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# CONSTITUTION

Bass Coast Community Health Service Limited

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Amended by Special Resolution 29 October 2009

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## 1 NATURE OF COMPANY AND LIABILITY

### NATURE OF COMPANY

- 1.1 The Company is a company limited by guarantee.

### LIABILITY OF MEMBERS AND GUARANTEE ON WINDING UP

- 1.2 The liability of the Members is limited. Every Member undertakes to contribute \$1.00 to the assets of the Company if it is wound up while he or she is a Member, or within one year afterwards.

## 2 OBJECTS OF THE COMPANY

### OBJECTS WITHIN AND OUTSIDE THE CATCHMENT AREA

- 2.1 The principal objects of the company are to establish, promote and operate a community health service on a not for profit basis:
- 2.1.1 within the Catchment Area, to provide direct relief to those suffering from poverty, sickness, disability or misfortune;
  - 2.1.2 for the delivery of specific health programs to the sick, destitute and helpless outside its Catchment Area where it has been funded to do so, and
  - 2.1.3 to promote the prevention or control of diseases in human beings.
- 2.2 Subject always to its principal objects, the Company has the following additional objects:
- 2.2.1 to directly provide primary health care services which may include medical, nursing care, disability services, aged care, allied health and counselling;
  - 2.2.2 to provide emergency relief to those in need; and
  - 2.2.3 to operate consistently with the Guiding Principles.

## GUIDING PRINCIPLES

- 2.3 The Company must strive to achieve the following in everything it does:
- 2.3.1 give priority to the socially and economically disadvantaged, and, in particular, the frail aged, the disabled, the mentally ill and individuals with complex health care needs;
  - 2.3.2 evidence a social model of health which particularly recognizes the needs of those who cannot readily access the health and welfare system and encourages and empowers members of the community to understand the broader determinants of health;
  - 2.3.3 to directly deliver high quality services which enhance health and social wellbeing;
  - 2.3.4 to deliver services in a culturally appropriate, effective and empowering manner;
  - 2.3.5 to strive for a seamless system of care which ensures maximum accessibility for clients; and
  - 2.3.6 within the scope of its principal objects, work in partnership with members of the community and other agencies, to improve the health and well-being of the community.

## 3 FEES POLICY

The Company may waive fees for services provided to people who are disadvantaged.

## 4 NO ASSETS OR INCOME TO BE DISTRIBUTED TO MEMBERS

The assets and income of the Company may only be applied to further its objects and no portion may be distributed directly or indirectly to its Members except as bona fide compensation for services rendered or expenses incurred on behalf of the Company.

## 5 INITIAL MEMBERS OF THE COMPANY AND SUBSEQUENT MEMBERS

### WHO ARE MEMBERS?

- 5.1 The Members of the Company are the initial Members as set out in clause 5.1 and such other persons as the Company admits to membership in accordance with this document.

### INITIAL MEMBERS OF THE COMPANY

- 5.2 The initial Members of the Company are those persons who have consented to become Members and who are named in the application for incorporation of the Company to the Australian Securities and Investment Commission.

### PERSONS SUBSEQUENTLY ADMITTED TO MEMBERSHIP

- 5.3 After incorporation, persons are eligible to be admitted to membership of the Company if they have attained age of 18 years and:
- 5.3.1 they are a client,
  - 5.3.2 or they live, work or are enrolled as a student at an educational service in the Catchment Area;
  - 5.3.3 they are a volunteer doing unpaid work for the Company; or
  - 5.3.4 they have a previous connection with the Company which the Board considers sufficient for its purposes; or
  - 5.3.5 they are appointed a Director of the Company; and/or
  - 5.3.6 are any employee of the Company.

### NO LIMIT

- 5.4 Unless otherwise determined by the Members in General Meeting, the number of Members is not limited.

### RESIGNATION

- 5.5 A Member may resign from membership of the Company by giving written notice to the Chief Executive Officer.

- 5.6 The resignation of a Member is deemed to take effect from the date of receipt of the notice of resignation or such later date as is provided in the notice.

## 6 APPLICATION AND ADMISSION TO MEMBERSHIP

- 6.1 An application for membership of the Company must be:
- 6.1.1 in the form set out in Appendix one, signed by the applicant;
  - 6.1.2 accompanied by such other information as the Directors require; and
  - 6.1.3 lodged with the Chief Executive Officer of the Company.
- 6.2 The Board may from time to time set an application and subscription fee but at the date of incorporation there is no application or subscription fee.
- 6.3 On receipt of an application, the Chief Executive Officer must forward the application to the Board.
- 6.4 The Board must consider each application for Membership as soon as practicable after its receipt. The Board has discretion to admit or reject the application. The Board need not give reasons for its decision.
- 6.5 If the Board accepts an application, the Chief Executive Officer must enter the applicant's name in the Register with as little delay as possible. The applicant becomes a Member of the Company when their name is entered in the Register.
- 6.6 A right, privilege or obligation of a person by reason of his or her membership of the Company:
- 6.6.1 is not capable of being transferred or transmitted to another person; and
  - 6.6.2 terminates upon the cessation of his or her membership, except for any accrued obligation pursuant to clause 1.2.

