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Member Consultation Paper

RACP Constitution and Governance Review

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1. Introduction

The College has embarked on the RACP Constitution Review Project. With this review underway, it is important that the College look to ensure good governance with the membership retaining control of the College in the long term. To find this balance, there are many things that should be considered.

The purpose of this document is to provide background information about the College's governance and seek feedback on questions related to future governance arrangements.

2. Role of the Constitution and the importance of good governance

To have a meaningful dialogue on this issue it is important to establish the purpose of a constitution and what we mean by governance.

A constitution is a legally binding set of rules on the internal governance structure of an organisation. It establishes the purpose and function of an organisation. With regards to a membership body, it is a contract between the College on the one hand and members and the board on the other. The constitution also explains the roles, responsibilities, powers and obligations of the Board, the members and management.

Governance can be defined as "...the framework of rules, relationships, systems and processes within and by which authority is exercised and controlled" (ASX Corporate Governance Principles). Although not an ASX entity, this definition is equally applicable to the College. Governance is about leading and guiding the direction of an organisation by setting strategy, monitoring performance and compliance, overseeing risk and ensuring that an appropriate control framework (such as by-laws, policies and procedures) is in place to make sure the College is working towards achieving its charitable purpose.

The College Constitution separates the different roles and functions that members, directors and management play in the governance of the College. Good governance practice requires those charged with the governance of an organisation (the Directors of the Board) to be separate from management, which is responsible for operating the College on a day-to-day basis.

It is a requirement that directors act independently and owe a fiduciary duty to act for the benefit of the College as a whole. That is, they must act in the interests of the entire College and not any specific part of the College. This will continue to apply irrespective of the process by which directors are elected or appointed.

Changing the RACP constitution requires at least a 75% vote in favor of any changes by members present and entitled to vote.



3. RACP Board composition and election/appointment process

a. Past (pre-2018)

Prior to changes that came into effect in 2018, the College had a 'representative Board' made up of 18 directors. The President and President-elect were directly elected from the Membership. However, the other director roles on the Board were constituted by representatives determined by their position or were appointed by the Board. They were:

- President and President-elect New Zealand
- President AMD and President-elect AMD
- President PCHD and President-elect PCHD
- Presidents of AFRM, AFOEM and AFPHM
- Two representatives from the Trainee Committee
- Two AMD representatives
- Honorary treasurer (appointed by the Board)
- Two non-member Directors (appointed by the Board)

b. Key drivers of change (2013-2016)

In 2013, the then Board reviewed various aspects of governance to ensure College structures remained efficient, responsive and cost effective in the delivery of services to members.

At a General Meeting of Members held in December of that year, a Special Resolution was put forward proposing various amendments to the College's constitution to give effect to a proposal for Board reforms. The Special Resolution required at least 75% of the votes cast by Members to be cast in favour for the resolution to be passed. However, as there were only 66.4% of votes for the Special Resolution, it was not carried. Accordingly, the proposed changes to the College's constitution were not approved and no changes were made.

At Board strategy days held in June 2014, it was recognised that the College needed to be able to adapt review governance structures and to evolve the College to keep up with, and anticipate, real and strategic change. During 2014, there was significant member consultation on the topic in both Australia and New Zealand to design a governance model. There was support for moving away from a 'representative Board' to a smaller 'skills-based Board' to build on its effectiveness and provide greater accountability for decision making.

During 2015 members were widely consulted to determine the future of the College and at the 2016 Annual General Meeting, members voted to change the Board structure, effective May 2018, reducing the number of Board Directors from 19 to 10. Of these Directors, 60% (six) were to be elected by all RACP members (compared to 11% under the previous structure). In addition, three Community Directors were to be appointed.

c. Current (post-2018)

The new Board structure took effect in May 2018 and includes the President, President-Elect, President New Zealand, three Member Directors, a Member Director – Trainee and three Community Directors appointed by the Board.

d. Role of the Board in 2021

The Board is the sole governance body in the Constitution. It performs all the governance functions for the College. It delegates some of these functions to Committees it has created to assist in the discharge of its obligations.

4. College Council composition and appointment process

In 2015, a new representative College Council (the Council) was established by the Board to act as its peak advisory body on strategic and cross-College issues.

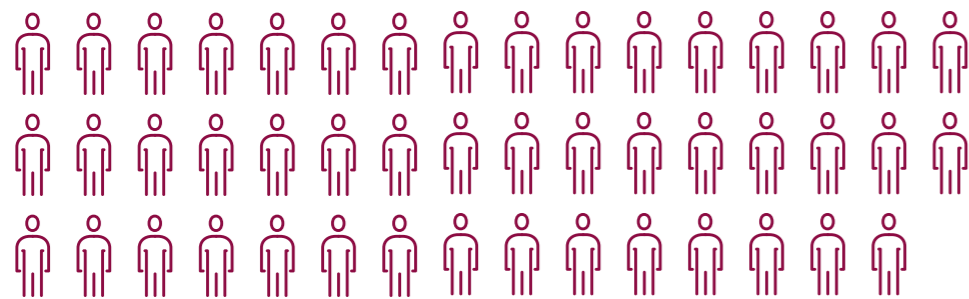
The Council responds to issues the Board refers to it and raises issues to the Board that the Council feels need consideration. The composition of the Council enables a variety of member and non-member perspectives to be heard in a single forum.

The Council bylaw makes provision for 47 representative positions and includes:

- a Fellow nominated by the Aotearoa New Zealand Committee, which may or not be the Aotearoa New Zealand President-Elect
- a Fellow from each of the 26 identified Education Pathways, as nominated by their respective bodies
- a Fellow nominated by the Adult Medicine Division Council
- a Fellow nominated by the Paediatrics and Child Health Division Council
- a Fellow nominated by the Australasian Faculty of Occupational and Environmental Medicine Council
- a Fellow nominated by the Australasian Faculty of Public Health Medicine Council
- a Fellow nominated by the Australasian Faculty of Rehabilitation Medicine Council
- two Trainees nominated by the College Trainees' Committee
- a Fellow nominated by each of the seven Australian Regional Committees
- a Māori representative and an Aboriginal or Torres Strait Islander representative, who may be Fellows, trainees or non-Members of the RACP; and
- a consumer representative from the RACP appointed Consumer Advisory Group or an approved delegate.

