



# CONSTITUTION

SPINE SOCIETY OF AUSTRALIA [LIMITED]

ABN [TO BE INSERTED]

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SWAAB Attorneys

ABN 71 028 846 652

Level 1, 20 Hunter Street  
SYDNEY NSW 2000

GPO Box 35  
SYDNEY NSW 2001

DX 522 SYDNEY NSW

T +61 2 9233 5544  
F +61 2 9233 5400  
mail@swaab.com.au

www.swaab.com.au

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Liability limited by a  
scheme approved under  
Professional Standards  
Legislation



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# SPINE SOCIETY OF AUSTRALIA LIMITED

## **A company limited by guarantee**

### CONSTITUTION

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#### **1 Company's name**

The name of the company is Spine Society of Australia Limited.

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#### **2 Company's object/objects**

- (a) The company is established to:
- (i) to form an educational organisation dedicated to the exchange of ideas and dissemination of scientific and clinical knowledge concerning spinal disease and disorder, aspiring to be the peak body representing clinicians and researches in the management of spinal disorders in Australia;
  - (ii) to advance the quality of and encourage research into the management of spinal disease and disorder;
  - (iii) to improve the means of communication and support for those involved in the medical and scientific study and investigation and treatment of spinal disease and disorder;
  - (iv) to maintain prestigious status for the organisation and to obtain affiliation with other major national speciality associations and with International Spine Societies;
  - (v) to provide education and training in spinal surgery and rehabilitation; and
  - (vi) to act as an advocate in respect of furthering scientific and clinical knowledge concerning spinal disease and disorder.
- (b) For the purposes outlined in rule 2, the directors may:
- (i) formulate policies;
  - (ii) make rules in connection with any policy; and
  - (iii) revoke or amend any policy or rules and formulate others.
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#### **3 Company's powers**

Solely for the purpose of carrying out the company's objects, the company may:

- (a) by personal or public appeals or otherwise procure contributions by way of gifts (by will or otherwise), grants, sponsorships or otherwise;
- (b) provide funds or other material benefits by way of grant or otherwise;



- (c) accept and hold funds or property of any kind on or for any charitable objects or purposes specified or to be specified by any person or to be selected by the directors from a class of trusts, objects or purposes specified by any person;
- (d) accept and undertake trusteeship, administration and management of trusts and funds, whether as trustee or as agent for the trustee or otherwise, and charge and accept fees, commission or other remuneration for doing so;
- (e) purchase, take on lease or in exchange, hire or otherwise acquire real or personal property, and any rights or privileges;
- (f) control, manage, lease, exchange, mortgage, charge, sell, transfer, surrender, dispose of, develop, carry on business or otherwise deal with any real or personal property of any kind or any estate or interest in that property;
- (g) invest, deal with and lend money and otherwise provide financial accommodation to, and guarantee or otherwise secure loans to, charitable objects or purposes;
- (h) construct, improve, maintain, develop, work, manage and control real or personal property;
- (i) enter into contracts and deeds;
- (j) appoint an attorney or agent with the powers (including the power to sub-delegate) and on the terms the company thinks fit, and procure registration or recognition of the company in any other country or place;
- (k) enter into arrangements with any government or authority, and obtain from any government or authority any right, privilege or concession;
- (l) engage, dismiss or suspend any employee, agent, contractor or professional person;
- (m) borrow, raise or secure the payment of money and secure the repayment or performance of any debt, liability, contract, guarantee or other engagement in any way and, in particular, by mortgage, charge or overdraft or by the issue of debentures or debenture stock (perpetual or otherwise) charged on all or any of the company's property (both present and future) and purchase, redeem or pay off those securities;
- (n) make, draw, accept, endorse, discount, execute and issue promissory notes, bills of exchange and other negotiable or transferable instruments;
- (o) print and publish newspapers, periodicals, books or leaflets or otherwise publish information in hard copy or by electronic means;
- (p) accept any gift of property, whether subject to any special trust or not;
- (q) appoint patrons of the company;
- (r) make donations for charitable purposes;
- (s) decline or otherwise refuse to accept any gift (by will or otherwise), donation, settlement or other disposition of money or property;
- (t) co-ordinate and arrange conferences, meetings, standing committees and commissions and other forums; and



- (u) do all other things that are incidental or conducive to doing so.

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#### **4 Additional powers**

The company has the powers set out in the Act but only to the extent necessary or convenient to carry out, or incidental to carrying out, the company's objects.

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#### **5 Income and property**

The company's income and property must be applied solely towards promoting the company's objects. No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, fee or otherwise, to any of the members or directors. However, this rule 5 does not prohibit making a payment approved by the directors for:

- (a) out-of-pocket expenses incurred by a director in performing a duty as a director of the company; or
- (b) a service rendered to the company by a director in a professional or technical capacity or as an employee, other than in the capacity as a director of the company, where:
  - (i) the provision of the service has the prior approval of the directors; and
  - (ii) the amount payable is not more than an amount which commercially would be reasonable payment for the service,

or prohibit payment:

- (a) in good faith to any member for goods supplied in the ordinary and usual course of business;
- (b) of reasonable and proper interest on money borrowed from a member; or
- (c) of reasonable and proper rent for premises let by any member to the company,

or indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

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#### **6 Liability of members**

The liability of the members is limited.