## 7 RENEWAL AND CLOSURE OF REGISTER

- 7.1 Membership of the Company is for the period from the entry of their name in the register until 30 June in any year.

- 7.2 Members must renew their membership during the months of May and June but prior to 30 June.
- 7.3 No person may be admitted as a Member after 30 June until the Register reopens on the day after the next Annual General Meeting.
- 7.4 The form for renewal is set out in Appendix two.

## **8 REGISTER OF MEMBERS**

- 8.1 The Chief Executive Officer must keep the Register of Members in accordance with the Act.
- 8.2 The Register of Members must contain the full name, address and date of entry of each Member. The Register shall be available for inspection at the registered address of the Company.
- 8.3 The name of a person who has died, resigned or not renewed their membership in accordance with clause 8 must be removed from the Register.

## **9 LIFE MEMBERS**

- 9.1 The Board may, by resolution, appoint any Member who has made a significant contribution to the affairs of the Company to be a Life Member.
- 9.2 A Life Member is an honorary position which confers no additional rights or obligations.

## **10 BOARD OF DIRECTORS**

- 10.1 Unless otherwise determined by Members in General Meeting, the Board consists of not less than seven nor more than nine Directors.
- 10.2 An employee of the Company cannot be a Director.

## 11 INITIAL BOARD

### DIRECTORS ON REGISTRATION

- 11.1 Upon incorporation the Board will be those persons who have consented to being a Director and are named as Directors in the application to incorporate the Company.\*

### ADDITIONAL DIRECTORS MAY BE APPOINTED

- 11.2 The initial Board may appoint additional Directors to ensure appropriate numbers and mix of skills. In appointing additional Directors, the Board shall have regard to the principles in clause 14.

## 12 TRANSITIONAL BOARD AFTER THE FIRST ANNUAL GENERAL MEETING

### APPOINTMENT OF ONGOING DIRECTORS

- 12.1 Prior to the first Annual General Meeting the Board must select from its number: four Directors (Appointed Directors); and two Directors (Initial Elected Directors). The two Initial Elected Directors are to continue in office.

The four Appointed Directors shall have staggered terms of one, two or, in the case of two of them, three years from the date of the first Annual General Meeting. The initial elected directors shall have terms of one year and shall be deemed to be Community Representative Directors effective from the first Annual General Meeting.

### ELECTION OF FIVE COMMUNITY REPRESENTATIVE DIRECTORS

- 12.2 At the first Annual General Meeting of the Company, the Members must elect three Community Representative Directors in accordance with clause 35 from amongst the Members.
- 12.3 The term of each Community Representative Director elected at the first Annual General Meeting shall be determined by lot. Two of the Community Representative Directors shall have two year terms and one of them shall have a three year term.

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\* Clause 11 makes it clear that the Board members of Bass Coast Community Health Service Inc will be the initial Directors of the Board if they consent to take the office.

#### ELECTION TO REPLACE RETIRING COMMUNITY REPRESENTATIVE DIRECTORS

- 12.4 At the second Annual General Meeting, two Community Representative Directors must retire. At the third Annual General Meeting, two Community Representative Directors must retire. At the fourth Annual General Meeting, one Community Representative Director must retire.

#### ADDITIONAL DIRECTORS MAY BE APPOINTED

- 12.5 At any time after the first Annual General Meeting the Board is entitled to appoint additional Directors, but only up to the maximum number. In appointing additional Directors, the Board shall have regard to the principles in clause 14.
- 12.6 At the time of appointment, the Board will set the term of additional Directors to a maximum of 3 years.

### 13 CASUAL VACANCIES

#### ELECTED DIRECTOR VACANCY

- 13.1 If a vacancy occurs in the office of a Community Representative Director, or if there are insufficient nominations for election pursuant, the Board may co-opt a Member to hold office as Director until the next Annual General Meeting. An election will then be held for a Director to replace the Director whose office was vacated and for the term of that vacated office. The person appointed to fill the vacancy is eligible for election.

#### APPOINTED DIRECTOR VACANCY

- 13.2 If a vacancy occurs in the office of an appointed Director either to the initial, transitional or subsequent Board, then the Board may appoint a Member to replace that Director who shall hold office for the term of that vacated office. The person appointed to the vacancy is eligible for re-appointment. In appointing additional Directors, the Board shall have regard to the principles in clause 14.

