

# Constitution

of

## **The Australian and New Zealand Society of Palliative Medicine Limited**

**Australian Business Number (ABN) 46 639 357 305**

**Australian Company Number (ACN) 639 357 305**

A Company limited by guarantee

## Preliminary

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### 1. Name of the company

The name of the company is the [Australian and New Zealand Society of Palliative Medicine Limited (the **Company**)].

### 2. Type of company

The **Company** is a not-for-profit public company limited by guarantee.

### 3. Limited liability of members

The liability of members is limited to the amount of the guarantee in clause 4.

### 4. The guarantee

Each member must contribute an amount not more than \$10 AUD (the **guarantee**) to the property of the Company if the Company is wound up while the member is a member, or within twelve (12) months after they stop being a member, and this contribution is required to pay for the:

- (a) debts and liabilities of the **Company** incurred before the member stopped being a member; or
- (b) costs of winding up.

### 5. Definitions

In this constitution, words and phrases have the meaning set out in clause 66.

## Charitable purposes and powers

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### 6. Objects

The **Company's** principal purpose is to advance health and promote the prevention and relief of sickness, disease or human suffering in people with a life limiting illness in Australia and New Zealand. In particular, by pursuing the following charitable purposes:

- (a) To promote excellence in **Palliative Medicine** and to foster the professional development of doctors who practise **Palliative Medicine**;
- (b) To provide a forum for **Registered Medical Practitioners** engaged in the practice of **Palliative Medicine** or related disciplines to facilitate their professional development and mutual support;
- (c) To advance the discipline of **Palliative Medicine**;
- (d) To provide a voice on policies relating to **Palliative Medicine**;
- (e) To promote undergraduate and postgraduate education and training in **Palliative Medicine** and to support **Palliative Medicine** trainees;
- (f) To promote awareness of, and development of a knowledge base about, **Palliative Medicine**;
- (g) To promote research in and evaluation of medical and related issues in **Palliative Medicine**;
- (h) To liaise with other relevant bodies with similar objects; and

- (i) Anything else ancillary to these objects.

## 7. Powers

Subject to clause 8, the **Company** has the following powers, which may only be used to carry out its purposes set out in clause 6:

- (a) the powers of an individual; and
- (b) all the powers of a **Company** limited by guarantee under the **Corporations Act**.

## 8. Not-for-profit

8.1 The **Company** must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2.

8.2 Clause 8.1 does not stop the **Company** from doing the following things, provided they are done in good faith:

- (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the **Company**; or
- (b) making a payment to a member in carrying out the **Company's** charitable purposes.

## 9. Amending the constitution

9.1 Subject to clause 9.2 the members may amend the constitution of the **Company** by passing a **special resolution**.

9.2 The members must not pass a **special resolution** that amends the constitution of the **Company** if passing it causes the **Company** to no longer be a charity.

# Members

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## 10. Members

10.1 The members of the **Company** are:

- (a) those persons who are members of the **Company** upon registration of the **Company** in accordance with the Corporations Act; and
- (b) any other person whom the **Council** admits to membership in accordance with this constitution.

## 11. Membership requirements

11.1 The requirements of membership shall be laid down from time to time by the **Council** as the **Council** sees fit.

## 12. Classes and rights of membership

12.1 Membership of the **Company** will be divided into the following classes:

- (a) Full Member;

- (b) Trainee Member;
  - (c) Honorary Life Member;
  - (d) Retired Member;
  - (e) Associate Member; and
  - (f) such other class or classes of members as the **Council** may from time to time determine.
- 12.2 The **Council** may, from time to time, determine the requirements that individuals must meet in order to qualify for a particular class of membership.
- 12.3 Subject to this constitution, each member is entitled to notice of each general meeting of the **Company** and is entitled to attend that meeting and may exercise any other rights or privileges assigned to their respective class of membership by the **Council** or this constitution.
- 12.4 Only a **Voting Member** is entitled to vote at a general meeting.

### **13. How to apply to become a member**

- 13.1 An individual wishing to become a member of the **Company** must be nominated for membership in accordance with any requirements laid down from time to time by the **Council**, as the **Council** sees fit.
- 13.2 All nominations of an individual for membership of the **Company** must be made in the form determined by the **Council** from time to time and must be lodged with the **Secretary** of the **Company**.
- 13.3 As soon as practicable after receiving a nomination for membership, the **Secretary** must refer the nomination to the **Council**, who must determine whether to approve or to reject the nomination. The **Council** shall have absolute discretion to decide upon acceptance or rejection. No reason need be given for this decision.
- 13.4 As soon as practicable after the **Council** makes a determination under clause 13.3, the **Secretary** must:
- (a) notify the nominee in writing that the **Council** has approved or rejected the nomination (whichever is applicable); and
  - (b) if the **Council** approved the nomination, request the nominee to pay (within a period of twenty-eight (28) days after receipt by the nominee of the notification), the **Admission Fee** as specified in clause 19.
- 13.5 The **Secretary** must, on payment by the nominee of the amounts referred to in clause 19 within the period referred to in that provision, enter the nominee's name in the register of members.
- 13.6 A person who accepts membership of the **Company** shall be thereby deemed to have agreed to be bound by the rules of the **Company** including payment of the guarantee under clause 4 if required.

### **14. When a person becomes a member**

- 14.1 A nominee will become a member of the **Company** when they are entered on the register of members.

## 15. When a person stops being a member

- 15.1 A person immediately stops being a member of the **Company** if they:
- (a) die;
  - (b) resign membership in accordance with clause 16;
  - (c) are expelled from the **Company** under clause 21.4(d);
  - (d) it is determined by **Council** that their membership has lapsed, under clause 18;  
or
  - (e) cease to have capacity to make sound and independent decisions to enable participation in the **Company**.