The Council has been created and exists at the discretion of the Board. As an advisory body only, it does not have powers reserved for it on behalf of the membership.

47 representative positions



5. Committees that report to the Board

There are currently 35 committees that report to the Board. These include the Divisions and Faculties, College Trainees' committee, Regional Committees as well as others. There are too many committees reporting to the Board, so some changes are necessary.



6. Governance issues and the Effective Governance Recommendation

In April 2019, the Australian Charities and Not-for-Profits Commission (ACNC) launched an investigation into the RACP Board governance and organisational culture.

As part of a Voluntary Compliance Agreement, the RACP engaged Effective Governance as subsequently appointed to review the RACP Board governance and organisational culture.

Effective Governance found that, under Theme 6, it was identified that the “RACP’s governance effectiveness is hampered by structural issues” and it was recommended that “a more detailed review of the Constitution to refine the governance structures of RACP” be undertaken (6.1, j). In addition, in order to “progress towards leading effective College Governance and better meet the needs of the members”, it was recommended that “the College consider commencing over the next two years to move to a similar model as Chartered Accountants Australia and New Zealand (CAANZ) and the Royal Australasian College of Surgeons (RACS), with the College Council as the lead governance body” (6.7,a).

Some of the key attributes of the model recommended by Effective Governance, which it called the ‘RACP Transformation Governance Model’ (RTGS), were:

- A significantly enhanced role for the Council, which would become the lead governance body for the College. The Council would elect the directors to the Board and the positions of President and President-elect.
- Council would be responsible for setting organisational strategy and would have the member-facing Committees reporting to it.

- The Board would have a reduced scope of responsibility compared to the existing Board, with a focus on implementation, management oversight, risk and compliance. The Board would be chaired by a seasoned, independent person – such that the President of the College and the Chair of the Board would not be positions held by the same person as currently occurs.

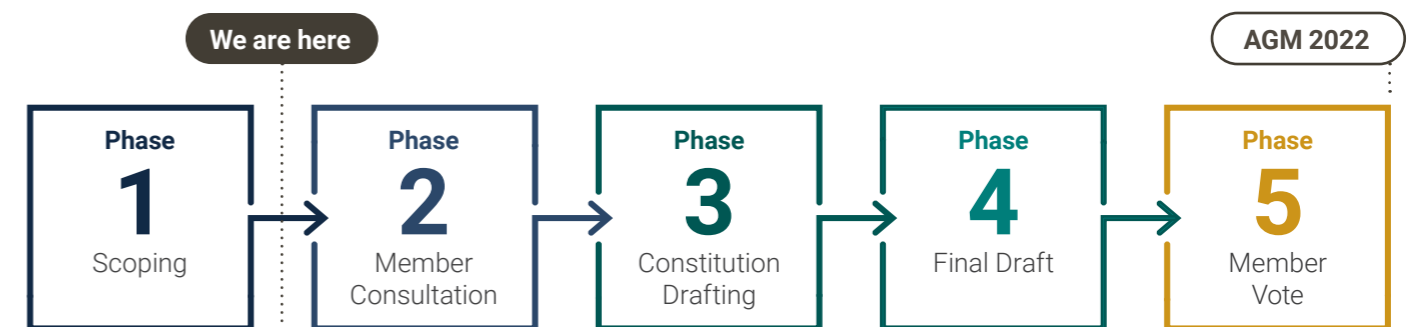
Additional detail on the RTGS is provided in Appendix 2 of this document and in the Effective Governance report of December 2019 found [here](#).

7. The RACP Constitution Review Project

The Board has determined that a fulsome consultation occur with the members of the College, rather than simply endorsing the RTGS proposed by Effective Governance. This decision recognises that the College has been evolving its governance over a period of time, and that changes to the Constitution should not be undertaken lightly and without careful consideration. In addition to the issues raised by Effective Governance regarding the structure of the College, the Board has also determined that Indigenous recognition in the constitution is important and so the Constitution review project has two major streams:

- Stream 1 - Governance review
- Stream 2 - Indigenous recognition

The project has five phases: Scoping, Specific Consultation, Constitution Drafting and Refinement, Final Draft and Approval, and Member Vote. The first two phases will culminate in the development of a preferred College governance model around which a new constitution will be written. The draft constitution will be subjected to iterative refinement prior to final approval. The final phase will be the member vote at the AGM 2022.



8. Potential governance models

A review of the governance models of the following types of organisations was conducted:

- specialist medical colleges from Australia and Aotearoa New Zealand
- physician colleges from three other countries
- other membership organisations from health and non-health sectors

The review found that while there is a large amount of variation with regards to the composition of the governance bodies of these organisations, they can be grouped into the following three models:



Of the specialist medical colleges from Australia and Aotearoa New Zealand, there is an almost even split between the three models with six falling into type i, four falling into type ii and five falling into type iii (including the current RACP model).

Of the three international physician colleges reviewed, two are type ii (Royal College of Physicians and Surgeons Canada and Royal College of Physicians Ireland) and one is type iii (Royal College of Physicians). The majority of other organisations reviewed are type i (five of eleven), two are type ii and three are type iii.

For examples of potential governance models (including the RTGS, RACS and CAANZ) see Appendix 2.

9. Indigenous recognition

The College has made a commitment to advancing Indigenous/First Nations Peoples' health and education equity through its Indigenous Strategic Framework (ISF) by embedding the principles of the ISF in all levels of RACP governance and operations as core business.

