

**Corporations Act 2001
A Public Company Limited by Guarantee
Constitution**

**Austcare
ACN 001 251 930**

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1 Nature of the Company

- 1.1 The Company is a public company limited by guarantee.
- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$50.00 to the assets of the Company if it is wound up while they are a Member, or within one year afterwards.

2 Objects

- 2.1 The objects of the Company are:
- (a) to work with people affected by conflict or natural disaster to enable them to claim their human rights, build human security, and empower them to escape poverty;
 - (b) to provide humanitarian assistance and protection to refugees and internally displaced persons;
 - (c) to engage the Australian public and work for sustainable change in less developed countries;
 - (d) to undertake any humanitarian and development assistance activities approved by the Board;
 - (e) to value the human rights of all people and contribute towards a more just, equitable and sustainable world;
 - (f) to raise money to further the aims of the Company and to secure sufficient funds for the objects of the Company;
 - (g) to receive any funds and to distribute these funds in a manner that best attains the objects of the Company; and
 - (h) to do all such things as are incidental or conducive to the operation of the Company and otherwise for the attainment of all or any of the objects of the Company.

3 Membership

Admission of Members

- 3.1 The Membership of the Company:
- (a) shall be unlimited in number;
 - (b) shall comprise only ordinary Members; and

- (c) subject to clause 4.2, may include such categories of ordinary Membership (such as “Life” or “Corporate” Membership) as the Members in Assembly may determine by ordinary resolution at a general meeting.

Becoming a Member

3.2 The following provisions apply to applications for admission as an ordinary Member:

- (a) membership is open to natural persons, companies and organisations, supportive of the objects of the Company and approved by the Board, or its duly authorised delegate, for admission to membership under and in accordance with this Constitution;
- (b) the application must be made by completing and signing the form approved for the purpose by the Board, and lodging it with the Secretary; and
- (c) upon lodging the application, the applicant must pay the relevant entrance fee (see clause 4).

3.3 In respect of each application for membership duly made in accordance with this Constitution:

- (a) the Board, or its duly authorised delegate, shall promptly after it is received from the applicant, consider whether to accept or reject the application;
- (b) the Board has the sole and absolute discretion to accept or reject the application for membership;
- (c) if the application is accepted by the Board or its duly authorised delegate, the applicant shall be admitted forthwith as a Member, and their details entered in the Register of Members and the applicant notified accordingly;
- (d) the Board does not have to give reasons for rejecting an application; and
- (e) if the application is rejected, all amounts paid by the applicant on account of the application shall be refunded in full.

Ongoing Member Obligations and Rights

3.4 The Members of the Company agree to be bound by the provisions of this Constitution.

3.5 For so long as a Member abides by the provisions of this Constitution, the Member shall enjoy the rights and privileges of membership under this Constitution and the Act, including the rights to receive notices of, and to attend and be heard at, and to vote (subject to the other provisions of this Constitution and relevant by-laws promulgated by the Board) at any general meeting of the Members in Assembly.

Register of Members

3.6 A Register of the Members must be kept in accordance with the Act.

3.7 Each Member is responsible to notify the Secretary in writing of any change in that Member's name, address, telephone or facsimile number within 1 month after the change.

4 Membership fee

4.1 Subject to clauses 4.2 and 4.3 the:

- (a) entrance fee, payable upon admission to any category of Membership; and
- (b) annual subscription, payable upon renewal of Membership in any category of Membership,

is the amount determined by the Board from time to time.

4.2 The Board may determine differential entrance and annual subscription fees for:

- (a) any different categories of ordinary Membership which may be created as contemplated by clause 3.1(c); and
- (b) individuals and Corporate Members.

4.3 The Board may vary the nature and frequency of Membership fees payable.

5 Resignation, Removal and Cessation of Membership

Resignation

5.1 A Member may resign from membership of the Company by giving written notice to the Secretary, and:

- (a) the resignation shall take effect from the date of receipt of the notice of resignation or such later date as may be stated in the notice; and
- (b) the Member's liability for any fees, subscriptions or other moneys in arrears at the date of such resignation shall continue until discharged by payment.

Removal from Membership

5.2 A Member may be removed by ordinary resolution of the Members in Assembly, provided that:

- (a) the Board has first, pursuant to an ordinary resolution of the Board, given at least one month's written notice to the Member of the intention to terminate his/her membership and the grounds for the intended termination;
- (b) the Member has been invited in the written notice to provide to the Board any written representations which the Member wishes to be put to the meeting of the Members in Assembly;
- (c) the Board has included a copy of the Member's representations in the notice calling the meeting of the Members in Assembly (unless they were not provided by the Member in sufficient time);
- (d) if copies of the representations have not been included in the notices of meeting, for any reason, the Member may require the representations to be read out at the meeting; and

- (e) whether or not representations have been circulated or read, the Member must be given a reasonable and fair opportunity to address the meeting.

