

**CONSTITUTION  
OF  
VCS Foundation Limited**

**Version 10**

A company limited by guarantee

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## Preliminary

### 1. Name of the Company

The name of the Company is VCS Foundation Ltd (**Company**).

### 2. Type of Company

The Company is a not-for-profit public Company limited by guarantee which is established to be, and to continue as, a charity.

### 3. Limited liability of members

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

### 4. The guarantee

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

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

### 5. Definitions

In this Constitution, words and phrases have the meaning set out in clauses 83 and 85.

## Charitable purposes and powers

### 6. Object

The Company's object is to pursue the following charitable purpose(s) on a not for profit basis as a health promotion charity:

- (a) a high quality and efficient screening and reporting service for women at risk of cervical cancer, free of charge to screening program participants;
- (b) education to women about the necessity for cervical screening tests and encouragement of women to have regular tests to detect early stage abnormalities or evidence of cervical cancer in order to prevent, detect and treat cervical cancer;
- (c) management of relevant health registers that minimize the impact of diseases preventable by screening, immunisation or other public health initiatives;
- (d) the operation of relevant health registries in accordance with regulatory requirements to ensure that the rates and instances of diseases preventable by screening, immunisation or other public health initiatives are known so that causes and any epidemiological factors can be investigated;

- (e) through these health registries provide alerts and follow up for relevant testing and immunisation;
- (f) independent high quality research aimed at lessening the impact of cancers and other diseases preventable by screening or immunisation;
- (g) collaboration in and development of initiatives to prevent cervical cancer;
- (h) contributions to the development of public policy in areas relevant to diseases preventable by screening and other health initiatives;
- (i) leadership and collaboration in national and international initiatives in service quality improvement for diseases preventable by screening and other health initiatives;
- (j) undertaking of any activity that may be conveniently carried out in connection with the Company's purposes;
- (k) training for scientists and pathologists in aspects of laboratory based screening;
- (l) an educational resource for health professionals and people at risk of infertility or cancer preventable by screening.

## **7. Powers**

Subject to clause 8, the Company has the following powers, which may only be used to carry out its purpose(s) set out in clause 6:

- (a) the powers of an individual, and
- (b) all the powers of a company limited by guarantee under the Corporations Act.

## **8. Not-for-profit**

- 8.1 The Company must not distribute any income or assets directly or indirectly to its members, except as provided in clauses 8.2 and 8.1.
- 8.2 Clause 8.1 does not stop the Company from doing the following things, provided they are done in good faith:
  - (a) paying a member for goods or services they have provided or expenses they have properly incurred at fair and reasonable rates or rates more favourable to the Company, or
  - (b) making a payment to a member in carrying out the Company's charitable purpose(s).

## **9. Amending the Constitution**

- 9.1 Subject to clause 9.2, the members may amend this Constitution by passing a special resolution.
- 9.2 The members must not pass a special resolution that amends this Constitution if passing it causes the Company to no longer be a charity.

## Members

### 10. Membership and register of members

- 10.1 The members of the Company are:
- (a) the existing members, and
  - (b) any other person that the directors allow to be a member, in accordance with this Constitution.
- 10.2 The Company must establish and maintain a register of members. The register of members must be kept by the secretary and must contain:
- (a) for each current member:
    - i) name
    - ii) address
    - iii) any alternative address nominated by the member for the service of notices, and
    - iv) date the member was entered on to the register.
  - (b) for each person who stopped being a member in the last 7 years:
    - i) name
    - ii) address
    - iii) any alternative address nominated by the member for the service of notices, and
    - iv) dates the membership started and ended.
- 10.3 The Company must give current members access to the register of members.
- 10.4 Information that is accessed from the register of members must only be used in a manner relevant to the interests or rights of members.

### 11. Who can be a member

- 11.1 The members consist of the persons appointed as directors pursuant to this Constitution.
- 11.2 In this clause, 'person' means a natural person.

### 12. How to apply to become a member

A director must apply to become a member of the Company by writing to the secretary stating that they:

- (a) want to become a member
- (b) support the purpose(s) of the Company, and
- (c) agree to comply with the Company's Constitution, including paying the guarantee under clause 4 if required.

### **13. Directors decide whether to approve membership**

- 13.1 The directors must consider an application for membership within a reasonable time after the secretary receives the application and must approve an application made in accordance with this Constitution.
- 13.2 If the directors approve an application, the secretary must as soon as possible:
- (a) enter the new member on the register of members, and
  - (b) write to the applicant to tell them that their application was approved, and the date that their membership started (see clause 14).
- 13.3 If the directors reject an application, the secretary must write to the applicant as soon as possible to tell them that their application has been rejected.
- 13.4 For the avoidance of doubt, the directors may approve an application even if the application does not state the matters listed in clauses 12(a), 12(b) or 12(c). In that case, by applying to be a member, the applicant agrees to those three matters.

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

Other than existing members, an applicant will become a member when they are entered on the register of members.

### **15. When a person stops being a member**

A person immediately stops being a member if they:

- (a) die
- (b) cease to be a director
- (c) resign as a member (in which case they will also resign as a director), by writing to the secretary
- (d) are expelled under clause 17.4, or
- (e) have not responded within three months to a written request from the secretary that they confirm in writing that they want to remain a member.

## **Dispute resolution and disciplinary procedures**

### **16. Dispute resolution**

- 16.1 The dispute resolution procedure in this clause applies to disputes (disagreements) under this Constitution between a member or director and:
- (a) one or more members
  - (b) one or more directors, or
  - (c) the Company.

