

Notice of proposed alteration to the Rules and Objects of the Society

Background

The Society is an incorporated association registered under the *Associations Incorporation Act 1991* (ACT) (**ACT Act**). Since our incorporation in 1967, we have grown in size and complexity to an organisation which now has over 44,000 members. The current corporate structure of the Society is no longer appropriate for an organisation with a national focus. Accordingly, your Management Committee has undertaken a detailed review of the Society's existing corporate governance structure and the change required to enable the Society to operate more efficiently and effectively on a national scale, and bring it into line with best market practice.

Your Management Committee has unanimously decided that it intends to seek the approval of members to change the legal structure of the Society from an incorporated association under the ACT Act to a company limited by guarantee under the *Corporations Act 2001* (Cth) (**Corporations Act**) and to replace the entirety of the existing Rules of the Society (the **Rules**) with a new constitution that is compliant with the Corporations Act (collectively, the **Proposal**).

The limited company structure is quite common for nationally-focused not-for profit organisations in Australia. Many comparable professional bodies in Australia are companies limited by guarantee - for example, the Australian Institute of Company Directors, the Institute of Managers and Leaders and the Australian Psychological Society.

Under the Proposal, it is envisaged that the Society will continue to be a not-for-profit organisation with charitable status. For that reason, the new constitution includes slightly amended Objects to assist the Society in maintaining its charitable status.

Under rule 19 of the existing Rules, the Management Committee is required to send to each member written notice of any proposed alteration to the Rules and Objects, together with certain information, at least 3 months before the notice calling a general meeting to consider the proposed alteration is sent to members. This document (including the schedules and the attachment to it) is a notice given to members under that rule.

Included at the schedules to this notice are memoranda setting out the case in favour, and the case against, the Proposal. The proposed constitution which the Society would adopt, should the Proposal be approved by members, is also attached at Attachment 1.

Proposed resolution

The proposed resolution to be considered and voted on at the general meeting as a special resolution is as follows:

"That for the purposes of the *Associations Incorporation Act 1991* (ACT) (**ACT Act**), the *Corporations Act 2001* (Cth) (**Corporations Act**) and for all other purposes:

- (a) subject to approval of resolution (b), the Society's application for transfer of registration as an incorporated association under the ACT Act to a company limited by guarantee (**Company**) under the Corporations Act be authorised; and
- (b) with effect from the date of registration as a company limited by guarantee under the Corporations Act:

- (i) the proposed name of the Society as a Company be 'Australian Computer Society Limited';
- (ii) the existing Rules and Objects of the Society be repealed; and
- (iii) the new constitution (including the new Objects) be adopted as the constitution of the Company in the form set out in Attachment 1."

Frequently asked questions

For your convenience, we have set out some frequently asked questions (and answers) for your consideration:

(a) **Q: What is a company limited by guarantee?**

A: a public company limited by guarantee is a company structure, typically used by not-for-profit organisations, where upon the winding up of the company, the liability of each member is limited. Pursuant to the terms of the new constitution, we propose to set the amount of this liability is set at no more than \$1.

(b) **Q: What is the key impact of changing the structure**

A: The governance and reporting requirements for a company limited by guarantee are higher than those for an incorporated association under the ACT Act. That said, these requirements are not particularly onerous and are at least partly contingent on annual revenue, rather than organisational structure. Your Management Committee is comfortable that the Society is well-placed to meet these additional requirements and believes that this additional level of reporting and regulation in the interests of members as a whole.

(c) **Q: What will happen to the Society's current assets?**

A: All of the Society's current assets (including intangible assets, such as intellectual property rights) will be transferred to the new company limited by guarantee. This will require the Society to contact relevant organisations (e.g. banks) and change the details they have on file.

(d) **Q: What will happen to your membership?**

A: Since membership of a company limited by guarantee involves additional liability (even though it is only \$1) we are on the safest legal ground by asking you to agree to be a member of the new entity. We will try to make this process as seamless as possible and provide further information in due course.

(e) **Q: How was the transitional arrangements for the new Board of Directors determined in the proposed Constitution?**

A: Your Management Committee deliberated extensively and sought expert advice on the transitional arrangements best suited for the Society converting into a company limited by guarantee. The proposed transitional arrangements has been designed to ensure that crucial corporate knowledge is not lost through the immediate implementation of a new election model. This means that:

- the 2019 skills-based Vice Presidents on the Management Committee will be entitled continue to serve members of the Society on the inaugural Board of Directors for the first 12-months of transition; and
- those members of the Management Committee who were meant to continue serving on the Management Committee post-2019 under the current Rules are entitled to serve out those terms under the new Board of Directors.

However, the transitional provisions acknowledges that transitioning into the new structure should also take into account the new direct election model that is proposed to govern the election process of the Board of Directors moving forward. In that regard, the transitional arrangements contemplate a direct election being held by the Society to elect three (3) new Directors to serve on the inaugural Board of Directors. It is envisaged that these direct elections will be held in the last quarter of the 2019 calendar year. Your Management Committee will separately send out further information about these direct elections.

Next steps

You do not need to take any action now.

The Management Committee intends to convene a special general meeting to be held in or around October 2019 to consider and vote on the proposed resolution. At least 21 days before the date of the meeting, you will be sent a further notice of meeting setting out the date, time and place of the meeting, and instructions on how you can attend and vote (whether in person or by proxy).

If you have any queries about this notice, please contact ClaytonUtz@acs.org.au

By order of the Management Committee.

Yohan Ramasundara, FACS CP
President of the ACS

3 July 2019

Memorandum setting out the case IN FAVOUR of the Proposal

Your Management Committee is in favour, and recommends that members vote in favour of the Proposal.

The ACS Strategic Plan 2017-2022 commits to being contemporary and relevant, and at the forefront of thinking in relation to emerging technology and the new economy. As part of the plan, the corporate form and governance structures have been reviewed to best position the Society as agile and fit for the future, maximising the ability of the Society to respond to external forces.

In making this Proposal, the Management Committee has considered the advantages and disadvantages and taken advice from external advisers.

Key reasons to vote in favour of the Proposal are set out below.

The current structure is not appropriate for the size and nature of Society.

The incorporated association structure is designed for small, local and grassroots based organisations. The *Associations Incorporation Act 1991* (ACT) (**ACT Act**), under which the Society is registered, implies that this structure should only be used for smaller organisations and gives the Registrar-General the ability to cancel an organisation's incorporation (and force it to move to a company limited by guarantee) where the Registrar-General determines that the "scale or nature" of activities of the association is inappropriate or inconvenient.

By adopting the Proposal now, the Society can implement the change voluntarily and in its own timeframe. This obviates the risk of the Registrar-General requiring the Society to transfer its incorporation at a time inconvenient to the Society.

Converting to a company limited by guarantee provides more rigorous regulatory oversight.

If the Proposal is adopted, the Society will be regulated by the Australian Securities and Investments Commission (**ASIC**), rather than Access Canberra. ASIC has greater capacity and experience in regulating large and complex organisations and enforcing compliance with directors' duties and other regulatory matters. Members can benefit and take comfort from the greater level of regulation, oversight and accountability.

The existing Rules and Regulations are not fit for the future.

There are a number of operational deficiencies in the existing Rules and Regulations. In particular:

- **clarity around accountability and governance authority** - The existence of both a Management Committee and a Congress unnecessarily complicates the governance structure and creates uncertainty as to who has ultimate oversight and responsibility for the Society. The new structure makes clear that the Board is ultimately responsible for the Society.
- **attracting the best candidates to the Board of directors** - The Management Committee believes that the current system has had the effect of narrowing the pool of potential candidates. By moving to a skills-based matrix for the selection of directors there is a higher likelihood of attracting broader and more diverse pool of appropriately qualified candidates.
- **inconsistencies and other deficiencies** - The existing Rules contain many inconsistencies and operational deficiencies, which create uncertainty and confusion. As the Society grows and becomes more complex, it is important that these inconsistencies and deficiencies are streamlined and rectified to ensure that the Society functions effectively. Examples of these deficiencies include:
 - the requirement to have separate branch and national funds under the Rules, which creates unnecessary duplication of administrative burden;
 - Branch Executive Committee members, though elected by the members cannot be removed by members;

- Boards are established by Management Committee, however the Director is appointed by Congress;
- the title of the Vice President is superfluous.

Your Management Committee has sought specialist advice, and the proposed constitution establishes best practice governance principles and direct accountability to members.

