

# Invited Statement to ACS Congress re Governance and the New Constitution

Roger Clarke – 16 June 2020

## Executive Summary

To convert from an association to a company limited by guarantee, the Society needs a Constitution. The Constitution needs to comply with the Corporations Act, but also to establish structures and processes that are appropriate for a professional society.

As a starting-point, it is important to consider **the nature of professional societies**, and of the special status that they enjoy. To fulfil the role, the ACS has to operate within a recognised body of learning that arises from research, education, training and deep experience. It must establish and encourage standards of behaviour of both a technical and an ethical nature. It must also ensure that its members apply their knowledge, and exercise their skills, in the interests not only of themselves and their employers, but also of society as a whole.

From this arise a set of **key functions** that every professional society must have at its core. These have to do with standards, accreditation processes for members and for educational institutions, continuing professional development, collegial interaction, services to the membership, and contributions to the formation of public policy. These key functions make a professional society quite distinct from a commercial or for-profit corporation, and very different also from an industry association.

When establishing a constitution for an organisation, form must follow function. The **principles to guide the design and drafting** of the ACS's new Constitution start with recognition of the centrality of the professional membership. Any professional society has to be of the Members, and for the Members, in order to satisfy its ethical responsibilities and to service needs beyond the members' own interests.

More specifically, the Constitution needs to embody the Society's values, and to ensure that the behaviour of both the Society and its professional members is consistent with those values. Business lines must be appropriate to the Society's nature, and priorities for the application of surpluses from business lines need to reflect the Society's key functions.

Responsibilities, powers and resources need to be delegated to appropriate levels within the organisation, with accountability mechanisms back up the chain. This includes direct voting by professional members on the key documents that define the Society and its operations, priorities and initiatives. Further, the organisation's governing and other committees need to draw on the full body of professional members.

In a large country with diversity of scale and regional cultures, there is a need for functional groupings of members (such as communities of interest) to be complemented by regional groupings of members (branches and chapters), each with the scope, powers and resources to inform and to draw information from engaged members. On governance matters, communication channels are needed outbound from the Society to members, inbound, and across the structure, among members.

The design and drafting of a Constitution with these characteristics needs to involve the membership, rather than being driven entirely by the Management Committee or the Congress.

A **task force** needs to be established, with appropriate Terms of Reference, composition and resourcing. This needs to establish an open and participative process. A priming document needs to be published, and submissions sought, received, considered and published. Several rounds of drafting and public debate will be needed. The task force's report then needs to be submitted to Congress and published to the members. This will ensure that the resulting Constitution satisfies the Principles implied by the ACS's status as a professional society, and that the proposal enjoys the support of the membership when put to a General Meeting.

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## Background

The Society intends converting from its longstanding form of an incorporated association to a company limited by guarantee. To do this, the Society needs to replace its existing Rules of Incorporation with a customised, but Corporations Act-compliant, Constitution.

This document summarises the key features of a professional society, expresses the principles that need to guide the design of the ACS's constitution for the third decade of the 21st century, identifies the key features of a Constitution suitable for the ACS, and sketches a process to deliver the result.

## 1. A Professional Society

"A Profession is a disciplined group of individuals who adhere to **ethical standards** and who hold themselves out as, and are accepted by the public as possessing **special knowledge and skills** in a widely recognised body of **learning derived from research, education and training [and/or deep experience] at a high level**, and who are prepared to apply this knowledge and exercise these skills in **the interest of others** ... [with] high standards of behaviour in respect to the **services provided to the public** and in dealing with professional colleagues. Further, these **codes are enforced** by the Profession and are acknowledged and accepted by the community" (as defined by the Australian Council of Professions, emphases added).

These attributes clearly distinguish a professional society from a commercial corporation that seeks return on investment, and from an industry association that represents the interests of the corporations that make up its membership.

Appendix 1 lists the functions that are key to the performance of a professional society, as reflected in the constitutions, web-sites and practices of a range of such organisations. They include:

- **Standards** (including a Code of Ethics, technical standards, and accreditation of educational providers and courses for entry qualifications and for postgraduate and professional studies)
- **Requirements for Entry to the Profession** (including bodies of knowledge, express criteria, application assessment, and accreditation)
- **Continuing Professional Development for Professional Members** (through learned publications, professional publications, events and the operation of communities of practice)
- **Public Policy** in relation to relevant technologies, their applications, and their implications (including public statements, submissions, publications and outreach)
- **Member Services** (including networking events, facilitation of communications among members, information resources, and professional insurance)

## 2. Principles underlying a Professional Society Constitution

Many ACS members are involved with for-profit corporations, variously as entrepreneurs, investors, directors, senior executives, managers and employed professionals; and many more are self-employed. Those corporations drive economic activity. The reasons those same people join the ACS are very different from the motivations that drive their investment and employment decisions.

ACS members expect that their professional society will evidence values, will declare and apply a suitable mission statement, strategy and priorities, and will conduct activities that are complementary to those performed by for-profit corporations, not competitive with them. This section proposes a set of Principles intended to encapsulate those values and priorities. The following Meta-Principle underpins the Principles more generally:

### (0) **The Centrality of the Professional Membership**

An appropriate Constitution entrenches direct involvement of the professional membership in the Society's values, strategy and priorities.

