

Attachment B. Frequently Asked Questions on
the proposed revised Constitution

2020 ANNUAL GENERAL MEETING

FREQUENTLY ASKED QUESTIONS ON THE PROPOSED REVISED CONSTITUTION

This schedule of frequently asked questions was developed as part of the member consultation process.

1. Why are the changes to the Institute's Constitution needed?

The Institute's current Constitution is not in line with common contemporary governance practice.

Three external reports commissioned over the last four years to provide recommendations for improving the Institute's governance structure, Bosch (2016), Kirby (2018) and Slocombe (2019), each recommended the Constitution be revised as a priority.

The need to update the Institute's Constitution also brings an opportunity for much-needed simplification and modernisation of the document that underpins the way a contemporary membership organisation operates.

2. How does the Constitution fit within the Institute's Governance Framework?

The Institute's Constitution is a key component of its governance framework that also includes relevant legislation (in particular the *Corporations Act 2001*), as well as other internal documents including, Charters for bodies such as the Board, National Council and Board Committees, as well as Regulations, and policies and procedures.

The Board has ultimate responsibility for the overall governance, management and strategic direction of the Institute and for delivering accountable performance in accordance with the organisation's goals and objectives. It is able to delegate some of its powers and relies on the input and advice from key bodies such as National Council (in its capacity as an advisory committee to the Board) and Board Committees, however, the Board remains ultimately responsible.

The Constitution of a company sets out certain rights, roles and responsibilities of members and directors and rules which govern various internal management activities such as meetings of members and directors.

3. What process has the Institute used to determine the proposed revisions to the Constitution?

The process that has culminated in the proposed changes to the Institute's Constitution being recommended to the Members by the Board and National Council, which began more than 16 months ago, has been rigorous and comprehensive and has included extensive key stakeholder consultation.

Listed below are key components of this process.

2019

- At the **21 February** National Council meeting, the Slocombe report (Judith Slocombe was the Interim CEO for six months) was presented and endorsed for action by the Board and National Council.
- **May/June** The Board and National Council made a series of decisions about the key recommendations from the Slocombe report.
- **17 June** The Board appointed a Constitution Working Group to develop proposed changes to the Institute's Constitution. The Committee's membership is Genevieve Overell FAICD (current Independent Director), Richard Kirk LFRAIA Hon. AIA (Past President) with the management team of the CEO, CFO & Company Secretary and strategic consultant, Jane Smith AM. The Board Committee considered three reports about the Institute's governance that had been commissioned by the Institute, Bosch (2016), Kirby (2018) and Slocombe (2019), as well as the 2019 Board and National Council decisions made based on implementing the Slocombe report's recommendations.
- **23 October** Board meeting to progress range of issues identified, including a Preamble (now titled a Statement of Recognition); revised Purpose; Membership framework with details in regulation;

composition of the Board; terms of office for Board Directors; role of the Board; gender requirements for the Board; disciplinary process for Members.

- **7 November 2019** The Board and National Council approved the scope of changes to the Constitution covering board composition; terms for board directors; membership framework with detail in regulations; diversity on the board; disciplinary process for members and correcting typographical and drafting errors.
- **14 November 2019** Minter Ellison lawyers were appointed to assist with re-drafting the Institute's Constitution and addressing the issues identified.
- **December 2019** – First Drafts were completed, reviewed by the Constitution Working Group and circulated to the National Council and Board asking for feedback. There were also communications to Members during this process to advise them of the progress of the project.