In December 2019, the Board committed to recognising the Indigenous/First Nations peoples of Australia and Aotearoa New Zealand in the College Constitution. This provides an opportunity for the College to become a leader in enshrining its commitment to Indigenous/First Nations Peoples and recognising and respecting the values, skills and knowledge systems of these peoples.

Trusted Aboriginal and Torres Strait Islander and Māori constitutional law experts Professor Megan Davis and Kāhui Legal (respectively) have been engaged to provide expertise and advice. They are working closely with the College's Aboriginal and Torres Strait Islander Health Committee and Māori Health Committee to develop and refine potential changes to the Constitution to advance this objective. This work is in progress and is not within scope of this consultation paper.

10. Consultation to date

In August 2020, emails were sent to all Members, the Chairs and Presidents of Peak Bodies and Committees and staff asking them what aspects of the College governance and constitution they thought are working well and those that they thought need to be changed or updated. The Board Directors were also invited to provide feedback via direct invitation from the Chief Executive Officer.

Analysis of the feedback identified an additional major theme, 'EGM/AGM processes, voting and proxies'. As there was substantial feedback regarding the need to review and amend this area, it has subsequently formed a third stream of work within the Constitution Review project.

During this consultation, other matters for consideration were also identified. Whilst they do not constitute major themes of work, they can be dealt with during the Constitution Review process. These matters include:



Openness and transparency



Conflict of interest



Maximum Number of terms for a Director



Inclusive language

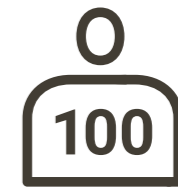
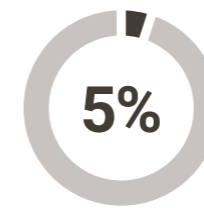


Remuneration of Directors

In addition, some matters that are not constitutional matters were identified. These will not be ignored but instead will be dealt with as appropriate through bylaws or referred to relevant parts of the College for consideration.

11. Current Extraordinary General Meeting (EGM) process

Under the current constitution, the Board must call a general meeting of the College as required under the Act or if the College receives a written request from the lesser of:



(a) at least 5% of members who are entitled to vote at the general meeting; or

(b) at least 100 members who are entitled to vote at the general meeting.

Due to large membership of College the 100 member threshold is needed in practice to call an extraordinary general meeting.

It should be noted that the Corporations Legislation Amendment (Deregulatory and Other Measures) Act 2015 amended section 249D of the Corporations Act 2001 to remove the '100-member rule', which required directors to call a general meeting at the request of 100 members. It is a provision still available to the members of this College at this time as it is included specifically in our Constitution.

12. Criteria for assessing alternative governance models for the RACP

Every organisation needs to consider its own circumstances when determining how best to develop its approach to governance. The following key criteria are proposed to be used to assess which governance models are fit-for-purpose for the College in later stages of consultation:



a. Alignment of purpose and strategy:

Supports the development and implementation of a clear strategy that aligns the organisation's activities to its purpose, including the pivotal role it has in educating future generations of Physicians.



b. Membership voice is heard:

Ensures there is meaningful engagement of members and that their interests are understood and considered.



c. The College works in partnership with Indigenous Peoples:

Supports partnership with Aboriginal, Torres Strait Islander and Maori people in growing cultural safety and achieving health equity.



d. The structure is efficient:

Ensures that there is clarity of decision-making within the organisation and that the right people have the right authority to make effective and efficient decisions.



e. Effective oversight of risk, performance and compliance:

Decision making is informed by an understanding of risk and there is effective oversight of College performance, risk, and compliance matters such that all regulatory and fiduciary obligations are met.



f. The right composition:

Having the right mix of knowledge and skills present on the governing body (or bodies).



g. Supports the right culture:

Instils a culture that supports the organisation's purpose, strategy and compliance obligations.

13. Consultation Questions

Question 1: Should the College continue to have a Board and a Council?

Question 2: Should the Council be formally recognised in the Constitution?

Question 3: How should the Council be composed?

- Via proportional representation; or
- Via a proportional representational model that also allows for all of the various bodies /societies etc to have at least one member at a minimum; or
- Via a model where representatives from Divisions and Faculties are directly represented alongside a number of cross-discipline positions (for example trainees, Indigenous representatives) – a smaller Council than at present.

Question 4: What should Council's role be?

- What powers or matters should be reserved for council?
- What decisions should Council make and how frequently should it meet?
- What are the skills required for Council members?

Question 5: Should the President of the College be the President of Council, the Chair of the Board, or both?

Question 6: Should there be an Independent Chair of the Board?

Question 7: Could Council have a role in deciding who is on the Board?

- As part of a nominations process (short-listing candidates to meet Board skills gaps); or
- Electing (Fellow/Trainee) members to the Board after a nominations process open to the membership; or
- Electing the (Fellow/Trainee) Board positions from its own membership ("Council Executive model") – and if this is the preferred approach then to what extent should Council itself be elected?

Question 8: Are the proposed criteria appropriate? Are there other criteria that should be included?

Question 9: Should the threshold number of Members needed to call an EGM be changed and if yes, what do you suggest the new threshold be?

Question 10: Should Directors of the College be remunerated? Should this only be the Community Directors (who are not members of the College)?

Question 11: Any other feedback regarding the College's governance and constitution?

It is anticipated that the RACP President will hold an online interactive question and answer session mid-March 2021 to receive feedback on this consultation.

Feedback obtained during the whole consultation will be used to inform questions to be put to the Members at AGM 2021.

We value your input. Please provide your responses to this consultation by emailing constitution@racp.edu.au by COB Friday, 9 April 2021.