The following are proposed as the Principles to guide the expression of the Constitution for the ACS:

(1) **Embodiment of Values**

An appropriate Constitution expresses the Society's purposes and embodies the Society's values, including those in the Code of Ethics, and particularly the primacy of the public interest.

(2) **Behaviour Consistent with Values**

An appropriate Constitution provides assurance that business objectives, priorities, judgements and practices are based on, and are at all times consistent with, the Society's objects and the Society's values. The Society's business lines are means to an end, not ends in themselves. Further, prioritisation of the allocation of surpluses from operational activities reflect the Society's nature and the functions it performs.

(3) **Dispersed Responsibilities, Powers and Funds**

An appropriate Constitution allocates responsibilities, powers and funding according to the principle of subsidiarity, i.e. they are to be situated only as remotely from the members as is justified. For example, standards and public policy positions need to be consistent nationwide; whereas outreach and events with a local footprint, especially events with a large inter-personal networking component, need to be run by the local Branch.

(4) **Workable Delegations**

An appropriate Constitution establishes and enables delegations of responsibility, powers and accountability, so that the Board, other internal organs, and the senior staff-member and the staff, can conduct the Society's ongoing business in an efficient and effective manner. This implies:

- **carefully framed delegation of the membership's authority to the Board and other internal organs, with responsibility accompanied by transparency and accountability**, and subject to a carefully framed reserve power in the hands the professional membership to override or recall an action; and
- **carefully framed delegation of the Board's and other internal organs' tasks and powers to the senior staff-member and the staff, with responsibility accompanied by transparency and accountability**, and subject to carefully-framed reserve powers of the Board and other internal organs, and ultimately the professional membership, to override or recall an action.

(5) **Control of the Key Constitutional Documents by the Professional Membership**

An appropriate Constitution entrenches control of the documents that define the Society's structures, processes, norms and priorities in the hands of the professional membership. This can be performed in a prompt and timely manner through the use of contemporary, adequately secure electronic communications and voting facilities.

(6) **Control of Nomination Processes by the Professional Membership**

An appropriate Constitution entrenches control of the nomination process for the Board and other senior positions in the hands of the professional membership. The provisions need to safeguard the retention of corporate memory through careful design of election cycles and terms. Mechanisms to ensure breadth and depth of expertise, and diversity, need to mature in concert with Australian law and good practice.

(7) **A Dual-Electorate Mechanism to Ensure Balance among Interests**

To reflect the twin factors of being both national and regionally diverse, an appropriate Constitution adopts the principle applied in the Australian Constitution, whereby some Directors are elected by the voting members as a whole, and some by an electoral college comprising members drawn equally from each Branch.

(8) **Invigoration of the Branches**

An appropriate Constitution features elected Branch Committees each of which has authority in relation to activities within its own geographical area, is assured of resources, exercises control over staff within its area, and is subject to transparency and accountability requirements to Branch members and to the Board, and is subject to financial management norms. However, Branch powers do not extend to matters of a national nature.

### 3. Implications for Governance and the Constitution

The details of the features designed into the Constitution of course depend on the outcome of deliberations. However, the Principles that the previous section inferred from the nature and key functions of a professional society point strongly toward some important features.

Form follows function. So all features need to be formulated with the organisation's particular nature, functions and values clearly in mind. Moreover, features need to be avoided that are inconsistent with the nature, functions and values, or that tend to undermine them rather than serving them.

The Board needs to be empowered, both in order to achieve compliance with applicable laws, but also to ensure effective and efficient performance of the Society's functions, and efficient and sufficiently flexible and adaptable operation of its business lines.

However, the empowerment of the Board needs to be within a framework that is driven by the members, and controlled by them. Changes in strategy and in the key documents that define the Society's activities and modes of operation need to be subject to member approval. Contrary to some people's claims, legal advice confirms that the Corporations Act provides ample scope to structure a company limited by guarantee in a manner suitable for a professional society.

The Society's form also needs to reflect 21st-century realities. Critical among these are:

- open and timely electronic communications:
  - from organs of the Society and its staff to members;
  - from members to organs and staff; and
  - among members, directly, without mediation or delay by staff;
- online voting in order to implement primarily direct rather than representative democracy.

Strategic functions need to be driven by Panels of appropriately qualified members, with each Panel responsible for the preparation of proposals for change within its terms of reference. Reflecting the Society's Key Functions as described above, the Panels' scope can be readily clustered as follows:

- **Professional Standards**  
Professional ethics, professional skills inventories, accreditation of educational institutions and courses of study, professional entry and promotion requirements, skills assessments of all kinds, national and international industry standards, and like matters
- **Public Policy**  
The Society's public policy statements and submissions, encompassing technology, applications, economic, legal, social and environmental implications, and like matters
- **Professional Development**  
National continuing professional education events, national events series, courses, libraries, professional publications, the formation and operation of Communities of Practice and Sub-Societies, and like matters
- **Member Services**  
Facilitation of communications and communication channels from the Board, Committees and staff to Society Members, from Society Members to organs and staff, and among Society Members, social networking among members, relationships with national employers, professional insurance, liaison with Branches and Chapters, and like matters

The majority of the Directors need to be elected directly by the membership as a whole. However, some recognition of and representation for lower-population-density regions is needed, in a manner similar to the Australian Parliament. A convenient way to achieve this would be by the election of those Directors who are to chair the Panels by an electoral college comprising members from each geographical Branch in equal numbers.

In keeping with the open, transparent and member-driven nature of the Society, nomination for the Board needs to be open and not subject to control by the existing Board. Because of the scale of the Society, some demonstrated experience is necessary; but the Society should not run ahead of qualifications requirements of corporate Boards more generally.

Again reflecting the nature of the Society and the functions it performs, the CEO's KPIs need to be custom-built to serve the Society's needs and reflect its values, and not modelled on those for commercial corporations or industry associations.

The vital emphasis on members' needs is in part fulfilled by the Professional Development and Member Services Panels. However, Australia has a widely dispersed population, and considerable variations exist in the nature, scale and emphases of IT applications. Member services therefore need to be delivered, within recognised geographical territories, by elected Committees and employed staff who are of, and for, the regional membership, and are perceived to be so.

To ensure local engagement, Branch committee membership needs to be elected by members who live within the relevant geographical region. The Committees also need to be empowered, and resourced. Most Branches need to stimulate and support Chapters within their geographical region, to ensure that the Society neither has, nor is perceived to have, a narrow focus on services for capital-city members.

On the other hand, with travel and communications vastly more advanced than they were 60 years ago, the need for a strong role for Branches in national activities has long since expired. Further, where overlaps between national and regional functions arise, Branches need to be required to coordinate their activities with national organs.

#### **4. The Vehicle to Develop the New Constitution**

The Principles outlined above identify a focus on members as being central to the Society's new Constitution. That will enable the organisation to harness the energy of Members, to attract back Members who have not renewed, and to enthuse more to join.

To signal that the focus is on members, the development of the new Constitution needs to be undertaken in the spirit of an open and member-oriented Society. A task force needs to be formed that can reach out to the membership, identify issues, consult, consider, debate, and draft. To attract the support of the membership, its composition needs to be broadly representative, across all dimensions of diversity.

The process that the task force adopts needs to be open, with submissions published. Resources need to be provided to it, and put under the task force's control. Successive drafts of the report and proposed features and clauses need to be openly available, and comments on them published. The Congress needs to provide the task force with delegations sufficient that it can design and operate that process, and bring forward a sufficiently consensual document that it will gain the required 75% support of the membership.

## Appendix 1: Key Functions of a Professional Society

- **Technical and Ethical Standards**
  - Establishment, promulgation, articulation, enforcement and adaptation of a **Code of Ethics** and more detailed standards of professional behaviour
  - Establishment or adoption, promulgation, articulation, enforcement and adaptation of **professional and technical standards**, where appropriate in conjunction with other professional, industry and international associations
  - Establishment or adoption, promulgation, application, articulation, enforcement and adaptation of **accreditation standards**
- **Membership Requirements**
  - Formulation, adaptation and interpretation of threshold requirements for the various **grades of professional and other membership**
  - Formulation, adaptation and interpretation of threshold requirements for **certification of members** for practice and specialisations
- **Knowledge and Skills Assessment**
  - Accreditation of educational institutions
  - Accreditation of courses of study relating to entry to the profession
  - Accreditation of providers of and courses for postgraduate and specialised studies
  - **Assessment** of applications for admission to the various grades of professional and other membership and for certifications
- **Professional Development**
  - Operation of and/or support for:
    - learned **publications**
    - technical publications
  - Professional development **events**
  - Operation of and/or support for **communities of practice, special interest groups and sub-societies** that focus on particular aspects of IT and its applications and implications
  - Support for **professional development** across the full range of technical, managerial, executive, legal, economic, social and environmental aspects of IT
- **Member Services**
  - Operation of and/or support for **Networking Events**, including geographically dispersed activities through branches, chapters, communities of practice and sub-societies
  - Operation of and/or support for **Information Resources**
  - Analysis and publication of **Employment Roles, Skills and Career Pathways**
  - Operation of and/or support for **Insurance**
  - Advice, counselling, mentoring and other member services
- **Public Policy**
  - In relation to relevant technologies, their applications, and their economic, legal, social and environmental implications:
    - **proactive formulation and publication of policies** and other measures to influence public policy-makers
    - **reactive preparation and submission of responses** to enquiries and proposals
    - **critical reviews of policy impacts**
    - **contributions to media and social media discussions**
  - Operation of and/or support for **public-outreach publications**
  - Outreach to **schools and communities**
- **Internal Functions**
  - Governance and operational management
  - Strategic, tactical and risk assessment and management
  - Communications with and among the membership
  - Maintenance and enhancement of governance expertise among the membership