In particular:

- ***a strong governing body*** - A Board of Directors will replace the Management Committee. It will set the overall direction of the Society and will have broad discretion in whether and how it delegates its powers. It is intended that the Board will establish geographically-based Divisional Councils (replacing the existing Branch Executive Committees).
- ***direct accountability to members*** - All voting members will be able to directly elect Directors to the Board. It is intended that the Board will establish a Nominations Committee to identify, assess and recommend candidates for election. The Board will also have the power to appoint directors (but such appointees must retire at the next annual general meeting and may stand for re-election by the members). The Corporations Act also provides the ability of members to requisition a meeting to consider matters including the removal of Directors.

The Objects have been updated to assist the Society in maintaining its charitable status.

Minor amendments have been made to the Objects of the Society, based on expert taxation advice, to maximise the likelihood of the Society maintaining its charitable status.

Schedule 2

Memorandum setting out the case AGAINST the Proposal

You may disagree with the Management Committee's recommendation and believe that the Proposal is not in the Society's best interests.

Notwithstanding the recommendation of the Management Committee, you may believe that the Proposal is not in the Society's best interests. You are not obliged to follow the Management Committee's recommendation.

Some reasons why you may want to vote against the Proposal are set out below.

You may consider that the regulatory risks exceed the potential benefits of the Proposal.

The Society is currently a charity registered with the Australian Charities and Not-for-profits Commission (**ACNC**) and has access to the following taxation endorsements and registrations:

- GST concessions;
- fringe benefits tax rebate concession; and
- income tax exemption.

If the Proposal is implemented, the Society will need to notify the ACNC of the changes to its constituent documents. There is a risk that in considering those changes, the ACNC and ATO may revisit the Society's tax endorsements and registrations including the possible removal of the Society from the ACNC Charity Register. You may consider that this risk exceeds any potential benefits of the Proposal.

You may consider that the existing corporate governance structure should be retained.

Notwithstanding the Management Committee's view that the existing corporate governance structure is not fit for the future, you may disagree and consider that it should be retained.

Historically, power and responsibility for the Society was vested in the Management Committee, which was elected by members of Congress comprising representatives of the various state/territory branches. Under the new governance structure, Congress will cease to exist and that form of representation and oversight will be replaced by a direct voting model, comprising a Board of Directors elected directly by the Society's members. The new Board will be the over-arching governing body, with the ability to set the overall direction of the Society and delegate powers as it sees fit including the power to amend subordinate rules and regulations such as By-Laws and Charters. You may prefer the existing organisational structure and consider that it should be retained.

Additionally, certain matters such as the geographical region of divisions, the grades of members and disciplinary procedures have been purposely moved from the Rules and Regulations into the By-Laws so that any changes required in the future can be more easily made by the Board (unilaterally). You may disagree with this allocation of power within the Society as it allows the Board to amend those matters without the members' approval.

You may consider that the Proposal disadvantages smaller Branches to the detriment of the Society as a member based professional society

Under the current Rules, National Congressional Representatives are elected to the Management Committee ensuring some smaller Branches have direct input into the decision making of the body that is ultimately responsible for the Society. This representation is no longer guaranteed under the Proposal.

Further, Branches (to be called Divisions under the new Proposal) will lose the guaranteed right (currently enshrined in the Rules and Regulations) to maintain their own budgets. Funds are intended to be centrally managed under the Proposal and you may disagree with this.

You may disagree with the standing and voting rights of certain categories of members in the current Proposal.

Members of the Professional Division of the Society currently have special standing and voting in governance arrangements and this may change in the future (although the current Proposal does not materially alter the voting rights of current members who are entitled to vote).

You may disagree with the proposed changes to the Objects of the Society.

Minor amendments have been made to the Objects of the Society, based on expert taxation advice. You may disagree with the amendments and prefer the existing Objects.

You may consider that there are risks in the implementation of the Proposal which may cause disruption to the Society.

Implementing the Proposal will require changes to the existing governance structures and practices of the Society. Although your Management Committee believes that the Society is well prepared to manage this transition, the changes may be more time consuming and complicated than anticipated and may result in disruption of the Society, including the potential loss of members. Your Management Committee considers that the implementation risk is low, but you may nonetheless consider that the risk exceeds the potential benefits of the Proposal.

Constitution of Australian Computer Society Limited

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Constitution

Preliminary

1. Definitions

In this Constitution:

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

Associate means a grade of Members called "Associate" that meets the applicable qualifications as set out in the By-Laws or any other alternative qualifications approved by the Board from time to time.

Attending Member means, in relation to a meeting of Members, the Voting Member present at the place of the meeting, in person or by proxy, or by attorney.

Board means the Directors of the Company from time to time.

Business Day means a day except a Saturday, Sunday or public holiday in the state or territory in which the Company is taken to be registered for the purposes of the Corporations Act.

By-Laws means the By-Laws of the Company as determined by the Board from time to time in accordance with Article 47(d).

Chapter means a vehicle to mobilise authorised volunteers to ensure regional centres can optimise engagement with the Company.

Company means the Australian Computer Society Limited.

Corporations Act means the Corporations Act 2001 (Commonwealth).

Director means a person who is, for the time being, a director of the Company.

Division means any geographical territory as determined by the Board from time to time.

Effective Date means the date of incorporation of the Company as a company limited by guarantee under the Corporations Act.

Fee means a fee or levy referred to in Article 17(a) or 19(b).

Fellow means a grade of Members called "Fellow" that meets the applicable qualifications as set out in the By-Laws or any other alternative qualifications approved by the Board from time to time.

Legal Costs of a person means legal costs calculated on a solicitor-and-client basis incurred by that person in defending or resisting any proceedings (whether criminal, civil, administrative or judicial), appearing before or responding to actions taken by any court, tribunal, government authority or agency, other body or commission, a liquidator, an administrator, a trustee in bankruptcy or other authorised official, where that proceeding, appearance or response relates to a Liability of that person.

Liability of a person means any liability including negligence (except a liability for legal costs) incurred by that person in or arising out of the discharge of duties as an officer of the Company or in or arising out of the conduct of the business of the Company, including as result of appointment or nomination by the Company or a subsidiary as a trustee or as a director, officer or employee of another body corporate.

Member means a person whose name is entered in the Register as a member of the Company.

Member Benefits means services and benefits offered by the Company to Members as the Board determines from time to time (whether on an exclusive or non-exclusive basis) and which may include professional development services, lifestyle related services and magazine subscriptions).

Non-Voting Member means a Member who has the rights set out in Article 8(c).

Nominations Committee means a committee established by the Board (in accordance with a Nominations Committee Charter) for the purposes of, among other things, determining the future nominees for election to the Board.

Nominations Committee Charter means the charter establishing the Nominations Committee as determined by the Board from time to time in accordance with clause 47(d).

Notice means a notice given pursuant to, or for the purposes of, this Constitution or the Corporations Act.

Ordinary Member means a grade of Members called "Ordinary Member" that meets the applicable qualifications as set out in the By-Laws or any other alternative qualifications approved by the Board from time to time.

Personal Representative means the legal personal representative, executor or administrator of the estate of a deceased person.

Position of Governance means any position of a person having authority and responsibility for planning, directing and controlling the activities of the Company (or its Subsidiaries), directly or indirectly.

Professional Group means:

- (a) the following grades of members:
 - (i) Fellow;
 - (ii) Senior Member; and
 - (iii) Ordinary Member; and
- (b) any other grades, groups or categories as determined by the Board from time to time to be part of the "Professional Group".

Register means the register of Members kept pursuant to the Corporations Act and, where appropriate, includes any Division register.

Relevant Officer means a person who is, or has been, a Director or Secretary.

Secretary means a person appointed as, or to perform the duties of, secretary of the Company for the time being.

Senior Member means a grade of Members called "Senior Member" that meets the applicable qualifications as set out in the By-Laws or any other alternative qualifications approved by the Board from time to time.

Subsidiary has the meaning given in the Corporations Act.

Voting Member means a Member who has the rights set out in Article 8(b).

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);
 - (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 in a visible form;
 - (vi) a notice or document required by this Constitution to be signed may be authenticated by any other manner permitted by the Corporations Act or any other law; and
 - (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 Board on the interpretation of any provision of the Constitution or the By Laws is binding on all Members.

3. Application of Corporations Act

- (a) Unless the context indicates a contrary intention, in this Constitution:
 - (i) a reference to the Corporations Act is to the Corporations Act in force in relation to the Company after taking into account any waiver, modification or exemption which is in force either generally or in relation to the Company; and
 - (ii) a word or phrase given a meaning in the Corporations Act has the same meaning in this Constitution where it relates to the same matters as the matters for which it is defined in the Corporations Act, unless that word or phrase is otherwise defined in this Constitution.
- (b) The replaceable rules in the Corporations Act do not apply to the Company.