Appendix 1: Constitution Review - Initial Feedback by theme

FEEDBACK	COMMENTS
<p>College purpose/ vision/mission</p> <ul style="list-style-type: none"> Review and refreshment of the vision and purposes of the College—possibly to include a more specific statement of values relating to gender equity, indigenous recognition etc.; I submit that the key to having a useful constitution – and for re-engaging with your disenchanted constituency – is to have a very clear and precise statement of purpose that focusses on the core reason for having a College. The Constitution, as it stands, really fails to enunciate the values of the RACP and the leadership role that many Fellows believe it should take in the Australian Health care system. The Constitution provides the basis on which the RACP functions and should reflect and embody the culture and the values of the organisation. If ever there was a time and an opportunity to do this, surely it is now. Should contain our values, mission and vision. The college should be member and trainee centred, as our representative organisation The Constitution, as it stands, really fails to enunciate the values of the RACP and the leadership role that many Fellows believe it should take in the Australian Health care system. The Constitution provides the basis on which the RACP functions and should reflect and embody the culture and the values of the organisation. If ever there was a time and an opportunity to do this, surely it is now. The preamble and objects could therefore be rewritten to state more clearly that the College has a moral purpose which may include, for example, working to address systematic inequities that entrench disadvantage, discrimination and ill-health; welcoming diversity and engagement inside and outside the College; working collaboratively to create a fair and just society; recognising, respecting and joining with the First Nations peoples of Australia and Aotearoa New Zealand in all its work; and advancing the health and wellbeing of all citizens now and into the future through quality health care, deliberative democracy and healthcare policy that recognises global citizenship, social solidarity and environmental responsibility. The college should be member and trainee centred, as our representative organisation. If this conflicts with its accreditation role, the college should establish a clear boundary between welfare / education arms and accreditation arms, as these are often at odds. The college should make clear reference to use of both soft and hard metrics used to determine its internal processes. It stop handing out heaps of money to a huge amount of directors, DEPTs and committees without any clear indication how these contribute constructively to members. The essential voice and feedback of members or trainees who are not in positions of power associated with the college should be recognised. Should contain clearer objects (section 1). They are currently worded a bit messily and are partially overlapping. I think education should be first as RACP's raison d'être. The points in this section should then form the core/structure of our strategic plan. 	<p>Covered by Stream 1 of the Constitution Review project - Governance review</p>

FEEDBACK	COMMENTS
<p>Openness and transparency</p> <ul style="list-style-type: none"> A fundamental commitment at the foundational level to openness and transparency in the operation of the organisation and its accountability to its members The principles of transparency and openness should be a key feature of the new constitution While the preamble includes mention of transparency – it is not referred to elsewhere in the Constitution. This also should be addressed as a clear statement of ways in which the College is committed to becoming and remaining more open. It is our view that the focus of the current constitution on disciplinary processes and sanctions (while necessary to some degree) overwhelms the ethical purpose of the College and suggests a culture that discourages openness, discourse, transparency and active engagement by members (despite the brief mention of democracy and transparency in the preamble). This may be corrected both by further emphasising ethics and by weaving the ethical principles referred to in the preamble into the entire constitution. At present they are referred to once and then never appear again, a common fault with such documents. There is, for example, no reference to transparency at any point throughout the remainder of the constitution and no requirement that the interests of individual Board members are available for public scrutiny, which would be a meaningful example of transparency 	<p>An area to be reviewed and woven into the whole constitution</p>
<p>EGM/AGM processes, voting and proxies</p> <ul style="list-style-type: none"> A review of the number of members required to call an EGM to ensure that this important reserve power of the members is preserved but not misused (I would suggest that a number between 250 and 400 might be appropriate), with the requirement that members signing a petition to call an EGM are required to make their identities publicly known; EGM re-write i.e. need 5% of members and publication of names Review processes of AGM 6.2.5 review whether voting at AGM can be by means other than proxy if that meeting is to be held by online or other technology Voting: The issues of proxies needs clarification. We suggest that Proxies must be 'directed' and that the President (Chair) of the meeting must adhere to that determination by the proxy provider and/ or the direction of the Board (if that is so determined). The recent experience of the President/Chair choosing to take a position on proxies at odds with the Board should not be repeated. The policies surrounding the requisitioning of an EGM need urgent review. While 5% of Fellows (under the Companies Act) would be difficult to achieve given the difficulty of getting Fellows to vote even in Presidential elections – the current number – 100 – is clearly inadequate. We suggest requiring 250-300 signatories in order to call an EGM would be a reasonable compromise. This issue has cost the College dearly over the past few years and needs urgent attention. Importantly all signatories to a Call for an EGM must be openly identified. The recent decision by the Board to allow requisitioners to remain anonymous was regrettable, was inconsistent with the values of the profession and did not reflect the transparency we should aspire to as a College. 	<p>A major area of work to be taken on as a separate stream of work within the project</p>

FEEDBACK		COMMENTS
	<ul style="list-style-type: none"> Number of Fellows required to requisition an EGM. The calling of an EGM must balance the ability of members to call the College to account and hold it up to scrutiny with the effective functioning of the College and Board. At present only 100 members are needed to requisition an EGM. This seems too few. Equally, however, given the (relatively) low numbers of Fellows/Trainees who are actively engaged with the College, 5%, as outlined by the Corporations Act, may be too large a number and may work against democratic reform. Perhaps consideration should be given to increasing the number to 250-400? Transparency of EGM. Consistent with the ethical commitment to democracy and transparency - the anonymous requisitioning of an EGM, as occurred recently, simply must be prohibited. If members do not have the courage to stand by their convictions, then it should simply not proceed. 	
Conflict of interest	<ul style="list-style-type: none"> The entire section on conflicts of interest (COI) should be reviewed. COI can be handled in many ways - what is important is that a conflict (or perceived COI – the SMH/Age test) is declared, noted in the meeting minutes and managed appropriately. Whether those who are ‘conflicted’ should always leave the room during discussion of the relevant matter is debateable as in some circumstances it may be important that they are able to provide their particular insights or viewpoint for consideration by the Board. They probably should not vote – but even that should be a decision of the Board. In other words the Board must develop a ‘trust’ between its members whereby Board members can speak openly and freely about all issues before it, without the constraints of ‘Board solidarity’ – something that has arguably led previous Boards to act uniformly against the wishes and views of many Fellows and that has led to a schism between the Board and the Fellowship The section on conflicts of interest is unclear, leaves ‘interests’ undefined and includes no process for resolving conflict where the Board itself is conflicted. 	Conflict of interest section to be reviewed and re-written
Indigenous voice and values	<ul style="list-style-type: none"> An endorsement of relevant parts of the Uluru Statement from the Heart, to the extent that it is possible for civil society organisations to adopt the purposes and ideals of constitutional change advocated in that statement, while awaiting incorporation into the Australian Constitution. ISF incorporation. The recognition of indigenous health issues should be high level and generic. The ISF may be re-named at some point and the focus may move somewhat. General intro ...am sure this can be updated e.g. indigenous. Modernisation of the Constitution to recognise First Nations peoples in both countries and ensuring position(s) on any new governing body for Aboriginal, Torres Strait Islander and Maori physicians. Explicit recognition of Aboriginal and Torres Strait Islander and Māori history, law and world view(s) in the Constitution. 	Covered by Stream 2 of the Constitution Review project - Indigenous recognition