## 16. Resignation of membership

- 16.1 A member of the **Company** is not entitled to resign their membership except in accordance with this clause 16.
- 16.2 A member of the **Company** who has not paid all amounts payable in respect of their membership, may not resign from membership of the **Company** until the amounts have been paid to the **Company**.
- 16.3 To resign, a member must give the **Secretary** at least one (1) month notice, or such other period as the **Council** may determine, of the member's intention to resign. On the expiration of this period the member will cease to be a member.

## 17. Register of members

- 17.1 The **Secretary** of the **Company** must establish and maintain a register of members. The register of members must contain:
- (a) For each current member of the **Company**:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the member for the service of notices; and
    - (iv) date the member was entered on the register.
  - (b) For each person who stopped being a member in the last 7 years:
    - (i) name;
    - (ii) address;
    - (iii) any alternative address nominated by the member for the service of notices; and
    - (iv) date their membership ended.
- 17.2 The register of members must be kept at the **Company's** registered address and must be open for inspection, free of charge, by any member of the **Company** within business hours.

17.3 If the **Company** has more than fifty (50) members, the **Secretary** must include in the register an up-to-date index of members' names. The index must be convenient to use and allow each member's entry in the register to be readily found. A separate index need not be included if the register itself is kept in a form that operates effectively as an index.

17.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

## 18. Lapsed Members

18.1 The **Council** may, from time to time, decide on criteria for determining whether a member's membership has lapsed.

18.2 If the **Council** determines that a member's membership has lapsed in accordance with the criteria it sets from time to time, the member will be deemed to no longer be a member.

## 19. Fees and subscriptions

19.1 Every person to be admitted as a member shall, before admission, pay such **Admission Fee** (if any) as the **Council** may determine.

19.2 The **Council** may, in its absolute discretion, waive payment of any **Admission Fee**.

19.3 Every member must pay an annual **Subscription Fee**, in the amount determined by the **Council** from time to time with respect to each class of membership.

19.4 The **Council** may, in its absolute discretion, reduce or waive a member's **Subscription Fee**.

# Dispute resolution and disciplinary procedures

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## 20. Dispute resolution

20.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this constitution between a member or **Councillor** and:

- (a) one or more members;
- (b) one or more **Councillors**; or
- (c) the **Company**.

20.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 21 until the disciplinary procedure is completed.

20.3 Those involved in the dispute must try to resolve it between themselves within fourteen (14) days of knowing about it.

20.4 If those involved in the dispute do not resolve it under clause 20.3, they must within ten (10) days:

- (a) tell the **Council** about the dispute in writing;

- (b) agree or request that a mediator be appointed; and
- (c) attempt in good faith to settle the dispute by mediation.

20.5 The mediator must:

- (a) be chosen by agreement of those involved; or
- (b) where those involved do not agree:
  - (i) for disputes between members, a person chosen by the **Council**; or
  - (ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the law institute or society in the state or territory in which the **Company** has its registered office.

20.6 A mediator chosen by the **Council** under clause (20.5(b)(i)):

- (a) may be a member or former member of the company;
- (b) must not have a personal interest in the dispute; and
- (c) must not be biased towards or against anyone involved in the dispute.

20.7 When conducting the mediation, the mediator must:

- (a) allow those involved a reasonable chance to be heard;
- (b) allow those involved a reasonable chance to review any written statements;
- (c) ensure that those involved are given natural justice; and
- (d) not make a decision on the dispute.

## 21. Disciplining of members

21.1 In accordance with this clause, the **Council** may resolve to warn, suspend or expel a member from the **Company** if the **Council** considers that:

- (a) the member has breached this constitution; or
- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the **Company**.

21.2 At least fourteen (14) days before the **Council's** meeting at which a resolution under clause 21.1 will be considered, the Secretary must notify the member in writing:

- (a) that the **Council** is considering a resolution to warn, suspend or expel the member;
- (b) that this resolution will be considered at a **Council** meeting and the date of that meeting;
- (c) what the member is said to have done or not done;
- (d) the nature of the resolution that has been proposed; and

- (e) that the member may provide an explanation to the **Council**, and details of how to do so.
- 21.3 Before the **Council** passes any resolution under clause 21.1, the member must be given a chance to explain or defend themselves by:
- (a) sending the **Council** a written explanation before that **Council** meeting; and/or
  - (b) speaking at the meeting.
- 21.4 After considering any explanation under clause 21.3, the **Council** may:
- (a) take no further action;
  - (b) warn the member;
  - (c) suspend the member's rights as a member for a period of no more than twelve (12) months;
  - (d) expel the member;
  - (e) refer the decision to an unbiased, independent person on conditions that the **Council** considers appropriate (however, the person can only make a decision that the **Council** could have made under this clause); or
  - (f) require the matter to be determined at a **general meeting**.
- 21.5 The **Council** cannot fine a member.
- 21.6 The Secretary must give written notice to the member of the decision under clause 21.4 as soon as possible.
- 21.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 21.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## **22. Right of appeal of disciplined member**

- 22.1 A member may appeal to the **Company** against a decision of the **Council** under clause 21.4 within seven (7) days after notice of the decision is served on the member, by giving a notice to that effect to the **Secretary**.
- 22.2 The notice may, but need not, be accompanied by a statement of the grounds on which the member intends to rely for the purposes of the appeal.
- 22.3 The **Secretary** on receipt of the notice under clause 22.1 must inform the **Council** of the appeal.
- 22.4 On being notified by the **Secretary**, the Council must convene a **general meeting** of the **Company** to be held within twenty-eight (28) days after the date on which the **Secretary** received the notice under clause 22.3.
- 22.5 At a **general meeting** of the **Company** convened under clause 22.4:
- (a) no business other than the question of the appeal is to be transacted;
  - (b) the **Council** and the member must be given the opportunity to state their respective cases orally or in writing, or both; and



- (c) the **Voting Members** present are to vote by secret ballot on the question of whether the **Council's** disciplinary decision should be confirmed or revoked.
- 22.6 If at the **general meeting**, the **Company** passes a **special resolution** in favour of the confirmation of the decision of the **Council** under clause 21.4, the resolution is confirmed.

