Online Voting means voting by electronic means approved in accordance with the law, this Constitution and the By-Laws, using procedures and rules expressed in the By-Laws and approved by the Voting Members in relation to, in particular, the manner in which a vote by electronic means may be cast, the time-period within which such a vote may be cast, the circumstances in which such a vote will be valid, and the effect of a Voting Member casting both a direct vote and a vote in any other manner.

Open Vote means a system of voting in which voters indicate their choices in a manner visible to those present, such as by a show of hands or equivalent indications in dispersed and technologically-supported Meetings.

Optional Preferential Voting is a scheme whereby a vote is valid if it contains the digit '1' indicating the voter's first preference, and zero or more successive digits thereafter, without any requirement that there be as many digits as there are candidates or options.

Overseas Group means a group to which all those Society Members are assigned who are not members of a Branch, in accordance with clause 8(g).

Professional Division means those Grades defined in the By-Laws to be professional grades of membership, in accordance with clauses 1.4 and 4.3(a).

Schedule of Membership Fees means that segment of the By-Laws that specifies the membership fees payable by each category of Society Member.

Secret Ballot means a system of voting in which voters designate their choices by some relatively secure means, such as marks on an unidentified ballot paper placed in a ballot box, or an online form operated using software designed to not disclose any voter's choices other than to that voter themselves.

Society means the organisation that is incorporated as the Australian Computer Society.

Society Member means a member of the Society in any Grade, and whose name has been entered into the Membership Register in accordance with clause 4.1.

Special Interest Group (SIG) means an organ of the Society formed to facilitate interactions among Society Members and others who have an interest of a professional nature. A SIG may have national or regional scope.

Special Resolution has the same meaning that it has in section 70 of the AIA.

Standing Committee means a committee of the Governing Committee, which is either established under clause 9, or is established by the Governing Committee without a trigger for its disestablishment (such as an end-date or the completion of a defined task). It does not include time- or task-bounded committees, typically called *ad hoc* committees, task forces or working groups.

Sub-Society means an organ of the Society that operates relatively independently from the Society as a whole, but is supported by the Society, complies with the Society's Constitution and its own Charter, and includes in its communications an indication of its relationship with the Society;

Voting Member means a Society Member who has a right to vote under either clause 5.1 or clause 16.9.

15.2 Interpretation

(a) Headings are for convenience only and do not affect interpretation. Unless the context indicates a contrary intention, in this Constitution:

(i) a word importing the singular includes the plural (and vice versa);

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- (ii) a word indicating a gender includes every other gender;
 - (iii) if a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning;
 - (iv) the word "includes" in any form is not a word of limitation;
 - (v) a reference to something being "written" or "in writing" includes that thing being represented or reproduced in any mode that is capable of being rendered in a visible form;
 - (vi) a notice or document required by this Constitution to be signed may be authenticated by any manner permitted by law; and
[The two preceding sub-clauses enable the constitutional document to refer throughout simply to 'writing' and 'signing', but to embody technological neutrality as regards the particular mechanism that is used.]
 - (vii) a reference to a statute includes its delegated legislation, and a reference to a statute or delegated legislation or a provision of either includes consolidations, amendments, re-enactments and replacements.
- (b) A decision by the Governing Committee on the interpretation of any provision of the Constitution is binding on all Society Members, subject to the law, this Constitution and the By-Laws.

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16. Transitional Provisions

[Multiple provisions are needed to ensure as smooth a transition as practicable from the Society's operation under the existing Rules to operation under the new constitutional document.]

16.1 The Interim Governing Committee

On the date when this Constitution comes into effect, notwithstanding the provisions in this Constitution relating to retirements and maximum terms of Governing Committee members, each member of the Management Committee of the Society shall continue as a member of the Governing Committee until the election of members of the Governing Committee in accordance with this Constitution, including clause 16.2.

[The Constitution comes into effect when it is lodged with the Registrar-General. See ss. 14(1) and 33(2), (5) of the AIA.]

16.2 Formation of the Governing Committee

To facilitate a transition in governance arrangements:

- (a) A call for nominations for [insert number] positions on the Governing Committee is to be issued as soon as practicable after the date on which this Constitution comes into effect, and a Meeting of Congress is to be called as soon as practicable after the date on which that call for nominations closes.

[At that stage, Congress comprises the 16 existing Congress Representatives. See cl.16.3 for the (delayed) changeover of Congress Reps.]

- (b) With effect from the conclusion of that Meeting, all members of the Interim Governing Committee retire from office, but are not thereby ineligible to stand for re-election.

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- (c) At that meeting of Congress, the Congress is to elect **[insert number]** individuals to fill the **[insert same number]** vacancies, in accordance with the terms of this Constitution and the By-Laws.
- (d) To facilitate orderly rotation of members of the Governing Committee over time, immediately after the election is held, **those** elected are **to be** sorted in order of the most votes received, and allocated an initial term of 3, 2 or 1 year(s), as follows:
- (i) **[insert number, for example 3]** members of the Governing Committee who have the most votes have an initial 3 year term expiring on 31 December **[YEAR]**;
 - (ii) **[insert number, for example 3]** members of the Governing Committee who have the number of votes between the most and least votes have an initial 2 year term expiring on 31 December **[YEAR]**; and
 - (iii) **[insert number, for example 3]** members of the Governing Committee who have the least votes have an initial 1 year term expiring on 31 December **[YEAR]**.
- [This arrangement establishes a regular pattern of elections each year.]*
*[The **[YEAR]** can be inserted once the date of the General Meeting is decided, by which time a practical date for the first Congress meeting will be much clearer. If the elections take place on a date later than, say, 1 April, the first term of each member can be set to include their full term of 1, 2 or 3 years, plus the remaining part of the calendar year in which the election takes place.]*
- (e) In the event that the allocation of terms is equivocal, because two or more members have the same number of votes, the Meeting Chair **must draw lots** to determine the order in which their names will appear in the list of the most votes received, as referred to in clause 16.2(d).
- (f) At the conclusion of that term, each member of the Governing Committee retires, but is not thereby ineligible for re-election.