- 16.2 A member must not start a dispute resolution procedure in relation to a matter which is the subject of a disciplinary procedure under clause 17 until the disciplinary procedure is completed.
- 16.3 Those involved in the dispute must advise the Chairperson in writing of the dispute and must try to resolve it between themselves within 10 days of such notification.
- 16.4 If those involved in the dispute do not resolve it in the time frame required in clause 16.3, they must:
- (a) advise the Chair in writing
  - (b) agree or request that a mediator be appointed, and
  - (c) attempt in good faith to settle the dispute by mediation.
- 16.5 The mediator must:
- (a) be chosen by agreement of those involved, or
  - (b) where those involved do not agree:
    - i) for disputes between members, a person chosen by the directors, or
    - ii) for other disputes, a person chosen by either the Commissioner of the Australian Charities and Not-for-profits Commission or the president of the Law Institute of Victoria.
- 16.6 A mediator chosen by the directors under clause 16.5(b)(i):
- (a) may be a member or former member of the Company
  - (b) must not have a personal interest in the dispute, and
  - (c) must not be biased towards or against anyone involved in the dispute.
- 16.7 When conducting the mediation, the mediator must:
- (a) allow those involved a reasonable chance to be heard
  - (b) allow those involved a reasonable chance to review any written statements
  - (c) ensure that those involved are given natural justice, and
  - (d) not make a decision on the dispute.
- 16.8 Where the dispute involves the Chairperson, notification pursuant to clauses 16.3 and 16.4 must instead be given to the Deputy Chairperson or the Chairperson of the Audit and Finance Committee (as appropriate) provided that they are not a party to the dispute.

## **17. Disciplining members**

- 17.1 In accordance with this clause, the directors may resolve to warn, suspend or expel a member from the Company if the directors consider that:
- (a) the member has breached this Constitution, or



- (b) the member's behaviour is causing, has caused, or is likely to cause harm to the Company.
- 17.2 At least 14 days before the directors' meeting at which a resolution under clause 17.1 will be considered, the secretary must notify the member in writing:
  - (a) that the directors are considering a resolution to warn, suspend or expel the member
  - (b) that this resolution will be considered at a directors' meeting and the date of that meeting
  - (c) what the member is said to have done or not done
  - (d) the nature of the resolution that has been proposed, and
  - (e) that the member may provide an explanation to the directors, and details of how to do so.
- 17.3 Before the directors pass any resolution under clause 17.1, the member must be given a chance to explain or defend themselves by:
  - (a) sending the directors a written explanation before that directors' meeting, and/or
  - (b) speaking at the meeting.
- 17.4 After considering any explanation under clause 17.3, the directors may:
  - (a) take no further action
  - (b) warn the member
  - (c) suspend the member's rights as a member for a period of no more than 12 months
  - (d) expel the member
  - (e) refer the decision to an unbiased, independent person on conditions that the directors consider appropriate (however, the person can only make a decision that the directors could have made under this clause), or
  - (f) require the matter to be determined at a general meeting.
- 17.5 The directors cannot fine a member.
- 17.6 The secretary must give written notice to the member of the decision under clause 17.4 as soon as possible.
- 17.7 Disciplinary procedures must be completed as soon as reasonably practical.
- 17.8 There will be no liability for any loss or injury suffered by the member as a result of any decision made in good faith under this clause.

## General meetings of members

### 18. General meetings called by directors

- 18.1 The directors may call a general meeting.
- 18.2 If members with at least 5% of the votes that may be cast at a general meeting make a written request to the Company for a general meeting to be held, the directors must:
- (a) within 21 days of the members' request, give all members notice of a general meeting, and
  - (b) hold the general meeting within 2 months of the members' request.
- 18.3 The percentage of votes that members have (in clause 18.2) is to be worked out as at midnight before the members request the meeting.
- 18.4 The members who make the request for a general meeting must:
- (a) state in the request any resolution to be proposed at the meeting
  - (b) sign the request, and
  - (c) give the request to the Company.
- 18.5 Separate copies of a document setting out the request may be signed by members if the wording of the request is the same in each copy.

### 19. General meetings called by members

- 19.1 If the directors do not call the meeting within 21 days of being requested under clause 18.2, members with more than 50% of the vote of all members who made the request may call and arrange to hold a general meeting.
- 19.2 To call and hold a meeting under clause 19.1 the members must:
- (a) as far as possible, follow the procedures for general meetings set out in this Constitution
  - (b) call the meeting using the list of members on the Company's member register, which the Company must provide to the members making the request at no cost, and
  - (c) hold the general meeting within three months after the request was given to the Company.
- 19.3 The Company must pay the members who request the general meeting any reasonable expenses they incur because the directors did not call and hold the meeting.

### 20. Annual general meeting

- 20.1 A general meeting, called the annual general meeting, must be held:
- (a) within 18 months after registration of the Company, and

- (b) after the first annual general meeting, at least once in every calendar year.
- 20.2 Even if these items are not set out in the notice of meeting, the business of an annual general meeting may include:
  - (a) a review of the Company's activities
  - (b) a review of the Company's finances
  - (c) any auditor's report
  - (d) the election of directors, and
  - (e) the appointment and payment of auditors, if any.
- 20.3 Before or at the annual general meeting, the directors must give a report to the members on the Company's activities and finances during the period since the last annual general meeting. The report shall include:
  - (a) details of the activities of the Company, including compliance with the *Improving Cancer Outcomes Act 2014* (Vic), health promotion activities and details of educational programmes provided and research undertaken;
  - (b) the performance of the Company against the goals and objectives of any agreement it has entered for the provision of health screening, health promotion, education, research, training or other services.
  - (c) details of any material personal interests of directors declared pursuant to clause 58.1(b) during the financial year.
- 20.4 The chairperson of the annual general meeting must give members as a whole a reasonable opportunity at the meeting to ask questions or make comments about the management of the Company.