FEEDBACK		COMMENTS
Governance and roles of Board/Council/management	<ul style="list-style-type: none"> There are various approaches that could be adopted to ensure democratic decision-making processes that are appropriate to the nature and purposes of a professional mutual assistance organisation like the RACP, and there is a very extensive literature that outlines theories and experiences from around the world in relation to this. I personally favour some version of the “deliberative democracy” models that have been widely discussed over the last few decades. One component of this would likely include a devolution of defined aspects of decision-making to the College Council (similar to that proposed by Effective Governance), with preservation of board-focused authority in relation to legally mandated responsibilities. I would favour a debate among the membership about how such a process would work. This would require discussion about who would make up the Council, how members would be elected and the relationship with the statutory board. It would also quite possibly be linked with the Proposition 7 concept, according to which certain proposals could be put to a plebiscite of the membership. 7.2 boards responsibilities can be modernised Size of the Board. EG believe that the current 10 Board Directors is on the high side of an appropriate number of Board Directors, with leading practice being 6 – 8 Board Directors (see their Board & Governance Review page 15). Based on my experience on a number of not-for-profit and member organisation boards over the past 20 years, I think that a members’ organisation does seem to require/warrant a larger board for the following reasons: <ul style="list-style-type: none"> To get a good ‘representation’ of the membership base. To have a better chance of getting the desired skills on to the board – this is certainly more difficult (as pointed out by EG) when a significant number of the directors are elected by the members. Because in the case of the RACP the members have to be members of the organisation as part of their profession – they can’t just ‘sell their shares’ if they don’t like the Board or disagree with the way it is managing the organisation. Therefore, having a reasonable number of member directors helps the members feel more ‘ownership’ of the Board. Although there are undoubtedly negatives with a larger Board (it is certainly harder to ‘manage the conversations/discussions/debates around the table’), in my experience a board size of even 12 directors in a not for profit has been quite manageable. Particularly given the decision to have 3 ‘non-member’ directors on the Board (which is certainly helpful from the point of view of getting the required skills base around the table), this leaves only 7 positions for members around the Board table and that is not a lot in an organisation of over 20,000 members. Reducing that number even further would only make that ‘representational’ aspect more difficult to achieve. 	Covered by Stream 1 of the Constitution Review project - Governance review

FEEDBACK	COMMENTS
<p>Other constitutional questions</p> <ul style="list-style-type: none"> Given the current roles of the Board and the Council, I think that in general terms the Constitution is pretty solid and covers the key aspects that a constitution should. And it generally better to keep it as simple and broad as can be as amending it can always be difficult. There are however some aspects/issues that could be considered. 	
<p>The Council</p> <ul style="list-style-type: none"> Even if the Board does remain as the lead governance body there could well be a sound argument put to place the Council and its role in to the Constitution – even if it is just as an advisory body. This might also make it more ‘meaningful’ in having Maori and Aboriginal & Torres Strait Islander representation on the Council as a way of enshrining the Indigenous Strategic Framework. I see it as being very difficult to have allocated places for Maori and Aboriginal & Torres Strait Islander representation on a Board of only 10 members, especially when 3 are non-member directors. One role that could perhaps be given to it might be to ‘oversee the Board election process’ – which currently under Cl 7.2.2 is the role of the Board. See also the By Laws for elections 7.4.2 (g), (h) and (l). a scan of governance structures in other like-situated Colleges which comprise member subgroups, including overseas examples to broaden initial ideas about what models might work best and why. My experience is that there continues to be more involvement and interference at a Board level in the operational, business-as-usual activities of College staff than would generally be expected of Board members. This can be frustrating, as it undermines the extensive corporate knowledge of staff and encourages a hierarchical, micro-managerial culture at times. It can also mean that a different set of rules is applied to one group of members than to another, because a member or group of members who has the attention/ear of the Board – or is a Board member themselves – is treated with priority/exception, where another member in the same situation may not get that same treatment. It’s important to note that this is not a constant problem, but it’s one that I’ve witnessed firsthand, even within the last few months. This has happened specifically in the context of attempts to bypass the BAU and governance processes of slightly lower level College bodies. I am, by no means, an expert in governance, constitutions, or the writing of them, but I note that it appears item 7.3 seems to be the key section of ours that relates to this issue. 7.3.4 requires the delegation of day-to-day activities to the CEO and staff, but it is not clear on the extent of this, or what level of involvement the Board should have. My suggestion regarding this would be to clarify that the mentioned delegation precludes Board members from involving themselves in the “day to day management and administration” of College business, unless it is required of them in a different role (e.g. Committee member) or deemed appropriate/necessary by a consensus of the Board. 	