## Meetings

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### 23. General Meetings called by Council

- 23.1 The **Council** may call a **general meeting**.
- 23.2 If **Voting Members** with at least 5% of the votes that may be cast at a **general meeting** make a written request to the company for a **general meeting** to be held, the **Council** must:
- (a) within twenty-one (21) days of the members' request, give all members notice of a **general meeting**; and
  - (b) hold the **general meeting** within two (2) months of the **Voting Members'** request.
- 23.3 The percentage of votes that **Voting Members** have (in clause 23.2) is to be worked out as at midnight before the **Voting Members** request the meeting.
- 23.4 The **Voting Members** who make the request for a **general meeting** must:
- (a) state in the request any resolution to be proposed at the meeting;
  - (b) sign the request; and
  - (c) give the request to the **Company**.
- 23.5 Separate copies of a document setting out the request may be signed by **Voting Members** if the wording of the request is the same in each copy.

### 24. General Meetings called by Voting Members

- 24.1 If the **Council** does not call the meeting within twenty-one (21) days of being requested under clause 23.2, 50% or more of the **Voting Members** who made the request may call and arrange to hold a **general meeting**.
- 24.2 To call and hold a **general meeting** under clause 24.1, the **Voting Members** must:
- (a) as far as possible, follow the procedures for **general meetings** set out in this constitution;
  - (b) call the **general meeting** using the list of members on the **Company's** member register, which the **Company** must provide to the **Voting Members** making the request at no cost; and
  - (c) hold the **general meeting** within two (2) months after the request was given to the **Company**.
- 24.3 The **Company** must pay the **Voting Members** who request the **general meeting** any reasonable expenses they incur because the **Council** did not call and hold the meeting.

## 25. Annual General Meeting

- 25.1 A general meeting called the **Annual General Meeting** must be held:
- (a) within eighteen (18) months after the registration of the **Company**; and
  - (b) after the first **Annual General Meeting**, at least once in every calendar year but not later than six (6) months after the end of the financial year.
- 25.2 The **Annual General Meeting** will be specified as such in the notice convening it.
- 25.3 Even if these items are not set out in the notice of meeting, the ordinary business of the **Annual General Meeting** may include:
- (a) to confirm the minutes of the last preceding **Annual General Meeting** and of any **general meeting** held since that meeting;
  - (b) a review of the **Company's** activities;
  - (c) a review of the **Company's** finances;
  - (d) the appointment or payment of any auditor;
  - (e) to elect **Council** members; and
  - (f) any auditor's report.
- 25.4 Before or at the **Annual General Meeting**, the Councillors must give information to the members on the **Company's** activities and finances during the period since the last **Annual General Meeting**.
- 25.5 The **Chairperson** of the **Annual General Meeting** must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the **Company**.

## 26. Notice of general meetings

- 26.1 The **Secretary** of the **Company** will, at least twenty-one (21) days before the date fixed for holding a **general meeting** of the **Company**, give a notice to:
- (a) each member of the **Company**;
  - (b) each **Councillor**; and
  - (c) the auditor (if any),
- stating the place, date and time of the meeting and the nature of the business to be transacted at the meeting.
- 26.2 Subject to clause 26.3, notice of a meeting may be provided fewer than twenty-one (21) days before the meeting if:
- (a) for an Annual General Meeting, all **Voting Members** agree beforehand; or
  - (b) for any other **general meeting**, **Voting Members** with at least 95% of the votes that may be cast at the meeting agree beforehand.
- 26.3 Notice of a meeting cannot be provided fewer than twenty-one (21) days before the meeting if a resolution will be moved to:

- (a) remove a **Councillor**;
- (b) appoint a **Councillor** in order to replace a **Councillor** who was removed; or
- (c) remove an auditor.

26.4 Notice of a **general meeting** must include:

- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this);
- (b) the general nature of the meeting's business;
- (c) if applicable, that a **special resolution** is to be proposed and the words of the proposed resolution;
- (d) a statement that **Voting Members** have the right to appoint proxies and that, if a **Voting Member** appoints a proxy:
  - (i) the proxy does not need to be a member of the **Company**;
  - (ii) the proxy form must be delivered to the **Company** at its registered address or the address (including an electronic address) specified in the notice of the meeting; and
  - (iii) the proxy form must be delivered to the **Company** at least forty-eight (48) hours before the meeting.

26.5 If a **general meeting** is adjourned (put off) for one month or more, the members must be given new notice of the resumed meeting.

## 27. **Proceedings at general meetings**

### **Quorum**

27.1 All **Voting Members** deemed to be present (including for the purposes of constituting a quorum) are entitled to vote at the meeting.

27.2 For the purposes of this clause 27, a member is deemed to be **present** if they personally are present physically or present via any technological means by which they are able to simultaneously hear each other and participate in discussion.

27.3 Twenty (20) **Voting Members** personally present constitute a quorum for the transaction of the business of a **general meeting**.

27.4 No business may be conducted at a **general meeting** if a quorum is not present.

27.5 If there is no quorum present within thirty (30) minutes after the starting time stated in the notice of **general meeting**, the **general meeting** is adjourned to the date, time and place that the **Chairperson** specifies (**Resumed Meeting**). If the **Chairperson** does not specify one or more of those things, the meeting is adjourned to:

- (a) if the date is not specified – the same day in the next week;
- (b) if the time is not specified – the same time; and
- (c) if the place is not specified – the same place.

- 27.6 If no quorum is present at the **Resumed Meeting** within thirty (30) minutes after the starting time set for that meeting, the **general meeting** is cancelled.