### 14 PRINCIPLES REGARDING APPOINTMENT OF DIRECTORS

- 14.1 In relation to appointments of Directors made by the Board, the Board must try to ensure that the Board has sufficient expertise in the areas of law, finance, health, governance and such other areas as it thinks fit.
- 14.2 In selecting persons for appointment as Directors, the Board must put in place appropriate criteria for selection, advertise the positions, and have a formal process for selection and interview.

- 14.3 The Board should try to ensure that at all times there are no less than seven persons comprising the Board.

## 15 ELECTION OF OFFICERS

- 15.1 The Board must elect from amongst its number, the following Officers:

- 15.1.1 President;
- 15.1.2 Vice President; and
- 15.1.3 Treasurer.

Each Officer holds office for one year but is eligible, while a Director, to be re-elected.

- 15.2 If a vacancy occurs amongst the Officers, the Board must elect a person to fill that vacancy from its numbers. That person will hold office for the remainder of the term of the person he/she replaces, provided that he/she remains a Director.
- 15.3 The Board may revoke the appointment of an Officer at any time and elect another person to that office.
- 15.4 No person may be a Director of the Company (by election or appointment, or a combination of them) for more than six consecutive years.

## 16 THE ROLE OF THE BOARD

- 16.1 Subject to the exercise by the Board of the powers contained in this Constitution, the Board manages the governance of the Company and directs the affairs of the Company. The Board may exercise all such powers and do all such acts as are not by this Constitution or the Act directed or required to be done by the Members in General Meeting or otherwise.
- 16.2 The Board has power, subject to the Act and this Constitution, to perform all such acts and things including the determination of policies and procedures as appear to the Board to be necessary for the proper management of the Company.
- 16.3 Subject to the provisions of the Act and this Constitution the Board may, by resolution, authorise any person as the Board thinks fit to exercise any powers of the Board which are delegable at law.

## 17 PROCEEDINGS OF THE BOARD

- 17.1 The Board must meet at least nine times in each year at such place and time as the Board may determine.
- 17.2 The Chief Executive Officer must convene a special meeting of the Board if requested to do so by the Chairperson or any two Directors.
- 17.3 Unless the Directors unanimously waive this requirement, the Chief Executive Officer must give at least three days notice to all Directors of any special meeting. The notice must specify the general nature of the business to be transacted at that meeting. No other business can be transacted at such a meeting.
- 17.4 The Chief Executive Officer must ensure that notice of every meeting of the Board (other than a special meeting) is served on each Director by delivering it to or sending it by prepaid post addressed to the Director at his or her usual or last known place of residence or electronically if the Director has nominated an electronic address at least five days before the date of the meeting.
- 17.5 At all Board meetings other than as provided by clause 17.9.
- 17.5.1 All questions are to be decided by a show of hands, unless the person chairing that meeting determines that a secret ballot be held. The decision of the majority of Directors is the decision of the meeting.
- 17.5.2 Each Director has one vote and, in the event of an equality of votes on any resolution, the person chairing the meeting has a deliberative vote only and a tied vote means that the resolution is defeated.
- 17.5.3 In the event of an equality of votes in respect of an election of an Officer, the successful candidate shall be determined by lot.
- 17.5.4 Voting by proxy is not permitted.
- 17.6 The quorum for a meeting of the Board is one half (rounded down) of the number of Directors.\*

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\* For the avoidance of doubt, this means that when determining the quorum, reference is made to the number of Directors currently in office. Not the number of Directors who could be appointed to office.

- 17.7 No business shall be transacted unless a quorum is present, and if within half an hour of the time appointed for the meeting a quorum is not present, the meeting shall stand adjourned and the person chairing the meeting must set a further date for the adjourned meeting which must be within ten days.
- 17.8 At meetings of the Board the President shall preside but if the President is absent or unwilling to chair the meeting, then the Vice President shall do so. If both the President and the Vice President are absent or unwilling to preside, then the Directors must choose one of their number to preside at the Board meeting.