4. Enforcement

- (a) Each 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.

Objects

5. Objects of the Company

- (c) The principal object of the Company is to promote the development of Australian information and communications technology resources so as to be beneficial to the Australian community.
- (d) The secondary objects of the Company are:
 - (i) to advance professional excellence in information and communications technology;
 - (ii) to advance education, in particular to further the study, science and application of information and communications technology;
 - (iii) to promote, develop and monitor competence in the practice of information and communications technology by persons and organisations;
 - (iv) to define and promote the maintenance of standards of knowledge of information and communications technology;
 - (v) to promote the formulation of effective policies on information and communications technology and related matters;
 - (vi) to extend the knowledge and understanding of information and communications technology in the community; and
 - (vii) to maintain and promote the observance of a code of ethics by Members of the Company.

Income and property

6. Application of income and property

- (a) Subject to Articles 6(b) and 6(c), the Company is a not-for-profit organisation and must apply the profits (if any) or other income and property of the Company solely towards the promotion of the objects of the Company set out in Article 5 and no portion of it may be paid or transferred, directly or indirectly, to any Member whether by way of dividend, bonus or otherwise.
- (b) Nothing in Article 6(a) prevents the Company making any payment in good faith of:
 - (i) reasonable and proper remuneration to any Member for any services actually rendered or goods supplied to the Company in the ordinary and usual course of business of the Company;
 - (ii) the payment or reimbursement of out-of-pocket expenses incurred by a Member on behalf of the Company where the amount payable does not exceed an amount previously approved by the Board;
 - (iii) reasonable and proper rent or fees to a Member for premises leased or licensed by any Member to the Company;
 - (iv) money to any Member, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for

work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;

- (v) interest to a Member at a rate not exceeding a rate approved by the Board on money borrowed by the Company from the Member; or
 - (vi) an amount pursuant to Article 61.
- (c) The Company must not pay fees to or on behalf of Directors or a Secretary but the Company may make payments to a Director or Secretary in good faith for:
- (i) the payment or reimbursement of out-of-pocket expenses reasonably incurred by a Director or Secretary in the performance of any duty as a director or secretary of the Company where that payment or reimbursement has been approved by the Board;
 - (ii) money to any Director or Secretary, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Board and the amount payable is approved by the Board and is not more than an amount which commercially would be reasonable payment for the service;
 - (iii) any salary or wage due to the Director or Secretary as an employee of the Company where the terms of employment have been approved by the Board;
 - (iv) an insurance premium in respect of a contract insuring a Director or Secretary for a liability incurred as an officer of the Company where the Board has approved the payment of the premium; or
 - (v) any payment pursuant to Article 46(a), 46(c) or 46(d) or a payment pursuant to any agreement or deed referred to in Article 46(e).

Liability of Members

7. Extent of liability

Each Member undertakes to contribute an amount not exceeding \$1 to the property of the Company if the Company is wound up at a time when that person is a Member, or within one year of the time that person ceased to be a Member, for:

- (a) payment of the Company's debts and liabilities contracted before that person ceased to be a Member;
- (b) payment of the costs, charges and expenses of winding up the Company; and
- (c) adjustment of the rights of the contributories among themselves.

Membership

8. Classes of membership

- (a) The Company has two classes of Members:
 - (i) Voting Members; and

- (ii) Non-Voting Members.
- (b) A Voting Member has the following rights:
 - (i) **(Constitution and other rules)** a Voting Member has the rights given to a Voting Member under this Constitution and under any other rules the Directors may decide from time to time;
 - (ii) **(Member Benefits)** a Voting Member has the right to enjoy those Member Benefits bestowed on a particular group or category or grade of Voting Members from time to time. For the avoidance of doubt, it is the right to enjoy whatever Member Benefits apply to the relevant group or category or grade of Voting Member, not the individual Member Benefits themselves, that is a class right and therefore changing those Member Benefits from time to time does not amount to a variation of any Member's class rights;
 - (iii) **(General meeting)** a Voting Member has the right to attend, speak and vote (both on a show of hands and on a poll) at a general meeting of the Company; and
 - (iv) **(Voting for Directors)** without limiting Article 8(b)(iii), at an election of Directors, a Voting Member has the right to vote for the election, re-election or removal of a person from the role of a Director in accordance with the Corporations Act or ACNC Act.
- (c) A Non-Voting Member has the following rights:
 - (i) **(Constitution and other rules)** a Non-Voting Member has the rights given to a Non-Voting Member under this Constitution and under any other rules the Directors may decide from time to time;
 - (ii) **(Member Benefits)** a Non-Voting Member has the right to enjoy those Member Benefits bestowed on a particular group or category or grade of Non-Voting Members from time to time. For the avoidance of doubt, it is the right to enjoy whatever Member Benefits apply to the relevant group or category or grade of Non-Voting Member, not the individual Member Benefits themselves, that is a class right and therefore changing those Member Benefits from time to time does not amount to a variation of any Member's class rights; and
 - (iii) **(General meeting)** a Non-Voting Member has the right to attend and speak, but not vote, at a general meeting of the Company.
- (d) The Board must ensure that the Voting Members are constituted by Members:
 - (i) that are either Australian citizens or permanent residents of Australia;
 - (ii) that have not been designated as "Student Members"; and
 - (iii) have been admitted to groups or categories or grades of Members that has been designated as:
 - A. being part of the Professional Group;
 - B. an Associate; or
 - C. any other groups or categories or grades of Members (other than "Student Members") expressly designated as Voting Members by the Board for the purposes of this clause 8(d)(iii)C.

9. Applications

- (a) Any person is eligible to apply to become a Member.
- (b) Each applicant to become a Member must sign and deliver to the Company an application in the form which the Board determines, and pay any initial fee which the Board determines.
- (c) The Board determines in their absolute discretion whether an applicant may become a Member. The Board is not required to give any reason for the rejection of any application to become a Member.
- (d) If an application to become a Member is accepted by the Board, the Company must give written notice of the acceptance to the applicant and enter the applicant's name in the Register.
- (e) If an application to become a Member is rejected by the Board, the Company must give written notice of the rejection to the applicant and refund in full the fee (if any) paid by the applicant.
- (f) Failure by the Company to comply with any notice requirement in this Article 9(d) or 9(e) does not invalidate the decision regarding an application.

10. No transfers

The rights of being a Member are not transferable whether by operation of law or otherwise.

11. Class rights

- (a) Subject to the Corporations Act and the rights of a particular class of Members, the Company may vary or cancel rights of Members in that class:
 - (i) by a special resolution passed at a meeting of the Members included in that class; or
 - (ii) with the written consent of Members who are entitled to at least 75% of the votes that may be cast by Members included in that class.
- (b) Article 39 applies to a meeting held pursuant to Article 11(a)(i).

Cessation of membership

12. Ceasing to be a Member

A person will cease to be a Member if:

- (a) that person resigns in accordance with Article 13;
- (b) that person is expelled under Article 14; or
- (c) Article 15 applies in respect of that person.

13. Resignation of a Member

- (a) Subject to Article 13(b), a Member may at any time resign as a member of the Company by giving the Company notice in writing. Unless the notice provides otherwise, a resignation by a Member takes effect immediately on the giving of that notice to the Company.

- (b) If there is only one Member and the Member gives proper notice of resignation or on the same day all of the Members give proper notice of resignation, the notice or notices will be ineffective and the Member or Members cannot resign until either another person is appointed as a Member or the Company is wound up.
- (c) If a Member resigns, the Company must remove the Member's name from the Register.

14. Expulsion of a Member

- (a) Subject to Article 14(b), if:
 - (i) a Member is in breach of a provision of this Constitution; or
 - (ii) any act or omission of a Member is, in the opinion of the Board, unbecoming of a Member, or prejudicial to the interests or reputation of the Company including but not limited to:
 - A. breaching the By-Laws; or
 - B. failing to uphold the code of professional conduct and ethics of the Company;
 - (iii) a Member does not pay a Fee within 3 months after the due date for its payment,

the Board or a delegate of the Board may expel the Member and remove the Member's name from the Register.
- (b) The Company must not expel a Member pursuant to Article 14(a)(ii) unless:
 - (i) at least 5 Business Days' notice has been given to the Member stating the date, time and place at which the question of expulsion of that Member is to be considered by the Board, and the nature of alleged event giving rise to the expulsion; and
 - (ii) the affected Member is given the opportunity of explaining to the Board, orally or in writing, why the Member should not be expelled.

15. Other cessation events

If a Member:

- (a) dies; or
- (b) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health,

the Member ceases to be a member of the Company and the Company must remove the Member's name from the Register.