FEEDBACK	COMMENTS
<ul style="list-style-type: none"> Board membership. From 2018 the composition of the Board was changed to make it smaller and more dynamic. Given the experience since that time we suggest that the Board should again consider whether this has worked against member engagement and reduced the voice of the Faculties (in particular) (Although it may be felt to be premature to review the size and composition of the Board). If so, there may be mechanisms to enable some form of Board representation without making the Board too large (perhaps by having a Board position that rotates through the College Faculties?) Needs to strengthen the language around the Board (section 7). The current wording is weak; it says the Board “support and encourage” things like the College’s educational aims. Really, it’s responsible for achieving these aims as it “controls all the business of the College”. The main issue that needs to be resolved in any amendments to the constitution is how the College is run. Specifically, any changes need to facilitate a change in the College so that it is run by Fellows for Fellows. Our College has taken an unfortunate turn over the last period of time, like many bureaucracies, where many decisions are driven by College staff. I believe this is highly inappropriate. College staff exist to support Fellows where time pressure does not allow the Fellows to carry out administrative work. The direction of our College and ALL decisions should be made by Fellows elected to relevant positions. Too often the missteps made by our College, which are undermining our reputation, are made for administrative reasons rather than educational and medical care reasons. I implore the board to make the necessary changes to the constitution to allow our College to get back to where it should be a collection of the highest-level medical minds in Australasia. Please do not let us fall the way of many government and other large organisations where what is so good about us gets eroded by the bureaucracy because of our size. 	
<p>Member feedback mechanism</p> <ul style="list-style-type: none"> The College has frequently ignored the feedback of Fellows in constructing Educational programs, training requirements, CPD – sometimes shamelessly. This has to stop. The constitution should make mention of the essential need for clear and very accessible pathways for members to feedback. 	<p>Not regarded as a constitutional matter. To be referred to the Fellowship Committee</p>
<p>Maximum Number of terms for a Director</p> <ul style="list-style-type: none"> At present under the Constitution the maximum number of terms which can be served by a Director is 2 – which would mean a maximum of 6 years on the Board. This is probably a result of reducing the number of member directors down to 3, so reducing the number of terms that they can serve would be seen as a way of providing more opportunities for members to serve on the Board. However, it takes a while for a new director to get on top of the issues and understand their role, especially if they have not served as a director previously. So, someone might take 2 years to really find their feet and if they are performing well as a director why not have them be able to stay on for up to 9 years? 	<p>To be considered during the constitution review</p>

FEEDBACK		COMMENTS
Role of Faculties	<ul style="list-style-type: none"> The Future of the Faculty report had four major recommendations that require consideration in a revised Constitution and governance structure: Enhanced ability to advocate in the public domain in relation to issues that are of importance to the Faculties. Annual budget, under the control of Faculty Councils, to be used for purposes approved by Council, and consistent with the role and responsibilities of each Faculty. Recognition that the Faculty training and assessment programs must meet specific requirements for each Faculty and require more flexibility in their delivery. Greater trainee and supervisor support, noting the unique aspects of the training programs offered by each Faculty, especially for training outside the hospital system. 	Faculty specific. To be referred for consideration outside of the constitution review
Onerous requirements	<ul style="list-style-type: none"> The College frequently requires Fellows and trainees to meet requirements that are unnecessarily onerous. In this regard, the College needs to acknowledge that it does not employ Fellows and that manual tasks needs to be resourced by other employers. Furthermore, that task saturation is a key driver of physician burnout, cynicism and sometimes frankly anger. When the College ignores simple opportunities to exploit data solutions and process automation in exchange for manual reporting systems it does so at its peril and the peril of Fellows. Fellows should not feel they are jumping through hoops at the whim of the College. A binding principle of operational simplicity would require the College to ensure that the simplest solutions have been explored and implemented. Data can be used to identify those Fellows most likely in trouble with professional standards and CPD – use of data can focus attention in areas of highest reward, as opposed to blanket requirements for all Fellows. 	Not a constitutional matter. These requirements come from the regulators
Burnout	<ul style="list-style-type: none"> Burnout is now at crisis level – an existential threat to physicianship around the world. All College resolutions should be tested against a standard that requires the College to be part of the solution and not making burnout worse. Arguably, the College should rotate to be the principal body responsible for reducing professional burnout in physicians. The College needs to understand its own role in exacerbating burnout – professional barrier exams for candidates in their 30s during key fertility years, exit from training exams, recertification requirements, mandating pointless CPD requirements that lead to cynical acts to “play the game” - the College currently has a lot to answer for. 	Not a constitutional matter. Better addressed through Member health and wellbeing initiatives
Advocacy process	<ul style="list-style-type: none"> I have discussed the Colleges output on this with numerous fellows and there seems to be a general consensus that the committee (however named now or in the future) makes some recommendations that are more politically correct and in accordance with political views of some fellows, but far from all fellows of the College. Strong single advocates for a point of view on such committees can relatively easily promote their opinion(s). College policies are a valuable tool for single issue advocates to use in other places and even the parliament. As virtually all Fellows are contactable by email, I suggest that College policies in this area should be circulated prior to their being publicly posted as a policy as being endorsed by the Fellowship used as such in other areas. 	Not a constitutional matter. To be referred to CPAC for consideration

