

Australian Computer Society
Constitutional Reform Working Group
Guide to the Recommended Constitution
Version of 14 February 2023

Background

The Australian Computer Society (ACS) was formed in 1965-66, as a federation of existing associations that already existed in several States and the ACT. By design, a succession of changes over the decades has migrated the organisation from a federation of once-separate bodies to a national organisation, but one which sustains considerable scope for action within regional areas. There has been widespread recognition that the existing Rules, in place for two decades, with changes last made over a decade ago, are no longer fit for purpose and need to be replaced.

This document provides an overview of the Constitution recommended to Congress following the consultation undertaken during 2021-22. If preferred, the next, preliminary section can be skipped, and referred back to where it is necessary to understand the legal context.

The Law and Practice of Incorporation and Constitutional Documents

The two primary forms of incorporation are an 'incorporated association' (under the relevant statute in any of the States and Territories) and a 'company limited by guarantee' (CLG, which is subject to the Commonwealth Corporations Act). ACS is incorporated as an association under ACT law.

The corporations law developed as a means whereby large-scale for-profit entities could be created, which are not dependent on the continued existence of any particular human being. The idea of a 'person' was extended beyond a 'natural person' to a 'legal person', and some kinds of rights and responsibilities were applied to legal persons. The original term for this particular kind of legal person was 'a joint-stock company', but the terms 'company limited by shares' and 'for-profit corporation' have since become more common.

The governance model generally considered appropriate to **for-profit companies** features:

- All power granted to a Board of Directors;
- Almost all of those powers delegated by the Board to a Chief Executive Officer, subject to accountability measures, and retention of the power to fire the CEO; and
- Very limited powers remaining for the shareholders, because constraints are typically imposed on who can stand for the Board (which basically nullifies the members' right to vote) and considerable barriers against member control over, or removal of, Directors.

For many years, a secondary form of corporation has existed, which can be used by organisations that do not depend on investors who seek a return on investment. Rather than 'a company limited by shares', which has shareholders, this alternative form is a 'company limited by guarantee' (CLG), which has what the Act refers to as 'members'.

The for-profit governance model outlined above has been applied to **not-for-profit CLGs**. The differences between constitutional templates provided by lawyers for CLGs compared with for-profit companies are minimal. This approach is generally regarded as being appropriate for large-scale corporate entities in which individuals act as 'donors' (particularly of money, but in some cases of their time as volunteers) rather than being 'members' in any meaningful sense of the word.

A vast amount of statutory and case law now applies to companies of all kinds, and a very large majority of that has arisen in the context of for-profit activities. (For example, among the more than 3,500 clauses in the Act, the phrase "company limited by guarantee" is found in only 21).

This gives rise to a mis-match between corporations law and the needs of an organisation in which membership is intended to be meaningful. **Professional societies** are a very particular form of member-centric body. The standard model removes virtually all power from the professional members, and grants it, via the Directors, to the CEO. ACS members rejected that model in the vote on a replacement constitution in October 2019. It was also strongly opposed by participants in the consultation process in 2021-22. It has to be anticipated that that model would be rejected by ACS members again, if it were put to them a second time.

Management Committee recently decided that ACS will continue as an association incorporated in the ACT, to avoid unnecessary challenges. So ACS will continue to be subject to the ACT statute, and to the regulatory agency, the Australian Charities and Not-for-profits Commission (ACNC).

Key Features of the ACS Constitution

In May 2021, the ACS Congress commissioned a three-round consultation process with the membership, to produce a new constitution likely to gain approval by the membership. The process was completed in October 2022, resulting in a **Recommended Constitution**.

The views provided by participants during the consultation process are reflected in that document. However, the design and the expression also needed to take account of relevant law and appropriate governance practices. Key aspects of the requirements were:

- A membership-driven Society;
- Support for both national commonality and regional differences;
- A governing committee that has the power to govern the Society; but also
- Constitutionally-defined constraints on the governing committee, such that it must respect the Society's nature and values, must inform and engage the membership, and must heed warning signs where members are not satisfied with the directions being taken.

The remainder of this document presents the features of the Recommended Constitution that fulfil those requirements, with cross-references provided to the specific clauses. It identifies seven main topic-areas, and outlines the relevant features. The eighth and final section briefly explains the remainder of the constitutional document.

1. The Society and Its Nature and Values (cl.1)

This section draws together, and embeds within the constitutional document, expressions of what the Society is, and is about. Most crucial are the Foundational Value of commitment to the public good, the Mission, and the Purposes (cls.1.6-1.8, supported by the Code of Ethics).

2. Members (cls.4, 5)

The centrality of the membership (1.3-1.4) is reinforced by defining a framework for the Society's membership provisions (4). This includes a requirement that the details be articulated in the By-Laws. Key aspects of the By-Laws are subject to Member Approval (7(c), 12.8, Schedule A). Members are subject to requirements (4.2), but also enjoy rights (5). Specific rights are expressed relating to communications between the members and the Society (5.4), but also among members (5.5). Voting rights are defined as being available only to new members who are in a Grade in the Professional Division (5.1, 5.7). However, existing Associates retain the right to vote when the new constitution comes into force (16.9).