## **21. Notice of general meetings**

- 21.1 Notice of a general meeting must be given to:
  - (a) each member entitled to vote at the meeting
  - (b) each director, and
  - (c) the auditor (if any).
- 21.2 Notice of a general meeting must be provided in writing at least 21 days before the meeting.
- 21.3 Subject to clause 21.4, notice of a meeting may be provided less than 21 days before the meeting if:
  - (a) for an annual general meeting, all the members entitled to attend and vote at the annual general meeting agree beforehand, or
  - (b) for any other general meeting, members with at least 95% of the votes that may be cast at the meeting agree beforehand.

- 21.4 Notice of a meeting cannot be provided less than 21 days before the meeting if a resolution will be moved to:
- (a) remove a director
  - (b) appoint a director in order to replace a director who was removed, or
  - (c) remove an auditor.
- 21.5 Notice of a general meeting must include:
- (a) the place, date and time for the meeting (and if the meeting is to be held in two or more places, the technology that will be used to facilitate this)
  - (b) the general nature of the meeting's business
  - (c) if applicable, that a special resolution is to be proposed and the words of the proposed resolution
  - (d) a statement that members have the right to appoint proxies and that, if a member appoints a proxy:
    - i) the proxy does not need to be a member of the Company
    - ii) the proxy form must be delivered to the Company at its registered address or the address (including an electronic address) specified in the notice of the meeting, and
    - iii) the proxy form must be delivered to the Company at least 48 hours before the meeting.
- 21.6 If a general meeting is adjourned for one month or more, the members must be given new notice of the resumed meeting.

## **22. Quorum at general meetings**

- 22.1 For a general meeting to be held, at least four members (a quorum) must be present (in person, by proxy or by representative) for the whole meeting. When determining whether a quorum is present, a person may only be counted once (even if that person is a representative or proxy of more than one member).
- 22.2 No business may be conducted at a general meeting if a quorum is not present.
- 22.3 If there is no quorum present within 30 minutes after the starting time stated in the notice of general meeting, the general meeting is adjourned to the date, time and place that the chairperson specifies. If the chairperson does not specify one or more of those things, the meeting is adjourned to:
- (a) if the date is not specified – the same day in the next week
  - (b) if the time is not specified – the same time, and
  - (c) if the place is not specified – the same place.
- 22.4 If no quorum is present at the resumed meeting within 30 minutes after the starting time set for that meeting, the meeting is cancelled.

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

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

### **24. Using technology to hold meetings**

- 24.1 The Company may hold a general meeting at two or more venues using any technology that gives the members as a whole a reasonable opportunity to participate, including to hear and be heard.
- 24.2 Anyone using this technology is taken to be present in person at the meeting.

### **25. Chairperson for general meetings**

- 25.1 The Chairperson, or in their absence the Deputy Chairperson, is entitled to chair general meetings.
- 25.2 The members present and entitled to vote at a general meeting may choose a director or member to be the chairperson for that meeting if:
- (a) there is no Chairperson or Deputy Chairperson, or
  - (b) the Chairperson or Deputy Chairperson is not present within 30 minutes after the starting time set for the meeting, or
  - (c) the Chairperson or Deputy Chairperson is present but says they do not wish to act as chairperson of the meeting.

### **26. Role of the chairperson**

- 26.1 The chairperson is responsible for the conduct of the general meeting, and for this purpose must give members a reasonable opportunity to make comments and ask questions (including to the auditor (if any)).
- 26.2 The chairperson has a casting vote.

### **27. Adjournment of meetings**

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

## Members' resolutions and statements

### 28. Members' resolutions and statements

- 28.1 Members with at least 5% of the votes that may be cast on a resolution may give:
- (a) written notice to the Company of a resolution they propose to move at a general meeting (members' resolution), and/or
  - (b) a written request to the Company that the Company give all of its members a statement about a proposed resolution or any other matter that may properly be considered at a general meeting (members' statement).
- 28.2 A notice of a members' resolution must set out the wording of the proposed resolution and be signed by the members proposing the resolution.
- 28.3 A request to distribute a members' statement must set out the statement to be distributed and be signed by the members making the request.
- 28.4 Separate copies of a document setting out the notice or request may be signed by members if the wording is the same in each copy.
- 28.5 The percentage of votes that members have (as described in clause 28.1) is to be worked out as at midnight before the request or notice is given to the Company.
- 28.6 If the Company has been given notice of a members' resolution under clause 28.1(a), the resolution must be considered at the next general meeting held more than two months after the notice is given.
- 28.7 This clause does not limit any other right that a member has to propose a resolution at a general meeting.

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

- 29.1 If the Company has been given a notice or request under clause 28.1:
- (a) in time to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, it must do so at the Company's cost, or
  - (b) too late to send the notice of proposed members' resolution or a copy of the members' statement to members with a notice of meeting, then the members who proposed the resolution or made the request must pay the expenses reasonably incurred by the Company in giving members notice of the proposed members' resolution or a copy of the members' statement. However, at a general meeting, the members may pass a resolution that the Company may reimburse these expenses.

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

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

- 30.1 Subject to clause 30.3, the directors may put a resolution to the members to pass a resolution without a general meeting being held (a circular resolution).
- 30.2 The directors must notify the auditor (if any) as soon as possible that a circular resolution has or will be put to members, and set out the wording of the resolution.
- 30.3 Circular resolutions cannot be used:
- (a) for a resolution to remove an auditor, appoint a director or remove a director
  - (b) for passing a special resolution, or
  - (c) where the Corporations Act or this Constitution requires a meeting to be held.
- 30.4 A circular resolution is passed if all the members entitled to vote on the resolution sign or agree to the circular resolution, in the manner set out in clause 30.5 or clause 30.6.
- 30.5 Members may sign:
- (a) a single document setting out the circular resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording is the same in each copy.
- 30.6 The Company may send a circular resolution by email to members and members may agree by sending a reply email to that effect, including the text of the resolution in their reply.

## **Voting at general meetings**

### **31. How many votes a member has**

Each member has one vote.