#### **Auditor's right to attend meetings**

- 27.7 The auditor (if any) is entitled to attend any **general meeting** and to be heard by the members on any part of the business of the meeting that concerns the auditor in the capacity of auditor.
- 27.8 The **Company** must give the auditor (if any) any communications relating to the **general meeting** that a member of the **Company** is entitled to receive.

#### **Chairperson**

- 27.9 The President or, in their absence, the President-Elect or Past-President (as relevant) will preside as **Chairperson** at a **general meeting** of the **Company**.
- 27.10 If both the President and the President-Elect or Past-President (as relevant) are absent from a **general meeting**, the members present will elect one of the **Council** members to preside as **Chairperson** at the meeting.
- 27.11 The **Chairperson** must give members a reasonable opportunity to ask questions and make comments in a **general meeting**.

#### **Adjournment of meetings**

- 27.12 If a quorum is present, a **general meeting** must be adjourned if a majority of **members present** direct the **Chairperson** to adjourn it.
- 27.13 Only unfinished business may be dealt with at a meeting resumed after an adjournment.

### **28. Members' resolution and statements**

- 28.1 **Voting Members** with at least 5% of the votes that may be cast at a **general meeting** may give:
- (a) written notice to the **Company** of a resolution they propose to move at a **general meeting** ('**members' resolution**'); and/or
  - (b) a written request to the **Company** that the **Company** give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a **general meeting** ('**members' statement**').
- 28.2 A notice of a members' resolution must set out the wording and object of the proposed resolution and be signed by the members proposing the resolution.
- 28.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 28.4 Separate copies of a document setting out the notice referred to in clause 28.1(a) or request may be signed by members if the wording is the same in each copy.
- 28.5 The percentage of votes that **Voting Members** have is to be worked out as at midnight before the request or notice is given to the **Company**.
- 28.6 If the **Company** has been given notice of a members' resolution under clause 28.1(a), the resolution must be considered at the next **general meeting** held within two (2) months after the notice is given.

28.7 This clause does not limit any other right that a member has to propose a resolution at a **general meeting**.

## 29. **Company must give notice of proposed resolution or distribute statement**

29.1 If the **Company** has been given a notice or request under clause 28.1:

- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the **Company's** cost, or
- (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the **Company** in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a **general meeting**, the members may pass a resolution that the **Company** will pay these expenses.

29.2 The **Company** does not need to send the notice of proposed members' resolution or a copy of the members' statement to members if:

- (a) it is more than 1,000 words long;
- (b) the **Council** considers it may be defamatory;
- (c) clause 29.1(b) applies, and the members who proposed the resolution or made the request have not paid the **Company** enough money to cover the cost of sending the notice of the proposed members' resolution or a copy of the members' statement to members; or
- (d) in the case of a proposed members' resolution, the resolution does not relate to a matter that may be properly considered at a **general meeting** or is otherwise not a valid resolution able to be put to the members.

## 30. **Circular resolutions of members**

30.1 Subject to clause 30.3, the **Council** may put a resolution to the members to pass a resolution without a general meeting being held (a **Circular Resolution**).

30.2 The **Council** must notify the auditor (if any) as soon as possible that a **Circular Resolution** has or will be put to members, and set out the wording of the resolution.

30.3 **Circular Resolutions** cannot be used:

- (a) for a resolution to remove an auditor, appoint a **Councillor** or remove a **Councillor**;
- (b) for passing a **special resolution**,
- (c) where the **Corporations Act** or this constitution requires a meeting to be held; or
- (d) it is otherwise impracticable or inappropriate to use a **Circular Resolution**.

30.4 A **Circular Resolution** is passed if all the **Voting Members** entitled to vote on the resolution sign or agree to the **Circular Resolution**, in the manner set out in clause 30.5 or clause 30.6.

- 30.5 Members may sign:
- (a) a single document setting out the **Circular Resolution** and containing a statement that they agree to the resolution; or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 30.6 The **Company** may send a **Circular Resolution** by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## 31. Voting at general meetings

- 31.1 Each **Voting Member** has one vote.
- 31.2 Voting must be conducted and decided by:
- (a) a show of hands;
  - (b) a vote in writing; or
  - (c) another method chosen by the **Chairperson** that is fair and reasonable in the circumstances.
- 31.3 Before a vote is taken, the **Chairperson** must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.
- 31.4 On a show of hands, the **Chairperson's** decision is conclusive evidence of the result of the vote.
- 31.5 The **Chairperson** and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.
- 31.6 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:
- (a) at least five members present;
  - (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded); or
  - (c) the **Chairperson**.
- 31.7 A vote in writing must be taken at the time and in the manner the **Chairperson** directs, unless clause 31.8 applies.
- 31.8 A vote in writing must be held immediately if it is demanded under clause 31.6:
- (a) for the election of a **Chairperson**; or
  - (b) to decide whether to adjourn the meeting.
- 31.9 A demand for a vote in writing may be withdrawn.

## 32. Appointment of proxy

- 32.1 Each **Voting Member** shall be entitled to appoint a proxy by notice given to the **Company** at its registered address (including an email address) specified in the notice of the meeting no later than forty-eight (48) hours before the time of the meeting in respect of which the proxy is appointed.
- 32.2 The notice appointing the proxy shall be in the form set out in Appendix 1.
- 32.3 A proxy does not need to be a member.
- 32.4 A proxy appointed to attend and vote for a **Voting Member** has the same rights as the **Voting Member** in relation to voting and speaking at the meeting.
- 32.5 A proxy does not have the authority to speak and vote for a **Voting Member** at a meeting while the **Voting Member** is at the meeting.
- 32.6 Unless the **Company** receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing **Voting Member**:
- (a) dies;
  - (b) is mentally incapacitated;
  - (c) revokes the proxy's appointment; or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 32.7 A proxy appointment may specify the way the proxy must vote on a particular resolution.
- 32.8 A **Voting Member** may appoint a proxy in accordance with clause 32.1 and specify that the proxy is a standing proxy. If a standing proxy is nominated, the proxy may undertake all roles contemplated in this clause until the **Voting Member** provides written notice to the **Council** that the standing proxy is no longer required.
- 33. Challenge to Voting Member's right to vote**
- 33.1 The **Chairperson** or a member may only challenge a **Voting Member's** right to vote at an **Annual General Meeting** or **general meeting**.
- 33.2 If a challenge is made under clause 33.1, the **Chairperson** must decide whether or not the person may vote. The **Chairperson's** decision is final and is not open to appeal.