2020

- **20 January** Member EDM about:
 - the broad objectives of reform, including to:
 - Create a more contemporary, best practice governance framework;
 - Be compliant with the Corporations Act; and
 - Create a more flexible framework to allow the Institute to implement a number of reforms, especially for the membership.
 - The appointment of the Constitution Working Group
 - The scope of refinement as agreed by the Board and National Council
- **21 January** The Board and National Council considered further progress against the agreed scope of refinements.
- **4 February** CEO and Executive Leadership Team briefing.
- **6 February** Senior staff briefing.
- **7 February** briefing of the national Gender Equity Committee.
- **10 February** CEO briefing.
- **11 February** Member EDM and webinar run on the revisions to the Constitution.
- **18 February** Member EDM with a summary of the Board and National Council decisions on the proposed revisions to the Constitution.
- **26 February** Queensland Chapter Council briefing.
- **2 March** South Australia Chapter Council briefing.
- **3 March** Tasmania, NSW, Victoria, Western Australia Chapter Council briefings.
- **5 March** Board and National Council meeting on the Constitution.
- **6 March** International Chapter Council briefing.
- **11 March** ACT Chapter Council briefing.
- **12 March** NT Chapter Council briefing.
- **26 March** Revised Constitution in clean and tracked change versions, Frequently Asked Questions and draft regulations live on the Institute's website for members to read.
- Eight webinars were held between **30 March and 22 April** to provide members with a briefing and an opportunity to ask questions. Questions and feedback to jane.smith@architecture.com.au until 24 April.
- **22 May** Board update.
- **26 May** National Council update.
- **2 June** NSW Chapter Council briefing.
- **11 June** Board and National Council unanimously endorse and approve the proposed revised Constitution for the vote by Members at the 2020 AGM on 22 July.
- **15 July** final webinar planned for Members on the proposed changes to the Constitution.

4. Why is there a Statement of Recognition to the revised Constitution?

The Board and National Council endorsed the introduction of a Statement of Recognition that recognises the Aboriginal and Torres Strait Islanders. When the review of the Constitution was first discussed, it was suggested by National Council to include a statement to recognise Aboriginal and Torres Strait Islander people, in line with the social justice aims set out in the Institute's strategic plan. The statement is a small step towards health and healing both for Aboriginal and Torres Strait Islander members and for the membership as a whole.

The statement is intended to recognise the longevity of Aboriginal and Torres Strait Islander heritage and culture.

This wording of the Statement of Recognition was drafted by the Institute's new First Nations Advisory Working Group and Cultural Reference Panel.

"The Australian Institute of Architects recognises the unceded sovereign lands and rights of Aboriginal and Torres Strait Island peoples as the First Peoples of these lands and waters.

This recognition generates acknowledgement and respect for Aboriginal and Torres Strait Islander Countries, Cultures and Communities, and their ways of being, knowing and doing.

Caring for Country practices including architecture and place shaping have existed on this continent since time immemorial.

The Institute recognises a professional commitment to engage and act meaningfully through reciprocal partnership and relationships with Aboriginal and Torres Strait Islander peoples.

Together we will support and develop the emergence of new possibilities for our shared future."

5. Why is there a new Preamble to the Constitution?

It is common practice to have a Preamble at the beginning of a Constitution to provide a brief overview of the Institute as the context for the Constitution.

6. Will the focus of the Institute be changed?

The proposed new Principal Purposes of the Institute are to:

- advance architecture;
- advance education, culture and social or public welfare, through architecture;
- advocate for the profession; and
- encourage education in architecture.

The revised Constitution more accurately reflects the priorities for the Institute and removes references to the Institute being a charity and managing Art and Scientific Libraries and Museums.

Relatedly, at one point the Institute had aspirations to become a charity with deductible gift recipient (DGR) status so that it could then receive tax deductible gifts. It was unlikely that such status would have been granted and accordingly the Institute no longer seeking to be classified as a charity. The Institute's Foundation does however have DGR status.

7. How will the membership be affected?

Under the current Constitution, the Board have the power to make regulations for the general conduct and management of the Institute. This power, as well as specifically setting out that Members are required to comply with the Constitution and any other rules, Regulations, policies and standards prescribed by the Board from time to time, are provisions within the proposed revised Constitution.

The proposed Constitution has revised Membership clauses to establish a contemporary, flexible membership framework with the detail of membership classes, included in the current Constitution to be included in a new Regulation.

The Membership details in the Schedule 2 of the current Constitution will be slightly revised and moved into a new Regulation. Schedule 2 includes the Type of Members; Suffix Letters (Post nominals); Eligibility; as well as Voting and attendance rights at meetings of Members, such as the AGM. The changes are:

- 1) deleted the section about Practices as that no longer applies. Practices don't have voting rights but the individual members within the practice do (as long as their membership category permits it).
- 2) the Board, in consultation with National Council, makes eligibility decisions for Member Level 1, Graduate, Student, Affiliate Level 1 and 2 categories. (Changed from National Council). Decisions relating to Life Fellow, Fellow, Honorary Member and Honorary Fellow remain with National Council.
- 3) Affiliate Level 2 is added to the table as it had been omitted for Schedule 2.
- 4) Graduate and Affiliate Level 1 prescribed qualifications – specific reference to *architectural* qualifications has been added.