Other Cessation of Membership

5.3 A Member also ceases to be a Member, in the case of bodies corporate:

- (a) upon the dissolution of the Member; or
- (b) upon the winding-up of the Member.

6 No Profits for Members

Transfer of Income or Property

6.1 Subject to clause 6.2, all of the assets and income of the Company shall be applied solely in the furtherance of the objects of the Company and no portion shall be distributed directly or indirectly to any Member.

Payments for Services

6.2 Nothing in clause 6.1 prevents the payment, in good faith, of an amount, calculated on arms length terms, in respect of:

- (a) remuneration payable to an employee of the Company, who is also a Member's Representative under clause 9, for services actually rendered to the Company; or
- (b) goods or services actually supplied to the Company by a Member in the ordinary and usual course of the Member's business.

7 Members in Assembly (general meetings of Members)

Nature of the Members in Assembly

7.1 References in this Constitution to the Members in Assembly shall, for the purposes of the Act, be a reference to a General Meeting of the Members.

Convening of Meetings of Members in Assembly

7.2 The Secretary must comply with a request to convene a general meeting of the Members in Assembly on:

- (a) the request of the President or any 2 Directors of the Company; or
- (b) a requisition signed by not less than 5% of the Members entitled to vote at a general meeting of the Members in Assembly at the relevant time, provided that such requisition clearly states the nature of the business to be transacted and the reasons why a special meeting is required.

Notice of Meetings of Members in Assembly

7.3 Notice convening a general meeting of the Members in Assembly:

- (a) may be given by any form of communication permitted by the Act;
- (b) must be given at least 21 days prior to the date of the meeting;
- (c) must specify the place, the day and the hour of meeting, the general nature of the business to be transacted and any other matters as are required by the Act; and
- (d) in the case of an AGM, must include at least the following items of business:
 - (i) receipt and adoption of the statement of accounts and balance sheet;
 - (ii) election of the auditor or auditors and the fixing of the auditor's remuneration; and
 - (iii) election of Directors.

7.4 The accidental omission to give notice of any Meeting of Members in Assembly to, or the non receipt of a notice by, a person entitled to receive notice does not invalidate a resolution passed at the Assembly.

Quorum at Meetings of Members in Assembly

7.5 A quorum for the purposes of a general meeting of Members in Assembly shall be at least 5 Members, whether present personally or by proxy.

7.6 If a quorum is not present within half an hour from the time appointed for the meeting or a longer period allowed by the President:

- (a) if the meeting was convened by or on the requisition of Members, it must be dissolved; or
- (b) in any other case it must stand adjourned to the time and place advised by the President or that subsequently determined by the Board and notified to the Members by at least 7 days' notice given in the same manner as that of the original meeting.

7.7 If at the adjourned meeting a quorum is not present within half an hour after the time appointed for the meeting, the meeting must be dissolved.

Appointment of President and Powers of President

7.8 The President or, in his/her absence, the Vice-President, shall preside at every general meeting of Members in Assembly.

7.9 If for any reason neither the President nor Vice-President is present within 15 minutes of the time nominated for the meeting to start, the Members who are present and entitled to vote at the meeting shall select one of their own who is present to chair the meeting.

7.10 The chair of a meeting of Members in Assembly may, in his/her discretion, expel any person from a general meeting if the chair reasonably considers that the person's conduct is inappropriate.

No Casting Vote for President

7.11 The President of a meeting of Members in Assembly is not entitled to a second or casting vote on any resolutions, whether by show of hands or on a poll.

Adjournment of Assembly

7.12 The President may, with the consent of any meeting of Members in Assembly at which a quorum is present, adjourn the meeting to another time and to another place, provided that:

- (a) the only business that may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place;
- (b) when a meeting is adjourned for 30 days or more notice of the adjourned meeting must be given to all Members as in the case of the original meeting; and
- (c) when a meeting is adjourned for less than 30 days a further notice of the adjourned meeting is not necessary.

Voting on show of hands

7.13 All resolutions put to the vote of a general meeting of Members in Assembly must be decided on a show of hands unless a poll is demanded in accordance with clause 7.17.

7.14 On a show of hands, each Member present in person, and who is not more than 1 month in arrears in respect of any fees due by that Member, has one vote.

7.15 On a show of hands, a declaration by the President that a resolution has been carried or carried unanimously, or by a particular majority, or lost, and recorded in the minutes of the proceedings of the Company, is conclusive evidence of the fact.

Vote on a Poll

7.16 Subject to clause 7.17, a poll may be demanded in respect of a resolution at a general meeting of the Members in Assembly:

- (a) by the President; or
- (b) by at least 3 Members present and entitled to vote on the resolution.

7.17 The only times at which a poll properly may be demanded are:

- (a) before the vote on that resolution is taken;
- (b) before the result is declared on a show of hands; or
- (c) immediately after the result is declared on a show of hands.