#### MEETINGS OTHER THAN IN PERSON

- 17.9 Without limiting the discretion of the Board to regulate its meetings, a meeting of the Board may be conducted by
- 17.9.1 Directors conferring by telephone, close circuit television, or audio or audio visual communication at the same time ('the conference'), or
  - 17.9.2 Directors assenting in writing (by hand or by electronic encryption) to a resolution circulated to all Directors, whether electronically or in hard copy (the 'circulating resolution').
- 17.10 Notwithstanding that the Directors are not present together in one place at the time of the conference, a resolution passed at such a conference shall be deemed to have been passed at a meeting of Directors on the day and time at which the conference was held. In the case of a circulating resolution, a resolution shall be deemed to have been passed at a meeting of the Board on the day and at the time when it is last signed by a Director thereby constituting a majority of the Board.
- 17.10.1 A Director present at the commencement of a conference will be conclusively presumed to have been present and to have formed part of the quorum throughout the conference unless the Director advises the person presiding at the meeting that he/she will not continue to take part in the meeting.
  - 17.10.2 Any minutes of a conference purporting to be signed by the person who presided at the conference will be sufficient evidence of the observance of all necessary formalities regarding convening and conduct of the conference. A circulating resolution confirmed by a majority of Directors will be conclusive evidence that the resolution was passed.
- 17.11 When under the Constitution a resolution is deemed to be passed at a conference of the Board, that meeting will be deemed to have been held at such place as is determined by

the person who presided at the conference provided that at least one of the Directors who took part in the conference was at such place for the duration of the conference.

#### VALIDITY OF ACTS OF THE BOARD

17.12 An act or decision of the Board will not be invalid by reason only of a defect or irregularity in connection with the appointment or election of a Director or a vacancy in the membership of the Board.

### 18 PECUNIARY INTERESTS OF DIRECTORS

#### DISCLOSURE

- 18.1 A Director who has a material personal interest that relates to the affairs of the Company must give other Directors notice of that interest unless the Act otherwise provides.
- 18.2 This notice must give details of the nature and extent of the interest, the relation of the interest to the affairs of the Company, and must be given at a meeting of the Board as soon as practicable after becoming aware of their interest in the matter. The details must be recorded in the minutes of the meeting.
- 18.3 Other than as permitted by the Act, a Director who has a material personal interest in a matter that is being considered at a Board meeting must not be present and must not vote on the matter except in accordance with the Act.

### 19 VACATION OF OFFICE OF DIRECTOR

The office of a Director shall become vacant if the Director:

- 19.1 becomes insolvent under administration or makes any arrangement or composition with creditors generally;
- 19.2 becomes prohibited from being a Director of a Company by reason of any order made under the Act;
- 19.3 becomes incapable by reason of mental incapacity to perform his or her duties as a Director;
- 19.4 resigns his/her office by notice in writing to the Chief Executive Officer;

19.5 for more than three consecutive months is absent without express advance permission of the Board from meetings of the Board held during that period; or

19.6 dies.

That vacancy shall be filled in accordance with clause 13.

## 20 NO REMUNERATION TO DIRECTORS

### NO FEES TO DIRECTORS

20.1 Subject to clauses 20.2 and 20.3, the Directors are not entitled to any fees for their services as Directors.

### PAYMENT TO DIRECTORS FOR EXPENSES

20.2 The Directors may be paid, subject to Board approval, all reasonable travelling, accommodation and any other expenses properly incurred by them in attending and returning from meetings of the Directors or any committee of the Directors or General Meetings or otherwise in the execution of their duties as Directors.

### PAYMENTS MUST BE IN GOOD FAITH

20.3 Any payment made to a Director by the Company under this clause 20 must be made in good faith.

## 21 INDEMNITY AND INSURANCE

### INDEMNITY

21.1 Every Officer/Director and past Officer/Director of the Company must be indemnified by the Company, to the fullest extent permitted by the Act, against a liability incurred by that person as an Officer of the Company or a subsidiary of the Company, including without limitation, legal costs and expenses incurred in defending an action.

### INSURANCE PREMIUMS

21.2 The Company must pay the premium on a contract insuring a person who is or has been an Officer of the Company to the fullest extent permitted by law.

## 22 COMMITTEES

- 22.1 The Board must establish an audit committee and set out its terms of reference.
- 22.2 The Board must establish a quality improvement committee by whatever name called. The committee will be responsible for ensuring that:
- 22.2.1 A quality improvement plan is developed and reviewed at regular intervals; and
  - 22.2.2 The quality of health services provided by the Company is assessed and evaluated at regular intervals, including the review of clinical practices or clinical competence of the persons providing those services.
  - 22.2.3 The Board shall determine the composition of the quality improvement committee, terms of reference and meeting requirements.
- 22.3 The Board may establish any other committee and set out their terms of reference.
- 22.4 The Board may delegate any powers to a committee which are delegable at law.

## 23 CHIEF EXECUTIVE OFFICER IS COMPANY SECRETARY

The Board must appoint a person as Chief Executive Officer of the Company who shall also be the Company Secretary for the purposes of the Act.