16. Effect of cessation

- (a) A person who ceases to be a Member remains liable to pay, and must immediately pay, to the Company all amounts that at date of cessation were payable by the person to the Company as a Member (except for the payment of a fee to be, or to remain as, a Member in which case the Company's sole recourse for non-payment is the expulsion of that person from being a Member of the Company in accordance with Article 14(a)(iii)).
- (b) The Company may by resolution of the Board waive any or all of its rights pursuant to this Article 16.

Fees and other payments

17. Setting of Fees

- (a) Subject to the Corporations Act and the terms of membership of a group, grade or category of Members, the Company may by resolution of the Board require the payment of:
 - (i) an application fee; and/or
 - (ii) a membership fee,by Members of any amount, on any terms and at any times as the Board resolves, including payment by instalments.
- (b) The Company may when admitting Members make Fees payable for one or more Members for different amounts and at different times as the Board resolves.
- (c) The Company may by resolution of the Board revoke or postpone a Fee or extend the time for payment of a Fee, at any time prior to the date on which payment of that Fee is due.

18. Notice of Fees

- (a) The Company must give notice of Fees to the Members who are required to pay the Fees at least 10 Business Days before the due date for payment. The notice must specify the amount of the Fee, the time or times and place of payment and any other information as the Board resolves.
- (b) The non-receipt of a notice of a Fee by, or the accidental omission to give notice of a Fee to, any Member does not invalidate the Fee.

19. Payment of Fees

- (a) Each Member must pay to the Company the amount of each Fee payable by the Member in the manner, at the time and at the place specified in the notice of the Fee.
- (b) If the terms of membership of a class or group or category or grade of Members require an amount to be paid as a fee or levy on a fixed date, each Member in that class or group or category or grade of Members must pay that amount to the Company at that time and that amount is treated for the purposes of this Constitution as if a Fee for that amount had been properly determined by the Board of which appropriate notice has been given.
- (c) The Board may in its discretion suspend or waive the payment of any Fee.

20. Company payments

- (a) A Member or the Personal Representative of a deceased Member must pay to the Company on written demand an amount equal to all payments that the Company makes to a government or taxation authority in respect of the Member or the death of the Member, where the Company is either:
 - (i) obliged by law to make the relevant payment; or
 - (ii) advised by a lawyer qualified to practice in the jurisdiction of the relevant government or taxation authority that the Company is obliged by law to make the relevant payment.
- (b) The Company is not obliged to notify a Member in advance of its intention to make a payment pursuant to Article 20(a).
- (c) An amount payable by a Member to the Company pursuant to Article 20(a) is treated for the purposes of this Constitution as if it is a Fee properly made by the Board of which notice has been given on the date on which the written demand is given by the Company to the Member or the Personal Representative of a deceased Member.
- (d) Nothing in this Article 20 affects any right or remedy which any law confers on the Company.

Proceedings of Voting Members

21. Written resolutions of Voting Members

While the Company has only one Voting Member, the Company may pass a resolution by that Voting Member signing a record in writing of that resolution.

22. Calling meetings of Members

- (a) The Company may by resolution of the Board call a meeting of Members to be held at the time and place and in the manner that the Board resolves.
- (b) No Member may call or arrange to hold a meeting of Members except where permitted by the Corporations Act.

23. Notice of meetings of Members

- (a) Where the Company has called a meeting of Members, notice of the meeting and any proxy form for the meeting may be given in the form and in the manner in which the Board resolves, subject to any requirements of the Corporations Act.
- (b) A person may waive notice of any meeting of Members by written notice to the Company.
- (c) A person who has not duly received notice of a meeting of Members may, before or after the meeting, notify the Company of the person's agreement to anything done or resolution passed at the meeting.
- (d) A person's attendance at a meeting of Members waives any objection which that person may have had to a failure to give notice, or the giving of a defective notice, of the meeting, unless the person at the beginning of the meeting objects to the holding of the meeting.

- (e) Subject to the Corporations Act, anything done (including the passing of a resolution) at a meeting of Members is not invalid because either or both a person does not receive notice of the meeting or a proxy form, or the Company accidentally does not give notice of the meeting or a proxy form to a person.

24. Business of meetings

Except with the approval of the Board, with the permission of the chairperson of the meeting or pursuant to the Corporations Act, no person may move at any meeting of Members:

- (a) any motion (except in the form set out in the notice of meeting given pursuant to Article 23(a)); or
- (b) any amendment of any resolution or a document which relates to any resolution and a copy of which has been made available to Members to inspect or obtain.

25. Quorum

- (a) No business may be transacted at a meeting of Members except, subject to Article 26, the election of the chairperson of the meeting unless a quorum for a meeting of Members is present at the time when the meeting commences.
- (b) A quorum for a meeting of Members is 20 Attending Members entitled to vote on a resolution at that meeting or if only one Voting Member is entitled to vote at that meeting, then that person (or an Attending Member representing that person). Each individual present may only be counted once towards a quorum. If a Voting Member has appointed more than one proxy or attorney, only one of them may be counted towards a quorum.
- (c) If a quorum is not present within 30 minutes after the time appointed for the commencement of a meeting of Members, the meeting is dissolved unless the chairperson of the meeting or the Board adjourn the meeting to a date, time and place determined by that chairperson or the Board.
- (d) If a quorum is not present within 30 minutes after the time appointed for the commencement of an adjourned meeting of Members, the meeting is dissolved.

26. Chairperson of meetings of Members

- (a) Subject to Articles 26(b) and 26(c), the chairperson of the Board must chair each meeting of Members.
- (b) If at a meeting of Members:
- (i) there is no chairperson of the Board; or
- (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the commencement of a meeting of Members or is not willing to chair all or part of the meeting,

the Directors who are or will be present at the meeting may (by majority vote) elect one of their number or, in the absence of all the Directors or if none of the Directors present is willing to act, the Attending Members may elect one of their number, to chair that meeting.

- (c) A chairperson of a meeting of Members may, for any item of business at that meeting or for any part of that meeting, vacate the chair in favour of another person nominated by him or her (**Acting Chair**). Where an instrument of proxy appoints the chairperson as proxy for part of proceedings for which an Acting Chair has been

nominated, the instrument of proxy is taken to be in favour of the Acting Chair for the relevant part of the proceedings.

- (d) If at least 20 Attending Members entitled to vote at a meeting of Members demands another chairperson to chair the meeting of Members, the chairperson must allow the Directors who are present at the meeting to elect (by majority vote) one of their number to be the replacement chairperson or if none of the Directors present is willing to act, the Attending Members may elect one of their number, to replace the chairperson of that meeting.

27. Conduct of meetings of Members

- (a) Subject to the Corporations Act, the chairperson of a meeting of Members is responsible for the general conduct of that meeting and for the procedures to be adopted at that meeting.
- (b) The chairperson of a meeting of Members may make rulings without putting the question (or any question) to the vote if that action is required to ensure the orderly conduct of the meeting.
- (c) The chairperson of a meeting of Members may determine the procedures to be adopted for proper and orderly discussion or debate at the meeting, and the casting or recording of votes at the meeting.
- (d) The chairperson of a meeting of Members may determine any dispute concerning the admission, validity or rejection of a vote at the meeting.
- (e) The chairperson of a meeting of Members may, subject to the Corporations Act, at any time terminate discussion or debate on any matter being considered at the meeting and require that matter be put to a vote.
- (f) The chairperson of a meeting of Members may refuse to allow debate or discussion on any matter which is not business referred to in the notice of that meeting or is not business of the meeting permitted pursuant to the Corporations Act without being referred to in the notice of meeting.
- (g) The chairperson of a meeting of Members may refuse any person admission to, or require a person to leave and remain out of, the meeting if that person:
- (i) in the opinion of the chairperson, is not complying with the reasonable directions of the chairperson;
 - (ii) has any audio or visual recording or broadcasting device;
 - (iii) has a placard or banner;
 - (iv) has an article the chairperson considers to be dangerous, offensive or liable to cause disruption;
 - (v) behaves or threatens to behave in a dangerous, offensive or disruptive manner;
 - (vi) refuses to produce or to permit examination of any article, or the contents of any article, in the person's possession; or
 - (vii) is not entitled pursuant to the Corporations Act or this Constitution to attend the meeting.
- (h) If the chairperson of a meeting of Members considers that there are too many persons present at the meeting to fit into the venue where the meeting is to be held, the chairperson may nominate a different or additional meeting place using any

technology that gives Attending Members as a whole a reasonable opportunity to participate. For the avoidance of doubt, any person present at the different or additional meeting place so nominated by the chairperson will be deemed to be present at the place of the meeting.