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#### **7 Guarantee by members**

Every member undertakes to contribute an amount not more than the annual membership fee payable by that member, to the extent that the amount remains unpaid at the time of winding up, to the property of the Company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:

- (a) payment of the company's debts and liabilities contracted before the time he or she ceased to be a member;
- (b) the costs, charges and expenses of winding up; and
- (c) the adjustment of the rights of the contributories among themselves.



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## 8 Winding up

- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, this property must only be given or transferred to a fund, authority or institution whose constitution prohibits distributions or payments to its members and directors (if any) to an extent at least as great as is outlined in rule 5.
- (b) The identity of the fund, authority or institution referred to in rule 8(a) must be decided by the members by ordinary resolution at or before the time of winding up or dissolution of the company and, if the members cannot decide, by the Supreme Court of the State.

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## 9 Membership

### 9.1 Members

- (a) The members are:
  - (i) the persons that are members of the Association as at the date the Association was cancelled and the company came into existence; and
  - (ii) any other persons the directors admit to membership in accordance with this constitution, including Life Members and patrons of the company.

### 9.2 Classes of Members

The Company shall have 6 classes of membership, unless the Company in general meeting increases or decreases that number. The designation of such classes and the qualifications and rights of the members of such classes shall be as follows:

- (a) **Active Member:** Limited to qualified clinicians and researchers resident in Australia or New Zealand who demonstrate significant interest in the problems of the spine. Active Members will be designated as surgeons [members of the Royal Australasian College of Surgeons (RACS)] or non-surgeons [non-RACS] members. Applicants for Active Membership must be Full Members or Fellows (as defined) of their respective specialist professional associations in Australia or New Zealand as determined by the directors. An Active Member must demonstrate continuing interest in the subject and affairs of the Company, and is expected to devote a significant component of his or her professional activity towards spinal disease and disorders. Active Members shall pay annually such membership fees as established by the directors. An Active Member may attend meetings, vote and hold office in the Company.
- (b) **Associate Member:** an Associate Member may be any person resident in Australia or New Zealand, not eligible for Active Membership who in the judgment of the directors is making significant contributions to the study and/or treatment of spinal disease and disorder. Persons who are taking part in a Fellowship or other training programme concerning the treatment of the spine shall be entitled to be an associate member. Trainees or Fellows may apply for Active Member status upon achieving specialist recognition. An Associate Member may attend annual meetings and participate in



discussions but shall not have voting rights and cannot be a candidate for elected office or committee appointments. An Associate Member shall annually such membership fees as established by the directors.

- (c) **Senior Member:** a person may qualify as a Senior Member on reaching the age of 65 years. The person must be nominated and approved by the directors. A Senior Member may attend annual meetings and participate in discussions and shall have voting rights. A Senior Member shall not be levied annual membership fees. Unless directed by the directors either generally or in relation to a particular Senior Member or a particular meeting, a Senior Member shall pay the full registration fees for attendance at scientific meetings. A Senior Member may be a candidate for elected office.
- (d) **Life Member:** Life Membership may be conferred by the directors on members who have given a long and distinguished service to the Company. Life Membership shall be awarded by the directors after approval by a majority vote of members at an Annual General Meeting. A Life Member shall not be charged annual membership fees. A Life Member shall not pay registration fees for attendance at scientific meetings. A Life Member may vote and hold office.
- (e) **Honorary Member:** Honorary Membership is an accolade of the highest order and may be conferred by the Company on members, scientists, medical practitioners in related disciplines and distinguished public figures in recognition of their contributions to spinal surgery, other branches of surgery, medicine, or in any field of human endeavour. Honorary Members shall be awarded by the directors after approval by a majority vote of members at an Annual General Meeting. An Honorary Member may attend annual meetings and participate in discussions, but shall not have voting rights. An Honorary Member shall not be charged an annual membership fee. An Honorary Member shall not be charged for the registration fee for attendance at scientific meetings but will be charged for social functions unless otherwise directed by the directors. An Honorary Member may not be a candidate for elected office or committee appointment.
- (f) **Corresponding Member:** A Corresponding Member is a qualified medical practitioner or research worker with an active interest in spinal disease or disorder who is not a resident living in Australia or New Zealand. The directors may recommend that the Chairperson's guest of the meeting be awarded the title Corresponding Member at the meeting he or she attends. A Corresponding Member may attend annual meetings and participate in discussions but shall not have voting rights. Corresponding Members shall pay the full registration fees for attendance at scientific meetings subsequent to the one where he or she is the Chairperson's guest. Corresponding Members cannot be elected to office or committee appointments. A Corresponding Member shall not be charged annual membership fees.

### 9.3 Applications for Membership

- (a) Every applicant for membership of the company other than the initial members (including a Chairperson's invitee) must have a sponsorship of 2 Active Members and a senior colleague known to them who will submit letters of recommendation to the



company not less than [60 days] prior to the Annual General Meeting.

- (b) A curriculum vitae which follows the guidelines stated on the application form must accompany the application or request for application for membership.
- (c) Membership applications shall be reviewed by the directors who will confirm the Membership category. Upon approval of a majority of the directors the application shall then be submitted for election through the AGM agenda documents.
- (d) The recommendations for new membership will be made by the directors to the members of the company at the Annual General Meeting.
- (e) A member shall be elected if the recommendation is approved by at least two-thirds of those voting members present.