## 24 CHIEF EXECUTIVE OFFICER'S GENERAL DUTIES

The Chief Executive Officer shall make appropriate arrangements for giving notice of a meeting, the recording of minutes of the proceedings and resolutions of general meetings, Board meetings and committee meetings in a minute register and ensure that the minutes of all meetings are confirmed and signed by the person chairing the subsequent meeting. He/she must ensure that the annual financial report, Director's report and report of the auditor are provided to Members in accordance with the Act. Subject to the direction of the Board, the Chief Executive Officer is responsible for:

- a) Ensuring compliance with all obligations of the Company under the Act;
- b) The day to day management of the Company;
- c) Supervision of all staff;

- d) Dealing with the correspondence of the Company; and
- e) For the custody, documents and securities of the Company.

## 25 CHIEF EXECUTIVE OFFICER'S ELECTORAL DUTIES

- 25.1 The Chief Executive Officer must maintain the Register of Members as set out in clause 8.
- 25.2 The chief executive officer must ensure that elections are held in accordance with clauses 12, 13 and 16.

## 26 CHIEF EXECUTIVE OFFICER'S FINANCIAL AND COMPLIANCE RESPONSIBILITIES

The Chief Executive Officer

- a) Is responsible for the collection and receipt of all monies due to the Company.
- b) Shall hold all funds of the Company on trust for the Company and ensure that all funds are paid into a bank, building society or trust account in the name of the Company, including a separate account for any Gift Fund.
- c) Must ensure that no expenditure is made without the authority of the Board.
- d) Must ensure that all expenditure is in accordance with the protocol developed by the Board.
- e) Must ensure that proper accounts are kept for the Company and that the books of the Company are audited each year in accordance with the Act and any requirement imposed by government policy or law and submitted to the Annual General Meeting as required by the Act.
- f) Must ensure that appropriate notice is given for General Meetings and Board meetings.
- g) Must make available for inspection by Members during business hours the accounts and books showing the financial affairs of the Company and any document of the Company to which a Member is legally entitled.
- h) Must ensure all returns and reports are prepared and lodged in accordance with the Act.

- i) Must ensure that the Company complies with any requirement of any government grant or funding authority including any persecuted standards of its insurer or funding authority.
- j) Must ensure that the Company has a robust risk management program and that senior management understand, manage and control risk exposures.
- k) Must ensure that the Company complies with all relevant laws and, in particular, the Act.

## **27 CHIEF EXECUTIVE OFFICER TO HAVE CUSTODY OF THE COMMON SEAL**

- 27.1 The Company may execute a document without the use of a seal if the document is signed by two Directors or one Director and the Chief Executive Officer.
- 27.2 The Company shall determine what documents require the affixing of the seal.
- 27.3 The common seal of the Company must be kept in the safe custody of the Chief Executive Officer.
- 27.4 The Chief Executive Officer must ensure that where a document requires the affixing of the common seal that it is only affixed after the Board has given that authority.
- 27.5 The chief executive officer must ensure that the affixing of the common seal is attested to by the signatures of two Directors or one Director and the Chief Executive Officer.

## **28 ANNUAL GENERAL MEETING**

- 28.1 The Company shall once in each calendar year convene an Annual General Meeting of its Members on a date determined by the Board but not later than the last day in November.
- 28.2 The ordinary business of the Annual General Meeting is to:
  - 28.2.1 Confirm the minutes of the previous Annual General Meeting and any General Meetings held during the previous financial year;
  - 28.2.2 Consider the annual financial report of the Company, the report of the Directors and the report of the auditor in relation to the last financial year ended before the Annual General Meeting in accordance with section 250R of the Act; and

- 28.2.3 Elect the Community Representative Directors in accordance with clauses 12, 13 and 36.
  - 28.2.4 Consider any resolution of which at least 21 days written notice has been given.
  - 28.2.5 Appoint and fix the remuneration of the auditor
  - 28.2.6 Consider any matter which it is required to consider as a condition of the funding of the Company or by law.
- 28.3 The Chief Executive Officer must give notice of the meeting in accordance with this clause 31.

## 29 GENERAL MEETINGS

- 29.1 The Board may convene a General Meeting at any time, save that if a Special Resolution is proposed, notice of that Special Resolution must be given not less than 21 days prior to the meeting.
- 29.2 If two Directors or not less than five percent of the total number of Members deliver to the Chief Executive Officer a request in writing for a General Meeting, the Board must direct the Chief Executive Officer to call a General Meeting.
- 29.3 Any request must specify the purpose of the meeting and state any resolution to be proposed and be signed by the Directors or Members making the request. The meeting must be called within 21 days of the request and must be held within two months of the date of the request.
- 29.4 Members may call a General Meeting in accordance with and in the circumstances set out in sections 249E and 249F of the Act.
- 29.5 No business other than that specified in the notice of meeting is to be transacted at a General Meeting.

## 30 NOTICE OF MEETINGS GENERALLY

- 30.1 The Chief Executive Officer must give notice of a General Meeting by preparing a notice which sets out
  - 30.1.1 The date, time and place of the meeting and the nature of the business to be transacted and if it is the Annual General Meeting, a list and details of

the Members who have nominated as Community Representative Directors.