### **32. Chairperson has deliberative vote and may have casting vote**

At all general meetings, the chairperson shall have a deliberative vote and in the event of there being an equality of votes on any question shall have a casting vote also.

### **33. Challenge to member's right to vote**

33.1 A member or the chairperson may only challenge a person's right to vote at a general meeting at that meeting.

33.2 If a challenge is made under clause 33.1, the chairperson must decide whether or not the person may vote. The chairperson's decision is final.

### **34. How voting is carried out**

34.1 Voting must be conducted and decided by:

- (a) a show of hands
- (b) a vote in writing, or
- (c) another method chosen by the chairperson that is fair and reasonable in the circumstances.

34.2 Before a vote is taken, the chairperson must state whether any proxy votes have been received and, if so, how the proxy votes will be cast.

34.3 On a show of hands, the chairperson's decision is conclusive evidence of the result of the vote.

34.4 The chairperson and the meeting minutes do not need to state the number or proportion of the votes recorded in favour or against on a show of hands.

### **35. When and how a vote in writing must be held**

35.1 A vote in writing may be demanded on any resolution instead of or after a vote by a show of hands by:

- (a) at least two members present, or
- (b) members present with at least 5% of the votes that may be passed on the resolution on the vote in writing (worked out as at the midnight before the vote in writing is demanded), or
- (c) the Chairperson.

35.2 A vote in writing must be taken when and how the Chairperson directs, unless clause 35.3 applies.

35.3 A vote in writing must be held immediately if it is demanded under clause 35.1:

- (a) for the election of a Chairperson under clause 25.2, or
- (b) to decide whether to adjourn the meeting.

35.4 A demand for a vote in writing may be withdrawn.



### **36. Appointment of proxy**

- 36.1 A member may appoint a proxy to attend and vote at a general meeting on their behalf.
- 36.2 A proxy does not need to be a member.
- 36.3 A proxy appointed to attend and vote for a member has the same rights as the member to:
- (a) speak at the meeting
  - (b) vote in a vote in writing (but only to the extent allowed by the appointment), and
  - (c) join in to demand a vote in writing under clause 35.1.
- 36.4 An appointment of proxy (proxy form) must be signed by the member appointing the proxy and must contain:
- (a) the member's name and address
  - (b) the Company's name
  - (c) the proxy's name or the name of the office held by the proxy, and
  - (d) the meeting(s) at which the appointment may be used.
- 36.5 Proxy forms must be received by the Company at the address stated in the notice under clause 21.5(d) or at the Company's registered address at least 48 hours before a meeting.
- 36.6 A proxy does not have the authority to speak and vote for a member at a meeting while the member is at the meeting.
- 36.7 Unless the Company receives written notice before the start or resumption of a general meeting at which a proxy votes, a vote cast by the proxy is valid even if, before the proxy votes, the appointing member:
- (a) dies
  - (b) is mentally incapacitated
  - (c) revokes the proxy's appointment, or
  - (d) revokes the authority of a representative or agent who appointed the proxy.
- 36.8 A proxy appointment may specify the way the proxy must vote on a particular resolution.

### **37. Voting by proxy**

- 37.1 A proxy is not entitled to vote on a show of hands (but this does not prevent a member appointed as a proxy from voting as a member on a show of hands).
- 37.2 When a vote in writing is held, a proxy:

- (a) does not need to vote, unless the proxy appointment specifies the way they must vote
- (b) if the way they must vote is specified on the proxy form, must vote that way, and
- (c) if the proxy is also a member or holds more than one proxy, may cast the votes held in different ways.

## Directors

### 38. Number of directors

The Company must have at least seven and no more than eleven directors.

### 39. Election and appointment of directors

- 39.1 A person is eligible for election or appointment as a director of the Company if they:
- (a) are nominated in accordance with the processes specified in this Constitution,
  - (b) give the Company their signed consent to act as a director of the Company, and
  - (c) are not ineligible to be a director under the Corporations Act or the ACNC Act.

### 40. Ongoing viability of board

The directors must promote the ongoing viability of the board of directors by ensuring suitable recruitment of directors to ensure:

- (a) an open and transparent process of selection for good governance; and
- (b) a breadth of relevant skills amongst directors; and

must follow the process set out in clause 42 in appointing directors and recommending the appointment of directors.

### 41. Vacancy or impending vacancy in directors process

If the number of directors falls or is likely to fall below seven and if the vacancy or impending vacancy is due to the retirement, resignation or otherwise of a director appointed for their expertise in one or more of the categories set out in clause 47 then the directors must recruit to that position as soon as possible in accordance with clause 42(a).

### 42. Advertise for a director with special expertise or select from previous advertisement

The following process must be followed if there is a vacancy or impending vacancy in the membership of the directors as described in clause 41:

- (a) If there is a vacancy or impending vacancy in the office of a director appointed for their expertise in a category specified in clause 47, then

the directors must cause an advertisement to be placed in a newspaper circulating nationally in Australia and/or online advertisement service available nationally in Australia and such advertisement must describe the role and purposes of the Company, the category/ies of expertise sought by reference to the selection criteria set out in clause 47 (and relevant to the position vacated), the role of a director and the selection process; and/or

- (b) If the directors have advertised a position seeking applicants with expertise in any of the categories as set out in clause 47 within the previous 9 months, the directors may consider an applicant who responded to that advertisement and has relevant expertise as set out in the selection criteria in clause 47 for appointment.

#### **43. Not required to fill vacancy unless board is less than seven.**

For the avoidance of doubt, the directors are not required to advertise a position to fill a vacancy or impending vacancy of a director selected from one or more of the categories set out in clause 47 unless the number of directors falls, or is soon to fall, below seven. Nothing in this Constitution requires the directors to appoint, or recommend to the Minister to appoint a person who responds to an advertisement.