- (i) The chairperson of a meeting of Members may delegate any power conferred by this Article 27 to any person.
- (j) Nothing contained in this Article 27 limits the powers conferred by law on the chairperson of a meeting of Members.

28. Attendance at meeting of Members

- (a) Subject to this Constitution and any rights and restrictions of a class of Members, a Member who is entitled to attend and cast a vote at a meeting of Members, may attend and vote in person or by proxy, or by attorney.
- (b) The chairperson of a meeting of Members may require a person acting as a proxy or attorney at that meeting to establish to the chairperson's satisfaction that the person is the person who is duly appointed to act. If the person fails to satisfy this requirement, the chairperson may exclude the person from attending or voting at the meeting.
- (c) A Director is entitled to receive notice of and to attend all meetings of Members and all meetings of a class of Members and is entitled to speak at those meetings.
- (d) A person requested by the Board to attend a meeting of Members or a meeting of a class of Members is, regardless of whether that person is a Member or not, entitled to attend that meeting and, at the request of the chairperson of the meeting, is entitled to speak at that meeting.

29. Authority of Attending Members

- (a) Unless otherwise provided in the document or resolution appointing a person as proxy or attorney of a Voting Member, the person so appointed has the same rights to speak, demand a poll, join in demanding a poll or act generally at a meeting of Members to which the appointment relates, as the appointing Voting Member would have had if that Voting Member was present at the meeting.
- (b) Unless otherwise provided in the document or resolution appointing a person as proxy or attorney of a Member, the appointment is taken to confer authority to:
 - (i) vote on any amendment moved to a proposed resolution and on any motion that a proposed resolution not be put or any similar motion; and
 - (ii) vote on any procedural motion, including any motion to elect the chairperson of the meeting of Members to which the appointment relates, to vacate the chair or to adjourn the meeting,

even though the appointment may refer to specific resolutions and may direct the proxy or attorney how to vote on particular resolutions.
- (c) Unless otherwise provided in the document or resolution appointing a person as proxy or attorney of a Voting Member, the appointment is taken to confer authority to attend and vote at a meeting which is rescheduled, postponed or adjourned to another time or changed to another place, even though the appointment may refer to a specific meeting to be held at a specified time or place.

30. Multiple appointments

- (a) If more than one attorney appointed by a Voting Member is present at a meeting of Members and the Company has not received notice of any revocation of any of the appointments:
 - (i) an attorney appointed to act at that particular meeting may act to the exclusion of an attorney appointed pursuant to a standing appointment; and
 - (ii) subject to Article 30(a)(i), an attorney appointed pursuant to the most recent appointment may act to the exclusion of an attorney appointed earlier in time.
- (b) An appointment of a proxy of a Voting Member is revoked (or, in the case of a standing appointment, suspended for that particular meeting of Members) if the Company receives a further appointment of a proxy from that Voting Member which would result in there being more than one proxy of that Voting Member entitled to act at the meeting. The appointment of proxy made first in time is the first to be treated as revoked or suspended by this Article 30(b).
- (c) The appointment of a proxy for a Voting Member is not revoked by an attorney for that Voting Member attending and taking part in a meeting of Members to which the appointment relates, but if that attorney votes on a resolution at that meeting, the proxy is not entitled to vote, and must not vote, as the Voting Member's proxy on that resolution.

31. Voting at meeting of Members

- (a) A resolution put to the vote at a meeting of Members must be decided on a show of hands, unless a poll is demanded in accordance with Article 34 and that demand is not withdrawn.
- (b) The Board must use all reasonable endeavours to allow at any meeting of Members, that a Voting Member who is entitled to attend and vote on a resolution at that meeting, be entitled to a direct vote in respect of that resolution. A "direct vote" includes a vote delivered to the Company prior to the meeting by electronic means approved by the Board. The Board may determine rules and procedures in relation to direct voting, including the manner in which a direct vote may be cast, the circumstances in which a direct vote will be valid and the effect of a Voting Member casting both a direct vote and a vote in any other manner. Where a notice of meeting specifies that direct voting may occur by eligible Voting Members, a direct vote cast by an eligible Voting Member is taken to have been cast by that person at the meeting if the rules and procedures for direct voting determined by the Board (whether set out in the notice of meeting or otherwise) are complied with. A Voting Member exercising a right of direct voting is deemed to be present at the meeting and his or her direct vote is to be counted in relation to any resolution being voted on by show of hands or on a poll.
- (c) If a separate meeting place is linked to the main place of a general meeting by an instantaneous audio-visual communication device which, by itself or in conjunction with other arrangements:
 - (i) gives the general body of Voting Members in the separate meeting place a reasonable opportunity to participate in proceedings in the main place; and
 - (ii) enables the Voting Members in the separate meeting place to vote on a show of hands or on a poll,

a Voting Member present at the separate meeting place is taken to be present at the general meeting and entitled to exercise all rights as if he or she was present at the main place.

- (d) Subject to this Constitution and any rights or restrictions of a class of Members, on a show of hands at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote (except Voting Members with outstanding Fees who may not vote), provided that where a person is entitled to vote in more than one capacity, that person is entitled only to one vote (except Voting Members with outstanding Fees who may not vote).
- (e) Subject to this Constitution and any rights or restrictions of a class of Members, on a poll at a meeting of Members, each Attending Member having the right to vote on the resolution has one vote for each Voting Member that the Attending Member represents (except Voting Members with outstanding Fees who may not vote).
- (f) Subject to this Constitution and any rights or restrictions of a class of Members, where the Board has determined other means (including electronic) permitted by law for the casting and recording of votes by Voting Members on any resolution to be put at a meeting of Members, each Voting Member having a right to vote on the resolution has one vote (except Voting Members with outstanding Fees who may not vote).
- (g) An objection to a right to vote at a meeting of Members or to a determination to allow or disregard a vote at the meeting may only be made at that meeting (or any resumed meeting if that meeting is adjourned). Any objection pursuant to this Article 31(g) must be decided by the chairperson of the meeting of Members, whose decision, made in good faith, is final and conclusive.
- (h) Except where a resolution at a meeting of Members requires a special majority pursuant to the law, the resolution is passed if more votes are cast by Voting Members entitled to vote in favour on the resolution than against it.
- (i) In the case of an equality of votes on a resolution at a meeting of Voting Members, the chairperson of that meeting does not have a casting vote on that resolution.
- (j) Unless a poll is demanded and the demand is not withdrawn, a determination by the chairperson of a meeting of Members following a vote on a show of hands that a resolution has been passed or not passed is conclusive, without proof of the number or proportion of the votes recorded in favour or against the resolution.

32. Voting by representatives

- (a) The validity of any resolution passed at a meeting of Members is not affected by the failure of any proxy or attorney to vote in accordance with directions (if any) of the appointing Voting Member.
- (b) If a proxy of a Voting Member purports to vote in a way or circumstances that contravene the Corporations Act, on a show of hands the vote of that proxy is invalid and the Company must not count it. If a poll is demanded, votes which the Corporations Act require a proxy of a Voting Member to cast in a given way must be treated as cast in that way.
- (c) Subject to this Constitution and the Corporations Act, a vote cast at a meeting of Members by a person appointed by a Voting Member as a proxy or attorney is valid despite the revocation of the appointment (or the authority pursuant to which the appointment was executed), if no notice in writing of that matter has been received by the Company before the time appointed for the commencement of that meeting.

33. Restrictions on voting rights

- (a) The authority of a proxy or attorney for a Voting Member to speak or vote at a meeting of Members to which the authority relates is suspended while the Voting Member is present in person at that meeting.
- (b) An Attending Member is not entitled to vote on any resolution on which any Fee or other amount due and payable to the Company in respect of that Voting Member's membership of the Company has not been paid.
- (c) An Attending Member is not entitled to vote on a resolution at a meeting of Members where that vote is prohibited by the Corporations Act or an order of a court of competent jurisdiction.
- (d) The Company must disregard any vote on a resolution at a meeting of Members purported to be cast by an Attending Member where that person is not entitled to vote on that resolution. A failure by the Company to disregard a vote on a resolution as required by this Article 33(d) does not invalidate that resolution or any act, matter or thing done at the meeting, unless that failure occurred by wilful default of the Company or of the chairperson of that meeting.