7.18 On a poll each Member present in person or by proxy, and who is not more than 1 month in arrears in respect of any fees due by that Member, has one vote.

7.19 If a poll is duly demanded, it must be taken in the manner and, except as to the election of a President or on a question of adjournment, either at once or after an

interval or adjournment or otherwise as the President directs. The result of the poll is the resolution of the meeting at which the poll is demanded.

- 7.20 A poll demanded on the election of a President or on a question of adjournment must be taken immediately.
- 7.21 The President, in his/her discretion may expel any Member or Director from a general meeting of the Members in Assembly if the President reasonably considers that the Member or Director's conduct is inappropriate behaviour

8 Proxies

Proxies

- 8.1 At meetings of Members in Assembly, each Member may attend and, vote in person or by proxy.
- 8.2 A person attending as a proxy shall be deemed to have all the powers of the relevant Member, except where expressly stated to the contrary in this Constitution or the Act, or in the proxy.

Appointment of Proxies

- 8.3 A Member may appoint another person as their proxy to attend and vote in his/her place at a meeting of Members in Assembly.
- 8.4 The proxy must be appointed in writing, in the form required by the Board, and signed by the Member appointing the proxy.
- 8.5 If the document appointing a proxy specifies the manner in which the proxy is to vote in respect of a particular resolution, the proxy is not entitled to vote on the resolution otherwise than in the manner specified in the document.

Verification of Proxies

- 8.6 Notwithstanding any other provision, a proxy shall be deemed to be invalid unless the following provisions are fulfilled:
- (a) each Member appointing a proxy must send or deliver to the Company's registered office, for receipt no later than 2 business days before the time for holding the meeting or adjourned meeting at which the proxy proposes to vote, the following:
 - (i) the document appointing the proxy; and
 - (ii) if the appointment is signed by the Member's attorney, the authority under which the appointment was signed or a certified copy of that authority.
 - (b) the required documents must be either sent or delivered to the Company's office address, fax number or electronic address, and marked to the attention of the relevant person, as specified for that purpose in the notice convening the meeting.

Revocation of Appointment of proxy

8.7 A vote given in accordance with the terms of a proxy document or power of attorney is valid in spite of:

- (a) the death of the appointor; or
- (b) the revocation of the instrument or of the authority under which the instrument was executed,

except where the Secretary has been notified in writing of such event before the commencement of the meeting or adjourned meeting at which the proxy is used, in which case the proxy shall be deemed to be invalid.

9 Members' Representatives

9.1 A Corporate Member may appoint an individual person as a representative to exercise all or any of the powers of the Member under this Constitution or otherwise at law and:

- (a) the appointment may be a standing one;
- (b) the appointment may set out restrictions on the Representative's powers;
- (c) if the appointment is to be by reference to a position held, the appointment must identify the position; and
- (d) a Member may appoint more than 1 Representative but only 1 Representative may exercise the Member's powers at any one time.

9.2 Unless otherwise specified in the document of appointment, the Representative may exercise, on the Member's behalf, all of the powers that the Member could exercise at a meeting of the Members in Assembly or in voting on a resolution.

10 Board of Directors as governing body

10.1 The governance of the Company shall be the responsibility of the Board duly elected and appointed under and in accordance with this Constitution.

10.2 The Directors may exercise all of the powers of the Company which are not, by the Act or by this Constitution, required to be exercised by the Members in Assembly.

Number of Directors

10.3 There shall be shall be a minimum of 5 and a maximum of 9 Directors of the Company, together called the "Board", comprising:

- (a) the President;
- (b) the Vice-President; and
- (c) at least 3 and up to 7 other Directors.

- 10.4 The Company may, by ordinary resolution of its Members in Assembly, increase or decrease the minimum or maximum number of Directors (provided that the minimum must not fall below 3 as required by the Act) and may also determine in what rotation the Directors appointed as the result of any such alteration are to go out of office.

Eligibility for Election as a Director

- 10.5 A person is only eligible for election (or re-election) or appointment (or re-appointment) as a Director if the person:
- (a) is a Member;
 - (b) is not an employee of the Company or of any related entity employing staff of the Company; and
 - (c) has not then already served the maximum number of consecutive terms of office (see clause 10.7), unless a period of at least 12 months has passed since expiry of that person's last term of office as a Director.

Rotational Terms of Office of Directors

- 10.6 There shall be a rotational system of 3 year terms of office for each Director (including the President and Vice-President) so that each Director shall serve for a period of approximately 3 years from election or appointment, upon expiry of which term they must retire from office but shall be eligible for re-election provided that they are not then disqualified by law or by this Constitution from being re-elected.