#### **44. Selection of suitable applicants for directors**

##### Selection

- 44.1 The directors may delegate to a working party the function of assessing applicants for suitability as directors.
- 44.2 Applicants should be assessed for expertise in accordance with the selection criteria set out in clause 47. In all instances, the directors or its delegate must assess, usually by interview, any applicant who satisfies the areas of expertise as set out in clause 47.1. to ensure that they also have attributes, skills or knowledge that would be beneficial to the Company.

##### Shortlist applicants

- 44.3 The directors or their delegate must prepare a shortlist of applicants for appointment with ranking of the most suitable applicants for consideration by the directors. The directors must then consider the applicants so ranked for appointment by the directors.

#### **45. Board may appoint up to seven; Minister up to four directors**

- 45.1 Seven positions are designated as Board-appointed; four are designated as Ministerial appointments. (For the avoidance of doubt, the Minister may appoint four persons as directors for their initial term of 3 years, but the directors may offer a further term to a Ministerial appointee as set in clause 48.3 and may make subsequent appointments as set out in clause 48.4 or extend the term as provided by clause 48.5)

- (a) When a vacancy occurs in the office of a director who is appointed by the directors, the directors shall have regard to the short list prepared pursuant to clause 44.3 and may appoint a person on that list as a director.
- (b) When a vacancy occurs in the office of a director who is appointed by the Minister, the Minister shall have regard to the recommendations of the directors pursuant to clause 44.3 and may appoint a person on that list as a director by instrument in writing.

#### **46. Re-advertise or seek further nominee**

- 46.1 If the directors consider that none of the applicants is suitable for appointment, it shall direct that the vacancy be re-advertised.
- 46.2 If the Minister considers that none of the applicants shortlisted and recommended is suitable for appointment the directors may reconsider other applicants or re-advertise at the directors' discretion.

#### **47. Areas of expertise for selection to the directors**

- 47.1 When assessing and formulating a short list of suitable candidates pursuant to clause 44.3 for appointment as a director, the directors (or its delegate) must ensure that persons short listed have relevant expertise in at least one of the following areas or such other areas as may be beneficial to the operation of the company:
  - (a) finance, commerce, or corporate management;
  - (b) law;
  - (c) medical practitioner with gynaecological / colposcopy expertise;
  - (d) nurse with relevant expertise in preventative health;
  - (e) expertise in immunisation from a public health perspective;
  - (f) medical practitioner in general practice;
  - (g) consumer perspectives;
  - (h) information technology (IT).

#### **48. Term of appointment, extension of term and re-appointment**

##### Continuation of Term

- 48.1 For each existing director as at the date of adoption of this Constitution, the term and nature of appointment shall be a continuous appointment from the date and circumstances of their appointment and/or re-appointment under the preceding constitution of the Company.

##### Terms not to exceed three years

- 48.2 The term of appointment of any director shall not exceed 3 years. A director who has served one term may be offered a further term of 3 years as set out in clause 48.3 and is eligible for re-appointment in accordance with clause 48.5.

Board may appoint director for second three year term

- 48.3 A director may be reappointed on the resolution of the directors for one additional term not exceeding 3 years, irrespective of whether the initial appointment was by the directors or the Minister.

Director who has served two terms

- 48.4 A director who has served 2 terms, is eligible for appointment on a competitive, transparent basis. The directors must follow the procedure set out in clause 42 unless the director's term is extended as contemplated by clause 48.5.

Extension of term for director as chairperson or deputy

- 48.5 If a director is elected as Chairperson or Deputy Chairperson pursuant to clause 51 and their term of appointment as a director will expire prior to their term as an Chairperson or Deputy Chairperson, then that director's appointment is extended to a date 2 months after the date on which their term as an Chairperson or Deputy Chairperson expires.
- 48.6 If a director's term of appointment is extended pursuant to clause 48.4 the period of time for which it was extended will not count as an additional term for the purposes of clause 48.3.

**49. Duties of directors**

- 49.1 As soon as practicable after being appointed as a director, each director must become familiar with this Constitution, the Corporations Act, the ACNC Act and the Company's Governance Policy.

**50. Termination of director's term**

End of term

- 50.1 A director's term ceases at the end of the term of their appointment unless the director is re-appointed or has his or her term extended pursuant to clause 48.

Resignation

- 50.2 A director may resign their membership by writing to the Executive Director. If the director has been appointed by the Minister and is in their initial term, the director must also inform the Minister.

Other circumstances

- 50.3 A director's term also ends if the director:
- (a) dies;
  - (b) is removed as a director by a resolution of the members;
  - (c) stops being a member;

- (d) becomes insolvent under administration;
- (e) becomes a represented person within the meaning of the *Guardianship and Administration Act 1986* (Vic);
- (f) ceases to be a resident in Australia, or
- (g) becomes ineligible to be a director of the Company under the Corporations Act or the ACNC Act.

## **51. Chairperson / Deputy**

### Election

- 51.1 The members shall at the annual general meeting in each second year elect from its directors the following: Chairperson and Deputy Chairperson.
- 51.2 If more than one director nominates for a position, then a secret ballot shall be held.

### Two year term for Chairperson and Deputy Chairperson

- 51.3 The Chairperson and Deputy Chairperson hold office for a two year term and are eligible for re-election at the annual general meeting coinciding with the expiration of that term, but shall not hold the same position for longer than two consecutive terms but can be re-elected to either office after a period of two years has elapsed.

### Chairperson is Chairperson

- 51.4 The Chairperson will be the Company's chairperson.

### Casual vacancy in an office

- 51.5 In the event of a casual vacancy in the office of Chairperson or Deputy Chairperson, the directors may appoint to the vacant office any director qualified to hold the same and the director so appointed may continue in office up to and including the day of the next annual general meeting.