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16.3 Election of New Congress Representatives

- (a) To facilitate an orderly transition in governance arrangements:
- (i) the terms of all existing Congress Representatives on the last occurrence of 31 December prior to the coming into effect of this Constitution are extended beyond that date; and
 - (ii) the terms of all existing Congress Representatives expire on the first occurrence of 30 June following the coming into effect of this Constitution.
- (b) Each Branch is to elect Branch Congress Representatives in accordance with clauses 8(b) and 10.3 of this Constitution and the By-Laws, but subject to sub-clause (c).
- (c) To facilitate orderly rotation of each Branch's Congress Representatives over time, immediately after the first election is held, those elected are to be sorted in order of the most votes received, and allocated an initial term of 2 years or 1 year, as follows:
- (i) the person who has the most votes has an initial 2 year term; and
 - (ii) the other person has an initial 1 year term.

[The existing Congress Reps are extended briefly where necessary, to ensure that each Branch has its 2 votes available at the first election of governing committee members. On 30 June following that election, all Congress Reps' terms expire, and each Branch elects its new Congress Reps, one for a 2-year term, the other for a 1-year term, commencing on 1 July.]

That establishes a rolling pattern, with an election each year. The main provisions are in cls.8(b)(iv) and 10.3(a), but are varied by the transitional provisions in this cl.16.3.]

16.4 Prior Service on Society Committees

For the purposes of calculating the period of service of a member of any organ of the Society, including of a member of the Governing Committee under clause 11.3(b)(iv), the continuous period of time that the individual has served in the relevant office immediately prior to the adoption of this Constitution is to be counted.

[Prior service on any of the Society's Committee's is included in the calculation of when term limits come into effect. In particular, under cl.11.3(b)(iv), the 'maximum term' threshold for a member of the Governing Committee is defined as may not be elected "if they have served on the Governing Committee for more than 7 years in the previous 9-year period".]

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16.5 Existing Internal Organs

On the date when this Constitution comes into effect, all then-existing organs of the Society continue as organs of the Society.

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16.6 Existing Regulations and Additional Required Documents to be By-Laws

- (a) Subject to sub-clause (b), on the date when this Constitution comes into effect, all pre-existing By-Laws continue as if they were By-Laws under this Constitution.
- (b) To the extent of any inconsistency between a By-Law and this Constitution, the Constitution shall prevail.

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16.7 By-Laws Approved by the Members in General Meeting

From the date this Constitution comes into effect, any By-Laws approved by the Society Members in General Meeting are adopted into the By-Laws from the date of that General Meeting.

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16.8 Society Members

On the date when this Constitution comes into effect, each person who is on the Membership Register continues to be a Society Member, in the Grade in which they were at that time.

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16.9 Voting Rights of Associates

Notwithstanding clause 5.1(b), the right to vote in General Meetings of the Society, in Branch Meetings and in all forms of Online Voting, is available to a Society Member who is in the Associate grade on the date when this Constitution comes into effect, and who, at the time of the vote taking place:

- (a) is a citizen or permanent resident of Australia; and
- (b) is not a Student.

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Schedule A – By-Laws Subject to Congress Approval (cl.12.8)

The following documents are subject to Congress Approval:

- Code of Ethics - National Regulations (NR) 4
- Membership Grades - NR 2.1, 2.5
- Qualifications for Admission to the Professional Grades - NR 2.2
- Terms of Reference of the Professional Standards organ established under clause 9(a)(i)

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Schedule B – By-Laws Subject to Governing Committee Approval

All other documents of the nature of By-Laws, including the following:

The following documents are subject to Governing Committee Approval:

- Process and Authority for Amendment of the Code of Ethics
- Code of Ethics Supporting Materials
- Disciplinary Procedures - Rule 7, National Regulation (NR) 5
- Dispute Resolution Procedure
- Principles for Determining how Surplus from the Society's Operations is to be Allocated and/or Investment Policy
- Procedure for Proposals for Major Initiatives

- Procedures for General Meetings
- Procedures for Online Voting
- Standing Orders for Meetings

- Terms of Reference for Committees of the Governing Committee, Task Forces, Working Groups, National SIGs, etc. - NR 9 (extended)
- Procedures for Elections and Operations for Committees of Governing C'tee, Task Forces, Working Groups, National SIGs, etc. - NR 9 (extended)

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(1) - Agree all of these items as being

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(2) - Move some to Schedule B, subject

instead to Governing Committee

Approval -

(3) - Move some from Schedule B to

Schedule A, subject to Member Approval -

Terms of Reference for Vice-Presidents

- Terms of Reference for Branches and Branch Committees - NR 7 and 8
- Procedures for Elections and Operations for Branch Committees - NR 8
- Guidelines for Branch Chapters
- Guidelines for Branch SIGs and Communities of Interest or Practice

- Course Accreditation - NR 2.4
- Procedures for Admission of Members - NR 2.3
- Qualifications for Admission to the Non-Professional Grades - NR 2.2.4
- Procedures for Membership Administration - NR 2.9-2.12, 2.14
- Definitions and Procedures for Special Categories of Membership - NR 2.6-2.8
- Principles Underlying the Schedule of Membership Fees, including gratis memberships
- Schedule of Membership Fees
- Membership Fee Administration - NR 3
- Inter-Member Communications Services

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