Maximum Number of Consecutive Terms of Office for Directors, President and Vice-President

- 10.7 Subject to clause 10.11, the maximum number of consecutive 3 year terms of office which a person may serve as a Director (Maximum Number of Consecutive Terms of Office) is:
- (a) 3 in the case of a person elected as a Director;
 - (b) 3 in the case of a person elected as Vice-President provided that, for the avoidance of doubt, a person may serve a total of 3 consecutive terms as a Director, including up to 3 consecutive terms as Vice-President; and
 - (c) 3 in the case of a person elected as President, provided that, for the avoidance of doubt, a person may serve a total of 3 consecutive terms as a Director, including up to 3 consecutive terms as President.

Election of Directors

- 10.8 Subject to clauses 22 relating to the election of Directors in 2008 – 2011 inclusive, the election of the Elected Directors by Members to take effect at each AGM shall take place in the following manner:
- (a) a ballot of the Members shall, unless otherwise determined by the Board, be held at the AGM of the Members in Assembly and if so, subject to this clause, the ballot shall be conducted on a first past the post basis, in the manner determined from time to time by the Board;

- (b) the Board shall notify the Members at least 2 months prior to the date of the relevant AGM of the call for nominations for election as an Elected Director;
 - (c) all nominations for election as an Elected Director must be in writing and signed by at least 1 voting Member and also signed by the nominee consenting to such nomination and shall be delivered to and lodged with the Secretary not less than 28 days prior to the date fixed for the holding of the relevant AGM; and
 - (d) only persons who are eligible for election or appointment as an Elected Director under this Constitution may be nominated to stand for election.
- 10.9 The results of the election ballot shall be declared at, and take effect from the close of, the relevant AGM.
- 10.10 Notwithstanding the results of the ballot declared at the AGM, if any positions for Elected Directors are not filled, nominations for such position or positions may be accepted from the floor of the AGM and the election of such persons to the Board determined by resolution of the Members.

Filling Casual Vacancies of Directors

- 10.11 The Board may at any time appoint a person eligible to stand for election as a Director, to be a Director to fill a casual vacancy
- (a) created by the early retirement of an Elected Director;
 - (b) resulting from a vacant position for an Elected Director on the Board not having been filled at an AGM; or
 - (c) in any other circumstances where the maximum number of Elected Directors on the Board will not be exceeded as a result of the appointment, as an addition to the existing Directors.
- 10.12 If a Director has been duly appointed to fill a casual vacancy for an Elected Director's position:
- (a) that Director shall, notwithstanding any other provision, be required to retire, but be eligible for election, at the next AGM following his/her appointment;
 - (b) if his/her appointment was to fill a casual vacancy of a position which would have expired at some time after that AGM if:
 - (i) the position had been filled at a prior AGM; or
 - (ii) having been filled at a prior AGM, had not been vacated early,then the Director shall be eligible for re-election at the AGM for a term expiring when the term of the vacant or vacated Director's position which they filled would have expired if the position had not been vacated or left vacant;
 - (c) in any other case the Director shall be eligible for re-election at the AGM for a 3 year term; and

- (d) For the purposes of determining when the Director has served the maximum number of terms of office under clause 10.7:
 - (i) the period between the Directors' appointment to fill a casual vacancy and his/her election at the next following AGM (if applicable) shall be disregarded; and
 - (ii) the first term served by the Director after his/her election at the next following AGM (if applicable) shall be deemed to be a 3 year term of office as Director notwithstanding that it may be for a period less than 3 years in the circumstances contemplated by clause 10.12(b).

Retirement and Removal from Office

10.13 A Director may retire from office by giving notice in writing to the Company of that Director's intention to retire. A notice of resignation takes effect at the time of receipt of the notice by the Company or, if another time is specified in the notice, at that time.

10.14 The Members may by ordinary resolution remove a Director from office and may by ordinary resolution appoint another person as a replacement.

Vacation of Office

10.15 Without limiting any other provision, the office of a Director becomes vacant if required by the Act or if the Director:

- (a) becomes an insolvent under administration;
- (b) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the law relating to mental health;
- (c) is absent without the consent of the Directors from the meetings of the Directors held during a continuous period of 6 months and the Board resolves that the office of that Director be vacated; or
- (d) becomes prohibited from being a Director by reason of an order made under the Act.

11 President and Vice-President

11.1 The President and the Vice-President shall be elected in accordance with clause 10.3.

11.2 The President shall, subject to the provisions of this Constitution and the Act, act as chairperson of the Board and the Members in Assembly.

11.3 The Vice-President shall, subject to the provisions of this Constitution and the Act, act in place of the President as chair of the Board on as needed basis.

12 Directors' Remuneration

Payment for Expenses

- 12.1 Directors shall not be entitled to be paid sitting fees for their role as Directors.
- 12.2 Directors shall however be entitled, on an equitable basis, to be reimbursed all travelling, accommodation, and other expenses properly incurred by them in attending and returning from meetings of the Board or any of its committees or general meetings or otherwise in the execution of their duties as Directors provided that such expenses have first been approved by the Board.