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## 10 When membership ceases

### 10.1 Death, resignation and other events

A person immediately ceases to be a member if the person:

- (a) dies;
- (b) resigns as a member by giving [3 months] written notice to the company;
- (c) the member fails to pay their annual membership by [31 July] in any given year;
- (d) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under a law relating to mental health;
- (e) becomes bankrupt or insolvent or makes any arrangement or composition with his or her creditors;
- (f) is expelled under rule 10.2; or
- (g) becomes, if the directors so decide in their absolute discretion, an untraceable member because the person has ceased to reside at, attend or otherwise communicate with his or her registered address.

### 10.2 Expulsion

- (a) The directors may by resolution expel a member from the company if, in their absolute discretion, they decide it is not in the interests of the company for the person to remain a member.
- (b) If the directors intend to propose a resolution under rule 10.2(a), at least one [calendar month] before the meeting at which the resolution is to be proposed, they must give the member written notice:
  - (i) stating the date, place and time of the meeting;
  - (ii) setting out the intended resolution and the grounds on which it is based; and
  - (iii) informing the member that he or she may attend the meeting and may give an oral or written explanation or submission before the resolution is put to the vote.





- (c) Following the meeting, the determination of the directors shall be communicated to the member and in the event of an adverse determination the member shall, subject to rule 10.2(d) cease to be a member 14 days after the directors have communicated their determination to him or her.
- (d) A member expelled in accordance with rule 10.2 shall have the right to appeal to a general meeting of the company (annual or special) against the expulsion. The intention to appeal shall be communicated to the directors within 14 days after the determination of the directors has been communicated to the member.
- (e) In the event of an appeal under rule 10.2(d), the appellant members membership of the Company shall not be terminated unless the determination of the directors to expel the members is upheld by the members of the Company in general meeting after the appellant has been heard, and in such event the appellant member's membership shall be terminated at the date of the general meeting at which the determination of the directors is upheld.

### **10.3 Reinstatement**

Any time after the expiration of the period of one year from the date of expulsion the former member may apply in writing to the directors for reinstatement. The directors may reinstate the former member by a vote of not less than 75 percent of the directors. A person expelled twice shall be ineligible for further membership.

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## **11 General meetings**

### **11.1 Calling general meetings**

- (a) The directors may call and arrange to hold a general meeting whenever they think fit.
- (b) A general meeting may be called and arranged to be held only as provided by this rule 11.1 or as provided by sections 249D, 249E, 249F and 249G of the Act.
- (c) The directors may change the venue for, postpone or cancel a general meeting, unless the meeting is called and arranged to be held by the members or the court under the Act. If a general meeting is called and arranged to be held under section 249D of the Act, the directors may not:
  - (i) postpone it beyond the date by which section 249D requires it to be held; or
  - (ii) cancel it without the consent of the requisitioning member.

### **11.2 Notice of general meetings**

- (a) Notice of every general meeting must be given in any manner authorised by rule 16 not less than 21 days prior to the general meeting to:
  - (i) every member entitled to attend, except a member who has not supplied the company with an address in Australia for giving notices;
  - (ii) each director; and



(iii) the auditor.

No other person is entitled to receive notice of general meetings.

- (b) A notice of a general meeting must:
- (i) specify the date, time and place of the meeting; and
  - (ii) except as provided by the Act, state the general nature of the business to be transacted at the meeting.
- (c) A person may waive notice of a general meeting by written notice to the company.
- (d) The non-receipt of notice of a general meeting or proxy form by, or a failure to give notice of a general meeting or a proxy form to, any person entitled to receive notice of a general meeting under this rule 11.2 does not invalidate any thing done or resolution passed at the general meeting if:
- (i) the non-receipt or failure occurred by accident or error; or
  - (ii) before or after the meeting, the person has waived or waives notice of that meeting under rule 11.2(c), or has notified or notifies the company of the person's agreement to that thing or resolution by written notice to the company.
- (e) A person's attendance at a general meeting waives any objection that person may have to:
- (i) a failure to give notice, or the giving of a defective notice, of the meeting unless, at the beginning of the meeting, the person objects to the holding of the meeting; and
  - (ii) the consideration of a particular matter at the meeting which is not within the business referred to in the notice of the meeting, unless the person objects to considering the matter when it is presented.

### 11.3 Quorum at general meetings

- (a) No business may be transacted at a general meeting, except the election of a chairperson and the adjournment of the meeting, unless a quorum of members is present when the meeting proceeds to business.
- (b) A quorum shall consist of the members holding 10 percent of the votes which may be cast at any meeting by any member present personally or by proxy.
- (c) If a quorum is not present within 30 minutes after the time appointed for a general meeting where the meeting was convened on the requisition of members, the meeting must be dissolved, or in any other case:
- (i) the meeting stands adjourned to the day, and at the time and place, that the directors decide or, if the directors do not make a decision, to the same day in the next week at the same time and place; and
  - (ii) if, at the adjourned meeting, a quorum is not present within 30 minutes after the time appointed for the meeting, the meeting must be dissolved.



#### 11.4 Chairperson of general meetings

- (a) The chairperson of directors must (if present within 15 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each general meeting.
- (b) If at a general meeting:
  - (i) there is no chairperson of directors;
  - (ii) the chairperson of directors is not present within 15 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,  
the members present must elect as chairperson of the meeting:
    - (iv) another director who is present and willing to act; or
    - (v) if no other director present at the meeting is willing to act, a member who is present and willing to act.