## Council

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### **34. Members of Council**

- 34.1 For the purposes of the **Corporations Act**, the **Councillors** are the directors of the **Company**.
- 34.2 The **Company** must have at least three (3) and no more than eleven (11) **Councillors**.
- 34.3 Subject to clause 34.7 **Council** will be comprised as follows:
- (a) up to eight (8) **Councillors** elected in accordance with clause 38;

- (b) the individual who is the Chair of ANZSPM's Aotearoa (New Zealand) Committee from time to time; and
  - (c) up to two (2) **Councillors** appointed in accordance with clause 34.5(a)
- 34.4 The composition of **Council** must be such that:
- (a) no more than three (3) elected or appointed members of **Council** may be from any one State or Territory in Australia;
  - (b) at least two (2) but no more than three (3) **Councillors** may be from New Zealand; and
  - (c) at least one **Councillor** is training to become a specialist in Palliative Medicine.
- 34.5 Without limiting clause 34.4, the **Council** may appoint up to two (2) **Councillors**, including:
- (a) a member who is required to satisfy the composition requirements set out in this clause 34; or
  - (b) by having regard to policies external to this constitution (including a skills matrix of ANZSPM **Councillors**),
- and making nominations on this basis.
- 34.6 The **Councillors** may appoint a person as a **Councillor** to fill a casual vacancy if that person:
- (a) is a member of the **Company**;
  - (b) gives the **Company** their signed consent to act as a director of the **Company**; and
  - (c) is not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 34.7 If the number of **Councillors** is reduced to fewer than three (3) or is less than the number required for a quorum, the continuing **Councillors** may act for the purpose of increasing the number of **Councillors** to three (or higher if required for a quorum) or calling a general meeting, but for no other purpose.

## **Ex Officio Council Members**

- 34.8 The individual who is from time to time the President of the Chapter of Palliative Medicine of the Royal Australasian College of Physicians shall be an ex-officio observer member of **Council**, eligible to attend **Council** meetings but not eligible to vote at those meetings.

## **35. President**

- 35.1 The President is the **Company's** elected **Chairperson**.
- 35.2 Upon retirement of the President, the President-Elect will take the President's place, and his or her term in office will commence from that date.

## **36. Term of office - President-Elect, President and Past-President**

- 36.1 During the first year of any President's term of office, the **Council** must elect a **Councillor** as President-Elect.



- 36.2 The President-Elect will hold that position from the **Annual General Meeting** after their election until the following **Annual General Meeting**. At the conclusion of that following **Annual General Meeting**, the President-Elect will become President.
- 36.3 The President will hold office from the conclusion of the **Annual General Meeting** at which the previous President's term ended until the conclusion of the **Annual General Meeting** two (2) years thereafter, when they will become Past-President.
- 36.4 The Past-President will hold that position from the conclusion of the relevant **Annual General Meeting** until the conclusion of the **Annual General Meeting** one (1) year later.
- 36.5 If the President retires early, the **Council** may appoint a **Councillor** as interim President for the remainder of the retiring President's term.
- 36.6 Upon completion of an interim President's term, the interim President will become Past-President.

### 37. Term of office - Other members of Council

- 37.1 At each **Annual General Meeting**:
- (a) any **Councillor** appointed by the **Council** to fill a casual vacancy under clause 34.6 or under clause 34.7 must retire; and
  - (b) at least one-third of the remaining **Councillors** referred to in clause 34.3 must retire (excluding the individual who is from time to time the Chair of the ANZSPM's Aotearoa (New Zealand) Committee).
- 37.2 Each elected **Councillor** is to hold office from the conclusion of the **Annual General Meeting** until the conclusion of the **Annual General Meeting** two years following the date of the relevant **Councillor's** election, when (s)he shall retire.
- 37.3 **Councillors** who are due to retire at any **Annual General Meeting** shall, in the absence of disqualification for any reason set out in this constitution, be eligible for re-election, provided that no elected **Councillor** may serve on **Council** as an elected **Councillor** for more than six (6) consecutive years.
- 37.4 A **Councillor** appointed by the **Council** under clause 34.5 will hold office for two (2) years from the date of the relevant **Councillor's** appointment. Such a **Councillor** is eligible for reappointment by the **Council** under clause 34.5, provided that no appointed **Councillor** may serve on **Council** as a **Councillor** appointed under clause 34.5 for more than six (6) consecutive years.
- 37.5 For the avoidance of doubt, an individual may not serve as a **Councillor** for more than six (6) consecutive years regardless of whether, in that six (6) year period, they hold office as an elected **Councillor** or as a **Councillor** appointed under clause 34.5.