13 Proceedings of Directors

Convening of Directors' Meetings

- 13.1 The Board shall meet not less than 4 times per year and otherwise as necessary to discharge their duties and functions.
- 13.2 The President or any other 2 Directors may request the Secretary to convene a meeting of the Board at any time and the Secretary must comply with such request.
- 13.3 Notice of each meeting of the Directors must be given to each Director at least:
- (a) 14 days before a meeting; and
 - (b) in spite of (a) above, at least 24 hours before a meeting dealing with urgent business; or
 - (c) otherwise as determined by resolution of the Board, except in the case of a Director who is out of Australia or who has been given leave of absence from the Board.
- 13.4 A Directors' meeting may be called or held using any technology consented to by all the Directors. The consent may be a standing one. A Director may only withdraw their consent within a reasonable period before the meeting. The Directors may otherwise regulate their meetings as they think fit.

Quorum and Voting at Directors' meetings

- 13.5 A quorum for the purposes of a meeting of the Board is a simple majority of the Board as then constituted.
- 13.6 Questions arising at a meeting of the Board must be decided in the manner from time to time determined by the Board, and in the absence of any such agreement, by a majority of votes of Directors present and voting.

President of meetings

- 13.7 The President or, in his/her absence, the Vice-President, shall preside at every meeting of the Board.
- 13.8 If for any reason neither the President nor the Vice-President is present within 15 minutes of the time nominated for the Board meeting to start, the Directors who are

present and entitled to vote at the meeting shall select one of their number to chair the meeting.

President's Vote at Directors Meetings

13.9 The President does not have a second or casting vote at meetings of Directors.

Teleconference Meeting of the Board

13.10 A meeting of Directors may be held by means of the contemporaneous linking together by telephone, radio or other form of instantaneous audio or audio and visual communication of a number of Directors constituting not less than the quorum required for the purpose of this Constitution provided that the conditions set out in the next following clause are fulfilled.

13.11 The conditions referred to in the immediately preceding clause are that:

- (a) all the Directors for the time being entitled to receive notice of a meeting of the Board shall be entitled to notice of the meeting to be conducted by telephone, radio or other form of instantaneous audio or audio and visual communication;
- (b) notice of any such meeting shall be given in accordance with clause 13.3;
- (c) each of the Directors taking part in the meeting shall be linked by telephone, radio or other form of instantaneous audio or audio and visual communication and must throughout the meeting be able to hear each of the other Directors so taking part;
- (d) at the commencement of the meeting each Director must acknowledge his/her presence to all the other Directors taking part; and
- (e) if the Secretary is not present at the meeting one of the Directors so present shall take minutes of the meeting.

13.12 A Director shall be conclusively presumed to have been present and to have formed part of the quorum at all times during the meeting by telephone, radio or other form of instantaneous audio or audio and visual communication unless they have previously obtained the express consent of the President of the meeting to leave the meeting.

13.13 A minute of the proceedings at a meeting held by telephone, radio or instantaneous audio or audio and visual communication shall be sufficient evidence of such proceedings and of the observance of all necessary formalities.

13.14 A meeting by electronic communications shall not be invalidated by a voluntary or involuntary disconnection of a participant provided that there shall remain or be reconnected sufficient Directors able to communicate with each other as constitutes a quorum.

Committees

13.15 The Board shall appoint a Finance and Audit Committee and may from time to time appoint such other Committees:

- (a) consisting of such Directors and/or such other persons as the Board thinks fit;
- (b) to assist the Board for such purposes, in such manner and on such terms as the Board may determine;
- (c) to which the Board subject to its responsibilities under this Constitution and the Act may delegate any of the powers of the Board, except this power to delegate;
- (d) which must conform to the directions of the Board; and
- (e) which otherwise must conduct their meetings and proceedings in accordance with the provisions of this Constitution, as far as practicable, as if they were meetings and proceedings of the Board.

Minutes

13.16 The Board must cause minutes of all proceedings of meetings of Members in Assembly, of the Board and of Committees formed by the Board to be entered within one month after the relevant meeting is held, in books kept for the purpose but subject to confirmation at the next relevant meeting.

13.17 The Board must cause all minutes, except resolutions in writing treated as determinations of the Board, to be signed by the chair of the meeting at which the proceedings took place or by the chair of the next succeeding meeting.

Resolution in Writing

13.18 A resolution in writing signed by all Directors, excluding Directors who have been given leave of absence, is to be treated as a determination of the Board passed at a meeting of the Board duly convened and held.

13.19 A resolution in writing may consist of several documents in like form, each signed by one or more Directors and if so signed it takes effect on the latest date on which a Director signs one of the documents.

13.20 In relation to a resolution in writing:

- (a) a document generated by electronic means which purports to be a facsimile of a resolution of Directors is to be treated as a resolution in writing; and
- (b) a document bearing a facsimile of a signature is to be treated as signed.