30.1.2 A copy of the request for that meeting if the General Meeting has been requested.

30.1.3 If a Special Resolution is to be proposed, state the intention to so propose and the resolution.

30.1.4 That a Member may appoint a proxy to vote on his/her behalf and that the proxy does not have to be a Member.

30.2 The notice may be given in any form of communication permitted by the Act.

30.3 Any notice sent to Members must be sent to the Company's auditor.

30.4 The notice must be given to ensure that each Member receives at least 21 days notice of the meeting.

## 31 QUORUM FOR GENERAL MEETINGS

31.1 The quorum for a General Meeting is 10 percent of the total number of Members or 20 Members whichever is the lesser.

31.2 No business shall be transacted at a General Meeting unless a quorum is present. If within half an hour of the time fixed for the meeting no quorum is present.

31.2.1 In relation to an Annual General Meeting, the meeting stands adjourned to the same time on the same day in the following week; or

31.2.2 In relation to a General Meeting, the meeting lapses and does not need to be reconvened.

## 32 CHAIRPERSON OF GENERAL MEETINGS

32.1 The President, or in his or her absence, the Vice President shall preside as chairperson at each General Meeting of the Company.

32.2 If the President or Vice President is absent from a General Meeting, the Members present shall elect one of the Directors to preside as chairperson at the meeting.

### 33 ADJOURNMENT OF GENERAL MEETINGS

The chairperson of a General Meeting at which a quorum is present may, with the consent of the meeting, adjourn the meeting from time to time and place to place, but no business shall be transacted at an adjourned meeting other than the business at the meeting at which the adjournment took place.

### 34 VOTING AT GENERAL MEETINGS OTHER THAN ELECTIONS

- 34.1 Other than for the election of Community Representative Directors which is governed by clause 36, a question arising at a general meeting of the Company shall be determined on a show of hands or a Poll (if demanded as provided for in clause 35.4 or 35.5 before the person chairing the meeting has declared the result). If a declaration is made by the chairperson that a resolution has, on a show of hands, been carried or carried unanimously, or carried by a particular majority, or lost and an entry to that effect is made in the minute book of the Company, it is evidence of how the resolution was determined.
- 34.2 Each Member has one vote only and in the case of an equality of votes on a question, the person chairing the meeting has a casting vote.
- 34.3 A Member may appoint a proxy in accordance with clause 37 to vote on his/her behalf.
- 34.4 If a Poll is demanded at any general meeting on any question by no fewer than three Members, the Poll shall be taken in such manner as the chairperson may direct and the resolution of the Poll shall be deemed to be the resolution of the meeting on that question.
- 34.5 A Poll that is demanded on the election of the chairperson or on the question of an adjournment must be taken forthwith but a Poll that is demanded on any other question may be taken at such time before the close of the meeting as the chairperson may direct.

### 35 ELECTION

- 35.1 Not later than 42 days prior to the Annual General Meeting, the Chief Executive Officer must send a nomination form for election as a Community Representative Director to each Member.
- 35.2 That notice must specify the positions to be filled and include details of the date on which nominations (including details of the nominee) must be returned.
- 35.3 If the number of nominations for election as Community Representative Directors is equal to or less than the number of vacancies, then at the Annual General Meeting the Chief

Executive Officer shall declare those persons who nominated to be elected. If the number of nominations is less than the number of positions vacant, an election shall be held to fill the remaining vacancies in the same manner as set out in clause 36. If a vacancy still remains it will be treated as a Casual Vacancy.

- 35.4 If the number of nominations for election as Community Representative Directors exceeds the number of vacancies (or if insufficient nominations were received as contemplated by clause 35.3), an election shall be conducted at the Annual General Meeting by way of a secret ballot by the Chief Executive Officer who shall act as returning officer. Each Member present at the meeting shall have one vote for each vacant position and the ballot will be conducted in the First Past the Post System. In the event of an equality of votes for a position, the election shall be determined by lot.

## **36 PROXIES AND REPRESENTATIVES**

Proxies and representatives of Members are permitted only to the extent permitted by and in accordance with Division 6 of Part 2G.2 of the Act.

## **37 ALTERATION OF CONSTITUTION**

The name or Constitution of the Company shall not be altered, amended or added to except by Special Resolution in accordance with the Act.

## **38 AUDITOR**

- 38.1 An auditor who is a registered Company auditor must be appointed and his or her remuneration fixed by the Members at the Annual General Meeting.
- 38.2 The auditor shall hold office until the next Annual General Meeting but may be removed by resolution of the Board which may determine a replacement.
- 38.3 Any auditor so appointed must not be
- 38.3.1 A Director;
  - 38.3.2 An employee or employer of a Director; or
  - 38.3.3 A member of the same partnership as a Director; or
  - 38.3.4 An employee of the Company.