FEEDBACK		COMMENTS
Exam attempts	<ul style="list-style-type: none"> As it is illegal in Australia to restrict or restrain trade, and as the college of surgeons had no limit on the attempts candidates can make to pass the exam, it should be in our constitution that candidates may make as many attempts at the exam as they wish, without restraint. Anecdotaly, I know many good physicians, paediatricians and surgeons who took many attempts to pass. I suspect a court challenge might be made one day against this one day anyway, might as well fix it now, as we have our constitutional lawyers looking at us. 	Not a constitutional matter. Can be dealt with through by-laws
Inclusive language	<ul style="list-style-type: none"> Needs more inclusive language around gender. It currently has “he/she” which is not appropriate as some people do not identify as either. 	Can be incorporated during re-write of constitution
Status of OTPs	<ul style="list-style-type: none"> Needs clarity about the membership status of practitioners on the OTP pathway, eligibility to vote, etc. (Perhaps should be similar to trainees?) 	Referred for advice
Fellowship marks	<ul style="list-style-type: none"> Perhaps should cover use of the Fellowship marks, possibly in the membership section, if this is not covered in another document. 	Referred for advice
Trainee use of post nominals	<ul style="list-style-type: none"> Another point I noticed in my reading of the constitution is regarding item 2.5.3. Unless the Board otherwise determines, Trainees are not entitled to use any post nominal or nomenclature associated with membership of the College. I am unsure whether this encompasses all trainees – many trainees are post-FRACP trainees, whereby they are training in one specialty after having completed training and received Fellowship in another, and therefore are Fellows of the College as well as trainees and can use the post nominal. There may be a loophole in this regard somewhere that I’m not aware of, but thought it was worth flagging. 	Referred for advice
Miscellaneous	<ul style="list-style-type: none"> Section 8.4.2 d: This section currently allows the President to hold office as a Director for 2 years after she/he steps down as President. Surely Past Presidents should be exactly that - Past Presidents!! 	Can be reviewed
Miscellaneous	<ul style="list-style-type: none"> Section 9.10.2: This section specifies that Board members must be absent from meetings while discussions occur. As above – this is insufficiently nuanced to accommodate the many different types of interests that members may have and the need, in certain circumstances, to enable the conflicted member to at least participate in discussion. 	Can be reviewed
Miscellaneous	<ul style="list-style-type: none"> Anti-discrimination: This might be captured in an introductory paragraph on objectives of the College. E.g. The Royal Australasian College of Physicians serves the health of the communities of Australia and New Zealand. It trains medical practitioners in a wide range of specialty areas and provides ongoing maintenance of professional standards for consultant physicians. The College embraces diversity in all its forms, promotes the health of our indigenous peoples and is inclusive of the diverse opinions of our members. 	Can be considered during the constitution review
Miscellaneous	<ul style="list-style-type: none"> Removal of time-limiting clauses: Time limitation is written into by laws for committees. The time frames spelt out in the constitution i.e. election in 2018 etc need to be removed. 	Can be considered during the constitution review

Appendix 2: Examples of potential governance models

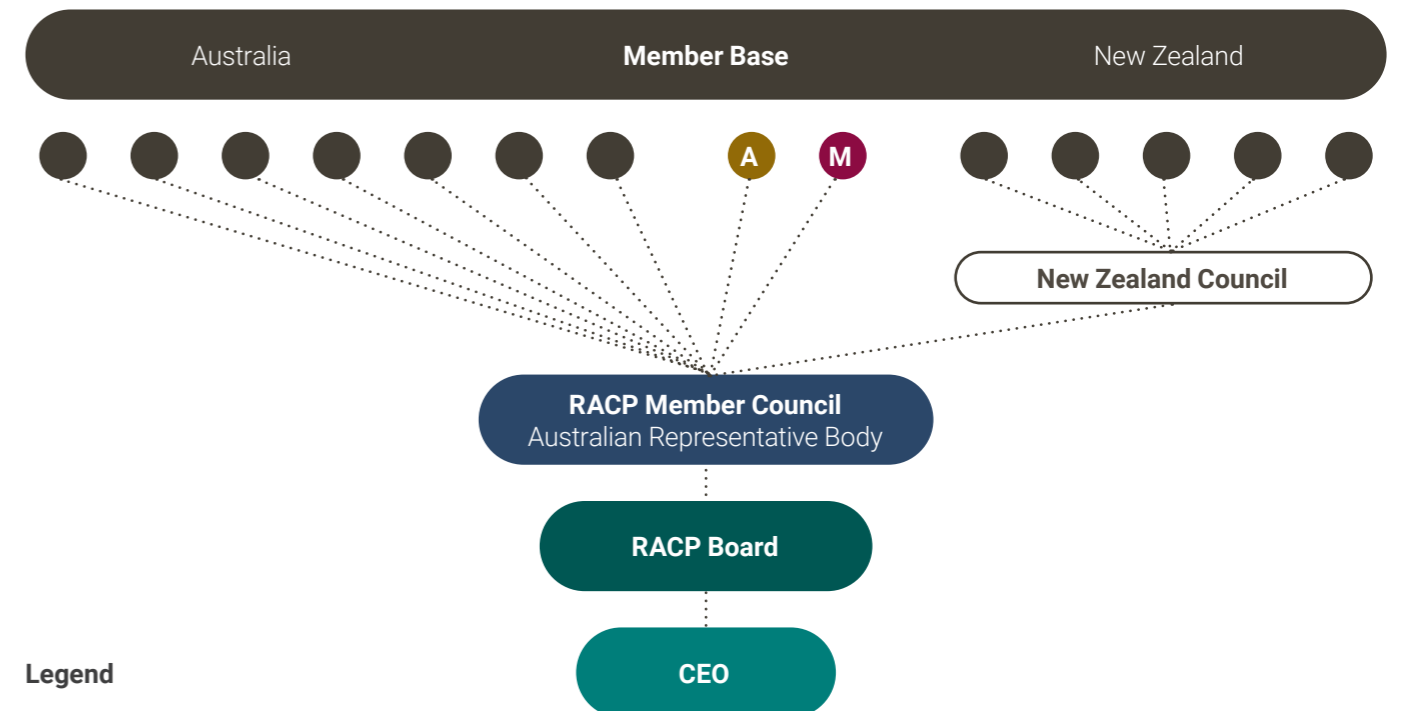
FEEDBACK		COMMENTS
Miscellaneous	<ul style="list-style-type: none"> Termination and re-admission to membership: 4.2 and 4.6 review whether these provisions meet contemporary standards 	Can be considered during the constitution review
Miscellaneous	<ul style="list-style-type: none"> Remuneration...? 	Referred for legal advice
Miscellaneous	<ul style="list-style-type: none"> Back fill for president 	Need more information

RACP Transformation Governance Structure (RTGS)

The Effective Governance report proposed that the College consider its RACP Transformation Governance Structure (RTGS). The RTGS is essentially a type ii model with the following features:

- Responsibilities of Council:
 - Strategic Direction (long term)
 - The boundaries of strategy would be defined by the Council
 - The Council would hold reserved powers on behalf of the members, including the legal appointment of the Board and removal of Board Directors.
 - The President and President-Elect would be positions of Council and would be elected from Council.