Conflict of Interest

13.21 The Board shall, agree from time to time in writing on its policy for the regulation of conflicts of interest, which shall include a requirement that Directors only be engaged to provide goods or services to or on behalf of the Company if:

- (a) that Director is for bona fide reasons considered by the Board, is agreed to be the most suitable person to provide such goods or services;

- (b) bona fide attempts have been made to identify others who provide similar goods or services and to compare rates and service levels of such others compared with the Director's rates and service levels;
- (c) the goods or services are provided on arms-length terms;
- (d) the provision of the goods and services is disclosed clearly and expressly to the Members in the Annual Report of the Company; and
- (e) the Board agrees by ordinary resolution (excluding the interested Director) to the provision of the goods or services by the Director.

Validity of Acts of Directors

13.22 All acts done by a meeting of the Board or of a Committee appointed by the Board or by a person acting as a Director are valid even if it is later discovered that there is a defect in the appointment of a person to be a Director or a Member of the Committee or that he/she or any of them were disqualified or were not entitled to vote.

14 Chief Executive Officer

14.1 The Board may appoint any person to act as Chief Executive Officer of the Company (by whatever title determined by the Board) for the period and on the terms (including as to remuneration) the Board sees fit.

14.2 The Board may, upon terms and conditions and with any restrictions it sees fit, confer on the Chief Executive Officer any of the powers that the Board can exercise including if the Board so decides the office of Secretary.

14.3 The Board may at any time revoke or vary an appointment of; or any of the powers conferred on, the Chief Executive Officer.

14.4 If the Chief Executive Officer becomes incapable of acting in that capacity the Directors may appoint any other person to act temporarily as Chief Executive Officer until such time as the position can be permanently filled.

15 Secretary

15.1 The Directors may:

- (a) appoint, and terminate the appointment of a Secretary to the Company notwithstanding Clause 14.2;
- (b) determine their terms and conditions of appointment.

15.2 The Secretary shall be responsible to carry out all acts and deeds required by this Constitution, the Act or by law to be carried out by the Secretary of the Company.

16 By-laws

- 16.1 The Board may, by resolution of the Board, make or adopt by-laws with respect to any matter or circumstances for the purposes of giving effect to any provision of this Constitution or generally for the purposes of carrying out the objects of the Company, which by-laws shall be binding on the Members, provided that to the extent of any inconsistency, this Constitution shall prevail over all such by-laws.

17 Seals and Execution of Documents

- 17.1 If the Company has one, the Board must provide for the safe custody of the Company Seal.
- 17.2 The Company may execute a document by affixing the Seal to the document where the fixing of the Seal is attested by:
- (a) two Directors;
 - (b) a Director and the Secretary; or
 - (c) a Director and some other person appointed by the Directors for the purpose.
- 17.3 The Company may execute a document without the use of a seal if the document is signed by:
- (a) two Directors; or
 - (b) a Director and a Secretary.

18 Surplus Assets on Winding Up or Dissolution

- 18.1 Upon the winding up or dissolution of the Company, any remaining property after satisfaction of all debts and liabilities, will not be paid to or distributed among the Members, but will be given or transferred to some other institution or organisations which:
- (a) has objects similar to the objects of the Company; and
 - (b) whose constituent documents prohibit the distribution of its income and property among its Members on terms substantially to the effect of clause 6.1,
- as determined by the Members at or before the time of winding up or dissolution of the Company.

19 Indemnity

Costs and Expenses

- 19.1 Every officer and past officer of the Company is indemnified by the Company against a liability for costs and expenses incurred by that person as an officer:
- (a) in defending any proceedings, whether civil or criminal, in which judgement is given in favour of the person or in which the person is acquitted; or
 - (b) in connection with any application in relation to those proceedings in which the Court grants relief to the person under the Act.

Liabilities to Third Parties

- 19.2 Every officer and past officer of the Company is indemnified against a liability incurred by that person as an officer to a person other than the Company or a related body corporate, except a liability which arises from conduct that involves a lack of good faith.

Insurance Premiums

- 19.3 The Company may pay the premium on a contract insuring a person who is or has been an officer of the Company against:
- (a) a liability for costs and expenses incurred by the person in defending proceedings arising out of the person's conduct as an officer, whether civil or criminal and whatever their outcome; and
 - (b) other liability incurred by the person as an officer of the Company except a liability which arises from conduct that involves a wilful breach of duty in relation to the Company or a contravention of sections 182, 183 or 184(2) or (3) of the Act.

20 Accounts, Audit and Records

Accounts

- 20.1 The Board must cause proper accounting and other records to be kept in accordance with the Act and must comply with the requirements of the Act in respect of reporting and the provision of accounts to Members.