34. Polls

- (a) A poll on a resolution at a meeting of Members may be demanded by a Voting Member only in accordance with the Corporations Act or by the chairperson of that meeting.
- (b) No poll may be demanded at a meeting of Members on the election of a chairperson of that meeting, or unless the chairperson of the meeting otherwise determines, the adjournment of that meeting.
- (c) A demand for a poll may be withdrawn.
- (d) A poll demanded on a resolution at a meeting of Members for the adjournment of that meeting must be taken immediately. A poll demanded on any other resolution at a meeting of Members must be taken in the manner and at the time and place the chairperson of the meeting directs.
- (e) The result of a poll demanded on a resolution of a meeting of Members is a resolution of that meeting.
- (f) A demand for a poll on a resolution of a meeting of Members does not prevent the continuance of that meeting or that meeting dealing with any other business.

35. Proxies

- (a) A Voting Member who is entitled to attend and vote at a meeting of Members (**Appointor**) may appoint another Voting Member as proxy to attend and vote for the Appointor in accordance with the Corporations Act but not otherwise.
- (b) A proxy appointed in accordance with the Corporations Act to attend and vote may only exercise the rights of the Voting Member on the basis and subject to the restrictions provided in the Corporations Act.
- (c) A form of appointment of proxy is valid if it is in accordance with the Corporations Act or in any other form (including electronic) which the Board may determine or accept.
- (d) If the name of the proxy in a proxy appointment of a Voting Member is not filled in, the proxy of that Voting Member is:

- (i) the person (who must be a Voting Member) specified by the Company in the form of proxy in the case that Voting Member does not choose; or
- (ii) if no person is so specified, the chairperson of that meeting.

36. Receipt of appointments

- (a) An appointment of proxy or attorney for a meeting of Voting Members is effective only if the Company receives the appointment (and any authority pursuant to which the appointment was signed or a certified copy of the authority) not less than 48 hours before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting.
- (b) Where a notice of meeting specifies an electronic address or other electronic means by which a Voting Member may give the Company a proxy appointment, a proxy given at that electronic address or by that other electronic means is taken to have been given by the Voting Member and received by the Company if the requirements set out in the notice of meeting are complied with.

37. Adjournments

- (a) The chairperson of a meeting of Members may at any time during the meeting adjourn the meeting or any business, motion, question or resolution being considered or remaining to be considered at the meeting or any discussion or debate, either to a later time at the same meeting or to an adjourned meeting to be held at the time and place determined by the chairperson.
- (b) If the chairperson of a meeting of Members exercises the right to adjourn that meeting pursuant to Article 37(a), the chairperson may (but is not obliged to) obtain the approval of Attending Members to the adjournment.
- (c) No person other than the chairperson of a meeting of Members may adjourn that meeting.
- (d) The Company may give such notice of a meeting of Members resumed from an adjourned meeting as the Board resolves. Failure to give notice of an adjournment of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the adjournment or anything done (including the passing of a resolution) at a resumed meeting.
- (e) Only business left unfinished is to be transacted at a meeting of Members which is resumed after an adjournment.

38. Cancellations and postponements

- (a) Subject to the Corporations Act, the Company may by resolution of the Board cancel or postpone a meeting of Members or change the place for the meeting, prior to the date on which the meeting is to be held.
- (b) Article 38(a) does not apply to a meeting called in accordance with the Corporations Act by Members or by the Board on the request of Members, unless those Members consent to the cancellation or postponement of the meeting.
- (c) The Company may give notice of a cancellation or postponement or change of place of a meeting of Members as the Board resolves. Failure to give notice of a cancellation or postponement or change of place of a meeting of Members or the failure to receive any notice of the meeting does not invalidate the cancellation, postponement or change of place of a meeting or anything done (including the passing of a resolution) at a postponed meeting or the meeting at the new place.

- (d) The only business that may be transacted at a meeting of Members the holding of which is postponed is the business specified in the original notice calling the meeting.

39. Meetings of a class of Members

All the provisions of this Constitution relating to a meeting of Members apply so far as they are capable of application and with any necessary changes to a meeting of a class of Members required to be held pursuant to this Constitution or the Corporations Act.

Directors

40. Appointment of Directors

- (a) The Board is to comprise of eight (8) Directors except if the Chief Executive Officer has also been appointed as a Director in accordance with Article 44(e) then the Board shall comprise of nine (9) Directors inclusive of the Chief Executive Officer (after his or her appointment as a Director).
- (b) Where the Board comprises of less than the relevant number of Directors required under Article 40(a), the Board may continue to exercise its powers in accordance with Article 47. Anything done (including the passing of a resolution) by the Board is not invalid merely because the Board comprises of less than the relevant number of Directors required under Article 40(a).
- (c) Subject to Articles 40(a), 40(e) and 41(c), the Board may appoint any person as a Director to fill a casual vacancy.
- (d) Subject to Articles 40(a) and 40(e), the Company may by ordinary resolution appoint any person as a Director.
- (e) A Director (other than the Chief Executive Officer appointed as a Director in accordance with Article 44(e)) must:
- (i) be a member of the Professional Group;
 - (ii) have been a member of the Professional Group for at least 3 years as at the time of appointment to the Board; and
 - (iii) be an Australian citizen or a permanent resident of Australia.
- (f) A person (other than a person who is appointed as the Chief Executive Officer of the Company under Article 44) cannot be appointed or elected to a Position of Governance if that person:
- (i) is an existing employee of the Company or a Subsidiary of the Company; or
 - (ii) has in the 2 years immediately prior to that person's proposed appointment or election to a Position of Governance, been an employee of the Company or a Subsidiary of the Company.

41. Retirement of Directors

- (a) Subject to Article 41(e), a Director must retire from office no later than the longer of the third annual general meeting of the Company or 3 years, following that Director's last election or appointment.
- (b) A Director who retires pursuant to Article 41(a) holds office as a Director until the end of the meeting at which the Director retires and is eligible for re-election.

- (c) A Director appointed pursuant to Article 40(c) must retire at the next annual general meeting occurring after that appointment and is eligible for re-election.
- (d) Subject to Article 41(e), the maximum term of any Director during his or her lifetime is 6 years in total including any re-elections.
- (e) The Chief Executive Officer who has also been appointed as a Director of the Company is not subject to Articles 41(a) and 41(d) and accordingly:
 - (i) is not taken into account in determining the Directors required to retire at an annual general meeting; and
 - (ii) may hold his or her office as a Director for longer than 6 years in total so long as he or she continues to hold that office as Director solely because he or she has been appointed in accordance with Article 44(e).
- (f) No person, other than a Director retiring pursuant to this Article 41 or a Director appointed pursuant to Article 40(c) or a person nominated by the Board, is eligible to be appointed as a Director at any meeting of Voting Members unless a nomination signed by a Voting Member accompanied by the consent of the nominee to act is given to the Company at least 1 month before the meeting.

42. Termination of office

A person ceases to be a Director if the person:

- (a) ceases to be a Member or, except in the case of the Chief Executive Officer who has been appointed a Director in accordance with Article 44(e), a Member in a Professional Group;
- (b) fails to attend at least 3 consecutive Board meetings without the consent of the Board;
- (c) resigns by notice in writing to the Company;
- (d) retires pursuant to Article 41 and is not re-elected;
- (e) is removed from office pursuant to the Corporations Act or ACNC Act;
- (f) in the case of the Chief Executive Officer, ceases to hold the position of the Chief Executive Officer of the Company;
- (g) becomes an insolvent under administration;
- (h) becomes of unsound mind or a person whose property is liable to be dealt with pursuant to a law about mental health; or
- (i) is not permitted to be a director, or to manage a corporation, pursuant to the Corporations Act.

43. Interests of Directors

- (a) A Director is not disqualified by reason only of being a Director (or the fiduciary obligations arising from that office) from:
 - (i) holding an office or place of profit or employment in any other company, body corporate, trust or entity promoted by the Company or in which it has an interest;

- (ii) being a member, creditor or otherwise be interested in any body corporate (including the Company), partnership or entity, except auditor of the Company;
 - (iii) entering into any agreement or arrangement with the Company; or
 - (iv) acting in a professional capacity (or being a member of a firm which acts in a professional capacity) for the Company, except as auditor of the Company.
- (b) Each Director must comply with Corporations Act in relation to the disclosure of the Director's interests.
- (c) A Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present while the matter is being considered at the meeting nor vote on the matter, except where permitted by the Corporations Act.
- (d) If a Director has an interest in a matter, then subject to Article 43(c), Article 43(e) and this Constitution:
- (i) that Director may be counted in a quorum at the Board meeting that considers matters that relate to the interest provided that Director is entitled to vote on at least one of the resolutions to be proposed at that Board meeting;
 - (ii) that Director may not participate in and may not vote on matters that relate to the interest;
 - (iii) the Company may proceed with any transaction that relates to the interest and the Director may participate in the execution of any relevant document by or on behalf of the Company;
 - (iv) the Director may retain the benefits pursuant to any transaction that relates to the interest even though the Director has the interest; and
 - (v) the Company cannot avoid any transaction that relates to the interest merely because of the existence of the interest.
- (e) If an interest of a Director is required to be disclosed pursuant to Article 43(b), Article 43(d)(iv) applies only if the interest is disclosed before the transaction is entered into.