3. Branches (cl.8)

Because of the size of the nation, and despite the changes brought about by telecommunications, members generally feel much closer association with activities within their local region than with the organisation as a whole. The existence and functions of Branches are assured (8(a)), as are the powers of Branch Committees (8(b)-(c)). This includes a recalibration of the relationship between Branch Committees and staff working with the Branch (8(c)(v)(A)). Concerns are addressed about the viability of Branches that are geographically large and have low population-density (8(h)).

4. Congress (cl.10)

Congress represents the interests of the membership as a whole (10.1(a)(v), 10.2(a)). As part of the process to protect small Branches, however, the Congress continues to comprise equal representation from each Branch, irrespective of Branch size (10.3(a)). Congress elects its own Chair (10.3(b)), and can create its own committees and working groups (10.1(b)-(d), 11.1(d)).

Congress 'hires and fires' members of the Governing Committee (10.1(a)(i)-(ii)). Congress also monitors the Governing Committee's performance and provides advice to it, both on request and of its own volition (10.1(a)(iv), (vi)).

5. The Governing Committee (cl.11)

Consistently with contemporary norms, the Governing Committee has full powers to run the Society (1.5, 11.1(a)), and all members of it have shared responsibility for all matters (11.2(a)-(b)). The Governing Committee elects its own Chair and Vice-Chairs (11.4(b)-(c)), and can establish its own committees and working groups, and can delegate to those organs and to individual members of the Governing Committee and other voting members (11.1(b)-(d), (g)-(h)).

The previous, tight eligibility requirements to stand for Governing Committee have been removed. Any member in a Grade in the Professional Division may be a candidate, subject to having performed at least some prior service on Society Committees (11.3(b)). It is vital that those elected have the necessary experience and expertise to perform the function. Hence, rather than all members voting in direct elections, the Congress acts an electoral college. Term limits are specified for all positions (11.3(b)(iv)). Members of the Governing Committee (as with Congress) are reimbursed expenses, but payment for work performed as members of committees is not permitted (11.3(d)).

To recover effective internal governance, the memberships of Congress and of the Governing Committee no longer overlap (11.4(a)(vi)). Communications between the Governing Committee and Congress are facilitated by the Chairs of each attending meetings of the other, with provision for other members to also be invited to participate in relevant items (10.1(f)-(g), 11.1(e)-(f)).

6. Constitutional Standing Committees (cl.9)

Some Standing Committees are defined and established by the Constitution. These include those for Professional Standards, and risk and audit (9(a)), but also the category of Standing Committees currently called Boards (9(b), 16.5-16.6). In addition, the Branch Chairs Forum, which has met from time to time in the past, has been formalised as a Committee of the Governing Committee (9(c)-(d)). All Standing and other committees and working groups must be suitably empowered and resourced (9(d), 11.1(d)). The Governing Committee cannot amend the Terms of Reference of the Professional Standards organ without an Online Vote of Congress (7(c), 12.8, Schedule A).

7. Effective Accountability of the Governing Committee (cl.12)

The Society's Nature and Values (1) provide the basis on which the Governing Committee can use its powers (2.2). They also establish the criteria against which Congress and Society Members can assess the performance of the Governing Committee (11.2(a)).

Further provisions are designed to ensure that the accountability of the Governing Committee to Congress and the membership is effective and not merely nominal. Its decisions must be consistent with the Society's nature and values (12.1-12.2). Explicit requirements exist for transparency to, and for engagement with, Congress and the membership (12.3-12.4, 12.7). A number of categories of decision not only require engagement but may also be subject to approval by the Congress (12.8).

Express provision has been made for any Branch Committee to communicate dissatisfaction directly to the Governing Committee (12.5). Intended as a last resort is an explicit power for Congress to remove any member of the Governing Committee for performance materially inconsistent with any of their duties under the law or the Constitution (12.6).

8. Other Aspects of the Constitution

The provisions in the remainder of the Constitution are of two kinds. Many are mainstream matters that are either legally required, or recommended for inclusion, in a constitutional document (3, much of 6, much of 13, much of 14, 15.2, much of 16).

The remaining provisions deliver features that are appropriate for a member-driven professional society. Examples of features specific to the ACS Constitution are:

- The form of meetings generally (14.1);
- Provisions enabling the membership to request the convening of a General Meeting (c6.1(c)-(g));
- Specifications relating to voting processes (6.4, supported by definitions in 15.1);
- Processes for amending the Constitution (6.3, 6.9-6.10, which include a somewhat streamlined version of the current Rule 19);
- Clarity in relation to the expression and amendment of By-Laws (7, Schedules A-B);
- Delegation to the CEO of the day-to-day management of the Society (13.2);
- Governing Committee responsibility for strategy and policy (11.2(a)-(b)), but with the power to provide instructions to the CEO from time to time in relation to tasks in support of strategy and policy (13.3); and
- Transitional provisions to achieve as smooth as practicable a switch from the old Rules to the new Constitution, including carry-forward of all existing organs and By-Laws, except to the extent that the new Constitution expressly changes them (16.4, 16.9).