#### 11.5 Conducting and adjourning general meetings

- (a) A question arising at a general meeting relating to the order of business, procedure or conduct of the meeting must be referred to the chairperson of the meeting, whose decision is final.
- (b) The chairperson of a general meeting may, and must if so directed by the meeting, adjourn the meeting from time to time and from place to place, but no business may be transacted at any adjourned meeting except the business left unfinished at the meeting from which the adjournment took place.
- (c) Where a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as for an original meeting.
- (d) Except as provided by rule 11.5(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.
- (e) Where a meeting is adjourned, the directors may change the venue of, or postpone or cancel, the adjourned meeting, unless the meeting was called and arranged to be held by the members or the court under the Act. If a meeting is called and arranged to be held under section 249D of the Act, the directors may not postpone it beyond the date by which section 249D requires it to be held and may not cancel it without the consent of the requisitioning member.

#### 11.6 Decisions at general meetings

- (a) Except where by law a resolution requires a special majority, questions arising at a general meeting must be decided by a majority of votes cast by the members present at the meeting. Such a decision is for all purposes a decision of the members.
- (b) Where the votes on a proposed resolution are equal, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.
- (c) A resolution put to the vote of a general meeting must be decided on a show of hands unless, before the vote is taken or before or immediately after the declaration of the result of the show of hands, a poll is demanded by:
  - (i) the chairperson of the meeting;



- (ii) at least [three] members present and with the right to vote on the resolution; or
  - (iii) a member or members present at the meeting and representing at least 5% of the total voting rights of all the members entitled to vote on the resolution on a poll.
- (d) A demand for a poll does not prevent a general meeting continuing for the transaction of any business except the question on which the poll has been demanded.
- (e) Unless a poll is duly demanded, a declaration by the chairperson of a general meeting that a resolution has on a show of hands been carried or carried unanimously, or carried by a particular majority, or lost, and an entry to that effect in the book containing the minutes of the proceedings of the company, is conclusive evidence of the fact without proof of the number or proportion of the votes recorded in favour of or against the resolution.
- (f) If a poll is duly demanded at a general meeting, it must be taken in such manner, and either at once or after an interval or adjournment or otherwise, as the chairperson of the meeting directs. The result of the poll is the resolution of the meeting at which the poll was demanded.
- (g) A poll demanded at a general meeting on the election of a chairperson of the meeting or on a question of adjournment must be taken immediately.
- (h) The demand for a poll may be withdrawn.
- (i) If the company has only one member, the company may pass a resolution by the member recording it and signing the record.

### 11.7 Voting rights

- (a) Subject to this constitution and to any rights or restrictions attached to any class of membership as detailed in rule 9.2, at a general meeting every member present has one vote.
- (b) A proxy, attorney or representative is entitled to a separate vote for each member the person represents, in addition to any vote the person may have as a member in his or her own right.
- (c) An objection to the qualification of a person to vote at a general meeting must be:
  - (i) raised before or at the meeting at which the vote objected to is given or tendered; and
  - (ii) referred to the chairperson of the meeting, whose decision is final.
- (d) A vote not disallowed by the chairperson of a meeting under rule 11.7(c) is valid for all purposes.

### 11.8 Representation at general meetings

- (a) Subject to this constitution, each member entitled to vote at a meeting of members may vote:
  - (i) in person; or
  - (ii) by proxy.
- (b) A proxy must be a natural person who is also a member of the company.



- (c) A proxy may be appointed for:
  - (i) all general meetings;
  - (ii) any number of general meetings; or
  - (iii) a particular general meeting.
- (d) Unless otherwise provided in the instrument, an instrument appointing a proxy is taken to confer authority:
  - (i) to agree to a meeting being convened by shorter notice than is required by the Act or by this constitution;
  - (ii) to speak to any proposed resolution on which the proxy, attorney or representative may vote;
  - (iii) to demand or join in demanding a poll on any resolution on which the proxy may vote;
  - (iv) even though the instrument may refer to specific resolutions and may direct the proxy how to vote on those resolutions to vote on any amendment moved to the proposed resolutions and on any motion that the proposed resolutions not be put or any similar motion, to vote on any procedural motion, including any motion to elect the chairperson, to vacate the chair or to adjourn the meeting, and to act generally at the meeting; and
  - (v) even though the instrument may refer to a specific meeting to be held at a specified time or venue, where the meeting is rescheduled or adjourned to another time or changed to another venue, to attend and vote at the re-scheduled or adjourned meeting or at the new venue.
- (e) An instrument appointing a proxy may direct the manner in which the proxy is to vote in respect of a particular resolution. Where an instrument contains such a direction, the proxy is not entitled to vote on the proposed resolution except as directed in the instrument.
- (f) Subject to rule 11.8(g), an instrument appointing a proxy need not be in any particular form as long as it is in writing, legally valid and signed by the appointer or the appointer's attorney.
- (g) A proxy may not vote at a general meeting or adjourned meeting or on a poll unless the instrument appointing the proxy, and the authority (if any) under which the instrument is signed or a certified copy of the authority, are received in the place or at the fax number, and before the time, specified for that purpose in the notice calling the meeting. In the notice:
  - (i) the place may be the company's office or another place and a fax number may be the fax number at the company's office or another fax number; and
  - (ii) the time may be before the time for holding the meeting or adjourned meeting.
- (h) The directors may waive all or any of the requirements of rules 11.8(f) and 11.8(g) and in particular may, on production of any other evidence the directors require to prove the validity of the appointment of a proxy, accept:
  - (i) an oral appointment of a proxy;