## **Powers of directors**

### **52. Powers of directors**

- 52.1 The directors are responsible for managing and directing the activities of the Company to achieve the purposes set out in clause 6.
- 52.2 The directors may use all the powers of the Company except for powers that, under the Corporations Act or this Constitution, may only be used by members.
- 52.3 The directors must decide on the responsible financial management of the Company including:
- (a) any suitable written delegations of power under clause 53, and
  - (b) how money will be managed, such as how electronic transfers, negotiable instruments or cheques must be authorised and signed or otherwise approved.

52.4 The directors cannot remove a director or auditor. Directors and auditors may only be removed by a members' resolution at a general meeting.

### **53. Delegation of directors' powers**

53.1 The directors may delegate any of their powers and functions to a committee, a director, an employee of the Company or any other person, as they consider appropriate.

53.2 The delegation must be recorded in the Company's minute book.

### **54. Established committees**

54.1 The directors must establish the following committees to provide assistance in carrying out their functions:

- (a) Audit and Finance; and
- (b) Quality Assurance.

#### Audit and Finance Committee

54.2 Members of the Audit and Finance Committee shall include the Chairperson, three other directors elected by the directors, the Executive director and the director of Corporate Services of the Company. The Executive director and the director of Corporate Services are ex-officio members of the Committee.

54.3 The election of the three directors to the Committee shall take place once every two years at the first meeting of the directors after the annual general meeting. Consideration should be given to holding a directors meeting immediately following the AGM if necessary to ensure continuity of the Audit and Finance Committee.

54.4 A director with appropriate financial expertise or in their absence, another director, shall be the chairperson of the Audit and Finance Committee.

54.5 In the event of a vacancy in a director elected by the directors, the directors shall elect a director to the Committee for the remainder of the unexpired term.

54.6 The role and terms of reference shall be determined by the directors and reviewed annually.

54.7 The quorum for meetings shall be 2 members of the Committee each of whom must be a director.

54.8 The Committee shall meet at least four times a year and shall communicate its findings, on a quarterly basis to the directors.

#### Quality Assurance Committee

54.9 The Quality Assurance Committee shall be responsible for the assessment and evaluation of the quality of service provided by the Company and the review of practices and competence of persons providing these services. The Committee shall also be responsible for coordinating and reviewing the implementation of the quality assurance plan.

- 54.10 The Executive Director shall be responsible for recommending to the directors for their approval:
- (a) The membership requirements, roles and changes to individual members of the Quality Assurance Committee;
  - (b) The duration and replacement of members of the Quality Assurance Committee.
- 54.11 The quorum for meetings of the Quality Assurance Committee shall be one third of the number of members of the Committee.
- 54.12 The Quality Assurance Committee shall meet at least four times each year and shall communicate its findings on a quarterly basis to the directors but in a way that does not identify patients or providers of services. A summary of the activities and results of the quality assurance processes of the Company will be included in the annual report of the Company.

### **55. Payments to directors**

- 55.1 The Company must not pay fees to a director for acting as a director of the Company.
- 55.2 The Company may:
- (a) pay a director for work they do for the Company, other than as a director, if the amount is no more than a reasonable fee for the work done, or
  - (b) reimburse a director for expenses properly incurred by the director in connection with the affairs of the Company.
- 55.3 Any payment made under clause 55.2 must be approved by the directors.
- 55.4 The Company may pay premiums for insurance indemnifying directors, as allowed for by law (including the Corporations Act) and this Constitution.

### **56. Execution of documents**

The Company may execute a document without using a common seal if the document is signed by:

- (a) two directors of the Company, or
- (b) a director and the secretary.

## **Duties of directors**

### **57. Duties of directors**

The directors must comply with their duties as directors under legislation and common law (judge-made law), and with the duties described in governance standard 5 of the regulations made under the ACNC Act which are:



- (a) to exercise their powers and discharge their duties with the degree of care and diligence that a reasonable individual would exercise if they were a director of the Company
- (b) to act in good faith in the best interests of the Company and to further the charitable purpose(s) of the Company set out in clause 6
- (c) not to misuse their position as a director
- (d) not to misuse information they gain in their role as a director
- (e) to disclose any perceived or actual material conflicts of interest in the manner set out in clause 58
- (f) to ensure that the financial affairs of the Company are managed responsibly, and
- (g) not to allow the Company to operate while it is insolvent.

### **58. Conflicts of interest**

- 58.1 A director must disclose the nature and extent of any actual or perceived material conflict of interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution):
- (a) to the other directors, or
  - (b) if all of the directors have the same conflict of interest, to the members at the next general meeting, or at an earlier time if reasonable to do so.
- 58.2 The disclosure of a conflict of interest by a director must be recorded in the minutes of the meeting.
- 58.3 Each director who has a material personal interest in a matter that is being considered at a meeting of directors (or that is proposed in a circular resolution) must not, except as provided under clauses 58.4:
- (a) be present at the meeting while the matter is being discussed, or
  - (b) vote on the matter.
- 58.4 A director may still be present and vote if:
- (a) their interest arises because they are a member of the Company, and the other members have the same interest
  - (b) their interest relates to an insurance contract that insures, or would insure, the director against liabilities that the director incurs as a director of the Company (see clause 78)
  - (c) their interest relates to a payment by the Company under clause 77 (indemnity), or any contract relating to an indemnity that is allowed under the Corporations Act
  - (d) the Australian Securities and Investments Commission (ASIC) makes an order allowing the director to vote on the matter, or

- (e) the directors who do not have a material personal interest in the matter pass a resolution that:
  - (i) identifies the director, the nature and extent of the director's interest in the matter and how it relates to the affairs of the Company, and
  - (ii) says that those directors are satisfied that the interest should not stop the director from voting or being present.

## Directors' meetings

### 59. When the directors meet

The directors shall meet at least four times each year at such time and at such place as the directors may from time to time determine.