### 38. Election of Council members

- 38.1 Apart from the **Councillors** appointed under the constitution of the **Company**, the members may elect a **Councillor** by a resolution passed in an **Annual General Meeting**.
- 38.2 Each of the **Councillors** must be appointed by a separate resolution, unless:
- (a) the members present have first passed a resolution that the appointments may be voted on together; and

- (b) no votes were cast against that resolution.
- 38.3 A person is eligible for election as a **Councillor** if they:
- (a) are at least eighteen (18) years of age;
  - (b) are a **Voting Member**;
  - (c) are nominated by two **Voting Members**;
  - (d) give the **Company** their signed consent to act as a director of the **Company**; and
  - (e) are not ineligible to be a director under the **Corporations Act** or the **ACNC Act**.
- 38.4 In addition to the above, nominations for elected **Councillors** must:
- (a) be made in writing on the nomination form provided by the **Secretary**; and
  - (b) be delivered to the **Secretary** by no later than fourteen (14) days before the date fixed for the holding of the **Annual General Meeting** at which the election is to take place.
- 38.5 All nominees will be elected if the number of nominations received is equal to the number of vacancies to be filled.
- 38.6 All nominees will be elected if there are insufficient nominations received to fill the number of vacancies. Any vacant positions remaining are taken to be casual vacancies that can be appointed by **Council**.
- 38.7 If the number of nominations received exceeds the number of vacancies to be filled, a ballot is to be held at the **Annual General Meeting**. The names of the nominees will be circulated to members no later than seven (7) days before the date set down for the **Annual General Meeting**.
- 38.8 The ballot for the election of members of the **Council** is to be conducted at the **Annual General Meeting** in such usual and proper manner as the **Council** may direct.
- 39. When a Councillor stops being a Councillor**
- 39.1 A **Councillor** stops being a **Councillor** if they:
- (a) give written notice of resignation as a **Councillor** to the **Company**;
  - (b) die;
  - (c) are removed as a **Councillor** by a resolution of the members;
  - (d) stop being a member of the **Company**;
  - (e) are absent for three (3) consecutive **Council** meetings without approval from the **Council**; or
  - (f) become ineligible to be a director of the company under the **Corporations Act** or the **ACNC Act**.

## Powers of Council

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#### **40. Powers of Councillors**

- 40.1 The **Councillors** are responsible for managing and directing the activities of the company to achieve the purpose(s) set out in clause 6.
- 40.2 The **Councillors** may use all the powers of the **Company** except for powers that, under the **Corporations Act** or this constitution, may only be used by members.
- 40.3 The **Councillors** must decide on the responsible financial management of the **Company** including:
- (a) any suitable written delegations of power under clause 41; and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.
- 40.4 The **Councillors** cannot remove a **Councillor** or auditor. **Councillors** and auditors may only be removed by a members' resolution at a **general meeting**.

#### **41. Delegation of Councillors' powers**

- 41.1 The Councillors must establish the ANZSPM Aotearoa (New Zealand) Committee to support the **Company's** activities in New Zealand, and may establish other committees.
- 41.2 The **Councillors** may delegate any of their powers and functions to a committee (including to the ANZSPM Aotearoa (New Zealand) Committee), a **Councillor**, an employee of the **Company** (such as a chief executive officer) or any other person, as they consider appropriate.
- 41.3 The delegation must be recorded in the **Company's** minute book.

#### **42. Payments to Councillors**

- 42.1 The **Company** must not pay fees to a **Councillor** for acting as a director.
- 42.2 The **Company** may:
- (a) pay a **Councillor** for work they do for the **Company**, other than as a **Councillor**, if the amount is no more than a reasonable fee for the work done; or
  - (b) reimburse a **Councillor** for expenses properly incurred by the **Councillor** in connection with the affairs of the **Company**.
- 42.3 Any payment made under clause 42.2 must be approved by the **Councillors**.
- 42.4 The **Company** may pay premiums for insurance indemnifying **Councillors**, as allowed for by law (including the **Corporations Act**) and this constitution.

#### **43. Execution of documents**

- 43.1 The **Company** may execute a document without using a common seal if the document is signed by:
- (a) two **Councillors** of the **Company**, or
  - (b) a **Councillor** and the **Secretary**.

## Duties of Councillors

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### 44. Duties of Councillors

- 44.1 The **Councillors** must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in Governance Standard 5 of the regulations made under the **ACNC Act** which are:
- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the **Company**;
  - (b) to act in good faith in the best interests of the **Company** and to further the charitable purpose(s) of the **Company** set out in clause 6;
  - (c) not to misuse their position as a **Councillor**;
  - (d) not to misuse information they gain in their role as a **Councillor**;
  - (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 45;
  - (f) to ensure that the financial affairs of the **Company** are managed responsibly; and
  - (g) not to allow the **Company** to operate while it is insolvent.

### 45. Conflicts of interest

- 45.1 A **Councillor** must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a **Council** meeting (or that is proposed in a **Circular Resolution**):
- (a) to the other **Councillors**; or
  - (b) if all of the **Councillors** have the same conflict of interest, to the members at the next **Annual General Meeting** or **general meeting**, or at an earlier time if reasonable to do so.
- 45.2 The disclosure of a conflict of interest by a **Councillor** must be recorded in the minutes of the meeting.
- 45.3 Each **Councillor** who has a material personal interest in a matter that is being considered at a meeting of **Council** (or that is proposed in a circular resolution) must not, except as provided under clause 45.4:
- (a) be present at the meeting while the matter is being discussed; or
  - (b) vote on the matter.
- 45.4 A **Councillor** may still be present and vote if:
- (a) their interest arises because they are a member of the **Company**, and the other members have the same interest;
  - (b) their interest relates to an insurance contract that insures, or would insure, the **Councillor** against liabilities that the **Councillor** incurs as a director of the **Company**;

- (c) their interest relates to a payment by the **Company** under clause 56, or any contract relating to an indemnity that is allowed under the **Corporations Act**;
- (d) the Australian Securities and Investments Commission (**ASIC**) makes an order allowing the **Councillor** to vote on the matter; or
- (e) the **Councillors** who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the **Councillor**, the nature and extent of the **Councillor's** interest in the matter and how it relates to the affairs of the **Company**; and
  - (ii) says that those **Councillors** are satisfied that the interest must not stop the **Councillor** from voting or being present.