Audit

- 20.2 A registered Company auditor must be appointed.
- 20.3 The remuneration of the auditor must be fixed and the auditor's duties regulated in accordance with the Act.

Rights of Inspection

- 20.4 Subject to the Act, the Board shall determine whether and to what extent, and at what times and places and under what conditions, the accounting records and other documents of the Company or any of them are open to the inspection of Members other than Directors, and a Member other than a Director does not have the right to

inspect any document of the Company except as provided by law or authorised by resolution of the Board.

21 Notices

Persons Authorised to Give Notices

- 21.1 A notice given by either the Company or a Member in connection with this Constitution may be given on behalf of the Company or Member by a solicitor, or, in the case of the Company, by the Secretary or a Director.
- 21.2 The signature of a person on a notice given by the Company may be written, printed or stamped.

Method and Time of Giving Notices

- 21.3 In addition to the method for giving notices permitted by statute, a notice by the Company or a Member in connection with this Constitution may be given by:
- (a) delivering it to the street address of the addressee and shall be taken to have been received at the time of delivery;
 - (b) sending it by prepaid ordinary post (airmail if outside Australia) to a street or postal address of the addressee and shall be taken to have been received on the next business day (or 5th business day if sent outside Australia) after posting;
 - (c) sending it by facsimile or e-mail to the facsimile number or e-mail address of the addressee and shall be taken to have been received when the transmission is complete ; or
 - (d) sending it by means of any other technology which the Members in general meeting agree to be permissible for the purpose of giving notices.

Addresses for Giving Notices to Members and to the Company

- 21.4 For the purposes of clause 21.3:
- (a) the address, facsimile, email or other contact details of a Member are the last details formally notified by the Member to the Company with a request that they be recorded in the Register or the other records of the Company.
 - (b) the street and postal address of the Company is the registered office of the Company and the facsimile, e-mail or other contact details are as the Company may specify from time to time by written notice to the Members as the contact details for the Company.

Proof of Giving Notices

- 21.5 The sending of a notice by facsimile or e-mail and the time of completion of transmission may be proved conclusively by production of:

- (a) a transmission report by the facsimile machine from which the notice was transmitted which indicates that a facsimile of the notice was sent in its entirety to the facsimile number of the addressee; or
- (b) a print out of an acknowledgement of receipt of the e-mail.

Persons Entitled to Notice of Meeting

21.6 Notice of every meeting of Members in Assembly must be given by a method authorised by this Constitution to every Member, Director and the auditor for the time being of the Company, if any. No other person is entitled to receive notices of meetings of Members in Assembly.

22 Transitional Board Provisions (applicable 2009-2012 only)

22.1 For the purposes of the transition to the rotational system of elections of Directors contemplated by clause 10.6:

- (a) the election of Members of the Board in 2009 shall occur in accordance with the Constitution of the Company which was in force immediately prior to the adoption of this Constitution;
- (b) as from the election of the President and the Vice-President respectively in 2009 for the purposes of all references in this Constitution to those offices; and
- (c) Notwithstanding the provisions of clause 10.7,
 - (i) the persons who were elected to the Board in 2009 may continue in office in spite of having been on the Board for longer than the period which is equivalent to the Maximum Number of Terms of Office for the Directors, President and Vice-President; and
 - (ii) as such persons retire from office under clauses 22.2 - 22.3 inclusive they shall be subject to the provisions of clause 10.7 relating to the Maximum Number of Terms of Office for the Directors, President and Vice-President.

22.2 For the purposes of the election in 2010:

- (a) the following Directors shall remain in office for a further 12 months:
 - (i) the President;
 - (ii) the Vice-President; and
 - (iii) 4 of the other Members of the Board who were elected in 2009 (in this clause called the Continuing Directors).
- (b) the Board shall, at least 4 months prior to the 2010 elections, determine by agreement which of their number shall be the 4 Continuing Directors;

- (c) if the Members of the Board are unable to reach such agreement, then the question shall be determined by the drawing of lots at a meeting of the Board held at least 3 months before the 2010 elections; and
- (d) for the elections in 2010:
 - (i) those Directors who were elected in 2009, other than the President, the Vice-President and the 4 Continuing Directors, shall retire from office;
 - (ii) 3 positions for Directors shall be declared vacant; and
 - (iii) the retiring Directors shall, provided they are not otherwise disqualified by law or under this Constitution, be eligible to stand for re-election to one of the vacant positions.