### 60. Leave of absence

The directors may grant a leave of absence to a director, for good cause shown, of up to six months but must not retrospectively grant leave unless satisfied that it was not feasible for a director to seek leave in advance.

### 61. Calling directors' meetings

61.1 A director may call a directors' meeting by giving reasonable notice (being a minimum of 14 days) to all of the other directors.

61.2 A director may give notice in writing or by any other means of communication that has previously been agreed to by all of the directors.

61.3 At the request of the Chairperson or four directors an urgent meeting may be convened upon the provision of at least 2 days notice to all directors. The urgent meeting's notice must specify the nature of the business to be transacted and no other business may be transacted at that urgent meeting.

### 62. Chairperson for directors' meetings

62.1 The Chairperson, or in his or her absence the Deputy Chairperson, shall be entitled to chair directors' meetings.

62.2 The directors at a directors' meeting may choose a director to be the chairperson for that meeting if the Chairperson or Deputy Chairperson is:

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

### 63. Quorum at directors' meetings

63.1 Unless the directors determine otherwise, the quorum for a directors' meeting is a minimum of four (4) directors.

63.2 A quorum must be present for the whole directors' meeting.

**64. Using technology to hold directors' meetings**

- 64.1 The directors may hold their meetings by using any technology (such as video or teleconferencing) that is agreed to by all of the directors.
- 64.2 The directors' agreement may be a standing (ongoing) one.
- 64.3 A director may only withdraw their consent within a reasonable period before the meeting.

**65. Passing directors' resolutions**

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

**66. Circular resolutions of directors**

- 66.1 The directors may pass a circular resolution without a directors' meeting being held.
- 66.2 A circular resolution is passed if all the directors entitled to vote on the resolution sign or otherwise agree to the resolution in the manner set out in clause 66.3 or clause 66.4.
- 66.3 Each director may sign:
  - (a) a single document setting out the resolution and containing a statement that they agree to the resolution, or
  - (b) separate copies of that document, as long as the wording of the resolution is the same in each copy.
- 66.4 The Company may send a circular resolution by email to the directors and the directors may agree to the resolution by sending a reply email to that effect, including the text of the resolution in their reply.
- 66.5 A circular resolution is passed when the last director signs or otherwise agrees to the resolution in the manner set out in clause 66.3 or clause 66.4.

## **Executive Director / Secretary**

**67. Appointment and role of Executive Director / Secretary**

- 67.1 The Company must have at least one secretary, who may also be a director.
- 67.2 The person appointed as Executive director of the Company shall also be the secretary of the Company.
- 67.3 A secretary must otherwise be appointed by the directors (after giving the Company their signed consent to act as secretary of the Company).
- 67.4 The directors must decide the terms and conditions under which the secretary is appointed, including any remuneration.
- 67.5 The office of secretary will be vacant if the Executive Director

- (a) dies;
- (b) resigns from the office of secretary in writing addressed to the directors;
- (c) is removed from the office of secretary;
- (d) becomes insolvent under administration;
- (e) becomes a represented person within the meaning of the *Guardianship and Administration Act 1986* (Vic);
- (f) ceases to be a resident in Australia.

67.6 The role of the secretary includes:

- (a) maintaining a register of the Company's members, and
- (b) maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.

67.7 The Executive Director shall, subject to the direction of the directors:

- (a) be responsible for dealing with correspondence of the Company and for the custody of all books, and documents and securities of the Company;
- (b) be responsible for the day-to-day management of the Company and employment of all staff;
- (c) be responsible for receipt of all monies on account of the Company and the issue of official receipts;
- (d) make all payments as authorised by the directors; and
- (e) keep correct accounts and books showing the financial affairs of the Company with full details of all receipts and expenditure connected with the activities of the directors.

**68. In addition to the responsibilities set out in clause 67.7, the Executive Director:**

- (a) is responsible for the collection and receipt of all moneys due to the Company;
- (b) must ensure that all moneys received on account of the Company are deposited without delay to the credit of the Company in such bank or financial institution as the directors may from time to time determine;
- (c) must ensure that all expenditure is in accordance with the protocol developed by the directors and in accordance with any specific delegations;
- (d) must ensure that financial records are kept for the Company and are audited each year in accordance with the Corporations Act and

submitted to the annual general meeting as required by the Corporations Act;

- (e) 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 (but excluding information of a personal nature regarding staff or service recipients);
- (f) must ensure all returns and reports are prepared and lodged in accordance with the Corporations Act and the ACNC Act;
- (g) must ensure that the Company complies with any requirement of any government grant or funding authority;
- (h) must ensure that the Company complies with all relevant laws;
- (i) must ensure that the assets and income of the Company are applied solely in furtherance of its objects and in accordance with clause 8;
- (j) must file Company statements as and when due accompanied by the prescribed fee;
- (k) must ensure that the Company's common seal is kept in safe custody and only affixed to an instrument after the directors have given authority; and
- (l) must ensure the safe custody of documents and securities of the Company.

## Minutes and records

### 69. Minutes and records

- 69.1 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of general meetings
  - (b) minutes of circular resolutions of members
  - (c) a copy of a notice of each general meeting, and
  - (d) a copy of a members' statement distributed to members under clause 29.
- 69.2 The Company must, within one month, make and keep the following records:
- (a) minutes of proceedings and resolutions of directors' meetings (including meetings of any committees), and
  - (b) minutes of circular resolutions of directors.
- 69.3 To allow members to inspect the Company's records:
- (a) the Company must give a member access to the records set out in clause 69.1, and

- (b) the directors may authorise a member to inspect other records of the Company, including records referred to in clause 69.2 and clause 70.1.
- 69.4 The directors must ensure that minutes of a general meeting or a directors' meeting are signed within a reasonable time after the meeting by:
  - (a) the chairperson of the meeting, or
  - (b) the chairperson of the next meeting.
- 69.5 The directors must ensure that minutes of the passing of a circular resolution (of members or directors) are signed by a director within a reasonable time after the resolution is passed.
- 70. Financial and related records**
- 70.1 The Company must make and keep written financial records that:
  - (a) correctly record and explain its transactions and financial position and performance, and
  - (b) enable true and fair financial statements to be prepared and to be audited.
- 70.2 The Company must also keep written records that correctly record its operations.
- 70.3 The Company must retain its records for at least 7 years.
- 70.4 The directors must take reasonable steps to ensure that the Company's records are kept safe.

