

## **Explanatory notes**

### **Transfer of Association to public company limited by guarantee**

SSA is an educational organisation dedicated to the exchange of ideas and the dissemination of scientific and clinical knowledge concerning spinal disease and disorder throughout Australia and New Zealand. While originally based in South Australia, SSA wishes to have the flexibility to carry on its business throughout Australia.

Currently, SSA is registered as an incorporated association under South Australian legislation. This means that it is not recognised as a legal entity outside South Australia. Consequently if SSA incurs any liability outside of South Australia (for example entering into a contract for services in connection with an event outside SA) the members of the Management Committee will be personally liable. This risk is removed if the organisation is a company limited by guarantee.

After careful consideration, and after taking legal advice, the executive committee has decided that the Association should incorporate as a company limited by guarantee under the *Corporations Act 2001*, so that it is recognised as a legal entity Australia wide.

If member approval is not given, the ability of SSA to operate effectively outside of South Australia will be constrained significantly.

It is common for not-for-profit organisations (especially those that operate in more than one State or Territory) to be registered as public companies that are limited by guarantee. This company has members (in the same way an incorporated association has members), and the liability of each member is limited under the company's constitution to an amount that each member undertakes to contribute to the property of the company if the company is wound up. This is the same as an incorporated association.

Companies are registered under the *Corporations Act 2001 (Corporations Act)*, which is legislation administered by the Australian Securities and Investment Commission (**ASIC**). A company's registration is recognised Australia wide. Registration of a company creates a legal entity separate from its members. The company can hold property and can sue and be sued.

### **Transfer process**

An association incorporated under the *Associations Incorporation Act 1985 (the Act)* that wishes to transfer its activities and undertakings to a company must make an application to the Commissioner of Consumer and Business Services under section 42 of the Act.

This requires a general meeting of SSA members at which the necessary resolutions must be passed. This notice of meeting is to call that meeting and consider the necessary resolutions.

Once approved by the members, a new company is incorporated through ASIC, and SSA makes the application to the Commissioner of Consumer and Business Services.

Once the Commissioner has issued approval for the transfer, the Commission may order that the undertaking and activities of SSA be transferred to the newly established company.

Once the transfer has been effected, the Commission will dissolve SSA, the property of SSA will become the property of the company, the rights and liabilities of SSA will become the rights and liabilities of the company, and the assets of SSA are vested in the company without attracting stamp duty.

### **Regulatory obligations**

By transferring from an incorporated association to a company limited by guarantee the cost of maintaining regulatory obligations in each state and territory is removed and reduced to one regulator for incorporation obligations.

### **Name of the company**

The name of the company on transfer will be **[Spine Society of Australia Limited]**.

### **Constitution**

Attached to this notice is a copy of the proposed constitution that will govern SSA on transfer to a company limited by guarantee. This is also an opportunity to update the governing documents (current SSA documents date from 1999) to meet best practice governance standards and the changes in the law.

Primarily the draft constitution reflects the same rights and obligations as the current Rules, however there are some changes. These changes are as follows:

- Disciplining members: the previous Rule 7 has been made a simpler process, which now appears as clause 10.2.
- Directors: the process of constituting the board has been simplified and brought into line with best practice. Members still retain the right to elect and dismiss directors (committee members under the Rules). There will still be a chairperson, secretary and public officer/treasurer. These roles appear at clause 12.12 (Chairperson of directors), clause 13.1 (Executive director) and clause 13.2 (Secretaries). However, we have dispensed with the roles of "President", "Vice President", "Editorial Secretary", and "Education Secretary". These roles can exist if the Board considers them necessary, but are not mandated by the governing documents.

There are no other substantial changes to the rights and obligations of members within the powers of the draft constitution.

#### **Committee endorsement**

The Committee endorses the proposed resolution to make SSA a truly federal organisation and to reduce significant regulatory oversight, cost and exposure. The Committee members, as members of SSA, intend to vote in favour of the resolution at the AGM.