- (ii) an appointment of a proxy which is not signed or executed in the manner required by rule 11.8(f); or
  - (iii) the deposit, tabling or production of a copy (including a copy sent by fax) of an instrument appointing a proxy.
- (i) A vote given in accordance with the terms of an instrument appointing a proxy is valid despite the revocation of the instrument, or of the authority under which the instrument was executed, if the company has not received written notice of revocation by the time and at the place at which the instrument appointing the proxy is required to be received under rule 11.8(g).
- (j) The appointment of a proxy is not revoked by the appointer attending and taking part in the general meeting but, if the appointer votes on a resolution, the proxy is not entitled to vote, and must not vote, as the appointer's proxy on the resolution.

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## 12 Directors

### 12.1 Appointing and removing directors

- (a) Subject to rule 12.1(c), there must be:
- (i) at least **3** directors; and
  - (ii) not more than **12** directors.
- (b) The first directors are the persons who have consented to act as directors from the date the Association was transferred to the company.
- (c) The company may by resolution:
- (i) increase or reduce the minimum or maximum number of directors; and
  - (ii) appoint or, in accordance with section 203D of the Act, remove a director.
- (d) The directors may remove a director whenever at least 75 percent of the directors believe it is in the best interests of the company, but such removals shall be without prejudice to the rights of any director so removed. A director removed in accordance with this rule 12.1(d) may be reinstated by the company in general meeting.
- (e) The directors may, subject to rule 9.2, appoint any individual as a director to fill a casual vacancy, but the total number of directors must not at any time exceed the maximum number allowed under this constitution.

### 12.2 Term

- (a) The directors hold their position from the close of the AGM that they are elected, until the close of the next AGM.
- (b) Directors are eligible to be nominated for consecutive terms

### 12.3 Nomination of Director

- (a) A written notice referring to all director vacancies, must be sent to all members at least **21** days before every annual general meeting at which an election of a director will take place.



- (b) In addition to rule 9.2, a person other than a retiring director is not eligible for election as a director at a general meeting unless the person, or a member who intends to propose the person, has left at the company's registered office a written notice signed by him or her:
  - (i) giving the person's consent to the nomination; and
  - (ii) stating either that the person is a candidate for the office of director or that the member intends to propose the person for election.
- (c) A notice given in accordance with **clause 12.3(a)** must be left at the company's registered office at least [14] days before the relevant annual general meeting.
- (d) A written notice referring to all director vacancies and each candidate for election, must be sent to all members at least seven days before every general meeting at which an election of a director will take place.

#### **12.4 Qualifications of directors**

- (a) A director must be a member of a class of members entitled to hold elected office to qualify for appointment.

#### **12.5 When office of director becomes vacant**

In addition to the circumstances prescribed by the Act, the office of a director becomes vacant if the director:

- (a) becomes of unsound mind or a person who is, or whose estate is, liable to be dealt with in any way under the law relating to mental health;
- (b) becomes bankrupt or insolvent or makes an arrangement or composition with his or her creditors generally;
- (c) is convicted on indictment of an offence and the directors do not within 1 month after that conviction resolve to confirm the director's appointment or election (as applicable) to the office of director;
- (d) is removed from office under rule 12.1(c)(ii);
- (e) resigns by written notice to the company; or
- (f) dies.

#### **12.6 Interested directors**

- (a) Subject to rule 5, a director may hold another position (except as auditor) in the company or any related body corporate in conjunction with his or her directorship and may be appointed to that position on terms as to remuneration, tenure and otherwise that the directors think fit.
- (b) A director:
  - (i) may be or become a director or other officer of, or otherwise interested in, any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise; and
  - (ii) is not accountable to the company for any remuneration or other benefits he or she receives as a



director or officer of, or from having an interest in, that body corporate.

- (c) A director is not disqualified merely because he or she is a director from contracting with the company in any respect including, but not limited to:
  - (i) selling property to, or purchasing property from, the company;
  - (ii) lending money to the company with or without interest or security;
  - (iii) guaranteeing the repayment of money borrowed by the company for a commission or profit;
  - (iv) underwriting or guaranteeing the subscription for securities in any related body corporate or other body corporate promoted by the company or in which the company is interested as a shareholder or otherwise, for a commission or profit; or
  - (v) being employed by the company or acting in any professional capacity (except as auditor) on behalf of the company.
- (d) A contract made by a director with the company and a contract or arrangement entered into by or on behalf of the company in which any director may be in any way interested is not avoided or rendered voidable merely because the director holds office as a director or because of the fiduciary obligations arising out of that office.
- (e) A director contracting with or being interested in any arrangement involving the company is liable to account to the company for any profit realised by or under that contract or arrangement unless the directors decide otherwise.
- (f) Unless section 195 of the Act permits, a director who has a material personal interest in a matter that is being considered at a directors' meeting must not:
  - (i) be present while the matter is being considered at the meeting; or
  - (ii) vote on the matter.
- (g) The directors may make regulations requiring the disclosure of interests that a director, and any person considered by the directors as related to or associated with the director, may have in any matter concerning the company or a related body corporate. Any regulations made under this constitution bind all directors.