The Institute has been working on improving the member benefits and is planning on reforming the fee structure to reduce the current complexity. This will take some time. There are no changes planned for membership classes etc in 2020.

The proposed changes to the Constitution will allow the Institute to be more agile in making changes to the membership structure in the future. Any changes will be made by the Board, in consultation with National Council.

Other changes are:

- Schedule 1 of current Constitution is a proxy form which will be removed. The proposed revised Constitution will provide for Institute's proxy form to comply with the Corporations Act which will provide for the proxy form to be an ongoing contemporary document.
- Schedule 3. Disciplinary Proceedings which will be moved to a new Regulation. A review of the Code of Professional Conduct is planned by a National Council approved working group which may result in future recommendations to update the existing Disciplinary Proceedings.
- In the proposed revised Constitution, a framework is set out which provides that the Board has the power to decide how to resolve complaints against a Member, including the appointment of a mediator, conciliator or committee. The Board, which has five directors that have been selected by National Council who are architects and Members, in consultation with National Council, may revise how complaints against a Member are resolved by revising the Disciplinary Proceedings Regulation. It is planned to form a working party, approved by National Council, to review the Institute's Code of Professional conduct. This review may result in recommendations to revise the current Disciplinary Proceedings.
- Members' right access to the Institute's records has been aligned to the Corporations Act and contemporary governance practice. There is no change to a Members' right of access to the Institute's financial records.

8. Why are the roles of the Board and National Council being clarified?

Under Corporations Act 2001, the Board is responsible for the overall governance, management and strategic direction of the organisation and for delivering accountable corporate performance in accordance with the organisation's goals and objectives.

Each Director is required to exercise their powers and discharge their duties with care and diligence, including decision-making, even if the Board delegates their powers.

The three external governance reports identified the lack of clarity in roles of National Council and the Board. In the current Constitution, clause 8.1, states that National Council is an advisory body reporting to the Board. The revised Constitution outlines how National Council and the Board can work more effectively together.

Importantly, the National Council retains its focus on the leadership of the profession, advocacy, research priorities and innovation, in its advisory capacity to the Board.

National Council also continues to appoint the President-Elect, the National Council Directors, as well as to determine Directors' fees, in consultation with the Board.

9. How will the Board be changed?

The number of Board directors and the composition of the Board remains the same in the proposed revised Constitution. There will continue to be eight Board Directors. There are the three Presidential roles (National President, National President-Elect [appointed by National Council] and Immediate Past National President), two National Councillor Directors [appointed by National Council] and three Independent Directors.

The proposed changes to the Board comprise:

- A Chairperson, appointed by the Board, for up to three years at a time, with any Director eligible to be Chairperson. The intention is to provide for the opportunity to have greater continuity in leadership of the Institute, rather than having a new chairperson every year when the new National President takes office. The National President is now automatically the Chairperson of the Board.
- The requirement to have a minimum of three female and three male Directors on the Board will be replaced with a requirement to comply with the Institute's People and Culture policies (including the newly-approved Gender Equity policy) and to use a skills matrix to determine the composition of the Board, through the Independent Director appointments. The new Gender Equity policy states that:

“Every effort should be made to achieve a 40 / 40 / 20 gender balance (40% female / 40% male / 20% any gender) for membership or leadership of Institute committees, juries, representation at conferences and on panel discussions, or Institute endorsement of external panels, conferences or competitions in line with this policy. The Institute commits to supporting ongoing data collection and research [on gender equity performance against the 40/40/20 formula] and to regularly report on findings both within the Institute and the greater profession.” (September 2019)
- All Independent Directors are not to be Members. This is a change from the current provision that provides for the possibility that one of the Independent Directors may be a Member. This change is in line with contemporary, good governance.
- Appointment of Independent Directors will be done by the Board, in consultation with National Council. Currently, National Council appoints the Independent Directors upon recommendation from the Board. This reflects that the Board is ultimately responsible for the overall governance, management and strategic direction of the Institute.
- Terms of office for Directors will be increased to three years for the National Council Directors and the Independent Directors (currently a one-year term in both cases). The three “Presidential” Directors already serve a total of three years on the Board.
- A Quorum for Board meetings is changed to a majority of Directors, in line with contemporary governance practice. The requirement for particular “types” of Board members to be part of the composition of a quorum is removed.
- Written resolutions of Directors changed to require a minimum of 75% of Directors entitled to vote, voting in favour to pass the resolution – currently 100%.