## By-laws

### 71. By-laws

- 71.1 The directors may pass a resolution to make by-laws to give effect to this Constitution, including a Code of Conduct.
- 71.2 Members and directors must comply with by-laws as if they were part of this Constitution.

## Notice

### 72. What is notice

- 72.1 Anything written to or from the Company under any clause in this Constitution is written notice and is subject to clauses 73 to 75, unless specified otherwise.
- 72.2 Clauses 73 to 75 do not apply to a notice of proxy under clause 36.5.

### 73. Notice to the Company

Written notice or any communication under this Constitution may be given to the Company, the directors or the secretary by:

- (a) delivering it to the Company's registered office

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

**74. Notice to members**

74.1 Written notice or any communication under this Constitution may be given to a member:

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

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

**75. When notice is taken to be given**

A notice:

- (a) delivered in person, or left at a recipient's address, is taken to be given on the day it is delivered
- (b) sent by post, is taken to be given on the seventh day after it is posted with the correct payment of postage costs
- (c) sent by email, fax or other electronic method, is taken to be given on the business day after it is sent, and
- (d) given under clause 74.1(e) is taken to be given on the business day after the notification that the notice is available is sent.

## Financial year

### 76. Company's financial year

The Company's financial year is from 1 July to 30 June, unless the directors pass a resolution to change the financial year.

## Indemnity, insurance and access

### 77. Indemnity

77.1 The Company indemnifies each officer of the Company out of the assets of the Company, to the relevant extent, against all losses and liabilities (including costs, expenses and charges) incurred by that person as an officer of the Company.

77.2 In this clause, 'officer' means a director or secretary and includes a director or secretary after they have ceased to hold that office.

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

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

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

### 78. Insurance

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

### 79. Directors' access to documents

79.1 A director has a right of access to the financial records of the Company at all reasonable times.

79.2 If the directors agree, the Company must give a director or former director access to:

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



## Winding up

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

If the Company is wound up, any **surplus assets** must not be distributed to a member or a former member of the Company, unless that member or former member is a charity described in clause 81.2.

### 81. Distribution of surplus assets

81.1 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 any grant, must be returned to the department or authority that supplied it or to a body nominated by that department or authority.

81.2 Subject to the Corporations Act and any other applicable Act, and any court order, any surplus assets other than the Gift Fund that remain after the Company is wound up must be distributed to one or more charities:

- (a) with charitable purpose(s) similar to, or inclusive of, the purpose(s) in clause 6,
- (b) which also prohibit the distribution of any surplus assets to its members to at least the same extent as the Company, and
- (c) that is or are deductible gift recipients within the meaning of the *Income Tax Assessment Act 1997* (Cth).

81.3 The decision as to the charity or charities to be given the surplus assets must be made by a special resolution of members at or before the time of winding up. If the members do not make this decision, the Company may apply to the Supreme Court to make this decision.

### 82. Gift Fund

82.1 The Company must maintain a Gift Fund for the principal purpose of the Company:

- (a) to which gifts of money or property for that purpose are to be made; and
- (b) to which any money received by the entity because of such gifts is to be credited; and
- (c) that does not receive any other money or property.

82.2 The Company must use:

- (d) gifts made to the fund; and
  - (e) any money received because of such gifts,
- only for the principal purpose of the Company.

82.3 In the event of:

- (a) the winding up of the Gift Fund; or
- (b) the revocation of the Company's deductible gift recipient endorsement under the *Income Tax Assessment Act 1997* (Cth),

the Company must transfer any surplus assets of the Gift Fund to one or more charities that meet the requirements of clauses 81.2(a), 81.2(b) and 81.2(c), as decided by the directors.

## Definitions and interpretation

### 83. Definitions

In this Constitution:

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

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

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

**Executive Director** means the person appointed by the directors as Executive Director of the Company who shall also be the secretary of the Company

**general meeting** means a meeting of members and includes the annual general meeting, under clause 20.1

**Gift Fund** means the gift fund established pursuant to clause 82 for:

- (a) gifts of money or property for the principal purpose of the Company,
- (b) contributions made in relation to a fund-raising event held for the principal purpose of the Company; and
- (c) money received by the Company because of such gifts and contributions wherein 'contributions' and 'fund-raising event' have the same meaning as in Division 30 of the *Income Tax Assessment Act 1997* (Cth).

**member present** means, in connection with a general meeting, a member present in person, by representative or by proxy at the venue or venues for the meeting

**Minister** means the Minister for Health in the State of Victoria, including a successor Minister with responsibility for the State health portfolio.

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

**secretary** means the person appointed as Executive director unless otherwise determined by the directors

**special resolution** means a resolution:

- (a) of which notice has been given under clause 21.5(c), and
- (b) that has been passed by at least 75% of the votes cast by members present and entitled to vote on the resolution, and

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

**84. Reading this Constitution with the Corporations Act**

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

**85. Interpretation**

In this Constitution:

- (a) the words ‘including’, ‘for example’, or similar expressions mean that there may be more inclusions or examples than those mentioned after that expression, and
- (b) reference to an Act includes every amendment, re-enactment, or replacement of that Act and any subordinate legislation made under that Act (such as regulations).