## 12.7 Powers and duties of directors

- (a) The directors are responsible for managing the company's business and affairs and may exercise to the exclusion of the company in general meeting all the company's powers which are not required, by the Act or by this constitution, to be exercised by the company in general meeting.
- (b) Without limiting rule 12.7(a), the directors may exercise all the company's powers to:
  - (i) borrow or otherwise raise money;
  - (ii) charge any property or business of the company; and





- (iii) issue debentures or give any other security for a debt, liability or obligation of the company or of any other person.
- (c) The directors may decide how cheques, promissory notes, bankers drafts, bills of exchange or other negotiable instruments must be signed, drawn, accepted, endorsed or otherwise executed (as applicable) by or on behalf of the company.
- (d) The directors may pay out of the company's funds all expenses of the promotion, formation and registration of the company and the vesting in it of the assets acquired by it.
- (e) The directors may:
  - (i) appoint or employ a person to be an officer, agent or attorney of the company for the purposes, with the powers, discretions and duties (including powers, discretions and duties vested in or exercisable by the directors), for the period and on the conditions they think fit;
  - (ii) authorise an officer, agent or attorney to delegate all or any of the powers, discretions and duties vested in the officer, agent or attorney; and
  - (iii) subject to any contract between the company and the relevant officer, agent or attorney, remove or dismiss any officer, agent or attorney at any time, with or without cause.
- (f) A power of attorney may contain any provisions for the protection and convenience of the attorney or persons dealing with the attorney that the directors think fit.

## **12.8 Proceedings of directors**

- (a) Subject to rule 12.8(b), the directors may meet together and adjourn and otherwise regulate their meetings as they think fit.
- (b) The directors must meet no less than 3 times in each 12 month period at such place and time as determined by the directors.
- (c) The contemporaneous linking together by telephone or other electronic means of a sufficient number of the directors to constitute a quorum constitutes a meeting of the directors. All the provisions in this constitution relating to meetings of the directors apply, so far as they can and with any necessary changes, to meetings of the directors by telephone or other electronic means.
- (d) A director who takes part in a meeting by telephone or other electronic means is taken to be present in person at the meeting.
- (e) A meeting by telephone or other electronic means is taken as held at the place decided by the chairperson of the meeting, as long as at least one of the directors involved was at that place for the duration of the meeting.

## **12.9 Convening meetings of directors**

- (a) A director may convene a meeting of the directors whenever he or she thinks fit.



- (b) A secretary must, on the requisition of a director, convene a meeting of the directors.

#### **12.10 Notice of meetings of directors**

- (a) Subject to this constitution, notice of a meeting of directors must be given to each person who is at the time of giving the notice:
  - (i) a director, except a director on leave of absence approved by the directors; or
  - (ii) an alternate director appointed under rule 12.15 by a director on leave of absence approved by the directors.
- (b) A notice of a meeting of directors:
  - (i) must specify the time and place of the meeting;
  - (ii) need not state the nature of the business to be transacted at the meeting;
  - (iii) may be given immediately before the meeting;
  - (iv) may be given in person or by post, telephone, fax or other electronic means ; and
  - (v) is taken as given to an alternate director if it is given to the director who appointed that alternate director.
- (c) A director or alternate director may waive notice of a meeting of directors by notifying the company to that effect in person or by post, telephone, fax or other electronic means.
- (d) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, a director does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the director or an alternate director appointed by the director has waived or waives notice of that meeting under rule 12.10(c), or has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (iii) the director or an alternate director appointed by the director attended the meeting.
- (e) The non-receipt of notice of a meeting of directors by, or a failure to give notice of a meeting of directors to, an alternate director of a director on leave of absence approved by the directors does not invalidate any thing done or resolution passed at the meeting if:
  - (i) the non-receipt or failure occurred by accident or error;
  - (ii) before or after the meeting, the alternate director or the director who appointed the alternate director has waived or waives notice of that meeting under rule 12.10(c), or has notified or notifies the company of his or her agreement to that thing or resolution personally or by post, telephone, fax or other electronic means; or
  - (iii) the alternate director or the director who appointed the alternate director attended the meeting.



- (f) A person who attends a meeting of directors waives any objection that person may have to a failure to give notice of the meeting.

If the person is:

- (i) a director, the waiver applies to any alternate director appointed by that person; or
- (ii) an alternate director, the waiver applies to the director who appointed that person as an alternate director.

#### **12.11 Quorum at meetings of directors**

- (a) No business may be transacted at a meeting of directors unless a quorum of directors is present at the time the business is dealt with.
- (b) A quorum for the transaction of business at any meeting of directors shall consist of a majority (meaning more than 50 percent) of the directors then appointed.
- (c) If there is a vacancy in the office of a director then, subject to rule 12.11(d), the remaining directors may act.
- (d) If the number of directors present is not sufficient to constitute a quorum at a meeting of directors a majority of the directors present may adjourn the meeting from time to time without further notice.

#### **12.12 Chairperson of directors**

- (a) The directors may elect one of the directors as chairperson of directors and may decide the period for which that director is to be the chairperson.
- (b) The chairperson of directors must (if present within 10 minutes after the time appointed for the meeting and willing to act) preside as chairperson at each meeting of directors.
- (c) If at a meeting of directors:
  - (i) there is no chairperson of directors;
  - (ii) the chairperson of directors is not present within 10 minutes after the time appointed for the meeting; or
  - (iii) the chairperson of directors is present within that time but is not willing to act as chairperson of the meeting,the directors present must elect one of the directors as chairperson of the meeting.