10. How will National Council be changed?

The proposed changes to the composition of National Council are:

- The number of Nationally-Elected National Councillors increases from four to six to increase the pool of National Councillors who can consider nominating for National President-Elect or National Councillor Director positions. Further, National Council, in consultation with the Board, may increase the number of Nationally-Elected National Councillors, from time to time, from a minimum of six.
- Terms of office for Nationally-Elected National Councillors to be increased from two years to three years, with a maximum of two terms [six years], to provide for greater continuity. If a Member, having served six years on National Council, wants to re-nominate for National Council as a Nationally-Elected National Councillor, they must wait three years. Once the increased number of Nationally-

Elected National Councillors (from four to six) is established (see the transitional arrangements below) there will be two Nationally-Elected National Councillors positions vacant each year.

- Eligibility to become National President-Elect. Removing the Life Fellow or Fellow prerequisite to become President-Elect to potentially increase the pool of National Councillors able to nominate for the President-Elect position.

The proposed prerequisite is “... *the National Councillors will elect a National President Elect, who must be a Member who has made a significant contribution to the profession and the Institute, beyond their architectural practice, as determined by National Council, and has a minimum of six years of membership.*”

- A Quorum for National Council meetings is changed to a majority of National Councillors. This is in line with contemporary governance practice. The requirement for particular “types” of National Councillors to make up the quorum is removed.
- Written resolutions of National Councillors - changed to require a minimum of 75% of National Councillors entitled to vote, voting in favour to pass the resolution (currently 100%).
- The Board, in consultation with National Council, will decide the classes of membership, the qualifications for admission to each class, rights of each class, fees, and the wording of the membership form (currently National Council).
- In relation to membership, it is proposed that:
 - the Board decides on whether to accept or reject membership applications (This is currently delegated from National Council to the CEO.).
 - The Board would also delegate this function to the CEO if the revised Constitution is passed.

11. How will Chapter Councils be changed?

There are no changes to the current Constitution proposed in relation to Chapter Councils, except for a new provision related to the Term of office of Chapter Councillors at 10.9(d). The new provision provides greater flexibility by establishing that “The Board, in consultation with National Council, may determine the commencement date” of the term of office which, unless such a determination is made, commences at the first Chapter Council meeting of the year as is the case under the current Constitution.

12. What is a Regulation and what will be in them?

In the current Constitution, the Board has the power to make Regulations (clause 6.2.1). This is consistent with contemporary governance practice with detail in placed in a regulation as a companion piece for the Constitution. Regulations allow for flexibility and consolidate information about an important issue, such as membership. In the proposed Constitution, the Board continues to have the power to make Regulations for the proper conduct and management of the Institute and the business of the Board, in consultation with National Council.

There are a range of Regulations already in place, dealing with matter such as elections of Chapter Councillors and elections of National Councillors. If the Members approve the proposed revised Constitution all existing Regulations will remain in place.

The revised Schedule 2 (Membership classes and voting rights) and 3 (Disciplinary proceedings) of the current Constitution and the Gender Equity policy will become Regulations to the revised Constitution, if the Members adopt it at the 2020 AGM. (Please see attachments A, B and C respectively)

There will be a review of the existing Regulations and a number of other documents and policies if the revised Constitution is approved.

13. Why are there Transitional arrangements and casual vacancy provisions?

Increasing the current one-year terms of office for Directors provides an opportunity to establish a framework that supports reasonable and balanced turnover of officeholders.

To establish the “staggering” of the timing of when the terms of office of Directors’ conclude, the first round of elections and appointments to the Board, following the adoption of the proposed changes to the Constitution (that is those terms commencing from the conclusion of the 2020 AGM), will be for terms of varying lengths. Subsequent elections and appointments will then be for the proposed standard terms.