## Meetings of Council

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### 46. When the Councillors meet

46.1 The **Councillors** may decide how often, where and when they meet.

### 47. Calling Councillors' meetings

47.1 A **Councillor** may call a **Council** meeting by giving reasonable notice to all of the other **Councillors**.

47.2 A **Councillor** may give notice in writing or by any other means of communication that has previously been agreed to by all of the **Councillors**.

### 48. Chairperson for Councillors' meetings

48.1 The President is entitled to chair **Council** meetings.

48.2 The President-Elect or Past-President (as relevant) will be the **Chairperson** for a meeting if the President is:

- (a) not present within thirty (30) minutes after the starting time set for the meeting, or
- (b) present but does not want to act as **Chairperson** of the meeting

### 49. Quorum at Councillors' meetings

49.1 Unless the **Councillors** determine otherwise, the quorum for a **Council** meeting is a majority (more than 50%) of **Councillors**.

49.2 A quorum must be present for the whole **Council** meeting.

### 50. Using technology to hold Councillors' meetings

50.1 The **Councillors** may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the **Councillors**.

50.2 The **Councillors'** agreement may be a standing (ongoing) one.

50.3 A **Councillor** may only withdraw their consent within a reasonable period before the meeting.

## 51. Passing Councillors' resolutions

51.1 A **Councillors'** resolution must be passed by a majority of the votes cast by **Councillors** present and entitled to vote on the resolution.

## 52. Circular resolutions of Councillors

52.1 The **Councillors** may pass a circular resolution without a **Councillors'** meeting being held.

52.2 A circular resolution is passed if all the **Councillors** entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 52.3 or clause 52.4.

52.3 Each **Councillor** may sign:

- (a) a single document setting out the resolution and containing a statement that they agree to the resolution; or
- (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.

52.4 The **Company** may send a **circular resolution** by email to the **Councillors** and the **Councillors** may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.

52.5 A **circular resolution** is passed when the last **Councillor** signs or otherwise agrees to the resolution in the manner set out in clause 52.3 or clause 52.4.

## 53. Secretary

53.1 The **Company** must have at least one **Secretary**, who may also be a **Councillor**.

53.2 A Secretary must be appointed by the **Councillors** (after giving the **Company** their signed consent to act as **Secretary** of the **Company**) and may be removed by the **Councillors**.

53.3 The **Councillors** must decide the terms and conditions under which the **Secretary** is appointed, including any remuneration.

53.4 The role of the **Secretary** includes:

- (a) maintaining a register of the **Company's** members; and
- (b) maintaining the minutes and other records of **general meetings** (including notices of meetings), **Council** meetings and Circular Resolutions.

53.5 Only an individual who is at least eighteen (18) years of age may be appointed as **Secretary**.

## Minutes and records

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### 54. Minutes and records

54.1 The **Company** must, within one month, make and keep the following records:

- (a) minutes of proceedings and resolutions of **general meetings**;

- (b) minutes of **Circular Resolutions** of members;
  - (c) a copy of a notice of each **general meeting**; and
  - (d) a copy of a members' statement distributed to members under clause 29.
- 54.2 The **Company** must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of **Councillors'** meetings (including meetings of any committees), and
  - (b) minutes of **Circular Resolutions** of **Councillors**.
- 54.3 To allow members to inspect the **Company's** records:
- (a) the **Company** must give a member access to the records set out in clause 54; and
  - (b) the **Councillors** may authorise a member to inspect other records of the **Company**, including records referred to in clause 54.2 and clause 55.1.
- 54.4 The **Councillors** must ensure that minutes of a **general meeting** or a **Council** meeting are signed within a reasonable time after the meeting by:
- (a) the **Chairperson** of the meeting; or
  - (b) the **Chairperson** of the next meeting.
- 54.5 The **Councillors** must ensure that minutes of the passing of a **Circular Resolution** (of members or **Council**) are signed by a **Councillor** within a reasonable time after the resolution is passed.
- 55. Financial and related records**
- 55.1 The **Company** must make and keep written financial records that:
- (a) correctly record and explain its transactions and financial position and performance; and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 55.2 The **Company** must also keep written records that correctly record its operations.
- 55.3 The **Company** must retain its records for at least 7 years.
- 55.4 The **Councillors** must take reasonable steps to ensure that the **Company's** records are kept safe.

## Indemnity, insurance and access

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### 56. Indemnity

- 56.1 The **Company** indemnifies each officer of the **Company** out of the assets of the company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the **Company**.
- 56.2 In this clause, '**officer**' means a director or **Secretary** and includes a director or **Secretary** after they have ceased to hold that office.

56.3 In this clause, 'to the relevant extent' means:

- (a) to the extent that the **Company** is not precluded by law (including the **Corporations Act**) from doing so, and
- (b) for the amount that the officer is not otherwise entitled to be indemnified and is not actually indemnified by another person (including an insurer under an insurance policy).

56.4 The indemnity is a continuing obligation and is enforceable by an officer even though that person is no longer an officer of the **Company**.

## 57. Insurance

57.1 To the extent permitted by law (including the **Corporations Act**), and if the **Council** consider it appropriate, the **Company** may pay or agree to pay a premium for a contract insuring a person who is or has been an officer of the **Company** against any liability incurred by the person as an officer of the **Company**.

## 58. Councillors' access to documents

58.1 A **Councillor** has a right of access to the financial records of the **Company** at all reasonable times.

58.2 If the **Council** agrees, the **Company** must give a **Councillor** or former **Councillor** access to:

- (a) certain documents, including documents provided for or available to the **Councillors**; and
- (b) any other documents referred to in those documents.

## By-laws

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### 59. By-laws

59.1 The **Councillors** may pass a resolution to make by-laws to give effect to this constitution.

59.2 Members and **Councillors** must comply with by-laws as if they were part of this constitution.

## Notice

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### 60. What is notice

60.1 Anything written to or from the **Company** under any clause in the constitution of the **Company** is written notice and is subject to clauses 61 to 63 unless specified otherwise.