#### **12.13 Decisions of directors**

- (a) A meeting of directors at which a quorum is present may exercise all the powers and discretions vested in or exercisable by the directors under this constitution.
- (b) Questions arising at a meeting of directors must be decided by a majority of votes cast by the directors present. Such a decision is for all purposes a decision of the directors.
- (c) Where the votes on a proposed resolution are equal, the chairperson of the meeting has a casting vote in addition to his or her deliberative vote.



## 12.14 Written resolutions

- (a) If:
  - (i) a majority of the directors assent to a document containing a statement to the effect that a thing has been done or resolution has been passed; and
  - (ii) the directors who assent to the document would have constituted a quorum at a meeting of directors held to consider that thing or resolution,then that thing or resolution is taken as done at or passed by a meeting of the directors.
- (b) For the purposes of rule 12.14(a):
  - (i) the meeting is taken as held if the directors assented to the document on the same day, on the day on which the document was assented to and at the time at which the document was last assented to; or
  - (ii) the meeting is taken as held if the directors assented to the document on different days, on the day on which, and at the time at which, the document was last assented to;
  - (iii) two or more separate documents in identical terms, each of which is assented to by one or more directors, are taken as constituting one document; and
  - (iv) a director may signify assent to a document by signing the document or by notifying the company of the director's assent in person or by post, telephone, fax or other electronic means.
- (c) Where a director signifies assent to a document otherwise than by signing the document, the director must as confirmation sign the document at the next meeting of the directors that director attends, but failure to do so does not invalidate the thing or resolution to which the document relates.

## 12.15 Alternate directors

- (a) A director may, with the approval of the directors, appoint a person as his or her alternate director for the period the director thinks fit.
- (b) An alternate director must be a member or director of the company.
- (c) One person may act as alternate director to more than one director.
- (d) An alternate director may, if the appointer does not attend a meeting of directors, attend and vote in place of and on behalf of the appointer.
- (e) An alternate director is entitled to a separate vote for each director the alternate director represents in addition to any vote the alternate director may have as a director in his or her own right.
- (f) In the absence of the appointer, an alternate director may exercise any power that the appointer may exercise. The exercise of such a power by the alternate director is taken to be the exercise of the power by the appointer.



- (g) The office of an alternate director is vacated if and when the appointer vacates office as a director.
- (h) The appointer may terminate the appointment of an alternate director at any time, even though the period of the appointment has not expired.
- (i) An appointment, or the termination of an appointment, of an alternate director must be in writing signed by the director who makes or made the appointment and does not take effect until the company has received written notice of the appointment or termination.
- (j) An alternate director is not to be taken into account in counting the minimum or maximum number of directors allowed under this constitution.
- (k) In deciding whether a quorum is present at a meeting of directors, an alternate director who attends the meeting is to be counted as a director for each director on whose behalf the alternate director is attending the meeting.
- (l) An alternate director, while acting as a director, is:
  - (i) responsible to the company for his or her own acts and defaults; and
  - (ii) not to be taken to be the agent of the director by whom he or she was appointed.

#### **12.16 Committees of directors**

- (a) The directors may delegate any of their powers to one or more committees consisting of the number of directors they think fit.
- (b) A committee to which any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.
- (c) The provisions of this constitution that apply to meetings and resolutions of directors apply, so far as they can and with any necessary changes, to meetings and resolutions of a committee of directors.

#### **12.17 Delegation to individual directors**

- (a) The directors may delegate any of their powers to one director.
- (b) A director to whom any powers have been delegated must exercise the powers delegated in accordance with any directions given by the directors.

#### **12.18 Validity of acts**

An act done by a person acting as a director, a meeting of directors, or a committee of directors attended by a person acting as a director, is not invalidated merely because of:

- (a) a defect in the appointment of the person as a director;
- (b) the person being disqualified to be a director or having vacated office; or
- (c) the person not being entitled to vote,

if that circumstance was not known by the person, the directors or the committee (as applicable) when the act was done.



## 13 Executive officers

***[Note: we have removed references to the previous roles of President, Vice President, Treasurer, Editorial Secretary and Education Secretary. However, following incorporation, the board of directors may implement a policy giving certain directors of the company the responsibilities related to these titles.]***

### 13.1 Executive director

- (a) The directors may appoint one of the directors as executive director.
- (b) An executive director's appointment as executive director automatically terminates if he or she ceases to be a director.

### 13.2 Secretaries

- (a) The first secretary is the person who has consented to act as secretary and who is named as the proposed secretary in the application for registration of the company.
- (b) The directors must appoint at least one secretary and may appoint additional secretaries.
- (c) The directors may appoint one or more assistant secretaries.

### 13.3 Provisions that apply to all executive officers

- (a) A reference in this rule 13.3 to an executive officer is a reference to an executive director, secretary or assistant secretary appointed under this rule 13.
- (b) The appointment of an executive officer may be for the period, at the remuneration and on the conditions that the directors think fit.
- (c) Subject to any contract between the company and the relevant executive officer, an executive officer may be removed or dismissed by the directors at any time, with or without cause.
- (d) The directors may:
  - (i) confer on an executive officer the powers, discretions and duties (including any powers, discretions and duties vested in or exercisable by the directors) they think fit;
  - (ii) withdraw, suspend or vary any of the powers, discretions and duties conferred on an executive officer; and
  - (iii) authorise the executive officer to delegate all or any of the powers, discretions and duties conferred on him or her.
- (e) An executive officer need not be a member to qualify for appointment.
- (f) An act done by a person acting as an executive officer is not invalidated merely because of:
  - (i) a defect in the person's appointment as an executive officer; or
  - (ii) the person being disqualified to be an executive officer,



if that circumstance was not known by the person when the act was done.