Casual vacancies that may arise from time to time will be filled for the remainder of the term of the Director whose position was vacated which gave rise to the casual vacancy.

To increase the number of Nationally Elected National Councillors on National Council, from four (4) to six (6), the first round of elections (that is elections to be held in December 2020 for those terms commencing from the first National Council meeting in 2021) will be to elect four (4) Nationally Elected National Councillors, providing for six Nationally Elected National Councillors from that point. Please see the diagrams below for details.

Board of Directors terms of office - post adoption of revised Constitution

If the proposed revised constitution is adopted at the Annual General Meeting of members currently scheduled for 22 July 2020, appointments to the Board for positions commencing at the conclusion of the AGM (July 2020) will be as set out in the revised Constitution. The revised Constitution provides for an increase in terms of office of Director appointments from one year, to three years. These changes provide an opportunity to establish a 'staggering' of the end of Directors terms on the Board, which will be achieved through a transitional year, 2020/21 (Schedule 1 of the proposed revised Constitution).

The table below provides a 'visual' presentation of the beginning and end points of terms of office on the Board, including through the 2020/21 transition year.

AIA Board composition		Period before July 2020 AGM (pre-constitution change)		Post-constitution change (post July 2020 AGM)							
No	Position	Standard Term - years	2019/20	Standard Term - years	Transition 2020/21	2021/22	2022/23	2023/24	2024/25	2025/26	cont...
1	President-elect	1 + 1 + 1	Start	1 + 1 + 1	Start	Start	Start	Start	Start	Start	
2	President	1 + 1 + 1	X	1 + 1 + 1	Start	Start	Start	Start	Start	Start	
3	Immediate Past President	1 + 1 + 1	X	1 + 1 + 1	Start	Start	Start	Start	Start	Start	
4	National Council Director	1	Start	3	Start	Start	Start	Start	Start	Start	
5	National Council Director	1	Start	3	Start	Start	Start	Start	Start	Start	
6	Independent Director	1	Start	3	Start	Start	Start	Start	Start	Start	
7	Independent Director	1	Start	3	Start	Start	Start	Start	Start	Start	
8	Independent Director	1	Start	3	Start	Start	Start	Start	Start	Start	
	Number of director positions for which terms commence		6 of 8		6 of 8	2 of 8	3 of 8	3 of 8	2 of 8	3 of 8	

National Council terms of office for Nationally Elected Councillors - post adoption of revised Constitution

If the proposed revised constitution is adopted at the Annual General Meeting of members currently scheduled for 22 July 2020, elections to the Nationally Elected National Council positions will be as set out in the revised Constitution. The revised Constitution provides for an increase in the number of such positions from four to six (a minimum of), with terms of office increasing from two years to three years. Increasing the number of positions and maintaining the staggering, to have a third of the positions end each year, will be achieved through a transitional year (Schedule 1 of the proposed revised Constitution). This transition year will be 2021, the first year post adoption of the revised Constitution in which those elected to Nationally Elected National Council positions will hold office.

The table below provides a 'visual' presentation of the beginning and end points of terms of office for Nationally Elected National Council positions, including through the 2021 transition year.

Nationally Elected National Council positions		Pre-constitution change		Post-constitution change							
No	Position	Standard Term - years	2020	Standard Term - years	Transition 2021	2022	2023	2024	2025	2026	cont...
1	Nationally Elected Councillor	2	Start	3	Start	Start	Start	Start	Start	Start	
2	Nationally Elected Councillor	2	Start	3	Start	Start	Start	Start	Start	Start	
3	Nationally Elected Councillor	2	2 nd year	3	Start	Start	Start	Start	Start	Start	
4	Nationally Elected Councillor	2	2 nd year	3	Start	Start	Start	Start	Start	Start	
5	Nationally Elected Councillor		N/A	3	Start	Start	Start	Start	Start	Start	
6	Nationally Elected Councillor		N/A	3	Start	Start	Start	Start	Start	Start	
	Number of Nationally Elected Councillor positions for which terms commence		2 of 4		4 of 6	2 of 6	2 of 6	2 of 6	2 of 6	2 of 6	