60.2 Clauses 61 to 63 do not apply to a notice of proxy.

### 61. Notice to the company

61.1 Written notice or any communication under this constitution may be given to the **Company**, the **Councillors** or the secretary by:



- (a) delivering it to the **Company's** registered office;
- (b) posting it to the **Company's** registered office or to another address chosen by the **Company** for notice to be provided;
- (c) sending it to an email address or other electronic address notified by the company to the members as the **Company's** email address or other electronic address; or
- (d) sending it to the fax number notified by the company to the members as the **Company's** fax number.

## 62. Notice to members

62.1 Written notice or any communication under this constitution may be given to a member:

- (a) in person;
- (b) by posting it to, or leaving it at the address of the member in the register of members or an alternative address (if any) nominated by the member for service of notices;
- (c) sending it to the email or other electronic address nominated by the member as an alternative address for service of notices (if any);
- (d) sending it to the fax number nominated by the member as an alternative address for service of notices (if any); or
- (e) if agreed to by the member, by notifying the member at an email or other electronic address nominated by the member, that the notice is available at a specified place or address (including an electronic address).

62.2 If the **Company** does not have an address for the member, the **Company** is not required to give notice in person.

## 63. When is notice taken to be given

63.1 A notice:

- (a) delivered in person, or left at the recipient's address, is taken to be given on the day it is delivered;
- (b) sent by post, is taken to be given on the third day after it is posted with the correct payment of postage costs;
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent; and
- (d) given under clause 62.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Winding up

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## 64. Surplus assets not to be distributed to members

- 64.1 If the **Company** is wound up, any surplus assets must not be distributed to a member or a former member of the **Company**, unless that member or former member is a charity described in clause 65.1.
- 65. Distribution of surplus assets**
- 65.1 Subject to the **Corporations Act** and any other applicable legislation, and any court order, any **surplus assets** that remain after the **Company** is wound up must be distributed to one or more charities:
- (a) with charitable purpose(s) similar to, or inclusive of, the purposes in clause 6; and
  - (b) which also prohibit the distribution of any **surplus assets** to its members to at least the same extent as the **Company**.
- 65.2 The decision as to the charity or charities to be given the **surplus assets** must be made by a **special resolution** of members at or before the time of winding up. If the members do not make this decision, the **Company** may apply to the Supreme Court to make this decision.

## Definitions

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### 66. Definitions

In this constitution:

**ACNC Act** means the *Australian Charities and Not-for-profits Commission Act 2012* (Cth).

**Admission Fee** means the admission fee referred to in clause 19.

**Annual General Meeting** means a general meeting held in accordance with the requirements of clause 25.1.

**Chairperson** means the person fulfilling that role as described in clauses 27 and 48, and as otherwise described in this constitution.

**Circular Resolution** means a resolution that is proposed for consideration and passing in the absence of a general meeting being held.

**Company** means the **Company** referred to in clause 1.

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

**Council** means the Councillors acting collectively.

**Councillor** means a director of the **Company**.

**general meeting** means a meeting of the members and includes an **Annual General Meeting** and a General Meeting.

**Palliative Medicine** is the medical assessment and management of patients with active, progressive, far-advanced disease for whom the prognosis is limited and the focus of care is the quality of life, working collaboratively with multidisciplinary health professionals.

**registered charity** means a charity that is registered under the ACNC Act.

**Registered Medical Practitioner** means an individual who is registered and entitled to practice as a medical practitioner in Australia or New Zealand.

**Resumed Meeting** means a general meeting that has been adjourned to the date, time and place specified by the Chairperson of that meeting in accordance with clause 27.5.

**Secretary** means the person fulfilling that role as described in clause 53.

**special resolution** means a resolution:

- (a) of which notice has been given under clause 26.4, and
- (b) that has been passed by at least 75% of the votes cast by **members present** and entitled to vote on the resolution.

**Subscription Fee** means the subscription fee referred to in clause 19.

**surplus assets** means any assets of the **Company** that remain after paying all debts and other liabilities of the **Company**, including the costs of winding up.

**Voting Member** means a class of member that is entitled under this constitution to vote at general meetings, and is limited to Full, Trainee, Honorary Life or Retired Members.

## 67. Reading this constitution with the Corporations Act

- 67.1 The replaceable rules set out in the **Corporations Act** do not apply to the **Company**.
- 67.2 While the **Company** is a **registered charity**, the **ACNC Act** and the **Corporations Act** override any clauses in the constitution of the **Company** which are inconsistent with those Acts.
- 67.3 If the **Company** is not a **registered charity** (even if it remains a charity), the **Corporations Act** overrides any clause in constitution of the **Company** which is inconsistent with that Act.
- 67.4 A word or expression that is defined in the **Corporations Act**, or used in that Act and covering the same subject, has the same meaning as in constitution of the **Company**.

## 68. Interpretation

- 68.1 In this constitution:
  - (a) the words 'including', 'for example', or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression;
  - (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations); and
  - (c) any reference to a percentage of votes required to trigger an event (including, for instance, a general meeting, or resolution) is to be determined as at midnight the night prior to the relevant event occurring.

Appendix 1

*FORM OF APPOINTMENT OF PROXY FOR VOTING MEMBERS*

I.....of.....  
being a financial member of The Australian and New Zealand Society of Palliative  
Medicine Limited hereby

appoint ..... of  
.....being a financial member of The  
Australian and New Zealand Society of Palliative Medicine Limited as my proxy  
vote to vote for me on my behalf at the [Annual General Meeting] or [General  
Meeting] [**delete one**] of the **Company** to be held on the

..... day of .....20..... and at any  
adjournment of that meeting. My proxy is authorised to vote in favour of/against  
(delete as appropriate) the resolution

.....  
(details to be inserted if desired).

..... Signature of Voting Member appointing  
proxy

..... Date