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## **14 Indemnity and insurance**

### **14.1 Persons to whom rules 14.2 and 14.4 apply**

Rules 14.2 and 14.4 apply to:

- (a) each person who is or has been a director, alternate director or executive officer (within the meaning of rule 13.3(a)) of the company; and
- (b) any other officers or former officers of the company or of its related bodies corporate that the directors decide in each case.

### **14.2 Indemnity**

The company must:

- (a) indemnify; and
- (b) if requested by a person to whom this rule 14.2 applies, enter into a deed indemnifying,

on a full indemnity basis and to the full extent permitted by law, each person to whom this rule 14.2 applies for all losses or liabilities incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred:

- (c) in defending proceedings, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (d) in connection with an application, in relation to those proceedings, in which the court grants relief to the person under the Act.

### **14.3 Extent of indemnity**

The indemnity in rule 14.2:

- (a) is a continuing obligation and is enforceable by a person to whom rule 14.2 applies even though that person has ceased to be an officer of the company or of a related body corporate; and
- (b) operates only to the extent that the loss or liability is not covered by insurance.

### **14.4 Insurance**

The company may, to the extent permitted by law:

- (a) purchase and maintain insurance; or
- (b) pay or agree to pay a premium for insurance,

for any person to whom this rule 14.4 applies against any liability incurred by the person as an officer of the company or of a related body corporate including, but not limited to, a liability for negligence or for reasonable costs and expenses incurred in defending proceedings, whether civil or criminal and whatever their outcome.

### **14.5 Savings**

Nothing in rules 14.2 or 14.4:



- (a) affects any other right or remedy that a person to whom those rules apply may have in respect of any loss or liability referred to in those rules; or
- (b) limits the capacity of the company to indemnify or provide insurance for any person to whom those rules do not apply.

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## 15 Auditor

The company must appoint a properly qualified auditor whose duties will be regulated in accordance with the Act.

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## 16 Notices

### 16.1 How notices may be given

A notice may be given by the company to a member by:

- (a) delivering it to the member personally;
- (b) sending it to the member's fax number or email address, if the member has nominated one to the company for receipt of notices; or
- (c) posting it by prepaid post to the member's registered address.

### 16.2 When taken as given

A notice is taken as given by the company and received by the member:

- (a) if delivered, at the time of delivery;
- (b) if faxed, when the company receives a confirmation report that all pages of the fax have been transmitted to the member's fax number, but if transmission or receipt is after 5.00pm, it is taken as received on the next business day;
- (c) if sent electronically, it shall be deemed given at the time of sending if it is emailed and not rejected as undeliverable; and
- (d) if posted, on the second business day after it was posted.

### 16.3 When member has no registered address

If one or more members do not have a registered address in Australia, a notice addressed to the member or members and advertised in a daily national newspaper is taken to be duly given to the member or members at midday on the day on which the advertisement appears.

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## 17 Definitions and interpretation

### 17.1 Definitions

In this constitution:

**Act** means the Corporations Act 2001 (Cth);

**Association** means the former incorporated association under the Associations Incorporation Act 1985 (SA) named *The Spine Society of Australia Incorporated* transferred under section 42 of the Associations Incorporation Act to the company.

**auditor** means the auditor of the company;





**business day** means a day on which the major trading banks are open for business in Sydney, except a Saturday, Sunday or public holiday;

**company** means Spine Society of Australia [Limited];

**company's office** means the company's registered office;

**directors** means the company's board of directors;

**member** means a member of the company;

**registered address** means a member's address as notified to the company by the member and recorded in the company's records;

**secretary** means a person appointed to perform the duties of a secretary of the company and includes an honorary secretary; and

**State** means New South Wales.

## 17.2 Interpretation

In this constitution unless the context requires otherwise:

- (a) references to notices include formal notices of meeting and all documents and other communications from the company to its members;
- (b) a reference to any legislation or a provision of any legislation includes any amendment to that legislation or provision, any consolidation or replacement of that legislation or provision and any subordinate legislation made under that legislation;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative;
- (d) a reference to writing and written includes printing, lithography and other ways of representing or reproducing words in a visible form; and
- (e) the singular (including defined terms) includes the plural and the plural includes the singular.

## 17.3 Headings

Headings are used for convenience only and do not affect the interpretation of this constitution.

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# 18 Application of the Act

## 18.1 What parts of the Act apply

Unless the contrary intention appears:

- (a) an expression used in a rule that deals with a matter dealt with by a provision of the Act has the same meaning as in that provision; and
- (b) subject to rule 18.1(a), an expression in a rule that has a defined meaning for the purposes of the Act has the same meaning as in the Act.

## 18.2 Replaceable rules displaced

- (a) The provisions of this constitution displace each provision of a section or subsection of the Act that applies (or would apply but for this rule) to the company.



- (b) The replaceable rules do not apply to the company except those which operate as mandatory rules for public companies under the Act.