Officers

44. Chief Executive Officer

- (a) The Board may appoint a person as the Chief Executive Officer of the Company, for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves.
- (b) Subject to any agreement between the Company and the Chief Executive Officer, the Board may terminate, vary or suspend the appointment of the Chief Executive Officer of the Company at any time, with or without cause.
- (c) The Board may delegate any of its powers to a Chief Executive Officer of the Company for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power delegated to a Chief Executive Officer of the Company.
- (d) A Chief Executive Officer of the Company must exercise the powers delegated to him or her in accordance with any directions of the Board.

- (e) The Board may appoint the Chief Executive Officer as a Director.
- (f) If the Chief Executive Officer is appointed as a Director, the Chief Executive Officer will cease to be a Director if the Chief Executive Officer is terminated for any reason, or otherwise resigns as the Chief Executive Officer, but will not, for that reason alone, be rendered ineligible for appointment as a Director under any other Article.
- (g) No Chief Executive Officer is entitled to attend or vote at any meeting of the Board whilst under suspension from office.

45. Secretary

The Board may appoint one or more Secretaries, for any period and on any terms (including, subject to Article 6, as to remuneration) as the Board resolves. Subject to any agreement between the Company and the Secretary, the Board may vary or terminate the appointment of a Secretary at any time, with or without cause.

46. Indemnity and insurance

- (a) To the extent permitted by law, the Company may indemnify each Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (b) The indemnity pursuant to Article 46(a):
 - (i) is enforceable without the Relevant Officer having first to incur any expense or make any payment;
 - (ii) is a continuing obligation and is enforceable by the Relevant Officer even though the Relevant Officer may have ceased to be an officer of the Company; and
 - (iii) applies to Liabilities and Legal Costs incurred both before and after this Article became effective.
- (c) To the extent permitted by law, the Company may make a payment (whether by way of advance, loan or otherwise) to a Relevant Officer in respect of Legal Costs of that person.
- (d) To the extent permitted by law, the Company may:
 - (i) enter into, or agree to enter into; or
 - (ii) pay, or agree to pay, a premium for,
 a contract insuring a Relevant Officer against a Liability of that person and the Legal Costs of that person.
- (e) To the extent permitted by law, the Company may enter into an agreement or deed with a Relevant Officer or a person who is, or has been, an officer of the Company or a subsidiary of the Company, pursuant to which the Company must do all or any of the following:
 - (i) keep books of the Company and allow either or both that person and that person's advisers access to those books on the terms agreed;
 - (ii) indemnify that person against any Liability and Legal Costs of that person;
 - (iii) make a payment (whether by way of advance, loan or otherwise) to that person in respect of Legal Costs of that person; and

- (iv) keep that person insured in respect of any act or omission by that person while a Relevant Officer or an officer of the Company or a subsidiary of the Company, on the terms agreed (including as to payment of all or part of the premium for the contract of insurance).

Powers of the Board

47. General powers

- (a) The Board has the power to manage the business of the Company and may exercise to the exclusion of the Company in general meeting all powers of the Company which are not, by the law or this Constitution, required to be exercised by the Company in general meeting.
- (b) A power of the Board can only be exercised by a resolution passed at a meeting of the Board in accordance with Article 52, a resolution passed by signing a document in accordance with Article 51, or in accordance with a delegation of the power pursuant to Article 44, 49 or 50. A reference in this Constitution to the Company exercising a power by a resolution of the Board includes an exercise of that power in accordance with a delegation of the power pursuant to Article 44, 49 or 50.
- (c) Without limiting the generality of Article 47(a), the Board may also from time to time:
 - (i) identify different groups or categories or grades of Members by reference to the certain criterion;
 - (ii) subject to approval by a two-thirds majority of the Board, establish, vary or remove any Division under which Members are categorised;
 - (iii) decide upon any restriction in the number of Members or the number of Members within each Member class;
 - (iv) decide the qualifications for admission as a Member or for admission to a particular class, group, category or grade of Member;
 - (v) make rules concerning the administration of Members generally, including:
 - A. the admission, readmission or refusal to admit persons as Members;
 - B. the transfer, lapse or cancellation of Members;
 - C. the transfer of Members between classes, groups, categories or grades;
 - D. refunds of Fees; and
 - E. the provision of Member Benefits to Members.
- (d) The Board may only amend the By-Laws and the Nominations Committee Charter from time to time by resolution of the Board passed with at least a two-third majority of the Board.

48. Execution of documents

- (a) If the Company has a common seal, the Company may execute a document if that seal is fixed to the document and the fixing of that seal is witnessed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.

- (b) The Company may execute a document without a common seal if the document is signed by one Director and either another Director, a Secretary, or another person appointed by the Board for that purpose.
- (c) The Board may determine the manner in which and the persons by whom cheques, promissory notes, bankers' drafts, bills of exchange and other negotiable or transferable instruments in the name of or on behalf of the Company, and receipts for money paid to the Company, must be signed, drawn, accepted, endorsed or otherwise executed.

49. Committees and delegates

- (a) The Board may delegate any of its powers to a committee of the Board, a Director, an employee of the Company or any other person. A delegation of those powers may be made for any period and on any terms (including the power to further delegate) as the Board resolves. The Board may revoke or vary any power so delegated.
- (b) A committee or delegate must exercise the powers delegated in accordance with any directions of the Board.
- (c) Subject to the terms of appointment or reference of a committee, Article 52 applies with the necessary changes to meetings and resolutions of a committee of the Board.

50. Attorney or agent

- (a) The Board may appoint any person to be attorney or agent of the Company for any purpose, for any period and on any terms (including as to remuneration) as the Board resolves. Subject to the terms of appointment of an attorney or agent of the Company, the Board may revoke or vary that appointment at any time, with or without cause.
- (b) The Board may delegate any of their powers (including the power to delegate) to an attorney or agent. The Board may revoke or vary any power delegated to an attorney or agent.

Proceedings of Directors

51. Written resolutions of Directors

- (a) The Board may pass a resolution without a Board meeting being held if notice in writing of the resolution is given to all Directors and a majority of the Directors entitled to vote on the resolution (not being less than the number required for a quorum at a meeting of Directors) sign a document (including by electronic means in accordance with Article 51(b)) containing a statement that they are in favour of the resolution set out in the document.
- (b) A resolution pursuant to Article 51(a) may consist of several documents in the same form each signed by one or more Directors and is effective when signed by the last of the Directors constituting the majority of the Directors. A Director is taken to have signed a resolution for the purposes of Article 51(a) by electronic means if the document is in PDF or other format that is a scanned image of the original of the resolution and includes the Director's signature; and the document is taken to be signed when received by the Company in legible form.

52. Board Meetings

- (a) Subject to this Constitution, the Board may meet, adjourn and otherwise regulate its meetings as it thinks fit.
- (b) A Director may call a Board meeting at any time. On request of any Director, a Secretary of the Company must call a meeting of the Directors.
- (c) Notice of a Board meeting must be given to each Director (except a Director on leave of absence approved by the Board). Notice of a Board meeting may be given in person, or by post or by telephone or other electronic means.
- (d) A Director may waive notice of a Board meeting by giving notice to that effect to the Company in person or by post or by telephone or other electronic means.
- (e) A person who attends a Board meeting waives any objection that person may have to a failure to give notice of the meeting.
- (f) Anything done (including the passing of a resolution) at a Board meeting is not invalid because either or both a person does not receive notice of the meeting or the Company accidentally does not give notice of the meeting to a person.
- (g) For the purposes of the Corporations Act, each Director, by consenting to be a Director or by reason of the adoption of this Constitution, consents to the use of each of the following technologies for the holding of a Board meeting:
 - (i) telephone;
 - (ii) video;
 - (iii) any other technology which permits each Director to communicate with every other participating Director; or
 - (iv) any combination of these technologies.

A Director may withdraw the consent given pursuant to this Article 52(g) in accordance with the Corporations Act.
- (h) If a Board meeting is held in 2 or more places linked together by any technology:
 - (i) a Director present at one of the places is taken to be present at the meeting unless and until the Director states to the chairperson of the meeting that the Director is discontinuing his or her participation in the meeting; and
 - (ii) the chairperson of that meeting may determine at which of those places the meeting will be taken to have been held.
- (i) Until otherwise determined by the Board, a quorum for a Board meeting is a majority of the Directors currently in office, who are entitled to vote on a resolution that may be proposed at that meeting. A quorum for a Board meeting must be present at all times during the meeting.