38.4 The auditor must carry out such audit as is required by the Board and the Act.

## 39 DISSOLUTION

39.1 The Company may only be wound up and its assets disposed of by Special Resolution of its Members in accordance with the Act.

39.2 Any asset or part of any asset of the Company that consists of property supplied by a government department or public authority, including the unexpended portion of a grant, must be returned to the department or authority that supplied it or to a body nominated by that department or authority.

39.3 Subject to clause 40.2, if on the winding up and dissolution of the Company there remains after satisfaction of all debts and liabilities, any assets or property whatsoever other than the Gift Fund, the same will not be paid to or distributed to any Member of the Company but will be given or transferred to an organisation which:

39.3.1 Has objectives or purposes similar to those of the Company;

39.3.2 Is a fund, authority or institution approved by the Commissioner of Taxation as a public benevolent institution or health promotion charity under the *Income Tax Assessment Act 1997*; and

39.3.3 Prohibits the distribution of its income and property amongst its Members to an extent at least as great as the Company,

but in no circumstances will any assets or property whatsoever be paid or distributed to any Member or Director of the Company.

## 40 GIFT FUND

40.1 The Company must maintain a Gift Fund called the Bass Coast Community Health Service Gift Fund for the principal purpose of the Company:

40.1.1 To which gifts of money or property for that purpose are to be made, and

40.1.2 To which any money received by the Company because of such gifts is to be credited, and

40.1.3 That does not receive any other money or property; and

the Company must maintain sufficient documents to provide evidence of the Gift Fund's purpose and operations.

40.2 The Company must use the following only for the principal objects and purpose of the Company:

40.2.1 Gifts made to the Gift Fund, and

40.2.2 Any money received because of such gifts.

40.3 In the event of:

40.3.1 The winding up of the Gift Fund.

40.3.2 The revocation of the Company's endorsement as a deductible gift recipient under the *Income Tax Assessment Act 1997*.

the Company must transfer any surplus assets of the Gift Fund to a fund, authority or institution endorsed by the Commissioner of Taxation as a deductible gift recipient under the *Income Tax Assessment Act 1997*.

40.4 The Company must keep a separate bank account for the Gift Fund.

## 41 COMPLIANCE WITH STANDARDS

41.1 The Company must operate in accordance with robust corporate and clinical governance and risk management processes as guided by:

41.1.1 Australian Standards.

41.1.2 Requirements or key performance indicators of any registration or funding authority;

41.1.3 Any mandated clinical or corporate governance standards;

41.1.4 Any requirements of the Company's insurer; and

41.1.5 The Health Privacy Principles set out in the Health Records Act 2001.

41.2 The Company must seek to maintain accreditation with a suitable accreditation body.

## 42 DEFINITIONS AND INTERPRETATION

### DEFINITIONS

42.1 In this document the following definitions apply:

- 42.1.1. **Act** means the *Corporations Act 2001* and regulations.
- 42.1.2. **Annual General Meeting** means the annual general meeting of the Company convened pursuant to clause 29.
- 42.1.3. **Board** means the Board of Directors of the Company.
- 42.1.4. **Casual Vacancy** means a vacancy in the office of a Director or an Officer as set out in clause 14 and 16.2.
- 42.1.5. **Catchment Area** means the southern Gippsland area of Victoria.
- 42.1.6. **Chief Executive Officer** means the person appointed to that position.
- 42.1.7. **Commissioner of Taxation** means the Commissioner of Taxation or a second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of the *Income Tax Assessment Act 1997*.
- 42.1.8. **Community Health Service** means an institution which delivers holistic and integrated health services based on a social model of health, and on a not for profit basis.
- 42.1.9. **Company** means Bass Coast Community Health Service Limited.
- 42.1.10. **Company Secretary** means the person who is the Chief Executive Officer.
- 42.1.11. **Community Representative Director** means a person elected as a community representative pursuant to clause 12 or 13 or a person elected or appointed to fill a casual vacancy in the office of a community representative Director pursuant to clause 14.
- 42.1.12. **Director** means a person elected or appointed to the initial, transitional or subsequent Board of the Company pursuant to clauses 11, 12 and 13 and includes a person who is chosen to fill a casual vacancy pursuant to clause 14.