22.3 For the purposes of the elections in 2011:

- (a) the following Directors shall remain in office for a further 12 months:
 - (i) the President;
 - (ii) the Vice-President;
 - (iii) 1 only of the Continuing Directors who was elected in 2009 who remained in office (in this clause called the Further Continuing Director); and
 - (iv) the Directors who were elected in 2010 to any of the 3 positions declared vacant in 2010.
- (b) the Board shall, at least 4 months prior to the elections in 2011, determine by agreement which of the Continuing Directors who remained on the Board after the elections in 2010 shall be the 1 Further Continuing Director and therefore which 2 of the Continuing Directors shall retire in 2011, and
- (c) if the Members of the Board are unable to reach such agreement, then the question shall be determined by the drawing of lots at a meeting of the Board held at least 4 months before the 2011 elections;
- (d) at the elections in 2011:
 - (i) those Directors who were elected in 2009, other than the President, the Vice-President and the 1 Further Continuing Director, shall retire from office;
 - (ii) 3 positions for Elected Directors shall be declared vacant; and
 - (iii) the retiring Directors shall, provided they are not otherwise disqualified by law or under this Constitution, be eligible to stand for re-election to one of the vacant positions.

22.4 For the purposes of the elections in 2012:

- (a) the President and the Vice-President and the 1 Further Continuing Elected Director referred to in clause 22.3 shall retire from office;
- (b) 3 positions for Directors (including the President and the Vice-President) shall be declared vacant; and
- (c) the retiring Directors (including the President and the Vice-President), shall, provided they are not otherwise disqualified by law or under this Constitution, be eligible to stand for re-election to one of the vacant positions.

22.5 For the avoidance of doubt, any of the persons who stand down from the Board in 2010, 2011 or 2012 shall, in addition to being eligible for re-election, be eligible for appointment to fill a casual vacancy provided that they are not otherwise disqualified by law or by this Constitution from being appointed.

23 Interpretation

References to law and the Constitution

23.1 A reference to:

- (a) any legislation includes any regulation or instrument made under it and where amended, re-enacted or replaced means that amended, re-enacted or replacement legislation; or
- (b) this Constitution, where amended, means this Constitution as so amended.

Replaceable rules

23.2 Each of the provisions of the Act which would but for this clause apply to the Company as a replaceable rule within the meaning of the Act are displaced and do not apply to the Company.

Presumptions of interpretation

23.3 Unless the context otherwise requires a word which denotes:

- (a) the singular denotes the plural and vice versa;
- (b) any gender denotes the other gender; and
- (c) a person denotes an individual and a body corporate.

23.4 Where a word or phrase is given a defined meaning any other part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

23.5 Headings and any table of contents must be ignored in the interpretation of this Constitution.

23.6 Unless the context otherwise requires a reference to a time of day means that time of day in the state or territory in which the Office is situated.

- 23.7 For the purposes of determining the length of a period (but not its commencement) a reference to:
- (a) a day means a period of time commencing at midnight and ending 24 hours later; and
 - (b) a month means a calendar month which is a period commencing at the beginning of a day of one of the 12 months of the year and ending immediately before the beginning of the corresponding day of the next month or, if there is no such corresponding day, ending at the expiration of that next month.
- 23.8 Where a period of time is specified and is to be calculated before or after a given day, act or event it must be calculated without counting that day or the day of that act or event.
- 23.9 A provision of this Constitution, except that specifying the time for deposit of proxies with the Company, which has the effect of requiring anything to be done on or by a date which is not a business day must be interpreted as if it required it to be done on or by the next business day.
- 23.10 A reference to a business day means a day during which banks are open for general banking business in the State or Territory in which the Office is situated.
- 23.11 A reference to an Act of Parliament, whether State or Federal, includes a reference to that Act of Parliament as amended from time to time, and a reference to a specific provision of an Act of Parliament means, unless the context demands otherwise, a reference to the equivalent provision in any later amended version of that Act of Parliament, or if the original Act of Parliament has been repealed in any Act of Parliament substituted in its place.

24 Definitions

- 24.1 In this Constitution, except where the context requires otherwise:

Act means the *Corporations Act 2001*.

AGM means an annual general meeting of the Members of the Company meeting as Members in Assembly and, where the content requires, means the specific annual general meeting in the context.

Assembly or **Members in Assembly** means a general meeting of the Members convened in accordance with this Constitution and the Act.

Board means the board of Directors of the Company unless the context demands otherwise.

President means the President of the Board, elected from time to time in accordance with this Constitution.

Company means Austcare (ACN 001 251 930) or the organisation to which it may change its name by resolution in the future.

Corporate Member means a Member who is not a natural person.

Vice-President means the person elected to that position in accordance with this Constitution.

Director means a person elected or appointed in accordance with this Constitution to perform the duties of a director of the Company and, unless the context requires otherwise, includes the President and the Vice-President.

Maximum Number of Terms of Office has the meaning, in relation to a Director or the President, set out in clause 10.7.

Member means a person that, at the relevant time, is a properly admitted Member in accordance with this Constitution.

Register means the register of Members kept by the Company under the Corporations Act 2001.

Representative means, in relation to a Member, the representative of the Member appointed under clause 9.

Seal means, if the Company has one, the common seal of the Company, if any.

Secretary means a person appointed to perform the duties of a secretary of the Company.