53. Chairperson of the Board

- (a) The Board may elect a Director as chairperson of the Board for any period up to 2 years, at which point that Director may nominate himself or herself to be re-elected by the Board as chairperson. There is no limit on the number of times on which a Director may be elected as chairperson of the Board (so long that that person remains a Director). The Board may remove the chairperson of the Board at any time with or without cause.

- (b) Subject to Article 53(c), the chairperson of the Board must chair each Board meeting.
- (c) If at a Board meeting:
 - (i) a chairperson has not been elected pursuant to Article 53(a); or
 - (ii) the chairperson of the Board is not present within 15 minutes after the time appointed for the holding of a Board meeting or is not willing to chair all or part of that meeting,

the Directors present must elect one of their number to, chair that meeting or part of the meeting.
- (d) A person does not cease to be a chairperson of the Board if that person retires as a Director at a meeting of Voting Members and is re-elected as a Director at that meeting (or any adjournment of that meeting).
- (e) If a Chief Executive Officer has been appointed under Article 44, the Chief Executive Officer must not act as chairperson of the Board.

54. Board resolutions

- (a) A resolution of the Board is passed if more votes are cast by Directors entitled to vote in favour of the resolution than against it.
- (b) Subject to Article 43 and this Article 54, each Director present in person has one vote on a matter arising at a Board meeting.
- (c) Subject to the Corporations Act, in case of an equality of votes on a resolution at a Board meeting, the chairperson of that meeting has a casting vote on that resolution in addition to any vote the chairperson has in his or her capacity as a Director in respect of that resolution, provided that the chairperson is entitled to vote on the resolution and more than two Directors are present and entitled to vote on the resolution.

55. Valid proceedings

- (a) An act at any Board meeting or a committee of the Board or an act of any person acting as a Director is not invalidated by:
 - (i) a defect in the appointment or continuance in office of a person as a Director, a member of the committee or of the person so acting; or
 - (ii) a person so appointed being disqualified or not being entitled to vote,

if that circumstance was not known by the Board, committee or person (as the case may be) when the act was done.
- (b) If the number of Directors is below the minimum required by this Constitution, the Board must not act except in emergencies, to appoint Directors up to that minimum number or to call and arrange to hold a meeting of Members.

Notices

56. Notices to Members

- (a) The Company may give Notice to a Member by any of the following means in the Board's discretion:

- (i) delivering it to that Member or person;
 - (ii) delivering it or sending it by post to the address of the Member in the Register or the alternative address (if any) nominated by that Member for that purpose;
 - (iii) sending it to the electronic address (if any) nominated by that Member or person for that purpose;
 - (iv) if permitted by the Corporations Act, notifying that Member of the notice's availability by an electronic means nominated by the Member for that purpose; or
 - (v) any other means permitted by the Corporations Act.
- (b) The Company must send all documents to a Member whose address for Notices is not within Australia by air-mail, air courier or electronic transmission.
- (c) Any Notice required or allowed to be given by the Company to one or more Members by advertisement is, unless otherwise stipulated, sufficiently advertised if advertised once in a daily newspaper circulating in the states and territories of Australia.

57. Notice to Directors

The Company may give Notice to a Director by:

- (a) delivering it to that person;
- (b) sending it by post to the usual residential address of that person or the alternative address (if any) nominated by that person for that purpose;
- (c) sending it to the electronic address (if any) nominated by that person for that purpose; or
- (d) any other means agreed between the Company and that person.

58. Notice to the Company

A person may give Notice to the Company by:

- (a) delivering it or sending it by post to the registered office of the Company;
- (b) delivering it or sending it by post to a place nominated by the Company for that purpose;
- (c) sending it to the electronic address (if any) nominated by the Company for that purpose; or
- (d) any other means permitted by the Corporations Act.

59. Time of service

- (a) A Notice sent by post or air-mail is taken to be given on the day after the date it is posted.
- (b) A Notice sent by electronic transmission is taken to be given when the transmission is sent provided that in the case of notice to the Company or a Director, the sender meets any action required by the recipient to verify the receipt of the document by the recipient.

- (c) A Notice given in accordance with Article 56(a)(iv) is taken to be given on the day after the date on which the Member is notified that the Notice is available.
- (d) A certificate by a Director or Secretary to the effect that a Notice by the Company has been given in accordance with this Constitution is conclusive evidence of that fact.

60. Notice requirements

The Board may specify, generally or in a particular case, requirements in relation to Notices given by any electronic means, including requirements as to:

- (a) the classes of, and circumstances in which, Notices may be sent;
- (b) verification (whether by encryption code or otherwise); and
- (c) the circumstances in which, and the time when, the Notice is taken to be given.

Winding up

61. Winding up

On a winding up of the Company, any surplus assets of the Company remaining after the payment of its debts must not be paid to or distributed among the Members, but must be given or transferred to:

- (a) one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Voting Members by resolution at or before the dissolution of the Company:
 - (i) having object similar to the objects of the Company; and
 - (ii) whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company pursuant to Article 6; or
- (b) if there are no bodies corporate, associations or institutions which meet the requirements of Article 61(a), to one or more bodies corporate, associations or institutions (whether or not a Member or Members) selected by the Voting Members by resolution at or before dissolution of the Company, the objects of which are the promotion of charity and gifts which are allowable deductions pursuant to the Income Tax Assessment Act 1997 (Cth); or
- (c) if the Voting Members do not make a selection pursuant to Article 61(a) or 61(b) for any reason, to one or more bodies corporate, associations or institutions meeting the requirements of either Article 61(a) or 61(b) selected by the Board, subject to Board obtaining court approval pursuant to the Corporations Act to exercise this power.

Transitional arrangements

62. Transitional arrangements

62.1 Transitional arrangements

Everything done under the previous rules of the Australian Computer Society Incorporated continues to have the same operation and effect after the Effective Date as if properly done under this Constitution.

62.2 Board

- (a) Notwithstanding Articles 41(a), 41(d) and 62.2(d), each of the:
- (i) 2019 "President" of the Australian Computer Society Incorporated (who would otherwise have continued in the title as "Immediate Past President" under the previous rules of the Australian Computer Society Incorporated);
 - (ii) 2019 "Vice President - Academic Boards" of the Australian Computer Society Incorporated;
 - (iii) 2019 "Vice President - Community Boards" of the Australian Computer Society Incorporated;
 - (iv) 2019 "Vice President - Membership Boards" of the Australian Computer Society Incorporated; and
 - (v) 2019 "National Treasurer" of the Australian Computer Society Incorporated,

shall, subject to receipt of a consent to act as a Director, be deemed to be Directors of the Company from the Effective Date for a term expiring on the date of the next annual general meeting of the Company after the Effective Date except the term of the 2019 "President" of the Australian Computer Society Incorporated shall expire on the second annual general meeting of the Company after the Effective Date.

- (b) Subject to Article 62.2(d), each Member (up to a maximum number of 3 unless any person referred to in Article 62.2(a) refuses to provide his or her consent to be a Director) duly elected with the purpose of becoming a Director of the inaugural Board of the Company at a special general meeting of the Australian Computer Society Incorporated shall, subject to receipt of a consent to act as a Director from that Member, be a Director of the Company on and from the Effective Date. Each of the Directors appointed under this Article will have a three year term commencing on the Effective Date.
- (c) At the annual general meeting held immediately after the Effective Date to elect the four new Directors to replace the same number retiring as envisaged under Article 62.2(a), the three Directors receiving the highest votes shall have a term of 3 years and, notwithstanding Article 41(a), the other Director so elected shall have a term of 2 years.
- (d) For the purposes of Article 41(d), the term served by a person on the "Management Committee" of the Australian Computer Society Incorporated will be deemed to count towards determining the term that such person has served as a Director of the Company. For clarity, Directors who are elected for a specific term may serve as Directors until they reach the maximum term set out in Article 41(d), at which point they must resign as a Director (for example, a Director elected when he or she has 5 years previous service on the "Management Committee" of the Australian Computer Society Incorporated may serve as a Director for a further 1 year).
- (e) If a Member elected at the special general meeting of the Australian Computer Society Incorporated referred to in Article 62.2(b) has served more than 6 years on the "Management Committee" of the Australian Computer Society Incorporated prior to the Effective Date, then that person is not entitled to serve as a Director and Article 62.2(b) does not have the effect of making that person a Director. In that scenario, the Board must as soon as reasonably practicable, arrange for a general meeting of the Voting Members of the Company to be held for the purposes of electing a Director to fill in that vacancy on the Board.