- Council members to be elected from the areas they represent.
- Responsibilities of the Board
 - Oversight of the implementation of the strategy (set by Council)
 - Governance functions
 - Appointment, oversight and dismissal of the CEO
- Board Composition:
 - Chairman (Seasoned Independent)
 - President of the College Council
 - President of the Aotearoa New Zealand Committee
 - 3 x Skills based non-members
 - 2 x Skills based members
- Board members would be elected via a nomination process



- Legend**
- A Aboriginal and Torres Straits Island Committee
 - M Maori Health Committee

Royal Australasian College of Surgeons (RACS)

The current Royal Australasian College of Surgeons (RACS) governance model also falls into type ii. In the RACS model:

- The Council is the Board of Directors and consists of:
 - 16 Fellows elected from the Fellows (Fellowship Elected Councillors)
 - One Fellow elected from each Specialty (Specialty Elected Councillors)
 - any Co-opted Councillor
- The Office Bearers of the College are the President, Vice President, Treasurer, Censor-In-Chief and Chair of the Professional Development and Standards Board, or such other title as those Office Bearers may utilise.
- At the first Council Meeting in each year, the Elected Councillors elect by secret ballot from among themselves the Office Bearers who will take office.
- The Executive of Council of the College comprises the Office Bearers and three other Councillors as Council elects at its first meeting held after the Annual General Meeting.
- Council may at any time remove any Member of the Executive and may fill any vacancy which occurs among the Members of the Executive.

Royal Australian and New Zealand College of Ophthalmologists (RANZCO)

Another College with a type ii governance model is the Royal Australian and New Zealand College of Ophthalmologists (RANZCO). In the RANZCO model:

- Council consists of approximately 50 members
 - Councillors are drawn, proportionally, from RANZCO's state and New Zealand branches and from key internal committees, membership cohorts and external organisations.

- The Council provides strategic advice to the Board.
- RANZCO is governed by a Board of Directors, elected from among the Fellowship via the RANZCO Council.
- The Board comprises 11 Fellows of the College and its role is to make strategic decisions about the College and to oversee the finances.

The Chartered Accountants Australia and New Zealand (CAANZ)

The Chartered Accountants Australia and New Zealand is required to have a council of members (Council) who represent the interests of the membership as a whole.

The Council comprises of a minimum of 16 and up to a maximum of 25 members all of whom must be members of Chartered Accountants Australia and New Zealand. The Council members include a President and two Vice Presidents and other members appointed to represent Australia, New Zealand, and the regions of Hong Kong, Malaysia, Singapore and the United Kingdom. The Council may also appoint up to nine additional members from any region to its membership as needed for their expertise or representation.

The Council's President and two Vice Presidents are directors of the Board. Each year, the Council appoints the President and Vice Presidents for the next calendar year from amongst its members.

The Council's main roles are to:

- act as a link between the Board and members, through input from Regional Councils in order to represent members' interests
- appoint the Board, on recommendation of the Nominations and Governance Committee, having regard to skill, capability, relevant experience, geographical representation and gender and cultural diversity
- confirm appointments to the Nominations and Governance Committee

- advise the Board on policies and topical issues that have a significant impact on members
- approve awards to members.

The Board is made up of 12 non-executive directors, including, the President of the Council, two Vice Presidents, and two independent non-executive directors who are not members of Chartered Accountants Australia and New Zealand. The inclusion of the President and two Vice Presidents, as members of the Board, help to ensure that decisions of the Board, and the background to the decisions, are communicated clearly to Council and other member groups.

The President and the two Vice Presidents are members of the Board for the term of their appointment as President and Vice Presidents' respectively. The term of appointment for all other directors of Chartered Accountants Australia and New Zealand is three years. They are eligible for re-appointment for two additional terms of three years each.

Board members are appointed by the Council, following recommendations from the Nominations and Governance Committee.

The Nominations and Governance Committee regularly reviews the structure and composition of the Board to ensure that directors have diverse and complementary skills, perspective and experience. It uses a skills matrix to identify gaps. The results of the review are considered in the context of Chartered Accountants Australia and New Zealand's operations and strategy, and the need for diversity on the Board. Review outcomes are then incorporated into the selection process for new directors and for any re-appointment of existing directors.

The Board is the legal decision-making body of Chartered Accountants Australia and New Zealand. It has primary oversight responsibility for the development and approval of long term strategy as well as monitoring of the implementation of that strategy by management. The Board also monitors the performance of the organisation, including policy and operational issues.

The Board has authority for:

- maintaining and controlling Chartered Accountants Australia and New Zealand's affairs
- succession planning for the Chief Executive Officer (CEO)
- promoting improvements in laws that affect the accounting profession
- promulgating regulations, including those that prescribe rulings
- providing guidance on standards of practice and professional conduct, including technical standards.

The Board's main functions are:

- leading Chartered Accountants Australia and New Zealand to ensure that strategic objectives are set and achieved
- establishing a policy framework within which Chartered Accountants Australia and New Zealand must operate
- monitoring organisational performance, financial performance and position
- overseeing Board committees and other governance bodies
- appointing and determining the duration, remuneration and other terms of appointment for the CEO
- approving risk management strategies and frameworks, and monitoring their effectiveness
- overseeing, reviewing and ensuring the integrity and effectiveness of compliance systems
- developing networks and working to promote the reputation of Chartered Accountants Australia and New Zealand
- delegating responsibility for the day-to-day management of the organisation's business and implementation of Chartered Accountants Australia and New Zealand's strategy and policy initiatives to the CEO (and through the CEO, to the Executive Team).





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