- 42.1.13. **General Meeting** means the annual general meeting or a general meeting.
- 42.1.14. **Gift Fund** means the fund established pursuant to clause 41.
- 42.1.15. **Life Member** means a person who is so appointed pursuant to clause 9.
- 42.1.16. **Member** means a member of the Company.
- 42.1.17. **Officer** means the President, Vice President and Treasurer of the Board elected to office pursuant to clause 16 and, where the context permits, the Directors and any person defined as an officer in the Act.
- 42.1.18. **Poll** means a method of determining whether a resolution is carried or lost and may be conducted by way of show of hands or secret ballot or by division.
- 42.1.19. **President** means the person elected to that office pursuant to clause 16.1.1.
- 42.1.20. **Register** means the register of Members referred to in clause 8.
- 42.1.21. **Special Resolution** means a resolution in respect of which the Act imposes special requirements for notice and voting.
- 42.1.22. **Treasurer** means the treasurer of the Board elected pursuant to clause 16.1.3.
- 42.1.23. **Vice President** means the person elected to that office pursuant to clause 16.1.2.

## INTERPRETATION

43.2 In this document, unless the context otherwise requires:

- 43.2.1 A reference to any law or legislation or legislative provision includes any statutory modification, amendment or re-enactment, and any subordinate legislation or regulations issued under that legislation or legislative provision, in either case whether before, on or after the date of this document.
- 43.2.2 Where a word or phrase is given a defined meaning another part of speech or other grammatical form in respect of that word or phrase has a corresponding meaning.

- 43.2.3 A word which denotes the singular denotes the plural, a word which denotes the plural denotes the singular, and a reference to any gender denotes the other genders.
- 43.2.4 An expression importing a natural person includes any Company, trust, partnership, joint venture, association, body corporate or public authority.
- 43.2.5 A reference to dollars or \$ means Australian dollars.
- 43.2.6 References to the word 'include' or 'including' are to be construed without limitation.
- 43.2.7 A reference to a time of day means that time of day in the place where the Office is located.
- 43.2.8 A reference to a business day means a day other than a Saturday or Sunday on which banks are open for business generally in the place where the Office is located.
- 43.2.9 Where a period of time is specified and dates from a given day or the day of an act or event it must be calculated exclusive of that day.
- 43.2.10 A term of this Constitution 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.

#### REFERENCES TO THE DOCUMENT

- 43.3 A reference to the Constitution, where amended, means this document as so amended.

**REPLACEABLE RULES**

43.4 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.

**APPLICATION OF CORPORATIONS ACT**

43.5 The Act applies in relation to this document as if it was an instrument made under the Act as in force on the day when this document became the constitution of the Company.

**EXERCISE OF POWERS**

43.6 Except as specifically contemplated to the contrary in this document, the Company may, in any manner permitted by the Act exercise any power, take any action or engage in any conduct or procedure which under the Act a Company limited by guarantee may exercise, take or engage in if authorised by this document.

**APPENDIX 1****APPLICATION FOR MEMBERSHIP**

I hereby apply for membership of Bass Coast Community Health Service Limited and consent to such membership and agree to the Constitution and to the requirement to guarantee Bass Coast Community Health Service Limited to the extent set out in the Constitution.

I confirm that I am over 18 years of age.

And I:

- Live, work or am enrolled as a student at an educational institution in the Gippsland region; or
- Volunteer with the Service; or
- Am an employee of Bass Coast Community Health Service Inc or Bass Coast Community Health Service Limited
- Am a client of the Service; or
- Am a .....(specify relationship)

I am an existing member of Bass Coast Community Health Service Inc and wish to transfer to the new company.

**OR** (cross out which ever is not applicable)

I am applying as a new member of Bass Coast Community Health Service Limited

**Please insert details:**

Full Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Suburb and postcode: \_\_\_\_\_

Phone: \_\_\_\_\_ . Email: \_\_\_\_\_

Preferred address for sending notices of meetings, either *home* or *Email* address. (cross out which ever is not applicable)

Signature of Applicant, \_\_\_\_\_ (Date).

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Date of receipt:

Considered by Board:

Decision of Board:

Entry in Register:

**APPENDIX 2****RENEWAL OF MEMBERSHIP**

I wish to renew my membership of Bass Coast Community Health Service Limited for the financial year 2009 - 2010

I confirm that I am over 18 years of age.

And I:

- Live, work or am enrolled as a student at an educational institution in the Gippsland region; or
- Volunteer with the Service; or
- Am employed by Bass Coast Community Health Service Inc.
- Am a client of the Service; or
- Am a .....(specify relationship)

Please insert details:

Full Name: \_\_\_\_\_

Street Address: \_\_\_\_\_

Suburb and postcode: \_\_\_\_\_

Phone: \_\_\_\_\_ . Email: \_\_\_\_\_

Preferred address for sending notices of meetings, either *home* or *Email* address. (*cross out which ever is not applicable*)

Signature of Applicant, \_\_\_\_\_ (Date).

Date of receipt:

Entry in Register: