FEDERAL COURT OF AUSTRALIA

Clarke v Australian Computer Society Incorporated [2019] FCA 2175

File number:	NSD 1892 of 2019
Judge:	**WIGNEY J**
Date of judgment:	23 December 2019
Catchwords:	**CORPORATIONS** – claim by member of incorporated association to set aside special resolution passed at general meeting of that association and the resulting permission given by the registrar-general under the *Associations Incorporation Act 1991* (Cth) to the association to apply to the Australian Securities & Investments Commission for registration as a company limited by guarantee – where special resolution put to the vote of the members to change the association to a company limited by guarantee and to replace existing rules with a new constitution compliant with the *Corporations Act 2001* (Cth) – where special resolution passed by one vote – where applicant claimed that the association's rules concerning notification of proposed alteration to its rules not complied with – where applicant claimed that notice of meeting not sent to members in accordance with the rules – where applicant claimed that explanatory memorandum was materially misleading – where applicant claimed that decision that proxies were invalid miscarried – where applicant claimed that chair of the meeting breached his duties by restricting debate at the general meeting – consideration of whether notice of general meeting was sent to members where access provided by way of hyperlink – consideration of whether notice of meeting was materially misleading – consideration of whether proxies were invalid by reason of clerical errors – consideration of power to correct clerical errors in a proxy form – consideration of whether chair of meeting breached his duties as chair by adopting a procedure which unjustifiably restricted debate of the special resolution– applicant's contentions concerning the notice of meeting, invalidation of proxies and conduct of meeting upheld – consideration of whether the various breaches were material – special resolution set aside
Legislation:	*Acts Interpretation Act 1901* (Cth) s 28A *Acts Interpretation Act 1954* (Qld) s 39 *Associations Incorporation Act 1991* (ACT) ss 14(1), 14(2), 16(b), 16(c), 18(1)(b)(i), 18(1)(b)(iii), 30, 32, 32(1), 33(1),

48, 49, 53, 60(1), 60(2), 68, 69, 70, 82(1), 83, 82(3), 124, 127(2)(a), Pt 4 Div 4.4, Pt 6, Sch 1

Civil Law (Wrongs) Act 2002 (ACT) Ch 9

Competition and Consumer Act 2010 (Cth) Sch 2, Australian Consumer Law s 18

Corporations Act 2001 (Cth)

Electronic Transactions (Queensland) Act 2001 (QLD) s 11

Fair Work (Registered Organisations) Act 2009 (Cth)

Federal Court of Australia Act 1976 (Cth) s 22

Jurisdiction of Courts (Cross-vesting) Act 1987 (Cth) s 9(3)

Cases cited:

Austar Finance Group Pty Ltd v Campbell [2007] NSWSC 1493; 215 FLR 464

Byng v London Life Association Ltd [1990] Ch 170

Campbell v The Australian Mutual Provident Society (1906) 7 SR (NSW) 99

Carruth v Imperial Chemical Industries Ltd [1937] AC 707

Conveyor & General Engineering Pty Ltd v Basetec Services Pty Ltd [2015] 1 Qd R 265

Crosby v Kelly [2012] FCAFC 96; 203 FCR 451

Devereaux Holdings Pty Ltd v Pelsart Resources NL (No 2) (1985) 9 ACLR 956

Dhami v Martin [2010] NSWSC 770; 241 FLR 165

Fraser v NRMA Holdings Limited (1995) 55 FCR 452

House v The King (1936) 55 CLR 499

Jones v Dunkel (1959) 101 CLR 298

Link Agricultural Pty Ltd v Shanahan, McCallum & Pivot Ltd [1998] VSCA 3; [1999] 1 VR 466

McLure v Mitchell (1974) 6 ALR 471 at 494; 24 FLR 115

MDA National Limited v Medical Defence Australia Limited [2014] FCA 954

Newsnet Pty Ltd v Patching [2011] NSWSC 690; 81 NSWLR 104

Re Adams International Food Traders Pty Ltd and the Companies Code (1988) 13 NSWLR 282

Re Direct Acceptance Corporation Ltd (1987) 5 ACLC 1,037

Re Dorman Long & Co Ltd [1934] Ch 635

Re Ryde Ex-Services Memorial & Community Club Limited (Administrator appointed) [2015] NSWSC 226

Vero Insurance Ltd v Kassem [2010] NSWSC 838; 79 ACSR 330

Wall v London & Northern Assets Corporation [1898] 2 Ch 469

	Watpac Limited, in the matter of Watpac Limited [2018] FCA 656
Date of hearing:	12 December 2019
Registry:	New South Wales
Division:	General Division
National Practice Area:	Commercial and Corporations
Sub-area:	Corporations and Corporate Insolvency
Category:	Catchwords
Number of paragraphs:	200
Counsel for the Applicant:	Dr A Greinke
Solicitor for the Applicant:	SBA lawyers
Solicitor for the First Respondent:	Clayton Utz
Counsel for the First Respondent:	Mr J Giles SC with Mr R Jedrzejczyk
Counsel for the Second Respondent:	The Second Respondent filed a submitting appearance save as to costs

ORDERS

NSD 1892 of 2019

BETWEEN:	**ROGER ANTHONY CLARKE** Applicant
AND:	**AUSTRALIAN COMPUTER SOCIETY INCORPORATED** First Respondent
	REGISTRAR-GENERAL OF THE AUSTRALIAN CAPITAL TERRITORY Second Respondent
JUDGE:	**WIGNEY J**
DATE OF ORDER:	**23 DECEMBER 2019**

THE COURT DECLARES THAT:

1. The convening of the general meeting of the first respondent held on 25 October 2019 was invalid.
2. The special resolution purportedly passed at the general meeting held on 25 October 2019 was invalid.

THE COURT ORDERS THAT:

1. The special resolution purportedly passed at the general meeting held on 25 October 2019 be set aside.
2. The permission granted to the first respondent by the second respondent pursuant to s 82(3) of the *Associations Incorporation Act 1991* (ACT) to apply to the Australian Securities & Investments Commission for registration be set aside.
3. The proceeding be listed for a case management hearing on a date to be fixed in February 2020 for the consideration of what further steps should be taken in the proceeding, including what, if any, orders or directions should be made concerning the holding of a further general meeting of the first respondent.
4. The first respondent pay the applicant's costs.

Note: Entry of orders is dealt with in Rule 39.32 of the *Federal Court Rules 2011*.

REASONS FOR JUDGMENT

WIGNEY J:

1 The Australian Computer **Society** Incorporated is a not-for-profit organisation, the principal objects of which include to promote and further the development, study and application of information and communications technology in Australia. It is registered as an incorporated association under the ***Associations Incorporation Act*** *1991* (ACT) and has just over 41,000 members, just over 10,000 of whom are voting members. During 2019, the Society took certain steps which were necessary for it to apply to the registrar-general under the Associations Incorporation Act for permission to apply for registration as a company limited by guarantee under the ***Corporations Act*** *2001* (Cth). In particular, on 25 October 2019, it held a general meeting at which a special resolution to apply for such registration was put to its members. That resolution, which was required to be passed by 75% of the voting members, was passed by effectively one vote.

2 Mr Roger **Clarke** is a member of the Society. He was a vocal opponent of the resolution that was put to the members at the general meeting. On 14 November 2019, he commenced proceedings in this Court, the general effect of which was to challenge the passing of the special resolution and the resulting permission granted by the registrar-general. He sought interlocutory relief restraining the Society from applying to the Australian Securities and Investments **Commission** for registration as a company limited by guarantee. The registrar-general, who was the second respondent to the proceeding, filed a submitting appearance.

3 At the hearing of Mr Clarke's application for interlocutory relief, the Society gave an undertaking, through its counsel, that it would not apply to the Commission for registration until 20 December 2019 or further order. The hearing of Mr Clarke's substantive application was expedited. The Society's undertaking was subsequently extended to 30 December 2019. The substantive application was heard on 12 December 2019. It was obviously necessary for the matter to be determined expeditiously. These reasons for judgment should be read and considered in that context.

STATUTORY CONTEXT AND JURISDICTION

4 Subsection 14(1) of the Associations Incorporation Act provides that an association is eligible for incorporation if it has at least five members, is formed or carried on for a lawful object and is not ineligible for incorporation under subs 14(2). An association is ineligible for

incorporation under subs 14(2) if it is formed or carried on with the object of trading or obtaining pecuniary gain for its members, or is trading or obtaining pecuniary gain for its members, or has capital divided into shares or stock held by its members, or holds property in which its members have an alienable interest (whether directly or in the form of shares or stock in its capital or otherwise), or is capable of applying for registration as an organisation under the *Fair Work (Registered Organisations) Act 2009* (Cth).

5 Before being incorporated under the Associations Incorporation Act, an association must approve a statement of the objects and adopt rules of the association: see subs 16(b) and (c) and subs 18(1)(b)(i) and (iii). The association's rules may be either the model rules, or rules other than the model rules that comply with s 32: see subs 31(1) of the Associations Incorporation Act. The model rules are the rules prescribed by a regulation pursuant to subs 127(2)(a). Section 32 defines the minimum requirements for rules, other than the model rules, by reference to matters set out in schedule 1 to the Associations Incorporation Act. It is unnecessary for present purposes to delve into those minimum requirements. As will be seen, the Society's rules were rules other than the model rules and there was no issue about whether they did or did not comply with s 32 and schedule 1 of the Associations Incorporation Act.

6 Section 30 of the Associations Incorporation Act provides that an incorporated association may alter its objects by special resolution. Similarly, subs 33(1) provides that an incorporated association may alter its rules "in whole or in part" by special resolution.

7 Section 48 of the Associations Incorporation Act provides that "[t]he rules of an incorporated association are taken to bind the association and its members from time to time as if the rules had been signed and sealed by each member and contained covenants on the part of each member to observe all the rules". Section 49 of the Associations Incorporation Act confers jurisdiction on "the court" where a member is deprived of a right conferred on the member by the rules. It provides as follows:

> A member of an incorporated association who is deprived by a decision of the association of a right conferred on the member, as a member, by the rules of the association, may apply to the court for an order to vary or set aside the decision.

8 The "court" is defined in the Dictionary to the Associations Incorporation Act as "the Supreme Court or the Magistrates Court". The reference to the Supreme Court is plainly a reference to the Supreme Court of the Australian Capital Territory.

9 Section 53 of the Associations Incorporation Act also confers jurisdiction on the court in respect of the enforcement of rights under the rules. It provides as follows:

> (1) On the application of an incorporated association or a member of an incorporated association, the court may, by order –
>
> (a) give directions for the performance and observance of the rules of the incorporated association by any person who is under an obligation to perform or observe those rules; and
>
> (b) declare and enforce the rights or obligations of members of an incorporated association between themselves, or the rights or obligations between an incorporated association and a member of the incorporated association.
>
> (2) On hearing an application, the court may make an order whether or not the application relates to a right or interest in property, and whether or not the applicant has an interest in property of the association.

10 Subsection 60(1) of the Associations Incorporation Act provides that an incorporated association must have a committee of at least three members of the association. Subsection 60(2) provides that the committee of an incorporated association has "the management of the association".

11 Division 4.4 of Pt 4 of the Associations Incorporation Act provides for the holding of general meetings of an incorporated association. Section 68 requires the holding of a first annual general meeting and s 69 provides for an annual general meeting each calendar year. Section 70 provides as follows in relation to special resolutions:

> A resolution of an incorporated association is taken to be a special resolution if –
>
> (a) it is passed at a general meeting of the association, being a meeting of which at least 21 days notice, accompanied by notice of intention to propose the resolution as a special resolution, has been given to the members of the association; and
>
> (b) it is passed by at least ¾ of the votes of those members of the association who, being entitled to vote, vote in person or, if the rules of the association permit voting by proxy, vote by proxy at the meeting.

12 Part 6 of the Associations Incorporation Act provides for the transfer of incorporation. Subsection 82(1) provides that an incorporated association may apply to the registrar-general for permission to apply for registration of the association under, relevantly, the Corporations Act. Subsection 82(3) provides that the registrar-general must give permission if, amongst other things, the association has, by special resolution, resolved to apply for registration of the association under a corporation law. It should also be noted in this context that s 83 provides

that the registrar-general may unilaterally take steps towards the cancellation of an association's incorporation because of the registrar-general's assessment of the scale or nature of the activities of the association, the value or nature of the property of the association, or the extent or nature of the association's dealings with persons who are not members or applicants for membership of the association.

13 Section 124 of the Associations Incorporation Act provides that "[o]n hearing an application under this Act, the court may make or refuse to make the order sought, and may make any other orders it thinks fit".

14 As has already been noted, the reference to "the court" in ss 49, 53 and 124 of the Associations Incorporation Act is a reference to, relevantly, the Supreme Court of the Australian Capital Territory. It ultimately was not disputed, however, that this Court nonetheless has jurisdiction to entertain applications pursuant to the Associations Incorporation Act. That jurisdiction arises by reason of subs 9(3) of the *Jurisdiction of Courts (Cross-vesting) Act 1987* (Cth): see *Crosby v Kelly* [2012] FCAFC 96; 203 FCR 451 in relation to the Court's jurisdiction to entertain an action for defamation pursuant to the common law and Ch 9 of the *Civil Law (Wrongs) Act 2002* (ACT). There was also ultimately no dispute that Mr Clarke had standing to seek the relief he sought under the Associations Incorporation Act.

THE RULES OF THE SOCIETY

15 Before turning to the facts and evidence relating to the general meeting of the Society which was held on 25 October 2019, the passing of the relevant special resolution at that meeting, and the procedural steps that occurred before those events, it is necessary to give some consideration to the rules of the Society. That is because the rules of the Society include rules relating to the holding of general meetings and the alteration of the Society's objects and rules. The rules also contain rules relating to the management and control of the Society which may be relevant to the present dispute.

16 It was common ground that the rules presently in force in relation to the Society are the rules published in November 2010 (the **Rules**). The Rules establish and specify the powers of two relevant committees.

17 The first relevant committee is the Congress. Rule 8.1 provides that the Congress: "may determine directions and policies for the Society"; elects the "Elected National Office Bearers" and "Directors"; and "provides advice to Management Committee, at its own instigation and/or

at the request of Management Committee, on strategic planning and otherwise for the betterment of the Society". Rule 8.2.1 provides that Congress consists of the "National Office Bearers, the Directors, the Congressional Representatives, the Chief Executive Officer and, if any, the Coopted Congress Members". Rule 8.3 provides that the National Office Bearers comprise the Elected National Office Bearers and the Ex Officio National Office Bearers. The National Office Bearers are the President, the Vice-President (Community Boards), Vice-President (Membership Boards), Vice-President (Academic (Technical) Boards) and National Treasurer. The Ex Officio National Office Bearers consist of the President Elect and the Immediate Past President. Rule 8.4 deals with the election and appointment of the Congressional Representatives, Directors and the National Office Bearers.

18 From an organisation's perspective, it would appear that the Society is divided into eight branches, one for each State or Territory in which the Society is active. Each branch is run by an executive committee which has the power to appoint two representatives to the Congress.

19 The second relevant committee is the Management Committee. Rule 10.1 provides that the Management Committee controls and manages the Society and "may exercise all functions that can be exercised by the Society, except those required to be exercised by Congress or the Society in general meeting" and is "the committee of the Society required under the [Associations Incorporation] Act". Rule 10.2 provides that the Management Committee consists of the National Office Bearers, the Chief Executive Officer and the National Congress Representatives. Rule 10.3 provides for the appointment of the Chief Executive Officer by the Management Committee who is responsible for the "day-to-day management of the Society". Rule 10.4 provides for Congress to elect or appoint National Congressional Representatives to the Management Committee.

20 Rule 13 of the Rules contains a number of rules relating to general meetings. Rule 13.2.1 provides that the Management Committee may convene a general meeting at any time. Importantly, rules 13.3.1 and 13.3.2 provide as follows in relation to the notice that must be given of a general meeting:

> 13.3.1. The Chief Executive Officer must ensure that notice of each general meeting is sent to each member at the member's address shown in the register of members:
>
> (a) at least 21 days before the date fixed for the meeting, if the nature of the business proposed to be dealt with requires a special resolution of the Society

(b) at least 14 days before the date fixed for the meeting, if no special resolution is required.

13.3.2. The notice must specify the date, time, place or places of the meeting, the nature of the business proposed to be dealt with and if a special resolution is required the intention to propose the resolution as a special resolution.

21 It is important to note in this context that the word "send" is defined in rule 1.1 as meaning "transmit to an address specific to each recipient and, in the absence of any expressly stated method" by either pre-paid post, any mode of document delivery, or "electronic communication".

22 Rule 13.5 provides that the President, or if the President is absent, a Vice-President elected by the meeting, must chair a general meeting of the Society.

23 Rule 13.7.5 provides that voting at a general meeting must be in person or by proxy. Rule 13.7.7 provides that a "member, or that member's proxy, may not vote at any general meeting of the Society unless all money payable by that member and the proxy to the Society has been paid".

24 Rule 13.8 provides as follows in relation to the appointment of proxies:

13.8. Appointment of Proxies

13.8.1. Any member entitled to vote may appoint another member entitled to vote as proxy by notice given to the Chief Executive Officer no later than 72 hours before the time of the meeting in respect of which the proxy is appointed.

13.8.2. The notice appointing the proxy must be in the form most recently approved by the Management Committee.

25 Rule 19 provides for the alteration of the Society's objects and rules. Rule 19.1 provides that the members in general meeting may alter "the Objects or the Rules under the Act". Rule 19.2 provides that "[b]efore the provisions of the Act are invoked, the procedure set out in R19 must be carried out". Rules 19.3 and 19.4, which are of central relevance to one of Mr Clarke's grounds of challenge, provide as follows:

19.3. Written notice of any proposed alteration to the Objects or the Rules must be sent by Management Committee to each member at least three months before any notice calling a general meeting to deal with the proposed alteration is sent to members.

19.4. Form of Notice

19.4.1. Written notice under R19.3 must include:

(a) the wording of the resolution to effect the proposed alteration,

and

(b) a copy of the object or rule proposed to be changed showing on it each alteration proposed, and

(c) a memorandum, prepared by the proponents of the proposed alteration, setting out the case in favour of the proposed alteration, and

(d) a memorandum, prepared by opponents of the proposed alteration, setting out the case against the proposed alteration.

19.4.2. A memorandum under R19.4.1(c) or R19.4.1(d) must not exceed 750 words unless Management Committee consents.

FACTS AND EVIDENCE

26 The facts were largely not in dispute. To the extent that there was any conflict in the evidence relied on by the parties, that conflict either related to a matter that was not of any particular relevance or was, in any event, readily able to be resolved.

27 On 7 December 2018, the Society's Congress unanimously resolved to recommend to the Management Committee that "the Society proceed with the restructure of the Society to transfer of registration to a Company Limited by Guarantee" and that "the Society take such steps as are necessary to achieve" that restructure.

Notice to members dated 3 July 2019

28 On 3 July 2019, an email was sent to certain members of the Society. The subject line of the email was "Notice of proposed alteration to the Rules and Objects of the Society – 3 July 2019". The body of the email referred to the resolution passed by Congress on 7 December 2018 and agreed to by the Management Committee and referred to the requirement under rule 19 of the Rules that "the Management Committee is required to send 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". The email then included a hyperlink to a document that was said to constitute a notice to members under rule 19. The email also included a hyperlink to an article entitled "ACS to modernise governance: From Incorporated Association to Company Limited by Guarantee" which was said to have been "posted in Information Age" on 25 June and a hyperlink to the "News Section" of the Society's website which was said to contain further "background information".

29 A hyperlink is a "pointer" to the location of a file stored electronically elsewhere that is able to be accessed and downloaded via the internet. It was common ground that if a recipient of the 3 July 2019 email clicked on the relevant hyperlinks, electronic versions of the following documents or webpages could be accessed via the internet.

30 First, a document headed "Notice of proposed alteration to the Rules and Objects of the Society". It will be necessary to consider the full text of this notice. That is because one of Mr Clarke's grounds of challenge to the special resolution passed on 25 October 2019 includes the allegation that the documents sent to certain members on 3 July 2019 did not adequately identify the proposed changes to the Society's Rules. A full copy of this notice is at **Appendix 1** to these reasons. It suffices at this point to note that the hyperlinked notice included background information relating to the proposed change of the Society to a company limited by guarantee, the text of the proposed resolution that would be put to the members at a general meeting in October 2019 and a number of "frequently asked questions (and answers)". The background information included that the proposed change to the legal structure of the Society included the replacement of the entirety of the existing rules of the Society with a new constitution that was compliant with the Corporations Act.

31 The second and third documents accessible via hyperlink from the 3 July 2019 email comprised a memorandum that was said to set out the case in favour of the proposal and a memorandum that was said to set out the case against the proposal. Both of those memoranda were about a page and a half in length. It will again be necessary to give close consideration to the contents of those memoranda given Mr Clarke's challenge to the adequacy of the information provided in relation to the proposed replacement of the Rules. Full copies of those documents are at **Appendix 2** to these reasons. It is important to emphasise at this point, however, that there was no evidence that the memoranda that was said to set out the case against the proposal was prepared by opponents of the proposal. Rather, the evidence of Mr Andrew **Madry**, who commenced working as company secretary of the Society in September 2019, was that he understood that both memoranda were prepared or drafted by the Society's solicitors and were subsequently approved by the Management Committee.

32 The fourth document which was accessible via a hyperlink was a draft of the proposed constitution of the Society. The draft constitution is 28 pages long and includes 62 clauses. It is unnecessary to address the contents of this document in any detail.

33 The fifth document which was available from a hyperlink in the 3 July 2019 email was a three-page article entitled "ACS to modernise governance – From Incorporated Association to Company Limited by Guarantee". It is unnecessary to consider the contents of this article in any detail. It suffices to note that it contains some broad and general statements relating to the rationale behind the proposal to change the Society to a company limited by guarantee. An example of the sort of statements included in the article is a statement said to have been made by the Society's President that "[w]e need to ensure our organisational design and governance frameworks are fit for purpose, so that ACS delivers agility in a changing operating environment, and that we are best placed to deliver on the Strategy". It did not provide any substantive or meaningful detail concerning the proposed changes to the Rules.

34 The last hyperlink in the 3 July 2019 email was a link to information on the Society's website which included the text of the email sent to certain members of the Society on 3 July 2019 and a list of further hyperlinked documents under the heading "Background Information". The hyperlinked documents included the "Information Age article 25 June 2019", the current Rules, the current Objects of the Society and a document entitled "Comparison between current Objects and proposed updated Objects as a CLG".

35 It is important to emphasise that the 3 July 2019 email which included the hyperlinks to those documents and information was not sent to all members. It was obviously only sent to those members who had provided the Society with an email address. More significantly, it was only sent to members who were "active", had paid their membership fees and had not opted out of receiving "marketing" communications from the Society. It was common ground that approximately 1,800 active members did not receive the 3 July 2019 email because they had opted out of receiving marketing communications.

36 Mr Clarke was one of the members who did not receive the 3 July 2019 email. That was because he had opted out of receiving marketing material from the Society. His unchallenged evidence was that he did "not consider notices of meetings and notices of changes to constitution or governance matters, including Branch or Congress matters, to be 'marketing'" and that by opting out of marketing communications he "had no intention to waive [his] rights to receive notices under the ACS Rules". Mr Clarke also said that, had he received the 3 July 2019 email, he would have conducted an analysis of the proposed changes and commenced a campaign against those changes in July 2019. As will be seen, Mr Clarke only became aware of the proposed changes on 11 October 2019.

Notice of general meeting dated 3 October 2019

37 On 3 October 2019, an email was sent to all Society members who had provided an email address to the Society. The subject line of that email was "Notice of General Meeting of Australian Computer Society Incorporated". The body of the email stated that "[p]ursuant to rule 13.2 of the Australian Computer Society Rules and clause 70(a) of the Associations Incorporations [sic] Act 1991, notice is hereby given that a General Meeting of Members of the Australian Computer Society Incorporated" would be held on 25 October 2019 at 9.00 am at the Society's offices in Sydney. The email stated that all but certain categories of members were entitled to attend and vote at general meetings of the Society but that members cannot vote unless all monies payable by them "and their proxy" had been paid. The email included a hyperlink "Click here to register for the General Meeting", though it is not entirely clear what occurred if a recipient of the email clicked on that link.

38 The body of the email continued as follows:

> The Management Committee has decided, after a detailed review and recommendation from the National Congress, to seek the approval of members to change the legal structure of the Society from an incorporated association under the [Associations Incorporation Act] to a company limited by guarantee under the Corporations Act, to alter the name of the Society to reflect the fact that it has been incorporated as a company limited by guarantee and to replace the entirety of the existing Rules with a new Constitution that is compliant with the Corporations Act and to also make minor alterations to the current Objects of the Society.
>
> As required under the existing Rules, written notice of the proposed alterations to the Rules and Objects of the Society, together with certain information was provided on 3 July 2019 to all Members. A copy of the notice is available here: ACS News
>
> The purpose of the SGM is to pass a special resolution relating to:
>
> 1. the change of the legal structure of Australian Computer Society Incorporated from an incorporated association under the [Associations Incorporation Act] to a company limited by guarantee under the [Corporations Act];
>
> 2. subject to the registration of the Society under the Corporations Act:
>
> a. change the name of the Society to 'Australian Computer Society Limited';
>
> b. replace the existing Rules and Objects of the Society with a new Constitution and new Objects in the form set out in Attachment B.
>
> Further information detailing the agenda, who may vote, appointment of Proxy form, Proxy instructions and explanatory memorandum is available here: ACS – Notice of Meeting and Explanatory Memorandum.
>
> …

39 The underlined parts of this extract from the 3 October 2019 email were hyperlinks. The first hyperlink, "ACS News", would, if clicked on by a recipient of the email, take the recipient to the webpage or electronic document entitled "Notice of proposed alteration to the Rules and Objects of the Society" which was first made accessible by way of hyperlink, in the 3 July 2019 email that was sent to certain members of the Society.

40 The second hyperlink, "ACS – Notice of Meeting and Explanatory Memorandum" would, if clicked on by a recipient of the email, take the recipient to the following electronic documents or webpages.

41 The first document accessible via hyperlink in the 3 October 2019 email was a document entitled "Notice of General Meeting and Explanatory Memorandum". That document gave notice of the date, time and place at which the general meeting would be held and referred to the accompanying explanatory memorandum which was said to provide "further information about the change of the legal structure of the Society and the Management Committee's recommendation". It also outlined the purpose of the general meeting, provided some background information and set out the agenda.

42 The purpose of the meeting was said to be to pass a special resolution relating to the change of the legal structure of the Society from an incorporated association to a company limited by guarantee under the Corporations Act and to "replace the existing Rules and Objects of the Society with a new Constitution and new Objects in the form set out in Attachment B". The background information outlined the genesis and general nature of the proposed changes, including changing the Society to a company limited by guarantee and replacing the Rules with a new constitution, and provided another hyperlink to the 3 July 2019 notice of proposed alteration to the Rules and Objects. Under the heading "Notes", information was provided about who was entitled to vote at the meeting and about voting by proxy. It was made clear that to vote by proxy, it was necessary to complete the "enclosed" approved form and return it to the Society by 9.00 am on 22 October 2019.

43 A full copy of the Notice of General Meeting is at **Appendix 3** to these reasons.

44 The second document accessible via hyperlink was a document entitled "Explanatory Memorandum". It was a one and a half page document with an additional half page comprising a glossary of terms. It will be necessary to give close consideration to this document. That is because one of Mr Clarke's grounds of challenge is that it was misleading because it conveyed

the impression that the new constitution represented only minor changes to the objects and rules and disguised quite significant changes. A full copy of this document is accordingly to be found at **Appendix 4** to these reasons. It suffices at this point to note that the information in the memorandum concerning the replacement of the existing rules with a new constitution was, on just about any view, extremely brief. It comprised the following (ss 1.1 and 1.2 of the explanatory memorandum):

> **1.1 Change of legal structure**
>
> The Society is seeking to amend its existing legal structure as an incorporated association incorporated pursuant to the Associations Incorporation Act 1991 (ACT) to a company limited by guarantee (**Company**), incorporated pursuant to the Corporations Act.
>
> The Notice of proposed alteration to the Rules and Objects of the society and background information to assist members understand how the proposed new governance model will operate in its entirety has been posted to the News Section on the ACS website:
>
> Notice of proposed alteration to the Rules and Objects of the Society – 3 July 2019.
>
> **1.2 Replace the existing Rules with a new Constitution (including minor alterations to the Society's Objects)**
>
> As part of the change of legal structure from an incorporated association to a company limited by guarantee, the Society must adopt a Constitution that complies with the Corporations Act.
>
> The Constitution will also provide for a new set of objects to be adopted by the Society once it becomes a company limited by guarantee. These updated objects differ slightly from the current Objects of the Society.
>
> A comparison of the current proposed Objects has been posted on the ACS website.
>
> Comparison between current Objects and proposed updated Objects as a Company Limited by Guarantee.
>
> The proposed Constitution is set out at Attachment B to this Notice of General Meeting.

45 The underlined portions of this extract from the memorandum comprised hyperlinks to the notice which was hyperlinked in the 3 July 2019 email and a short two-page document which compared the existing Objects with those that were proposed.

46 The third document accessible via hyperlink in the 3 October 2019 email was the approved form for the appointment of a proxy. It included sections that were to be completed by the member who was appointing a proxy. The first section required the insertion of the name of the member, the member's membership number and address and the name of the proxy (if the

proxy was not the Chairman of the Meeting) and that member's membership number and address (if the proxy was not the Chairman of the Meeting). The member was also required to provide his or her voting instructions by marking either a "for" or an "against" box. The second section required the member to sign the form and include a date.

47 The proxy form was accompanied by a document which provided instructions for the completion of the proxy form. The instructions for the completion of section 1 included that the member should "[i]nsert your name, membership number and address". The instructions for the completion of section 2 were as follows:

> **Section 2:**
>
> **Signing by member**
>
> You must sign, date and provide your membership number on this form as follows in the space provided
>
> (Emphasis by underlining in original.)

48 It will be necessary to give further consideration to the proxy form and the accompanying instruction sheet. That is because Mr Clarke's grounds of challenge included a challenge to the disallowance of two proxies on the basis that the completed proxy form contained the appointing member's incorrect membership numbers. Mr Madry, who was the person who decided to disallow those proxies, formed the view that the proxies were invalid if they contained an incorrect membership number. One of the bases for that view was the content of the instructions for completion of section 2 of the form.

49 The fourth document that was hyperlinked in the 3 October 2019 email was a copy of the draft constitution of the Society.

50 Unlike the 3 July 2019 email, the 3 October 2019 email was sent to all members who had provided an email address to the Society, including those who had opted out of receiving marketing material from the Society. It was not, however, sent to members who had not provided their email addresses to the Society. It was common ground that there were 20 such active members, five of whom had voting entitlements. There is no evidence to suggest that any steps were taken to send "hard copy" or paper versions of the 3 October 2019 email or any of the documents hyperlinked in that email to any of those members.

51 There was also some evidence to suggest that the 3 October 2019 email may not have been successfully delivered to all members who had provided email addresses to the Society. Some of the emails sent to members appeared to have "bounced back". Mr Madry's evidence was

that if the Society received a message indicating that an email sent to a member had not been delivered successfully, the email was resent using different emailing software known as "Mailchimp". If the member had provided a secondary or alternative email, that alternative email was used. An SMS was also sent to those members to whom the email had not been successfully delivered. That SMS asked the member to contact the Society to "update" their email.

52 There was also evidence that Mr Clarke did not receive a readable copy of the 3 October 2019 email from the Society. On 3 October 2019, he received an email from the Society with the subject line "Notice of General Meeting of Australian Computer Society Incorporated", however, the body of the email was unreadable or included meaningless or incomprehensible information. Another member subsequently forwarded the 3 October 2019 to Mr Clarke in readable form.

53 It is not entirely clear why Mr Clarke received the email from the Society in an unreadable form. Mr Clarke had configured his computer systems so that they displayed email messages in readable form as plain text only. He understood or believed that many professionals who were concerned with computer security had also set up their computer systems in a similar way.

54 It is, however, somewhat unclear whether the 3 October 2019 email was received by Mr Clarke in an unreadable form simply because he had configured his computer to only display emails in plain text. Mr Clarke's evidence was that the "email displayed code rather than text because it was mis-formatted" and that it was his belief or understanding, based on his experience in the computer or information technology industry, that the email, formatted in the way it was, "would also have been unreadable by other ACS members who set mail to display in plain text". The precise nature of the alleged "mis-formatting" and its relationship with the settings on Mr Clarke's computer was, however, never fully explained in the evidence. Nor was there any other evidence to suggest that any other member had received the email in an unreadable form, either because they too had set up their computer to display emails in plain text or for any other reason.

55 On 18 October 2019, the Society sent a further email to its members who had email addresses. The subject line of that email was "Don't forget to have your say! ACS General Meeting". The body of the email comprised a reminder to the members of the general meeting to be held

on 25 October 2019. The mail contained many of the same hyperlinks that were included in the 3 October 2019 email.

Disallowance of three proxies provided to Mr Clarke

56 As has already been noted, members wishing to appoint a proxy to vote on their behalf at the general meeting were required to return the approved form to the Society by 9.00 am on 22 October 2019. That was made clear in the notice and the instructions to complete the proxy form which were hyperlinked in the 3 October 2019 email. Rule 13.8.1 of the Rules also provided that a notice appointing a proxy had to be given to the Chief Executive Officer no later than 72 hours before the time of the meeting in respect of which the proxy was appointed.

57 Mr Madry's evidence was that in mid-October 2019, the Chief Executive Officer of the Society, Mr Andrew **Johnson** said the following to him in relation to proxies:

> Andrew, I will leave it to Jessica [Ibbotson] and you to check all of the proxies that are coming in for the general meeting in your capacity as Company Secretary and Jessica as the ACS Governance Officer. I do not want any visibility of any of the proxy numbers or individual names.

58 Mr Madry interpreted this statement by Mr Johnson as amounting to a delegation to him by Mr Johnson of the power to rule on the validity of proxies. The issue whether Mr Johnson's statement was capable of amounting to a delegation of that power is addressed later. In any event, Mr Madry, assisted by the Society's Corporate Governance Officer, Ms Jessica **Ibbotson**, subsequently undertook the task of reviewing and verifying each proxy form that was received by the Society. The procedure Mr Madry adopted was to use the Society's customer relationship management software to verify the information included in the proxy form, including the member name and the membership number of the person appointing the proxy. He also checked whether the member appointing the proxy had paid all their membership fees, whether the membership of the member appointing the proxy was current and had not expired, whether the membership grade of the member appointing the proxy entitled the member to vote and whether the form had been signed and dated.

59 Between 5.25 am and 8.43 am on the morning of 22 October 2019, Mr Madry received a total of eight emails from Mr Clarke which attached 62 proxy forms on behalf of other members. All of those proxies directed Mr Clarke to vote against the special resolution at the general meeting. Some of the proxies had been signed and dated in early October 2019. There was evidence which suggested that Mr Clarke had, apparently for tactical reasons, held back sending the proxy forms to the Society until shortly before the cut-off time.

60 Mr Madry's evidence was that he and Ms Ibbotson "went through" each of the proxies received from Mr Clarke and verified them, or attempted to verify them, in accordance with the procedure he had adopted in respect of all proxies. He "determined" or "declared" that three of the proxies were invalid: one because the membership of the member appointing Mr Clarke as his proxy, Mr Karlheinz **Kautz,** had expired on 31 December 2018 and had not been renewed, and two because he was "unable to verify the membership number provided on the form on ACS's Customer Relationship Management software, known as Salesforce". The two members who had apparently provided invalid or incorrect membership numbers were Mr Mark **Lee** and Mr Andrew **Mitchell**.

61 The validity of Mr Madry's determinations concerning the proxy forms submitted by or on behalf of Messrs Kautz, Lee and Mitchell will be addressed in detail later. It suffices at this point to make the following observations concerning the evidence relating to Mr Madry's determinations.

62 First, Mr Madry did not consult Mr Johnson about the three proxies or ask him to decide or rule on their validity. Nor did he consult the Society's President, Mr Yohan **Ramasundara**, who chaired the general meeting, or ask him to decide or rule on the validity of the proxies. He, in effect, took it upon himself to make the decisions, apparently on the basis that he implied from his earlier conversation with Mr Johnson that that was what Mr Johnson had asked him to do.

63 Second, at 2.02 pm on 24 October 2019, being the afternoon before the meeting, Mr Madry advised Mr Clarke by email that the "scrutineers" had identified three of the proxies who had appointed him as "ineligible" because one was not a current financial member of the Society and the other two had not provided valid membership numbers. Mr Madry did not identify the names of the members whose proxies had been found to be ineligible. Mr Clarke replied to Mr Madry's email at 2.39 pm on 24 October 2019 and queried how "not a valid membership number" was a "legitimate basis for disqualification". Mr Clarke asserted, in substance, that membership numbers were merely an aid to deal with potential ambiguities in relation to the name of a member and that "absent any indication of fraud, if a person with that name is on the register and financial, I can't see why the proxy's not eligible". Mr Madry did not reply to Mr Clarke's email and did not address his query.

64 Third, it is readily apparent that Mr Madry made no attempt to contact Mr Kautz to advise him that he was ineligible to vote at the general meeting because he had not renewed his

membership, and therefore was unable to give his proxy to Mr Clarke. Nor did he attempt to ascertain whether Mr Kautz wanted to renew his membership in those circumstances. The potential relevance or significance, on Mr Madry's part, is addressed later.

65 Fourth, and perhaps more significantly, it is equally apparent that Mr Madry made no attempt to ascertain whether Mr Lee and Mr Mitchell were members of the Society who were eligible to vote at the general meeting, and therefore able to appoint Mr Clarke as their proxy, but had simply made an error in providing their membership numbers. The evidence revealed that it would have been extremely easy for Mr Madry to have searched the Society's "Salesforce" software and database using Mr Lee's and Mr Mitchell's names. That search would have revealed that there were members with the names Mark Lee and Andrew Mitchell who were eligible to vote. The search would also have revealed that the details submitted in the proxy forms signed by Mr Lee and Mr Mitchell married up with the details on the Salesforce database for the members with those names, other than in respect of membership numbers. It would, in those circumstances, have been fairly obvious that both Mr Lee and Mr Mitchell had simply made a clerical error in submitting incorrect member numbers. Mr Madry also made no attempt to contact either Mr Lee or Mr Mitchell. Nor, as has been said, did he tell Mr Clarke the names of the two members whose membership numbers were incorrect.

66 It should also be emphasised, in this context, that there was unchallenged affidavit evidence from both Mr Lee and Mr Mitchell that they had mistakenly provided incorrect details of their membership numbers when they completed the proxy forms and supplied them to Mr Clarke. Mr Mitchell, for reasons he was unable to explain, had added the additional numerals "99" at the end of his membership number when he filled out the proxy form. The number was otherwise correct. Mr Lee had inadvertently used a number that had appeared on an invoice that he had received from the Society instead of his membership number. Neither Mr Lee nor Mr Mitchell were made aware that their proxies had been ruled invalid until well after the general meeting. They were both made aware of that by Mr Clarke.

67 Fifth, Mr Madry's explanations for why he made no attempt to contact Messrs Kautz, Lee and Mitchell, and why he made no attempt to search the Salesforce database using Mr Lee's and Mr Mitchell's names to ascertain whether, despite the incorrect membership numbers, they were nevertheless eligible to vote and appoint a proxy, were far from convincing or persuasive. In his affidavit, he simply said that as he did not have the addresses and telephone numbers of Messrs Kautz, Lee and Mitchell "to hand". As has already been observed, however, it would

have been extremely easy for Mr Madry to extract those details from the Salesforce database. Indeed, it was readily apparent that Mr Madry had in fact obtained Mr Kautz's membership details from Salesforce which would have recorded his contact details.

68 Mr Madry's evidence in cross-examination was that, in the case of Messrs Lee and Mitchell, he checked the membership numbers that had been supplied by them in the Salesforce database first and, when that did not produce any valid results, he did not make any further searches, including in relation to their names. That was said to be because he took the view that "once we couldn't find the number and given that it was post the time of – cut-off for the proxies, that we would invalidate that, given that one of the requirements for a valid proxy was to have a membership, a valid membership number". Mr Madry's reference to the "cut-off" was a reference to 9.00 am on 22 October 2019.

69 Mr Madry initially appeared to agree that, so long as the proxy was received by 9.00 am on the morning of 22 October 2019, there was nothing to stop him from looking at it later that day to ascertain whether it was a valid proxy or not. His evidence, at least initially, was that he did not have to rule on the validity of the proxy at 9.00 am on 22 October 2019, but "it was as quickly as we could on that day". Subsequently, however, he said that his view was that the "proxies were – had to be in a valid situation by 9 o'clock on the – on three days ahead, per the rules". His evidence was that he took a "strict view" that if a proxy contained an incorrect membership number, or even if the member misspelt his or her name or provided an incorrect address, and that error was not corrected before 9.00 am on 22 October 2019, the proxy was invalid and could not be accepted. While Mr Madry initially claimed that he did not turn his mind to whether he had the power to correct a clerical error on a proxy form, the effect of his later evidence was that he had formed the view or belief that there was no possibility of correcting a clerical error in a proxy form after 9.00 am on 22 October 2019. That was so, it appears, even if the member had contacted him later in the day on 22 October 2019 to correct that error.

70 The basis for Mr Madry's "strict view" appeared to be rule 13.8.2 of the Rules. As outlined earlier, that rule simply provides that "[t]he notice appointing the proxy must be in the form most recently approved by Management Committee". Mr Madry also suggested that the information accompanying the proxy form emphasised the importance of providing a membership number. As for the latter consideration, however, Mr Madry agreed, when cross-examined on that issue, that it would have been possible for him to verify a member's name

and other details without having been provided with a membership number and that the membership number accordingly was not necessary in order to confirm the identity of a member who had submitted a proxy.

71 Sixth, the evidence given by Mr Madry during cross-examination concerning his "strict view" is difficult to reconcile with his affidavit evidence that he did not contact Mr Lee and Mr Mitchell because he did not have "to hand" their email addresses or telephone numbers. In fact, Mr Madry could easily have ascertained and verified Mr Lee's and Mr Mitchell's email and telephone numbers and contacted them, if necessary, concerning the fact that they had apparently supplied incorrect membership numbers. Indeed, on one view, Mr Madry would not even have had to do that, as he could clearly have confirmed Mr Lee's and Mr Mitchell's identities and their eligibility to vote from the Society's membership database. The reality was, as Mr Madry ultimately conceded, that he did not bother to search for that information on the database because of the strict view he had apparently taken in relation to the validity of proxy forms and his inability to correct clerical errors.

72 Seventh, it is equally clear that Mr Madry's decision not to contact Mr Kautz and ascertain whether he wanted to renew his membership or pay his outstanding fee had nothing at all to do with the fact that he did not have Mr Kautz's email or telephone number. The reason that Mr Madry gave in cross-examination for not contacting Mr Kautz was that he had formed the view that Mr Kautz's eligibility to vote or provide a proxy was to be determined as at 9.00 am on 22 October 2019 and it was not possible for his proxy to be validated after that time by Mr Kautz taking steps to renew his membership.

73 The difficulty for Mr Madry, however, was that his evidence to that effect was impossible to reconcile with other objective documentary evidence which revealed that, at 9.59 am on 22 October 2019, Mr Madry sent an email to a member who had submitted a proxy. He advised the member that he was "unfinancial" and therefore could not vote at the meeting. He then enquired whether the member wanted to renew his membership. The member replied that they would take steps to renew their membership and appears subsequently to have paid the outstanding fees. At 1.26 pm on 22 October 2019, Mr Madry sent an email to the member advising that his "monies are all up to date now", that he had received the member's proxy and that it had been "placed on the register for the meeting". The available inference is that the proxy was considered valid.

74 Mr Madry was unable to provide any explanation for the inconsistency between this occurrence and the evidence he gave for not contacting Mr Kautz.

75 Eighth, Mr Madry suggested that each of the proxy forms that he had determined to be invalid were reviewed by independent scrutineers from KPMG who the Society had appointed. The evidence did not, however, reveal exactly what Mr Madry told the scrutineers about his determinations. Nor did it reveal exactly what the scrutineers did in reviewing the three relevant proxies that Mr Madry had ruled to be invalid, other than updating a spreadsheet that Mr Madry had prepared. The spreadsheet was not in evidence. Nor did the evidence suggest that Mr Madry told the scrutineers that he had made no attempt to contact Messrs Kautz, Lee and Mitchell, had taken no steps to ascertain whether the incorrect member numbers provided by Mr Lee and Mr Mitchell were simple clerical errors, or that the reason he had not attempted to contact Messrs Kautz, Lee and Mitchell was that he had taken a "strict view" about the need for the proxy forms to be compliant as at 9.00 am on 22 October 2019. The Society did not adduce any evidence from the scrutineers.

Conduct of the general meeting

76 The meeting commenced at, or very shortly after, 9.00 am on 25 October 2019 at the Society's offices in Sydney. A total of 161 members attended the meeting.

77 The meeting was chaired by the Society's President, Mr Ramasundara, in accordance with rule 13.5.1 of the Rules. Mr Ramasundara commenced the meeting by speaking to a series of PowerPoint slides. Mr Clarke's evidence was that Mr Ramasundara spoke for about 15 to 20 minutes and that most of what he said promoted or supported the passing of the special resolution. Mr Clarke did not, however, raise any complaint about Mr Ramasundara's address. The PowerPoint slides were in evidence, though neither party took the Court to any slide or slides or made any submission concerning them. Accepting that Mr Ramasundara's address closely followed the slides, a cursory perusal of the slides reveals that, consistent with Mr Clarke's evidence, much of the address concerned the special resolution and was broadly supportive of it.

78 Following his address, Mr Ramasundara announced that he would be inviting four members to speak in favour of the special resolution and four members to speak against it. The speeches were to be restricted to two minutes each. Mr Madry was to be the timekeeper. Mr Clarke's evidence was that Mr Ramasundara announced that there would be no questions. Mr Clarke then raised a point of order in respect of the procedure announced by Mr Ramasundara.

He submitted that while it was acknowledged that there was a need to manage and avoid an unduly lengthy meeting, it was "not appropriate to prevent further speakers from making further points not already covered". Mr Ramasundara summarily rejected Mr Clarke's point of order.

79 Mr Clarke had prepared an address providing arguments against the special resolution. He was one of the speakers against the resolution, however his evidence was that he was unable to complete his address within the time made available to him. The general effect of Mr Clarke's evidence was that the two-minute time limit was strictly enforced.

80 Mr Clarke's evidence was that after the eight short speeches, Mr Ramasundara spoke again in favour of the resolution. The resolution was then put to the vote. After counting was completed, at approximately 10.37 am a PowerPoint slide which contained the result was displayed on the screen. It showed that 75.1% had voted in favour of the special resolution. Mr Ramasundara declared the resolution carried. The meeting was concluded shortly after the result was announced. Mr Clarke's evidence accordingly suggests that the entire meeting, including the counting of votes, lasted for just over an hour and a half.

81 Mr Madry gave some evidence concerning the voting procedure, however Mr Clarke did not press any challenge concerning the vote count.

MR CLARKE'S GROUNDS OF CHALLENGE

82 Mr Clarke's challenge to the special resolution passed at the general meeting on 25 October 2019 relied on five grounds.

83 The first ground (paragraphs 8 and 9 of the Further Amended **Grounds** for Application dated 12 December 2019) was that the Society failed to comply with rules 19.3 and 19.4 of the Rules because it did not send a notice of the proposed alteration to the Rules and Objects to each member in compliance with those rules. That was because: the Society did not send the 3 July 2019 email which referenced the notice to "each member" because it was not sent to members who had not provided the Society with their email addresses or members who had opted out of receiving marketing communications from the Society; the documents referenced in the 3 July 2019 email did not include a memorandum prepared by opponents of the proposed alteration in compliance with rule 19.4.1(d) of the Rules; and the documents referenced in the 3 July 2019 email did not include any document which included a "copy of the object or rule proposed to be changed showing on it each alteration proposed" as required by rule 19.4.1(b) of the Rules.

84 The second ground (paragraph 10 of the Grounds) was that the Society failed to comply with rules 13.3.1 and 13.3.2 of the Rules because the Chief Executive Officer did not ensure that a notice of general meeting complying with rule 13.3.2 was sent to "each member". That was because: no such notice was sent to any member who did not have an email address recorded in the Society's register of members; the 3 October 2019 email that referenced the notice of general meeting was not received in readable form by some members; and the 3 October 2019 email did not contain or attach a notice complying with rule 13.3.2, but instead provided a hyperlink to a notice.

85 The third ground (paragraph 5 of the Grounds) was that the information in the notice of general meeting and explanatory memorandum which were hyperlinked in the 3 October 2019 email was materially misleading. The general thrust of Mr Clarke's contentions in support of this ground was that the explanatory memorandum conveyed the misleading impression that the replacement of the Rules with a new constitution represented only minor changes when in truth the new constitution had significantly different provisions relating to corporate governance.

86 The fourth ground (paragraphs 1 and 3 of the Grounds) was that the three proxies ruled invalid by Mr Madry ought to have been counted in the ballot at the general meeting on 25 October 2019. That was because Mr Madry did not have the power to declare the proxies invalid and because Mr Madry's decision miscarried in any event because it was wrong to disallow the proxies by reason of minor slips or errors in circumstances where there was no doubt about the voting intentions of the persons who provided the proxies, particularly in circumstances where those slips or errors could easily have been remedied prior to the general meeting.

87 The fifth ground (paragraph 7 of the Grounds) was that the conduct of the President of the Society in determining the procedures to be followed at the general meeting was wrong and in breach of his duties as chair of the meeting. That was because the President: failed to take steps to ensure a reasonable opportunity for argument; curtailed debate by members by imposing strict time limits; and refused to permit questions from members present at the meeting.

COMPLIANCE WITH RULE 19 OF THE RULES

88 The first question that must be addressed is whether the Society was obliged to carry out the procedure in rule 19 of the Rules before putting the special resolution to the members on 25 October 2019.

Was rule 19 relevantly engaged?

89 The Society, somewhat belatedly and inconsistently with the position it took prior to the general meeting, contended that it was not obliged to comply with rule 19 of the Rules before putting the special resolution to the members on 25 October 2019. That was said to be because, in putting the special resolution to the members, the Society was not invoking the provisions of the Associations Incorporation Act to alter the Objects or the Rules. In the Society's submission, what in fact would happen upon the passing of the special resolution was that the Society would cease to be an incorporated association under the Associations Incorporation Act and so the rules that had been adopted by the Society under that Act would cease to exist or have any effect. It would then be necessary for the Society to adopt the new constitution under the Corporations Act. That process did not amount to an alteration of the Rules under the Associations Incorporation Act.

90 The difficulty for the Society, however, is that it is abundantly clear from all of the material that was provided by the Society to its members in advance of the general meeting, including the terms of the special resolution, that what the members were being asked to approve was the repeal of the existing Rules under the Associations Incorporation Act and the replacement of the Rules with new rules, in the form of the proposed constitution. That was being done so that, when the Society became registered under the Corporations Act, the constitution, which was compliant with the Corporations Act, would then take effect under that Act. It was not simply a case of the Rules ceasing to exist once the Society ceased to be an incorporated association. That is why the resolution itself referred to the repeal of the existing Rules.

91 While the repeal of the Rules and the adoption of the constitution would only take effect upon the Society's registration under the Corporations Act, the process by which that was to occur, including the passing of the special resolution, was to occur while the Society was still an incorporated association. That process accordingly amounted to an alteration of the Rules under the Associations Incorporation Act for the purposes of rule 19 of the Rules. To wholly replace one set of rules with another set of rules is to alter the rules.

92 It is clear that the Society, or at least the Management Committee, took the view that rule 19 of the Rules applied to the process relating to the special resolution that was to be put to the general meeting. In the 3 July 2019 email, it was stated that the Management Committee intended to seek the approval of the members to not only change the legal structure of the Society but 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)". It was then said that the Management Committee was required to comply with rule 19 in relation to the proposal. That was no doubt because the Management Committee considered that replacing the existing Rules with the proposed constitution amounted to altering the Rules. Indeed, the whole point of the 3 July 2019 email was that it purported to satisfy the requirement in rule 19. The notice of general meeting that was hyperlinked in the 3 October 2019 email explained the process in similar terms. It again referred to the "Proposal" as including the replacement of the existing Rules in their entirety with the new constitution and stated that, as "the Proposal involves altering the Objects and Rules of the Society", rule 19 of the Rules applied. That was a correct analysis of the process and the proposal that the members were being asked to approve.

Did sending the 3 July 2019 email result in compliance with rule 19 of the Rules?

93 The next question is whether the sending of the 3 July 2019 email amounted to compliance with rule 19 of the Rules. The short answer to that question is that it did not. That is so for at least two reasons.

94 First, the email was unquestionably not sent to "each member". That is because it was not sent to any member whose membership details did not include an email address. More significantly, it was not sent to any member who had opted out of receiving marketing material from the Society. On no view could a notice which was required to be sent to a member pursuant to rule 19 be regarded as marketing material. The fact that a member had requested that he or she not be sent marketing material could not relieve the Society of the obligation to send the member a notice if that was required by rule 19. The Society did not contend otherwise.

95 Second, the 3 July 2019 email did not "include" a memorandum prepared by opponents of the proposed alteration, as required by rule 19.4.1(d). It is true that the notice which was hyperlinked in the email included a document headed "Memorandum setting out the case AGAINST the Proposal". The evidence of Mr Madry, however, revealed that that memorandum had been prepared by the Society's solicitors and approved by the Management Committee. The Management Committee supported the proposal. It did not oppose it.

96 The Society contended that rule 19 was "directed to an act done by the Management Committee" and that it would only be engaged when there was an opponent of the proposed alteration of the Rules who was on the Management Committee. In the Society's submission,

because there was no opponent of the proposed repeal and replacement of the Rules on the Management Committee, rule 19.4.1(d) was not engaged.

97 That submission is rejected. The Society's construction of rule 19 of the Rules is not supported by the text of rule 19 or by relevant contextual considerations. While rule 19 requires the Management Committee to send a notice complying with rule 19.4.1 to each member, it does not follow that the Management Committee must be responsible for the preparation of the entirety of the notice. The word "include" in the first line of rule 19.4.1 suggests that the memoranda referred to in paragraphs (c) and (d) of that rule may be prepared by someone other than the Management Committee and then included in the notice. That construction is supported by contextual considerations. In particular, rule 19.4.2 of the Rules, which provides that the memoranda under rules 19.4.1(c) and (d) must not exceed 750 words "unless Management Committee consents", clearly envisages that the memoranda may be prepared by someone other than the Management Committee or one of its members.

98 The Society also contended that rule 19.4.1(d) was not mandatory. That was said to be the case because, unlike rules 19.2, 19.3, 19.4.2 and the chapeau to rule 19.4.1, rule 19.4.1(d) did not use the word "must". There is no merit in that submission. The word "must" in the chapeau to rule 19.4.1 plainly applies to all of the paragraphs of that rule. Were it otherwise, it would not be mandatory for the written notice to include any of the things in any of the paragraphs, including, for example, the wording of the resolution, as required by paragraph (a), or a copy of the Rules and Objects showing the alterations proposed, as required by paragraph (b). The word "must" in the chapeau would, in those circumstances, have no effect.

99 The Society also pointed to some practical difficulties that rule 19.4.1(d) might give rise to. It was submitted, for example, that the rule would enable opponents to prevent a proposal from ever being put to a vote by refusing to prepare a memorandum. It was also suggested that the Management Committee would have to seek out opponents and that the opponents might be unable to reach a consensus about the preparation or wording of the memorandum. There could be little doubt that in some cases compliance with rule 19.4.1(d) might give rise to some practical difficulties which would need to be resolved by the Management Committee. There was, however, no evidence to suggest that any such practical difficulties arose in the circumstances of this case. In any event, the fact that compliance with rule 19.4.1(d) may be difficult in some hypothetical cases does not require the rule to be given a strained or limited operation which is not justified by the otherwise plain wording of the rule.

100 The Society did not adduce any evidence, from a member of the Management Committee or otherwise, to explain why the memorandum that was included with the notice in purported compliance with rule 19.4.1(d) was not prepared by opponents of the proposed alteration of the Rules. As already indicated, there was no evidence of any practical or administrative difficulties in complying with the rule in the circumstances of this case.

101 Mr Clarke submitted that the 3 July 2019 email also did not comply with rule 19.4.1(b) of the Rules. That was said to be because the email and the notice hyperlinked in it "did not in any meaningful way attempt to identify the changes in the ACS Rules, relative to the existing Rules as to governance". The difficulty with that submission, however, is that strict compliance with rule 19.4.1(b) in the circumstances of this case would not have been of any real benefit to the members. Rule 19.4.1(b) was plainly intended to apply where there were proposed alterations to a specific rule or rules. What was plainly envisaged by rule 19.4.1(b) was the inclusion of a "marked up" document showing, by underlining, strike-throughs, or other highlighting, what parts of the rules were to be deleted, or added to. The proposed alteration in this case, however, involved the repeal of the Rules in their entirety and the adoption of the proposed constitution. That was made tolerably clear to members. The hyperlinked material also included a copy of the proposed constitution. It would have been confusing, if not somewhat absurd, for the notice to include a complete copy of the Rules marked up to denote that those rules were to be repealed in their entirety, together with a copy of the constitution marked in some way to denote that each provision in the constitution was a new rule.

102 While it may perhaps be accepted that no document strictly complying with rule 19.4.1(b) was included in the 3 July 2019 email and hyperlinked notice, in the particular circumstances of this case any resulting non-compliance with rule 19 arising from that omission alone would be, at best, a highly technical breach.

103 The fact that the 3 July 2019 email was not sent to each member was, however, far from a mere technical breach of rule 19 of the Rules. Nor could it be seen, in all the circumstances, to be an insignificant or immaterial breach. As has already been noted, the fact that the email was not sent to any member who did not have an email address in the Society's membership database or any member who had opted out of receiving marketing material meant that no notice complying with rule 19 was sent to approximately 1,835 active members, of whom approximately 1,196 had voting entitlements. That is not an insignificant number of members, particularly in circumstances where only 161 members eventually attended the general

meeting, only 747 members voted in person or in proxy and, most significantly, the special resolution only passed by one vote.

104 What the members who did not receive the 3 July 2019 email may or would have done if they received it is a matter of pure speculation. It cannot be inferred or concluded that the fact that those members did not receive notice in accordance with rule 19 would have made no difference to the outcome of the general meeting held on 25 October 2019.

105 Nor can it be concluded, as the Society submitted, that any breach of rule 19 of the rules which resulted from the fact that the 3 July 2019 email was not sent to members who had opted out of receiving marketing material from the Society was a mere technical breach. It cannot be inferred that any member who opted out of receiving marketing material envisaged that he or she would, as a result, not receive important communications, including notices required by rule 19. Mr Clarke's evidence was that he had no intention of waiving his rights to receive notices under the Rules from the Society when he opted out of receiving marketing material.

106 The Society submitted that any prejudice caused by the breach of rule 19 was "remedied" when each member received the notice of general meeting that was sent to members on 3 October 2019. That submission is rejected. The adequacy of the notice given on 3 October 2019 is considered separately in the context of Mr Clarke's other grounds of challenge. It suffices here to note that the obvious intent of rule 19 was to give members significant advance notice of resolutions which altered the Society's rules or objects, no doubt to give the members sufficient time to consider and debate the proposed alterations. The notice required under rule 19 gave members three months to consider and debate the proposed changes. The notice of general meeting only gave members three weeks. Mr Clarke's evidence was that, if he had received the 3 July 2019 email, or otherwise received notice in accordance with rule 19, he would have conducted an analysis of the proposed changes well before he was able to do so as a result of only receiving a copy of the 3 October 2019 email. It may readily be inferred that he would, in those circumstances, have been able to conduct a far more concerted and organised campaign against the changes.

107 It should finally be noted that the non-compliance with rule 19 arising from the fact that the notice given by the 3 July 2019 email did not include a memorandum which complied with rule 19.4.1(d) also cannot be dismissed as technical, insignificant or immaterial. While Mr Clarke raised no specific complaint about the memorandum against the proposal that was included in the material hyperlinked to the 3 July 2019 email, it cannot be inferred that a

memorandum that was in fact prepared by opponents of the proposal would not have included different content, or presented a more persuasive or compelling case against the proposal. It is certainly clear from the evidence concerning the documents subsequently prepared by Mr Clarke in his campaign against the proposal, that if he had been involved in preparing a memorandum for the purposes of compliance with rule 19.4.1(d), that memorandum would have been very different to the one approved by the Management Committee and included in the material hyperlinked in the 3 July 2019 email.

COMPLIANCE WITH RULE 13.3 OF THE RULES

108 Rule 13.3.1 of the Rules provides that the Chief Executive Officer must ensure that notice of each general meeting is sent to each member at the member's address shown in the register of members. Where the business proposed at the general meeting requires a special resolution, the notice required by rule 13.3 is required to be given at least 21 days before the meeting. Rule 13.3.2 requires the notice to specify the date, time and place of the meeting, the nature of the business proposed to be dealt with and, if a special resolution is required, the intention to propose the resolution as a special resolution.

109 The Society purported or attempted to comply with rules 13.3.1 and 13.3.2 by sending members the 3 October 2019 email. There could be no doubt that the Society was able to send the notice required by rules 13.3.1 and 13.3.2 by way of email. That is because the rules define "send" as meaning to "transmit to an address specific to each recipient", including, in the absence of any expressly stated method, by "electronic communication". An email is obviously an electronic communication. There were, however, a number of problems with the 3 October 2019 email in terms of compliance with rules 13.3.1 and 13.3.2 of the Rules.

Was the 3 October 2019 email sent to "each member"?

110 The first problem for the Society is that the fact that it could comply with rules 13.3.1 and 13.3.2 by sending emails to members who had supplied email addresses did not absolve it of the need to send notice by some other means permitted by the Rules to members who had not supplied an email address to the Society. There were at least 20 such active members, of whom approximately five had voting entitlements. To comply with rules 13.3.1 and 13.3.2 in respect of each of those members, the Society was required to send the required notice to the address for each of those members which was shown in its register of members. Where that address was a postal or physical address, the required notice was required to be sent by pre-paid post or any other "mode of document delivery". There was no evidence that the Society made any

effort to send the required notice to any of the 20 members by either of those means. There is no evidence that any of the 20 members whose email addresses were not shown in the Society's register of members was sent any paper or hardcopy version of the 3 October 2019 email.

111 It follows that the Society did not fully comply with rules 13.3.1 and 13.3.2. It did not send the required notice to "each member". While the number of members who were not sent a notice in accordance with rules 13.3.1 and 13.3.2 was not large, the non-compliance could still not be said to be merely technical, insignificant or immaterial. That is so particularly given the fact that the special resolution was passed by only one vote. It cannot be inferred that the sending of a notice of the general meeting to any one of the 5 members who had voting rights and who were not sent notice would not or could not have made any difference.

Was the email sent in an unreadable form to some members?

112 Mr Clarke's second complaint concerning the Society's purported compliance with rules 13.3.1 and 13.3.2 was less compelling and less persuasive. Mr Clarke contended that the 3 October 2019 email was not sent in readable form to some members. The main basis of that contention was that the version of the 3 October 2019 email that he received was not readable or legible.

113 There could be no doubt that the email that the Society sent to Mr Clarke on 3 October 2019 was not received by him in readable form. It may also be accepted that a notice sent by an electronic communication, such as an email, cannot necessarily be regarded as having been served on a person if the communication was not received by that person in a readable form or a form that was complete and legible: ***Austar Finance*** *Group Pty Ltd v Campbell* [2007] NSWSC 1493; 215 FLR 464 at [49]; *Newsnet Pty Ltd v Patching* [2011] NSWSC 690; 81 NSWLR 104 at [38]-[39]. The difficulty for Mr Clarke, however, is that it is not entirely clear exactly why the 3 October 2019 email was not received by him in readable form.

114 As discussed earlier, Mr Clarke's evidence was that he configured his computer or software in such a way that his email messages were displayed in readable form only. He also asserted that the 3 October 2019 email as received by him "displayed code rather than text because it was mis-formatted". Despite being obviously well versed in computer and information technology, however, Mr Clarke did not attempt to further explain what he meant when he said that the email was "mis-formatted". While he did appear to suggest that the alleged mis-formatting had something to do with his computer being configured to display emails in plain text, he did not explain why the configuration of his computer in that way meant that the email displayed only code or was otherwise unreadable or incomprehensible.

115 There was also no evidence to suggest that any other person to whom the email was sent was unable to read it, either because their computer or software was configured in the same way as was Mr Clarke's, or for some other reason. Mr Clarke's evidence, based on his experience in computers or information technology, was that he believed that other members who had configured their computers to receive emails in plain text would also not have been able to read the 3 October 2019 email. Given Mr Clarke's inadequate explanation for why the settings on his computer caused the email to be unreadable, his belief that other members may have had the same difficulty can be given little weight.

116 The uncertainty or lack of clarity in the evidence as to exactly why the 3 October 2019 email that was sent to Mr Clarke was not received by him in readable form is important. That is because it is difficult to accept that an email which is sent to a person, but is unable to be read by that person because of some deficiency or idiosyncratic setting in the person's computer or email software, should in those circumstances necessarily be regarded as not having been sent to the person. That is particularly so if the relevant requirement is that the email be sent to a particular email address and there is no evidence to suggest any fault on the part of the sender of the email, or any problem with the email itself, or any evidence to suggest that any other recipient of the email encountered similar difficulties.

117 While the configuration of a computer or software to display emails only in plain text may not necessarily be considered to be idiosyncratic, or even unusual, it remains somewhat unclear whether that was the reason that Mr Clarke was unable to read the 3 October 2019 email. It is even more unclear whether there was any fault on the part of the Society, as the sender of the email, or any inherent defect in the email sent by the Society which was not unique to Mr Clarke's particular circumstances as a recipient of the email.

Were the hyperlinked files relevantly "sent" to the members?

118 Mr Clarke's third complaint concerning the 3 October 2019 email was that the files or documents which were hyperlinked in it could not be regarded as having been sent to him or the other members in accordance with the Rules. His argument in that regard was that a hyperlink is different to an email attachment. An attachment to an email is a copy of a file that is contained or included in the email transmission itself. Mr Clarke's unchallenged evidence was that a hyperlink is simply a "pointer to the location of a file stored in a location elsewhere, that is accessible over the internet". The hyperlinked file "is not attached to or contained in the

email but is able to be accessed and downloaded by the mail recipient taking steps to access a remote server where the file is contained, and downloading the file".

119 Mr Clarke's evidence that a file that is able to be accessed via a hyperlink in an email is not attached to, or included or contained in the email itself may readily be accepted. The critical question, however, is whether, for the purposes of the Rules, a file which is able to be accessed via a hyperlink which is included in an email can nevertheless be regarded as having been "sent" to the recipient of the email.

120 Mr Clarke's submission that a hyperlinked file cannot be regarded as having been "sent" to the recipient of the email containing the hyperlink relied heavily on the decision in ***Conveyor & General*** *Engineering Pty Ltd v Basetec Services Pty Ltd* [2015] 1 Qd R 265. The critical question in *Conveyor & General* was whether two files which were stored on "Dropbox" had been served in accordance with s 39 of the ***Acts Interpretation Act*** *1954* (Qld). A Dropbox is a facility whereby an electronic file is stored by a third party remotely so that any computer (with the relevant authority) can view the file. The respondent in *Conveyor & General* had sent the applicant an email which contained links to the two files stored on Dropbox. Justice McMurdo held that the files stored on Dropbox had not been served within the meaning of the relevant statutory provisions.

121 Much of McMurdo J's reasoning turned on the specific wording of s 39 of the *Acts Interpretation Act*. That section provided, inter alia, that a document could be served on a corporation by "leaving it at, or sending it by post, telex, facsimile or similar facility to" the corporation's office. Justice McMurdo referred to and applied the reasoning of Austin J in *Austar Finance*. In that case, Austin J considered whether an email sent to an address could involve "leaving" a document at that address for the purposes of a similar provision in s 28A of the *Acts Interpretation Act 1901* (Cth). Austin J held (at [60]) that "[i]n the case of an e-mail transmission, where the electronic message is received and held by a remote third-party server rather than in the receiver's computer, and there is no hard copy document unless the receiver accesses the e-mail and transmits it to a printer, nothing can be said to have been "left" at the receiver's premises, at least until the e-mail is accessed". Applying that reasoning, McMurdo J concluded (at [32]) that the documents in the Dropbox file had not been "left" or "sent" to the applicant's office, "at least until [the applicant] went to the Dropbox site and opened the file and probably not until its contents had been downloaded to a computer at [the applicant's] relevant office".

122 Justice McMurdo separately considered whether the inclusion of the Dropbox links in the email meant that the information in the Dropbox files had been "given by an electronic communication" within the meaning of s 11 of the *Electronic Transactions (Queensland) Act 2001* (Qld) (**ET Act**). That Act relevantly defined "electronic communication" to mean "a communication of information in the form of data, text or images by guided or unguided electromagnetic energy". Justice McMurdo held that s 11 of the ET Act did not apply because the applicant had not agreed to be electronically served. His Honour also reasoned (at [28]) that even if it did, the information in the Dropbox file was nevertheless not part of the relevant electronic communication, which was the email. That was because (at [28]):

> None of the data, text or images within the documents in the Dropbox was itself electronically communicated, or in other words communicated "by guided or unguided electromagnetic energy". Rather, there was an electronic communication of the *means* by which other information in electronic form could be found, read and downloaded at and from the Dropbox website.
>
> (Emphasis in original.)

123 Mr Clarke argued that the reasoning of McMurdo J in *Conveyor & General* was applicable to the hyperlinks contained in the 3 October 2019 email. The Society submitted that *Conveyor & General* concerned the question of service, not the question of whether a notice had been sent, and the question of service depended on the construction of a specific provision in another Act which had no relevance to the rules that are in issue in this case. The Society also relied on some brief observations made by Yates J in ***MDA National** Limited v Medical Defence Australia Limited* [2014] FCA 954 at [104].

124 It is true that the reasoning in *Conveyor & General* related to service and involved specific statutory provisions that employed different language to the relevant provisions in the Rules. Even so, the reasoning in *Conveyor & General* is instructive and helpful in resolving the issue in this case. The issue is whether the information or data in the hyperlinked files was "sent" to the recipients of the 3 October 2019 email. The word "send" is relevantly defined in rule 1.1 as meaning "transmit **to an address specific to each recipient** … by electronic communication" (emphasis added). The word "sent" may be taken to have a corresponding meaning. The expression "electronic communication" is not defined in the Rules, but may be taken to have a general meaning more or less consistent with the definition in the relevant statute considered in *Conveyor & General*. There could be no doubt that the information, in the form of data or text, in the 3 October 2019 email itself was transmitted to an (email) address specific to each recipient. It cannot, however, be concluded that the data in the hyperlink files

referred to in the email were transmitted to an address specific to each email. Rather, as in *Conveyor & General*, the email comprised an electronic communication of the means by which other information in electronic form could be found, read and downloaded on the hyperlinked websites.

125 Nor could the information, in the form of data or text, in the hyperlinked files, in any sense be considered to have been "transmitted" to an email address specific to the recipients, at least unless, and until, the recipient clicked on the links and read, downloaded or printed the data in the files. Again, what was transmitted to them was the means by which they could read, download or print those files or the data in them. The real difficulty for the Society is that there is no evidence that any, let alone all, all of the recipients of the email did that. Nor could that necessarily be inferred. It follows that the information or data in the hyperlinked files was not "sent" to the recipients of the email having regard to the definition of "send" in the Rules.

126 As for the Society's reliance on *MDA National*, that case concerned the convening of a general meeting to consider a scheme or arrangement. The orders sought by the applicant included the electronic delivery of the notice of the scheme meeting and the explanatory statement. The proposed electronic delivery of those documents included the sending of an email which included links from which the notice of meeting and other documents could be downloaded. The question was whether that form of electronic delivery was permitted by s 249J(3) and s 412(2) of the Corporations Act. Section 249J(3)(c) provided that a company could "give" a notice of meeting to a member by "sending it to the … electronic address (if any) nominated by the member". Section 412(1) provided that the company was required to send an explanatory statement with every notice convening a meeting that was sent to a member pursuant to s 411 of the Corporations Act. Justice Yates accepted that an email which contained a link to a notice of meeting did not involve "sending" the notice of meeting or explanatory statement "in the sense of attaching the notice of meeting or explanatory statement to the electronic communication". His Honour was nevertheless satisfied that the sense in which "sending" was used in s 249J(3) and s 412(1) "accommodates an electronic communication that contains a link which allows the recipient to download the relevant documents".

127 The difficulty in placing any reliance on the observations made by Yates J in *MDA National*, however, is that his Honour does not explain the basis upon which he accepted that the sending of an email containing a link to a notice of meeting satisfied the requirement in s 249J(3)(c) that the notice of meeting itself be sent to an electronic address nominated by the member,

particularly as his Honour appeared to have accepted that sending an email which contained a link to the notice did not involve sending the notice itself to the email address. Three other points should be noted. First, subs 249J(3)(ca) and (cb) and s 249J(3A) of the Corporations Act appear to specifically provide for a member to nominate a specific electronic means by which he or she could be notified of the meeting which could include notification by way of hyperlink. The inclusion of those provisions would tend to suggest that provision of a hyperlink might not fall within s 249J(3)(c). Second, it appears unlikely that there was any effective contradictor in respect of this issue in the application before Yates J. Third, *MDA National* was decided before *Conveyor & General*.

128 In all the circumstances, the detailed analysis in *Conveyor & General* concerning the use of hyperlinks or similar means of access to documents electronically stored on remote servers, including Dropbox, as a means of serving or sending such documents is to be preferred to what was said in *MDA National*. That, of course, is not to say that what appears to have become a convention of approving the notification of meetings for the approval of scheme of arrangements (cf. *Watpac Limited, in the matter of Watpac Limited* [2018] FCA 656 at [39] and the cases there cited) is in any way wrong or should not continue. The considerations that arise in considering schemes of arrangement and the procedural steps that must be taken before the approval of them are somewhat unique and different to the issues raised by this matter.

129 In all the circumstances, Mr Clarke's contention that the notice of meeting and explanatory memorandum were not sent to the Society's members in strict compliance with the Rules must be accepted. Compliance with rules 13.3.1 and 13.3.3 of the Rules must accordingly be judged on the basis that only the email dated 3 October 2019 was "sent" to the members, or at least to those of them who had provided email addresses, in accordance with the Rules.

130 The parties each proceeded on the basis that rules 13.3.1 and 13.3.3 were complied with in this case only if the hyperlinked files, and in particular the formal notice of meeting, including the explanatory memorandum and the draft constitution, were "sent" to the members. Neither party suggested that the 3 October 2019 email alone could satisfy rules 13.3.1 and 13.3.3 of the Rules. It should nevertheless be noted that the email alone would satisfy many of the requirements of rules 13.3.1 and 13.3.3. The email specified the date, time and place of the meeting. It also stated that the purpose of the meeting was to pass a special resolution, though it did not contain the precise text of that special resolution. The only real question is whether

the email alone adequately specified the nature of the business proposed to be dealt with. The short answer to that question is that it did not.

131 The information concerning the nature of business proposed to be dealt with in a notice of meeting must "fully and fairly inform members of what is to be considered at the meeting and for which their proxy may be sought" and must "be such as will enable members to judge for themselves whether to attend the meeting and vote for or against the proposal or whether to leave the matter to be determined by the majority attending and voting at the meeting": ***Fraser v NRMA*** *Holdings Limited* (1995) 55 FCR 452 at 466B-C and the cases there cited. Plainly the email alone did not provide sufficient information concerning the special resolution that was to be put to the general meeting, particularly having regard to the importance and complexity of that resolution. That was no doubt why the Management Committee intended to send the members additional documents, including the formal notice of meeting, the explanatory memorandum and accompanying material, and a copy of the proposed constitution. Without the information in those documents, there could be little doubt that the members would not have been put in a proper position to decide whether or not to attend the meeting.

132 It should finally be noted in relation to this ground that Mr Clarke did not suggest that the communication by the use of hyperlinks was not a common, practical and efficient means by which information can be conveyed. Nor was there any evidence to suggest that any Society member who received the 3 October 2019 email did not know what a hyperlink was, or was otherwise confused or unable to click on the links to open and download the hyperlinked documents. This was, after all, a society of people who were most likely well-versed, if not experts, in the use of computers and electronic communications. It was not the Australian Luddites Society. It follows that, on one view at least, the fact that the hyperlinked documents were not strictly "sent" to the members in accordance with the Rules might be considered to be a fairly technical breach. That is an issue which will be addressed later in the context of the consideration of the appropriate relief.

Conclusion in relation to notice of the general meeting

133 In all the circumstances, the Management Committee failed to comply with rules 13.3.1 and 13.3.2 of the Rules. The 3 October 2019 email was not sent to "each member" because it was not sent to those members who had not supplied an email address for inclusion in the Society's members register. The documents or files which were hyperlinked in the email were also not

strictly "sent" to members in accordance with the Rules. The hyperlinked documents included the formal notice of meeting, the explanatory memorandum and the copy of the constitution. The email itself, without those documents, was not capable of complying with rule 13.3.2 because it did not give adequate or appropriate notice of the nature of the business proposed to be dealt with at the meeting.

MISLEADING INFORMATION

134 It is important to emphasise that Mr Clarke's allegation that the information which was conveyed to the members on 3 October 2019, or at least those to whom the 3 October 2019 email was sent, was narrowly confined. It was based almost entirely on what was said in and what was not said in the explanatory memorandum. It was therefore premised on the fact that at least some members who received the 3 October 2019 email clicked on the hyperlink to the notice of general meeting and explanatory memorandum and opened, read, downloaded or printed that file.

135 The essence of Mr Clarke's contention was that the explanatory memorandum conveyed the misleading impression that the proposal the subject of the special resolution involved only minor alterations to the objects and certain changes that were required by the Corporations Act. Mr Clarke's case was that by conveying that that misleading impression, the Society engaged in conduct that was misleading or deceptive, or likely to mislead or deceive, contrary to s 18 of the ***Australian Consumer Law***, which is Schedule 2 to the *Competition and Consumer Act 2010* (Cth). He also contended that the provision of a misleading notice or meeting was "contrary to common law duties".

136 The main basis of Mr Clarke's contention that the notice of meeting and explanatory memorandum was materially misleading was that the heading to s 1.2 of the explanatory memorandum, which dealt with the replacement of the existing rules with the new constitution, included the words "including minor alterations to the Society's Objects". The very short consideration of that topic under the heading also included a hyperlink to a document which included a comparison between the current Objects and the proposed updated Objects. There was, however, no similar document which included a comparison between the existing Rules and the new constitution. Nor did the explanatory memorandum itself include any comparison between the existing Rules and the new constitution.

137 There could be little doubt that the explanatory memorandum provided virtually no material information to the members about the nature and extent of the changes that would result from

the replacement of the Rules with the constitution. It simply said that that as part of the change to the legal structure the Society was required to "adopt a new Constitution that complies with the Corporations Act" and that the constitution will "also provide for a new set of objects to be adopted by the Society once it becomes a company limited by guarantee. The explanatory memorandum did not itself include any other discussion or consideration of the main differences between the existing Rules and the new constitution in terms of the relevant governance structures. Nor did it include any direct hyperlink to any such document, as it did in relation to the proposed alteration to the Objects. Section 1.1 of the explanatory memorandum did include a hyperlink to a document which was said to include "background information to assist members understand how the proposed new governance model will operate in its entirety". If a member had clicked on that link, the member would have been connected to "news" section of the Society's website. That page included further hyperlinks, including a hyperlink to the notice of the proposed alteration to the Rules and Objects which was originally hyperlinked in the 3 July 2019 email. It will be recalled that the 3 July 2019 notice included the two memoranda presenting the case for and the case against the proposal. Other hyperlinks, if clicked on, would have taken the member to the proposed constitution and the existing Rules.

138 It should perhaps be emphasised at this point that, for a member who received the 3 October 2019 email to access the earlier 3 July 2019 notice, the member would have been required to click on three successive hyperlinks: the first link would take the member from the 3 October 2019 email to the explanatory memorandum; the second would take the member from the explanatory memorandum to the Society's "news" page; the third would take the member from the news page to the notice. Further or alternative "clicks" would have taken the member to the proposed constitution and the existing Rules. The reason for pointing this out is that, as will be seen, the Society submitted, in substance or effect, that any deficiency in the content of the explanatory memorandum itself, was remedied by the provision of hyperlinks to the 3 July 2019 notice and the documents that accompanied or were hyperlinked in it.

139 Returning to the content of the explanatory memorandum itself, the other three sections in the explanatory memorandum also did not contain any meaningful comparison between the key provisions in the existing Rules and the new constitution, or include any clear discussion of the main changes to corporate governance that would occur if the Rules were replaced by the constitution. Section 1.3 of the explanatory memorandum dealt with the provisions in the constitution concerning the application of income and property and what would occur if the

Society was wound up. Section 1.4, which was headed "Membership and management", noted that if the Society was registered as a company, members would be required to contribute $1.00 if it was wound up. It also included the following paragraph concerning the proposed board:

> The proposed board of the Company (Board) will manage the affairs of the proposed Company. The Board is to comprise of eight (8) directors except if the Chief Executive Officer has also been appointed as a Director 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). The directors of the Board of the Company will be subject to directors' duties under the Corporations Act, including to act in good faith in the best interests of the Company.

140 The balance of section 1.4 of the explanatory memorandum referred to the transitional arrangements for the new board.

141 Section 1.5 of the explanatory memorandum simply referred to the fact that the Management Committee unanimously recommended members to vote in favour of the special resolution.

142 The relevant principles concerning the requirements of a notice of general meeting are fairly well settled. As noted earlier, the information provided in a notice of general meeting must be such as will enable members to judge for themselves whether to attend the meeting and vote for or against the proposal or whether to leave the matter to be determined by the majority attending and voting at the meeting. Where, as here, the notice must state the purpose of the meeting and the business to be transacted, it "should be so drafted that ordinary minds can fairly understand its meaning … [i]t should not be a tricky notice artfully framed": *McLure v Mitchell* (1974) 6 ALR 471 at 494; 24 FLR 115 at 140; ***Dhami** v Martin* [2010] NSWSC 770; 241 FLR 165 at [51].

143 Directors who propose that a company's members take a particular course of action are "under a duty to make full disclosure of all facts within their knowledge which are material to enable the members to determine what action to take": *Dhami* at [53]. That duty arises "as part of the fiduciary duties of the directors to the company and its members in relation to proposals to be considered in general meeting": *Fraser v NRMA* at 466A. There is no reason why the same principle would not apply to the members of a management committee of an incorporated association who propose or recommend that the association's members vote in a particular way at a general meeting of the association.

144 The requirement of full and fair disclosure "must be tempered by the need to present a document that is intelligible to reasonable members of the class to whom it is directed, and is likely to assist rather than to confuse": *Fraser v NRMA* at 468B, referring to *Devereaux*

Holdings Pty Ltd v Pelsart Resources NL (No 2) (1985) 9 ACLR 956 at 959; *Re Dorman Long & Co Ltd* [1934] Ch 635 at 665-666. Where the proposal is complex and involves difficult questions of commercial judgment and matters of degree, the notice need not set out "every possible formulation of the commercial objective of the proposal, and arguments for and against every theoretical possibility", particularly if the resulting "package of information to members would be likely to confuse rather than to illuminate the issue for decision": *Fraser v NRMA* at 468A-B. The adequacy of the information must be "assessed in a practical, realistic way having regard to the complexity of the proposal": *Fraser v NRMA* at 468D.

145 The party alleging that the notice was inadequate must establish the materiality of the alleged errors and omissions and carries the onus of establishing "how or in what manner that which was said involved error or how that which was left unsaid had the potential to mislead or deceive": *Fraser v NRMA* at 467G.

146 The Society submitted that the notice of general meeting and explanatory memorandum, when assessed in a practical realistic way having regard to the nature of the proposal, provided sufficient information when read together to enable members to judge for themselves whether or not to attend the meeting and whether to vote for or against the proposed special resolution. In the Society's submission, it was not obliged to provide any comparison between the existing Rules and the proposed constitution. Indeed, it was said that the provision of any additional information would have been likely to confuse rather than assist members in understanding what they were being asked to vote upon. The Society also pointed out that the members were given (albeit via hyperlink) the proposed constitution and that the proposed changes to the governance structure were discussed in the memoranda setting out the cases for and against the proposed changes, which members could again access via hyperlink. As for Mr Clarke's contention that the explanatory memorandum conveyed an impression that the proposed changes were only minor, the Society submitted that the plain language of the document flatly contradicted that contention.

147 Was the notice of general meeting and explanatory materially misleading in all the circumstances? On balance, the answer to that question is "yes". Mr Clarke's contention that the notice of meeting and explanatory memorandum did not fully or fairly disclose the nature of the changes to corporate governance that would result from the passing of the special resolution should, in all the circumstances, be accepted. That omission, in all the circumstances, was capable of giving rise to the misleading impression that the changes that

would result from the repeal of the existing Rules and their replacement by the new constitution were not major or significant changes. That is all the more so given the juxtaposition, in s 1.2 of the explanatory memorandum, between the replacement of the Rules and what were said to be minor alterations to the Objects. The members were given a direct link to a document setting out the minor changes to the Objects. They were not given any such link to any document which set out the changes resulting from the replacement of the Rules by the constitution.

148 There could be little doubt that the changes to corporate governance which would flow from the repeal of the existing Rules and the adoption of the proposed constitution were major and significant. This is not the place to discuss those changes at any length. It suffices to say that the changes were not simply limited to the replacement of the Management Committee by a board of directors. The result of the change from the Rules to the constitution was that the role of the existing branches would be abolished, the Congress would be abolished and no similar body would be established, and the directors of the board would be elected in an entirely different way to the way the members of the Management Committee were elected. None of those changes were identified, let alone addressed in any detail, in the notice of meeting or explanatory memorandum. The impression that was given was that the replacement of the Rules with the new constitution was simply something that had to be done if the legal structure of the Society was to be changed to a company limited by guarantee.

149 It is true that the members were given the means by which to access a copy of the proposed constitution. That involved clicking through a series of hyperlinks which would eventually turn up an electronic version of the constitution. Members could also no doubt, again by clicking on a series of hyperlinks, eventually have been able to obtain a copy of the existing Rules. That alone, however, would not have greatly assisted the members in comprehending the changes that would result from the adoption of the constitution in place of the existing Rules. To appreciate those changes, the members would also have had to access the existing Rules and themselves engaged in a detailed comparison between the Rules and the constitution. The fact that members could have engaged in that comparison does not detract from the requirement that the notice and explanatory memorandum fully and fairly disclose the nature of the changes that would result from the proposal.

150 The only document that came close to considering the nature of the proposed changes to corporate governance was the memorandum that purported to set out the case against the proposal which was amongst the documents that were accessible via a hyperlink which was

included in the 3 July 2019 email. That document, which was titled "Memorandum setting out case AGAINST the Proposal" included the following information:

> **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 grade 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.

151 On one view, at least, those passages from the memorandum summarised some of the main changes in relation to corporate governance that would result from the passing of the special resolution. The difficulty for the Society, however, is that those changes were not directly identified in the body of either the notice of meeting or the explanatory memorandum. Nor were the members directed to this memorandum, via hyperlink or otherwise, in s1.2 of the explanatory memorandum, which purported to outline the replacement of the Rules with the new constitution. That was in contrast to the position in relation to the changes to the Objects, where a direct link was provided to a document comparing the old with the proposed new Objects. As has already been noted, to access the memorandum setting out the case against the proposal, a member would have had to click through a series of hyperlinks. It is also somewhat

unsatisfactory that the only real consideration of the nature of the proposed corporate governance changes appeared in an argumentative form in a document containing the case against the proposal. The analysis in the memorandum would not necessarily have appeared to a member to be a purely objective comparison between the existing Rules and the proposed constitution.

152 In all the circumstances, the notice of meeting and explanatory memorandum did not adequately or satisfactorily disclose the main changes that would result from the replacement of the Rules with the new constitution, particularly in relation to corporate governance. Those changes should have been identified in the explanatory memorandum, or there should at least have been a direct link to a document which identified those changes as had been done in relation to the proposed changes to the Objects. It was not sufficient to simply provide the members with access to the proposed constitution. Nor was it sufficient that members could, via a series of hyperlinks in various documents, have accessed the memorandum which set out the case against the proposal, which was the only document that made any attempt to summarise the effect that the proposed changes would have in relation to corporate governance, albeit in an argumentative format.

153 It should perhaps be emphasised that there was no evidence to suggest that the Management Committee or anyone else intended to provide misleading information to the members. Nor is there any evidence that any member was in fact misled. It is, however, well-established that a contravention of s 18 of the Australian Consumer Law can be made out in the absence of any evidence of an intention to mislead or deceive and in the absence of any evidence that anyone was in fact misled. It is equally unnecessary for there to be any evidence of such matters if the relevant question is whether a notice of meeting fairly and adequately disclosed the nature of a special resolution to be put to a general meeting, or provided full and fair disclosure.

154 In all the circumstances, the deficiencies in the notice of meeting and explanatory memorandum were capable of giving rise to the materially misleading impression that the proposed changes to the Rules were not major or significant changes. The notice was accordingly likely to mislead and did not provide full and fair disclosure of the special resolution that was to be put to the vote at the general meeting.

THE VALIDITY OF THE REJECTION OF THREE OF MR CLARKE'S PROXIES

155 The decision to reject the proxy forms submitted, through Mr Clarke, by Messrs Kautz, Lee and Mitchell was made by Mr Madry. The first question that arises is whether he had the power to make that determination.

Did Mr Madry have power to decide that the proxies were invalid?

156 The Society contended that the power to determine the validity of proxies was delegated to Mr Madry by the Chief Executive Officer, Mr Johnson. Mr Clarke contended, however, that there was no such delegation. If there was no delegation, Mr Madry plainly did not have the power to adjudicate on the proxies. The Society did not suggest otherwise.

157 The Rules are silent in relation to the power to invalidate or rule on the eligibility of, the appointment of a proxy. Rule 13.8.1 simply provides that any member entitled to vote at a general meeting may appoint another member to vote as proxy by notice given to the Chief Executive Officer. That would tend to suggest that the Chief Executive Officer was responsible, at least in the first instance, for the receipt of proxy forms. There is authority which suggests that the person with whom proxy forms must be lodged is expected to be the person who will perform the function of examining the proxies and ascertaining the voting power exercisable at the meeting by the person appointed: *Vero Insurance Ltd v Kassem* [2010] NSWSC 838; 79 ACSR 330 at [57].

158 Equally, however, rule 13.5.1 provides that the President, or if the President is absent, a Vice-President elected by the meeting, must chair a general meeting of the Society. It is ordinarily the duty or role of the chair of a meeting to determine the persons qualified to vote at the meeting and to adjudicate on proxies: *Re* ***Adams International*** *Food Traders Pty Ltd and the Companies Code* (1988) 13 NSWLR 282 at 283. That would suggest that it was the role of the President, Mr Ramasundara, who in fact chaired the meeting, to adjudicate on the proxies. In those circumstances, Mr Johnson was in no position to delegate that power to Mr Madry.

159 The evidence that Mr Johnson delegated the power to adjudicate proxies was also somewhat equivocal. Mr Madry's evidence was that Mr Johnson told him that he would "leave it to [him and Ms Ibbotson] to check all the proxies that are coming in for the general meeting" and that he, Mr Johnson, did "not want any visibility of any of the proxy numbers or individual names". Clearly Mr Johnson wanted Mr Madry to receive and check the proxy forms as they were received. He did not, however, in terms state that he was delegating the power to adjudicate

on the proxies to Mr Madry, or even that Mr Madry should determine the validity of the proxy forms or rule on the eligibility of the proxies. Mr Madry conceded as much. His evidence in cross-examination, when pressed, was that he believed that the delegation of that power was to be implied from what Mr Johnson said. Mr Johnson did not give evidence.

160 Despite the absence of any express provision in the Rules that the Chief Executive Officer was empowered to rule on the validity of proxies, as opposed to the chair of the meeting, and despite the somewhat equivocal terms of the conversation between Mr Johnson and Mr Madry that was said to amount to a delegation, on balance it should nevertheless be accepted that Mr Madry was empowered by delegation to rule on the validity of proxy forms submitted before the meeting. It is tolerably clear that the purpose of rule 13.8.1 was to ensure that proxy forms would be received and their validity investigated before the meeting: *Campbell v The Australian Mutual Provident Society* (1906) 7 SR (NSW) 99 at 120. It was implicit in rule 13.8.1 that the Chief Executive was to receive and investigate the proxies. Mr Johnson made it tolerably clear that he was delegating that task to Mr Madry and, while neither Mr Johnson nor Mr Ramasundara gave evidence, it may nevertheless be inferred that they proceeded on the basis that Mr Madry was responsible for determining the validity of the proxies that were submitted before the meeting. It was unnecessary, in the circumstances, for the delegation to be documented or expressed in more formal or express terms.

161 The next question is whether Mr Madry's exercise of that delegated power miscarried when he determined that three members who submitted forms appointing Mr Clarke as their proxy were invalid or ineffective.

Did Mr Madry err in determining that the proxy forms were invalid?

162 The short answer to that question is "yes": Mr Madry's determinations in respect of the proxies miscarried. That is perhaps clearest in the case of the proxies granted by Mr Lee and Mr Mitchell.

The proxy forms submitted by Mr Lee and Mr Mitchell

163 Mr Madry's decision to disallow or invalidate the proxies given by Mr Lee and Mr Mitchell miscarried because it was, at best, doubtful that the clerical errors by Mr Lee and Mr Mitchell in supplying their membership numbers necessarily invalidated their proxies. Perhaps more significantly, even if the clerical errors were capable of invalidating the proxies, Mr Madry's failure to take any steps to correct those errors or to ascertain whether Mr Lee and Mr Mitchell

were eligible to appoint Mr Clarke as their proxy was unreasonable and unjustified in all the circumstances.

164 There is no doubt that, at all relevant times, both Mr Lee and Mr Mitchell were members who were eligible to vote at the general meeting. There could equally be no doubt that the intended to appoint Mr Clark as their proxy to vote against the special resolution. They had both filled out the appropriate form, which had been approved by the Management Committee, appointing Mr Clarke to be their proxy at the general meeting. The forms filled out by both Mr Lee and Mr Mitchell were received by the Society before 9.00 am on 22 October 2019, that being the time by which they were required to be received in accordance with rule 13.8.1. The only deficiency in the forms submitted by both Mr Lee and Mr Mitchell was that they inadvertently provided incorrect membership numbers. It was on that basis alone that Mr Madry determined that their appointment of Mr Clarke as their proxy was invalid.

165 There is no doubt that completion of the authorised proxy form required the member to provide his or her membership number in the approved proxy form. The importance of the member providing his or her membership number on the form was also emphasised in the instructions for completion of the form. It is easy to appreciate why the provision of a valid membership number was of some importance. It was one of the means by which the identity of the member submitting the form and their membership details, including their eligibility to vote, could be readily confirmed and verified from the Society's register of members. It does not necessarily follow, however, that a form submitted with an incorrect membership number was necessarily an invalid form, or that the appointment of the proxy by the submission of that form was necessarily invalid. That is all the more so where the provision of the incorrect membership number was plainly a mere clerical error and the member's identity and eligibility to vote could, in any event, readily and easily have been confirmed or verified from the register of members.

166 In ***Link Agricultural*** *Pty Ltd v Shanahan, McCallum & Pivot Ltd* [1998] VSCA 3; [1999] 1 VR 466, the shareholders of a public company requisitioned the consideration of two ordinary resolutions at the company's annual general meeting. The meeting chairman, who was empowered to determine voting procedures, adopted a procedure which required voting papers to be placed in ballot boxes. One of the company's directors, who held proxies for a number of shareholders, inadvertently failed to place his proxy voting card for one of the resolutions in the ballot box before the close of the poll. The chairman ruled against the proxyholder's request for inclusion of those votes.

167 The Court of Appeal of the Supreme Court of Victoria upheld a challenge to the chairman's ruling not to include the votes. It held that the chairman's ruling not to accept the proxyholder's vote was invalid because it did not facilitate the purpose of the power conferred on him, which was to be exercised in good faith to facilitate him ascertaining the will of the majority of eligible voters. Kenny JA, with whom Batt and Buchanan JJA agreed, reasoned that the chairman had an implied power to correct a "patent and inadvertent slip" by a voter, that the chairman's decision ignored the fact that the proxy voters were seeking to exercise their right to vote by proxy and would validly have done so but for the inadvertent balloting error, and failed to consider whether that error justified excluding the votes. The balloting error was considered to be nothing more than a minor slip which could not have led to any doubt about the voters' true intentions.

168 While the Society sought to distinguish *Link Agricultural* from the facts of this case, it is clear that the principles and reasoning of the Court of Appeal are relevantly applicable and apposite to the facts of this case. There is no relevant or material point of distinction. There could be no doubt that the provision of incorrect membership numbers by both Mr Lee and Mr Mitchell were mere clerical errors or "patent and inadvertent slip[s]" by them. That was the effect of their unchallenged evidence. They were otherwise eligible to vote and their voting intentions were abundantly clear.

169 It is equally clear that any issue concerning the identity of Mr Lee and Mr Mitchell and their membership status and eligibility to vote could have been readily and easily resolved, despite their provision of incorrect membership numbers. A simple check of the Society's membership database, using Mr Lee's and Mr Mitchell's names, would have revealed that there were indeed members with their names who were eligible to vote. The search would also have revealed that the details submitted in the proxy forms signed by Mr Lee and Mr Mitchell married up with the other details on the database for the members with those names including their addresses, telephone numbers and email addresses. The only detail that would not have married up with the details on the proxy form was the Mr Lee's and Mr Mitchell's membership numbers. It would, in those circumstances, have been obvious, from even the most cursory check of the member's database, that both Mr Lee and Mr Mitchell had simply made simple clerical errors in submitting incorrect member numbers.

170 Mr Madry made no attempt to verify Mr Lee's and Mr Mitchell's identities and their membership details by interrogating the Society's membership database. Nor did he make any

attempt to contact Mr Lee or Mr Mitchell, either by using the contact details for those members in the database, or by contacting Mr Clarke. As the detailed discussion of Mr Madry's evidence earlier in these reasons revealed, his apparent reasons for not doing so were unpersuasive, unsatisfactory and unreasonable. The "strict view" that Mr Madry took in relation to the proxies, which was, in effect, that any defect or deficiency in a submitted proxy form which had not, or was not able to be, corrected by 9.00 am on 22 October 2019 was not, and is not, a view which is justified by the Rules, including rule 13.8.2. Nor is it justified by what is stated on the proxy form itself, or the instructions for the completion of that form.

171 Even if that strict approach was somehow justified by the Rules, Mr Madry's slavish adherence to the Rules was unjustified and erroneous in circumstances where even the most cursory interrogation of the Society's register of members would have revealed that the defects or deficiencies in the proxy forms signed by Mr Lee and Mr Mitchell were obviously little more than mere clerical errors. The eligibility of Mr Lee and Mr Mitchell to vote and their intention to appoint Mr Clarke as their proxy was otherwise abundantly clear and Mr Madry had an implied power to correct the clerical errors in those circumstances, even after 9.00 am on 22 October 2019. His decision to reject or invalidate the proxies without further inquiry or consideration of the exercise of his power to correct mere clerical errors prevented effect being given to the clear voting intentions of Mr Lee and Mr Mitchell. The fact that the proxies were reviewed by the KPMG scrutineers is irrelevant, particularly in circumstances where the nature of that review and the information that was given to the scrutineers was, at best, unclear from the evidence. The Society did not call any evidence from the scrutineers.

172 In all the circumstances, the Society's contention that the errors made by Mr Lee and Mr Mitchell in inserting their membership numbers in their proxy forms was fatal to the validity of their proxy nominations has no merit and is rejected. The same can be said in relation to the Society's contention that those errors were not able to be corrected by Mr Madry at any point after 9.00 am on 22 October 2019. If the Society's arguments and reasoning in that regard were accepted, it would equally follow that other minor errors in the completion of the form, which did not relate to the actual eligibility of the member or their proxy to vote, would also be fatal and would also be unable to be corrected after 9.00 am on 22 October 2019; for example if the member made an obvious error in the dating of the form (such as using the wrong year), or misspelling his or her address or the proxy's name. While it was also essential for such details to be included in the completed form, it is impossible to accept that Mr Madry, as the person who was apparently responsible for assessing the validity of the submitted proxy,

was not able to correct obvious errors once he became aware of them and was able to ascertain the correct information either from the Society's membership register or from the member or members concerned. If the Society's reasoning were to be accepted, it would follow that the error could not be corrected even if the member contacted the Society and sought to correct the error in the form at 10.00 am on 22 October 2019. The absurdity of that position is obvious.

173 It follows that Mr Madry's decision to reject or rule the proxy forms submitted by Mr Lee and Mr Mitchell as ineligible miscarried and was erroneous. The provision of the incorrect membership details on those forms was not fatal in terms of their validity and could and should in any event have been corrected to give effect to the clear voting intentions of Mr Lee and Mr Mitchell.

The proxy form submitted by Mr Kautz

174 The position is slightly more complex in the case of the form submitted by or on behalf of Mr Kautz. That is because the fact that a member or former member who had submitted a proxy was ineligible to vote because they had not renewed their membership, or had not paid all outstanding fees or dues, could not properly be described as a mere clerical error.

175 It is, at best, doubtful that a proxy form submitted by a member or former member who was not eligible to vote because he or she had not paid all outstanding fees could be said to constitute the valid appointment of a proxy. That is because rule 13.8.1 provides that a "member entitled to vote may appoint another member entitled to vote as proxy". It would follow that a member who is not entitled to vote cannot appoint another member to vote as proxy. A form submitted by a member who was not entitled to vote would not constitute a valid appointment of a proxy. The critical question is whether that situation was able to be remedied and, if so, by what time.

176 It is perhaps possible to see how a member who was not entitled to vote, but who had nonetheless submitted a proxy form before 9.00 am on 22 October 2019, may have been able to correct that position by paying his or her fees, or renewing their membership, before 9.00 am on 22 October 2019. It is, however, difficult to see how that could properly be done after 9.00 am on 22 October 2019. That would, on one view at least, be tantamount to permitting a member to appoint a member at a point in time later than 72 hours before the general meeting contrary to rule 13.8.1. It is quite different to permitting the correction of a mere clerical error after 9.00 am on 22 October 2019, particularly where that clerical error did directly impact on the member's ability to vote,.

177 In that analysis, it would follow that Mr Madry may well have been justified in not taking any steps after 9.00 am on 22 October 2019 to alert Mr Kautz to the fact that he had not renewed his membership or paid his fees. The difficulty for Mr Madry and the Society, however, is that, as discussed at length earlier in these reasons, there was evidence that Mr Madry had in fact invited another member who was "unfinancial", but who had nevertheless submitted a proxy, to pay their fees after 9.00 am on 22 October 2019. It would appear that that member's proxy was subsequently regarded as valid or eligible. Mr Madry was unable to proffer or suggest any rational explanation for that inconsistency.

178 It is perhaps unnecessary, given the findings that have been made concerning the proxies submitted by Mr Lee and Mr Mitchell, to reach a concluded view in relation to the validity of Mr Madry's ruling or determination concerning Mr Kautz's appointment of Mr Clarke as his proxy. It perhaps suffices to say that the unexplained inconsistency of the approach taken by Mr Madry is a matter of some concern. It casts some doubt on the fairness and impartiality of the approach taken by Mr Madry.

Conclusion in relation to the proxies of Mr Lee, Mr Mitchell and Mr Kautz

179 Mr Madry's determination, or purported determination, that the proxy forms submitted by or on behalf of Mr Lee and Mr Mitchell was invalid. The inadvertent errors made by Mr Lee and Mr Mitchell in submitted forms which included incorrect membership numbers did not make their appointments of Mr Clarke as their proxy invalid. Those clerical errors could readily have been corrected by Mr Madry and his failure to do so on the erroneous basis that he was not able to do so after 9.00 am on 22 October 2019 meant that his determinations miscarried.

CONDUCT OF THE GENERAL MEETING ON 25 OCTOBER 2019

180 The main thrust of Mr Clarke's challenge to the conduct of the general meeting was that the President of the Society, Mr Ramasundara, breached his powers or duties as chair of the meeting in relation to the determination of the procedure to be followed at the meeting. That was said to be because he did not act in a way that was calculated to ensure that the members present at the meeting, including those opposed to the special resolution, were given a fair opportunity to discuss and debate the resolution. Indeed, it was contended that Mr Ramasundara unreasonably stymied or prevented any real discussion or debate in relation to the special resolution.

181 The facts relating to the conduct of the meeting were summarised earlier. The critical facts are: *first*, the meeting commenced at about 9.00 am on 25 October 2019; *second* Mr Ramasundara's opening address, which lasted for about 15 to 20 minutes, mainly related to the special resolution and was mostly supportive of the resolution; *third*, Mr Ramasundara permitted only eight members to speak in relation to the special resolution, four in favour of the resolution and four against it, and those presentations were strictly limited to two minutes in length; *fourth*, Mr Ramasundara announced that there would be no questions; *fifth*, Mr Ramasundara summarily rejected, without discussion or reasons, Mr Clarke's "point of order" in relation to the procedure announced by him; *sixth*, the end result was that there were no questions from the floor concerning the special resolution or any aspect of it; *seventh*, Mr Ramasundara made some brief concluding remarks which were again supportive of the special resolution and votes were then taken and counted; *eighth*, the meeting in its entirety, including the time taken to count the votes, only took about one and a half hours.

182 The Rules are largely silent concerning the powers of the person who chairs a general meeting. It is clear from the authorities concerning the conduct of meetings of companies, however, that in the absence of any express powers, the chair of a meeting has the implied power to, amongst other things, regulate and control the proceedings, including the manner in which resolutions are considered and debated: see *Re* ***Ryde Ex-Services*** *Memorial & Community Club Limited (Administrator appointed)* [2015] NSWSC 226 at [104] and the cases there cited. It is equally clear that in exercising his or her powers, the chair must act not only in good faith, but also reasonably and for the purposes for which the powers were conferred: *Link Agricultural* at [39]-[42]; *Ryde Ex-Services* at [106]-[108]; ***Byng v London Life*** *Association Ltd* [1990] Ch 170 at 188-189, 194.

183 The purposes for which the powers are conferred on the meeting chair include the facilitation of debate in relation to the business properly before the meeting: *Ryde Ex-Services* at [107]; *Byng v London Life* at 188H. That is because the members who attend a meeting are not only entitled to vote, but are also entitled to hear and be heard in the debate. In that context, it has been said that a chair must "make sure that those who wish to speak at the meeting are given a fair opportunity to do so": *Adams International* at 283E-F. In *Re* ***Direct Acceptance*** *Corporation Ltd* (1987) 5 ACLC 1,037, McLelland J said (at 1,041-1,042):

> This was a meeting at which members by themselves their proxies or representatives had a right to attend and in which they had a right to participate, for the purpose of dealing with the proposed resolution which would potentially affect their legal rights.

> The chairman of such a meeting should not terminate debate on a substantive resolution over objection, unless he is satisfied that there has been a reasonable opportunity for the arguments on each side of the question to be put. The chairman is not bound to accept a motion for the closure of debate unless he is so satisfied. It does not matter that a majority at the meeting may wish to act in a particular way regardless of what might be said by the minority: the latter are nevertheless entitled to a reasonable opportunity to have their points of view ventilated.

184 It is clear that, because the exercise by a meeting chair of the power to regulate and control the procedure at the meeting is essentially discretionary, a court will not lightly interfere in the exercise of that power: *Direct Acceptance* at 1,041-1,042, referring to *Wall v London & Northern Assets Corporation* [1898] 2 Ch 469; *Carruth v Imperial Chemical Industries Ltd* [1937] AC 707. A court will, however, intervene and declare the decision or conduct of a meeting chair to be unlawful or invalid if it was not taken reasonably with a view to facilitating the purpose for which the power exists, or if the chair took into account irrelevant factors, or reached a conclusion which no reasonable chair, properly directing himself or herself as to his or her duties, could have reached: *Byng v London Life* at 189, 194; referred to with approval in *Link Agricultura*l at [42].

185 Mr Clarke's case was, in essence, that Mr Ramasundara's conduct of the meeting, and in particular his decision to limit the debate of the motion to strict two-minute presentations with no questions, was not taken reasonably with a view to facilitating the debate and consideration of the special resolution. While Mr Clarke did not allege bad faith on the part of Mr Ramasundara, he contended that it should nevertheless be concluded that his actions in curtailing debate were unjustified and arbitrary and, it may be inferred, designed to achieve the will or objective of the Management Committee to have the special resolution passed. The Society, on the other hand, submitted that the time allotted to speakers and the number of members who were allowed to speak was reasonable having regard to the size of the meeting, the nature of the business to be determined and the amount of information that had previously been provided to the members regarding the proposal.

186 Mr Clarke's contentions should be accepted and the Society's rejected. It is, in all the circumstances, impossible to conclude otherwise than that Mr Ramasundara's curtailment of the debate was manifestly unreasonable and was not taken with a view to facilitating the proper debate and consideration of the special resolution.

187 One of the difficulties for the Society is that it did not call evidence from Mr Ramasundara. He is still President of the Society and there was no evidence to suggest that he was unavailable to give evidence for any reason. Not only does that mean that there was no evidence of the

basis or justification for Mr Ramasundara's decision to curtail the debate; it also means that it may readily be inferred that Mr Ramasundara's evidence would not have assisted the Society's defence to Mr Clarke's case that Mr Ramasundara's actions at the meeting were in breach of his duties as meeting chair: ***Jones v Dunkel*** (1959) 101 CLR 298 at 320-321.

188 Even putting the *Jones v Dunkel* inference to one side, the difficulty for the Society is that there was and is, in all the circumstances, no apparent reasonable or rational justification for what was, on its face, a significant curtailment of the debate. There could be no doubt that the special resolution was an important and highly significant issue to be decided by the members. Not only would the passing of the resolution result in a major change to the legal status of the Society, it would result in significant changes to its corporate governance. The Society, and Mr Ramasundara in particular, must also have been aware that the special resolution was controversial, or at the very least potentially controversial, and that there was a degree of opposition to it. Mr Clarke's evidence was that he had mounted a campaign of sorts against it. There was, however, no evidence to suggest that Mr Ramasundara had reason to believe that any debate that may have occurred would have been overly lengthy, or unruly, or disruptive in any way. There was also no evidence to suggest that there were any time or logistical constraints, or that the meeting otherwise had to be completed within any set time. It commenced in the morning and was held at the Society's offices. The special resolution was the only item of business for consideration at the meeting. As events transpired, the meeting took only an hour and a half. There was no reason it had to be so short.

189 The procedure adopted by Mr Ramasundara was also not the subject of any discussion or debate at the meeting. It was simply announced by Mr Ramasundara at the meeting. Mr Clarke's challenge to it was summarily dismissed by Mr Ramasundara without reasons. In fact it may readily be inferred that the decision to restrict any discussion or debate, following Mr Ramasundara's address in favour of the resolution, to the eight two minute presentations, four in support of the special resolution and four against it, was a decision that was made prior to the meeting, most likely by the Management Committee. The availability of that inference is supported by the fact that the procedure was referred to in the PowerPoint slides, which must have been prepared prior to the meeting. There was no suggestion in the slides that any questions would be permitted, or that any time would be allowed for discussion or debate. Plainly a decision had been taken before the meeting to curtail discussion and debate at the meeting. The members were not consulted in relation to that decision.

190 There could also be no doubt that the procedure that was adopted at the meeting in fact significantly curtailed and stymied any real discussion or debate about the special resolution and effectively prevented opponents of the resolution from having a reasonable opportunity of putting their case. Opponents of the resolution who wanted to voice their opposition and explain what aspects of the resolution they objected to and why they objected to them, were strictly limited to four presentations of no more than two minutes each. There was no question or possibility of any extension of time. The opponents of the motion were also not permitted to question Mr Ramasundara or the speakers who gave presentations in favour of the resolution. It is unclear why. What if they did not understand, or wanted some clarification of an aspect of the special resolution?

191 There was no evidence that anyone other than Mr Clarke wanted, let alone requested, further time to make their presentations. Nor is there any evidence that anyone other than Mr Clarke objected to the procedure that Mr Ramasundara announced, or sought to ask any questions. It is, however, hardly surprising that nobody else objected or attempted to ask a question after Mr Ramasundara summarily dismissed Mr Clarke's point of order. In any event, it is sufficient that Mr Clarke's attempts to present his reasoned opposition to the special resolution and his attempts to foster debate were stymied.

192 The procedure adopted at the meeting was, in all the circumstances, manifestly unreasonable and unjustified. It may also readily be inferred that it was adopted by Mr Ramasundara, perhaps at the behest or direction of the Management Committee, not to facilitate appropriate discussion and debate about the special resolution at the meeting, but to restrict the debate so that the resolution would be put to the vote effectively without demur, dissent or delay. The procedure was an apparent reflection or manifestation of the will of the Management Committee, including Mr Ramasundara, that the resolution be passed. No other reasonable or rational inference is available, particularly in the absence of any evidence from Mr Ramasundara, or indeed anyone from the Management Committee. The decision or determination concerning the procedure was accordingly made for purposes other than those for which the powers and duties were conferred on the meeting chair, or were, at the very least, made in ignorance of the proper purposes for which the powers were conferred. In any event, the decision or determination was unreasonable or plainly unjust: cf. *House v The King* (1936) 55 CLR 499 at 505.

193 It follows that Mr Ramasundara breached his duties as the chair of the meeting. It cannot be concluded that Mr Ramasundara's breach of duty was immaterial or could or would have made no difference to the vote, particularly given the closeness of the vote.

CONCLUSION IN RELATION TO MR CLARKE'S GROUNDS

194 Mr Clarke has made out each of his main grounds of challenge to the calling of the meeting, the conduct of the meeting and the passing of the special resolution. In summary:

- The Management Committee failed to comply with rule 19 of the Rules. The special resolution involved a variation of the Rules. The Management Committee was accordingly required to send each member a notice complying with rule 19.4 at least three months before the general meeting. It did not do so. The 3 July 2019 email which purported to comprise that notice was not sent to at least 1,815 members who had opted out of receiving marketing material. The notice was plainly not marketing material. The notice also failed to comply with rules 19.4.1(b) and (d): it did not include a copy of the object or rule to be changed showing on it each alteration proposed, or a memorandum prepared by opponents of the alternation, setting out the case against the proposed alteration. The failure of the notice to comply with rule 19.4.1(b) could, however, fairly be said to be a technical or minor breach.
- The Chief Executive failed to ensure that a notice of the general meeting complying with rule 13.3.2 was sent to each member whose address was shown in the register of members in accordance with rule 13.3.1. The email of 3 October 2019 which purported to include the notice of general meeting was not sent to 20 members who had not supplied an email address to the Society. The notice which the email purported to send to the members was also not sent to members in accordance with the Rules because it was not attached to the email, though it was able to be accessed via a hyperlink contained in the email. The email itself did not include adequate or sufficient notice of the nature of the business to be dealt with at the meeting as required by rule 13.3.2 of the Rules. While the use of hyperlinks instead of attaching files or documents to an email might in some circumstances be considered to be a technical or minor breach of the Rules, that could not necessarily be said to be the case in relation to the 3 October 2019 email given the importance of the notice.
- The notice of general meeting, explanatory memorandum and other documentation which was hyperlinked in the 3 October 2019 email giving notice of the general meeting

gave the misleading impression that the changes to corporate governance that would result if the special resolution was passed were not major or significant changes. That is mainly because the explanatory memorandum referred to and provided a hyperlink to a document which compared the existing Objects with the proposed objects, but did not refer to or provide any direct hyperlink to any similar document containing a comparison between the existing Rules and the proposed constitution, or include any other discussion or analysis of the difference between the Rules and the proposed constitution.

- The purported disallowance by Mr Madry of the appointment by two members of Mr Clarke as their proxy, or Mr Madry's ruling that the proxy forms submitted by or on behalf of those two members were ineligible, was invalid or unlawful. His decision or determination about the proxy forms submitted by or on behalf of Mr Lee and Mr Mitchell miscarried. The proxy forms were either valid, despite containing the incorrect membership numbers of Mr Lee and Mr Mitchell, or if they were not, Mr Madry's failure to properly consider taking steps to remedy what amounted to mere clerical errors on the forms was erroneous in all the circumstances. His decision accordingly miscarried.
- Mr Ramasundara breached his duties as chair of the 25 October 2019 meeting by adopting a procedure which unreasonably and unjustifiably limited or curtailed debate concerning the special resolution. Mr Ramasundara's decision to adopt that procedure was not taken reasonably with a view to facilitating the purpose for which his power to regulate the meeting was conferred, which included to facilitate discussion and debate by those present at the meeting.

195 As has already been indicated, some of those breaches, defects or deficiencies might fairly be said to be fairly minor or technical. That is the case in respect of the failure of the notice and information sent in purported compliance with rule 19 not including a document which strictly complied with rule 19.4.1(b). But for the importance of the notice of general meeting, it might also be said to apply to the fact that the 3 October 2019 email did not attach the notice of general meeting and explanatory memorandum, but instead used hyperlinks to direct the reader to electronic files containing those documents. It cannot be said to be the case in relation to the other matters. In any event, the cumulative effect of all the breaches, defects or deficiencies was unquestionably significant and serious in terms of the lawfulness and validity of the 25 October 2019 general meeting and the special resolution that was passed at it. That is all

the more so given the extremely slender margin by which the resolution was passed. The breaches, defects and deficiencies also covered just about every stage of the process.

RELIEF AND DISPOSITION

196 The relief sought by Mr Clarke included: declarations that the decision to reject the proxy forms submitted by Messrs Kautz, Lee and Mitchell was invalid and that the special resolution put to the general meeting on 25 October 2019 was defeated; a declaration that the general meeting held on 25 October 2019 or the special resolution passed at it was invalid; an order that the special resolution passed at the general meeting on 25 October 2019 be set aside pursuant to s 49 of the Associations Incorporation Act; an order setting aside the permission granted by the Registrar-General to the Society pursuant to subs 82(3) of the Associations Incorporation Act to apply to the Commission for registration as a company limited by guarantee; and an order pursuant to s 53 of the Associations Incorporation Act or s 22 of the ***Federal Court of Australia Act*** *1976* (Cth) for the holding of a further general meeting of the Society, together with directions regarding the conduct of that meeting.

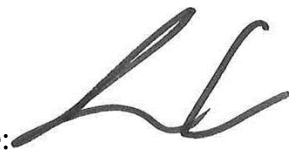
197 Given the findings that have been made concerning the proxies, it would perhaps be open to declare that the special resolution that was put to the general meeting was defeated. That is because the resolution was passed by only one vote in circumstances where the two proxy votes of Mr Lee and Mr Mitchell against the special resolution should also have been counted. The result if those votes had been counted would have been the defeat of the resolution. Given the other defects, however, which go to the validity of both the calling of the meeting and the conduct of the meeting, the preferable course would be to declare that both the meeting and the special resolution were invalid and to order that the special resolution be set aside and a new general meeting held.

198 It may be accepted, as the Society submitted, that the making of such declarations and orders under the Association Incorporation Act, or pursuant to s 22 of the Federal Court of Australia Act, is discretionary. The Court may decline to make such declarations or orders if the breaches, defects or deficiencies in the calling of the general meeting and the passing of the special resolution were considered to be merely technical or trivial, or that they could not or would not have affected the outcome. For the reasons already given, however, most of the breaches, defects or deficiencies were anything but technical or trivial. Nor could it be concluded that they would not, or even might not, have affected the outcome.

199 Declarations will accordingly be made that the general meeting held on 25 October 2019 and the special resolution passed at it were invalid. Orders will be made setting aside the special resolution and the permission granted by the Registrar-General to the Society pursuant to subs 82(3) of the Associations Incorporation Act. As for the holding of a further general meeting, the appropriate course would be to list the matter for a case management hearing in February 2020 for the purpose of considering what, if any, orders or directions should be made for the convening of a general meeting of the Society. To that end, the parties should confer and jointly arrange for the matter to be listed on a mutually convenient date in February 2020.

200 There is no reason why costs should not follow the event. The Society will accordingly be ordered to pay Mr Clarke's costs.

I certify that the preceding two hundred (200) numbered paragraphs are a true copy of the Reasons for Judgment herein of the Honourable Justice Wigney.

Associate: 

Dated: 23 December 2019

APPENDIX 1

Australian Computer Society Incorporated
ABN 53 156 305 487
(the "Society")

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

APPENDIX 2

Schedule 1

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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 23

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.

APPENDIX 3

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Notice of General Meeting and Explanatory Memorandum

Australian Computer Society Incorporated

Date of Meeting:	25 October 2019
Time of Meeting:	9.00am (AEDT)
Place of Meeting:	Australian Computer Society, Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000

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Australian Computer Society Incorporated ABN 53 156 305 487

NOTICE OF GENERAL MEETING

Pursuant to rule 13.2 of the Australian Computer Society Rules (**Rules**) and clause 70(a) of the *Associations Incorporations Act 1991* (ACT) (**ACT Act**), notice is hereby given that a general meeting of Members of the Australian Computer Society Incorporated (**Society**) will be held at Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000, at 9.00am (AEDT) on 25 October 2019.

The Explanatory Memorandum which accompanies and forms part of this Notice of General Meeting provides further information about the change of the legal structure of the Society and the Management Committee's recommendation, and contains a glossary of defined terms for those terms that are not defined in full in this Notice of General Meeting.

PURPOSE

The purpose of the General Meeting is to pass a special resolution relating to:

1. the change of the legal structure of Australian Computer Society Incorporated from an incorporated association under the Associations Incorporation Act 1991 (ACT) **(ACT Act)** to a company limited by guarantee under the *Corporations Act 2001* (Cth) (**Corporations Act**);

2. subject to the registration of the Society under the Corporations Act:

   (a) change the name of the Society to 'Australian Computer Society Limited';

   (b) replace the existing Rules and Objects of the Society with a new Constitution and new Objects in the form set out in Attachment B.

The special resolution is set out below in this notice.

BACKGROUND

The Society is an incorporated association registered under the Australian Capital Territory (ACT) Act. Since our incorporation in 1967, we have grown in size and complexity to an organisation which now has over 45,000 members.

The Management Committee has decided, after a detailed review and recommendation from the National Congress, to seek the approval of members to change the legal structure of the Society from an incorporated association under the Australian Capital Territory (ACT) Act to a company limited by guarantee under the Corporations Act, to alter the name of the Society to reflect the fact that it has been incorporated as a company limited by guarantee and to replace the entirety of the existing Rules with a new Constitution that is compliant with the Corporations Act and to also make minor alterations to the current Objects of the Society (collectively, the **Proposal**).

As the Proposal involves altering the Objects and Rules of the Society, rule 19 of the existing Rules requires the Management Committee to send to each member a written notice of the proposed alteration to the Rules and Objects, together with certain information at least 3 months before any notice calling a general meeting to deal with the Proposal is sent to Members. That notice, including its accompanying information was sent on 3 July 2019. A copy of this notice of proposed alteration to the Rules and Objects of the Society is available here: ACS News

The proposed new Constitution (including the new Objects) which the Society would adopt, should the Proposal be approved by Members, is also attached at Attachment B to this Notice of General Meeting. The proposed Constitution (including the new Objects) was also attached to the 3 July 2019 written notice.

AGENDA

Special Resolution:

Under the ACT Act and the Corporations Act, an Australian Capital Territory incorporated association can transfer its incorporation to a company, if the transfer application is authorised by a special resolution of the incorporated association. The Society proposes to transfer its registration to a public company limited by guarantee with a similar name and Constitution that complies with the Corporations Act and the *Australian Charities and Not-For-Profits Commission Act 2012* (Cth).

It is proposed that at the General Meeting, the Members will consider and, if thought fit, to pass the following resolution as a **special resolution**:

> *"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 to the Notice of General Meeting."*

By order of the Management Committee

Yohan Ramasundara, FACS CP
President

Dated: 3 October 2019

NOTES

Who may vote at a General Meeting

All members, other than members of Overseas Group, Students, Honorary Fellows and Honorary Members (who were not members before classification as an Honorary Member), are entitled to attend and vote at general meetings of the Society. A member may not vote at any general meeting of the Society unless all monies payable by that member (and their proxy), to the Society, have been paid.

Special Resolution

A special resolution must be passed by at least 75% of all votes cast by those members of the Society who, being entitled to vote on the special resolution, vote either in person at the General Meeting or by proxy.

Background Information

Attached to this Notice of General Meeting is an Explanatory Memorandum which provides further details on the Resolutions.

Voting by proxy

To vote by proxy, please complete the proxy form enclosed as Attachment B with this Notice of General Meeting and return it to the Society as soon as possible by one of the following means:

By mail:	PO Box Q534 Queen Victoria Building Sydney NSW 1230
By hand delivery:	To an ACS office
By email:	Secretary@acs.org.au

In accordance with 13.8. of the Rules, an appointment of proxy is effective only if the Society receives the notice of proxy **not less than 72 hours** before the time appointed for the commencement of the meeting or, in the case of an adjourned meeting, resumption of the meeting. The notice of proxy is only valid if it is in the approved form attached to this Notice of General Meeting Proxies should be received by 9:00am (AEDT), 22 October 2019 to be eligible.

In accordance with 13.7.7. of the Rules, you and your proxy will only be entitled to vote at the meeting if all money payable by you as a member and the proxy to the Society, have been paid.

Further information

If you have any questions, please contact Andrew Madry, ACS Company Secretary on email Secretary@acs.org.au

APPENDIX 4

Australian Computer Society ABN 53 156 305 487

EXPLANATORY MEMORANDUM

This Explanatory Memorandum has been prepared for the information of members of the Society in connection with the business to be considered at the General Meeting to be held at Australian Computer Society, Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000 at 9.00am (AEDT) on 25 October 2019.

The Explanatory Memorandum should be read in conjunction with the accompanying Notice of General Meeting and the proposed Constitution set out as Attachment B. A glossary of defined terms is included at the end of the Explanatory Memorandum.

Information supporting the resolution are set out below.

1. Special resolution

1.1 Change of legal structure

The Society is seeking to amend its existing legal structure as an incorporated association incorporated pursuant to the Associations Incorporation Act 1991 (ACT) (ACT Act) to a company limited by guarantee (**Company**), incorporated pursuant to the Corporations Act.

The Notice of proposed alteration to the Rules and Objects of the Society and background information to assist members understand how the proposed new governance model will operate in its entirety has been posted to the News Section on the ACS website:

Notice of proposed alteration to the Rules and Objects of the Society - 3 July 2019

1.2 Replace the existing Rules with a new Constitution (including minor alterations to the Society's Objects)

As part of the change of legal structure from an incorporated association to a company limited by guarantee, the Society must adopt a Constitution that complies with the Corporations Act.

The Constitution will also provide for a new set of objects to be adopted by the Society once it becomes a company limited by guarantee. These updated objects differ slightly from the current Objects of the Society.

A comparison of the current and proposed Objects has been posted on the ACS website:

Comparison between current Objects and proposed updated Objects as a Company Limited by Guarantee

The proposed Constitution is set out at Attachment B to this Notice of General Meeting.

1.3 Application of income and property

Similar to the Society, the new Constitution will require the Company to apply the income and property of the Company solely towards the promotion of the objects of the Company.

The Company will also be prohibited from making distributions to its members and paying fees to directors and requires the board of the Company to approve all other payments the Company makes to directors. These requirements are specified in the new Constitution for the Company.

On the winding up of the Company, any surplus assets of the Company remaining after the payment of its debts and liabilities must not be paid to or distributed among the members.

Rather, surplus assets must be given or transferred to one or more bodies corporate, associations or institutions having objects similar to the objects of the Company and whose constitution prohibits the distribution of its or their income or property to no lesser extent than that imposed on the Company. If there are no such entities, the surplus assets must be given or transferred to an entity or entities whose objects are the promotion of charity and gifts which are allowable deductions under the taxation law. In either case, the relevant entities must be elected by the members by resolution at or before the dissolution of the Company. Failing that, the Board will elect the recipient entities (subject to obtaining court approval pursuant to the Corporations Act).

1.4 Membership and management

Members of the Company are liable to contribute one dollar ($1.00) to the property of the Company if the Company is wound up at a time when the person is a member, or within one year of the time the person ceased to be a Member. Membership is personal and non-transferable.

The proposed board of the Company (**Board**) will manage the affairs of the proposed Company. The Board is to compromise 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). The directors of the Board of the Company will be subject to directors' duties under the Corporations Act, including to act in good faith in the best interests of the Company.

Subject to receiving the relevant consents to act, the Constitution provides that the initial directors of the Company are to include the current President, Vice President - Academic Boards, Vice President - Community Boards, Vice President - Membership Boards and the National Treasurer of the Society. The transitional arrangements have been designed to ensure that crucial corporate knowledge is not lost through the immediate implementation of a new election model. A direct election will be held for the remaining three (3) new Directors to serve on the inaugural Board of Directors.

1.5 Management Committee's recommendation

The Management Committee unanimously recommend that Members vote in favour of the Special Resolution.

Glossary of Terms

The following terms and abbreviations used in the Notice of General Meeting and this Explanatory Memorandum have the following meanings:

ACS means Australian Computer Society Incorporated ABN 53 156 305 487.

Constitution means the proposed constitution of the company limited by guarantee to be incorporated under Corporations Act pursuant to special resolution proposed to be passed as set out in the Agenda.

Explanatory Memorandum means this explanatory memorandum.

Honorary Fellow has the meaning given to it under article 2.7.2. of the National Regulations.

Honorary Member has the meaning given to it under article 2.7.3. of the National Regulations

Management Committee means the committee constituted under rule 10 of the Rules.

Meeting means the meeting of Members to be held at Australian Computer Society, Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000 at 9.00am (AEDT) on 25 October 2019, or any adjournment thereof.

Member(s) means any person registered on the members register of ACS for the time being.

Notice of General Meeting means this document.

Objects means the objects that are, with reference to section 29 of the Australian Capital Territory Act, the objects of the Society.

Overseas Group means the group of members who meet the qualifications set out in the National Regulations for Overseas Group.

National Regulations means the ACS National Regulations.

Resolutions mean the resolutions to be put to Members at the Meeting as set out in the Agenda to this Notice of General Meeting.

Rules means the rules that are, by virtue of Subsection 31(1) of the Act, the rules of the Society.

Student has the meaning given to it under article 2.7.8. of the National Regulations.

Attachment A - Proxy Forms

Proxy forms are set out in the following pages

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GENERAL MEETING - APPOINTMENT OF PROXY

(Sections 1 & 2 must be completed)

SECTION 1

I, ... Membership No: .....
(full name)

of .....
(address)

being a member of ACS entitled to vote hereby appoint:

..... Membership No: .....
(full name of proxy or write "Chairman of the Meeting")

of: .....
(address if proxy not Chairman)

being a member * of ACS entitled to vote, as my proxy to attend and vote on my behalf for the General Meeting of ACS to be held at Australian Computer Society, Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000 at 9.00am (AEDT) on 25 October 2019.

** N.B. All members, other than members of Overseas Group, Students, Honorary Fellows and Honorary Members (who were not members before classification as an Honorary Member), are entitled to attend and vote at general meetings of the Society. A member may not vote at any general meeting of the Society unless all monies payable by that member (and their proxy), to the Society has been paid.*

Voting Instructions

I direct my proxy to vote on the item of business at the meeting, as set out below. I accept that my proxy may decide how to vote (if at all) if I do not direct my proxy how to vote on the item of business below and for other votes at the meeting (for example procedural motions)

Mark ☒ one box only for the item of business set out below:

Special Resolution	☐ For	☐ Against
Approval of Change of Legal Structure		

SECTION 2

.....
(Signature of member appointing proxy)

Date:
.....

Forward to: Company Secretary
Australian Computer Society
PO Box Q534
QVB, SYDNEY NSW 1230
Secretary@acs.org.au
Ph: 02 9299 3666

(proxy notice is to be received no later than 72 hours before the time of the meeting)

Instructions for completion of proxy form

Section 1:

Name, membership number and address of member

Insert your name, membership number and address.

Appointment of proxy

If you wish to appoint the Chairman of the meeting as your proxy, write "Chairman of the Meeting". If the person you wish to appoint as your proxy is someone other than the Chairman of the meeting, write the full name of that person in the space provided and their address. If you leave this section blank or your named proxy does not attend the Meeting, the Chairman of the meeting will be your proxy. The Chairman has indicated that he will vote all undirected proxies FOR the resolutions. A proxy must be a voting member of the Society.

Voting instructions

You may direct your proxy how to vote on an item of business by placing a mark in one of the two boxes opposite the item of business. All of your votes will be voted in accordance with your direction. If you do not mark any of the boxes on a given item, your proxy may vote as the proxy sees fit. If you mark more than one box on an item, your vote on that item will be invalid.

Section 2:

Signing by member

You must sign, date and provide your membership number on this form as follows in the space provided

Lodging of proxy

This proxy form must be received by the Society at its registered office not later than 22 October 2019, by mail, hand delivery or email. Any proxy forms received by mail or delivery after 9.00am (AEDT) on 22 October 2019 and any proxy forms received by email after 9.00am (AEDT) on 22 October 2019, will not be valid.

Last time and date for lodgement	9.00am (AEDT) on 22 October 2019
By mail	PO Box Q534 Queen Victoria Building Sydney NSW 1230
By hand delivery	Level 27, Tower 1, 100 Barangaroo Avenue, Sydney NSW 2000
By email	Secretary@acs.org.au