



HERBERT  
SMITH  
FREEHILLS

# Constitution

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Foundation for Rural and  
Regional Renewal

ABN 27 091 810 589



# Contents

## Table of contents

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<b>1</b>	<b>Company's name</b>	<b>3</b>
<b>2</b>	<b>Company's purposes</b>	<b>3</b>
<b>3</b>	<b>Company's powers</b>	<b>3</b>
<b>4</b>	<b>Not for profit</b>	<b>3</b>
	4.1 Application of the company's income and property .....	3
	4.2 Payments of directors fees .....	3
	4.3 Other payments to directors .....	3
<b>5</b>	<b>Membership</b>	<b>4</b>
<b>6</b>	<b>Liability and guarantee of members</b>	<b>4</b>
<b>7</b>	<b>Winding up</b>	<b>4</b>
<b>8</b>	<b>Deductible Gift Recipient status</b>	<b>5</b>
	8.1 Application of this rule .....	5
	8.2 Public Fund .....	5
	8.3 Records and financial statements .....	5
	8.4 Public Fund administration .....	5
	8.5 Winding up or revocation of deductible gift recipient endorsement .....	6
<b>9</b>	<b>Altering this constitution</b>	<b>6</b>
<b>10</b>	<b>General meetings</b>	<b>6</b>
	10.1 Accountability to the members .....	6
	10.2 Convening general meetings .....	7
<b>11</b>	<b>Directors</b>	<b>7</b>
	11.1 Appointing directors .....	7
	11.2 Vacation of office .....	8
	11.3 Powers and duties of directors .....	8
	11.4 Directors conflict of interest .....	8
	11.5 Committees .....	9
	11.6 Validity of acts .....	9
<b>12</b>	<b>Decision-making procedures</b>	<b>10</b>
	12.1 Convening meetings .....	10
	12.2 Digital meetings .....	10
	12.3 Quorum .....	10
	12.4 Chair .....	11
	12.5 Decisions of directors .....	11
	12.6 Written resolutions of directors .....	11
	12.7 Minutes and records .....	11
<b>13</b>	<b>Secretary</b>	<b>12</b>
<b>14</b>	<b>Indemnity and insurance</b>	<b>12</b>
	14.1 Persons to whom the indemnity and insurance apply .....	12
	14.2 Indemnity .....	12



## Contents

14.3	Insurance .....	12
14.4	Savings .....	12
<b>15</b>	<b>Notice</b>	<b>13</b>
15.1	Notice from the company .....	13
15.2	Notice to the company .....	13
15.3	Time of service.....	13
15.4	Other communications and documents .....	13
<b>16</b>	<b>Definitions and interpretation</b>	<b>14</b>
16.1	Definitions .....	14
16.2	Interpretation.....	15
<b>17</b>	<b>Corporations Act and ACNC Act</b>	<b>15</b>

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# Constitution

## Foundation for Rural and Regional Renewal

### A company limited by guarantee

#### 1 Company's name

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The name of the company is Foundation for Rural and Regional Renewal.

#### 2 Company's purposes

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The company's charitable purpose is to promote rural and regional renewal, regeneration and development in Australia, in social, economic, environmental, and cultural areas, for the public benefit, in the manner the directors decide from time to time.

#### 3 Company's powers

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Solely for carrying out the company's purposes, the company may exercise all of the powers of a company limited by guarantee under the Corporations Act.

#### 4 Not for profit

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##### 4.1 Application of the company's income and property

- (a) The company's income and property must be applied solely towards promoting the company's purposes.
- (b) No part of the income or property may be paid, transferred or distributed, directly or indirectly, by way of dividend, bonus, or other profit distribution, to any member or director in their capacity as member or director.
- (c) This rule 4 does not prohibit indemnification of, or payment of premiums on contracts of insurance for, any director to the extent permitted by law and this constitution.

##### 4.2 Payments of directors fees

No directors fees may be paid to the directors.

##### 4.3 Other payments to directors

All other payments to directors must be approved by the directors including, but not limited to:



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

## 5 Membership

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- (a) The members are The Sidney Myer Fund and the Commonwealth of Australia, or subject to compliance with rule 5(b), any persons replacing these members or successor members.
- (b) If a member wishes to cease to be a member, it must first seek consent of the other member to its resignation and to the appointment of another person as member. On receipt of the approval, the resigning member must give notice to the company secretary of its resignation and the approval of the remaining member to the appointment of the incoming person as a member, together with the consent of the incoming person to becoming a member.
- (c) The company secretary will reflect all changes in the register of members.

## 6 Liability and guarantee of members

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- (a) The liability of the members is limited to the amount of the guarantee given in rule 6(b).
- (b) Each member must contribute an amount not more than \$100 to the property of the company if it is wound up while the person is a member or within one year after the person ceases to be a member, for:
  - (1) payment of the company's debts and liabilities contracted before the time the individual ceased to be a member; and
  - (2) expenses of winding up.

## 7 Winding up

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- (a) If, on the winding up or dissolution of the company, any property remains after satisfaction of all its debts and liabilities, and after application of rule 8.5, this property must only be transferred to an entity that is charitable at law.
- (b) The entity referred to in rule 7(a) must be decided by the members, or if the members do not wish to decide or do not decide, it must be decided by the Supreme Court of the Australian Capital Territory.



## 8 Deductible Gift Recipient status

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### 8.1 Application of this rule

This rule only applies if the company is a deductible gift recipient under the ITAA 97 and only to the extent required by law or the Commissioner.

### 8.2 Public Fund

- (a) The company must maintain a public fund for its purposes to be known as Foundation for Rural and Regional Renewal Public Fund (**Public Fund**):
  - (1) to identify and record Gifts and Deductible Contributions;
  - (2) to identify and record any money received by the company because of those Gifts and Deductible Contributions; and
  - (3) that does not record any other money or property.
- (b) The company must invite the public to contribute to support its purposes.
- (c) Receipts for Gifts or Deductible Contributions must state the:
  - (1) name and ABN of the company;
  - (2) name of the public fund;
  - (3) the date and amount (or value, if property) of the Gift or Deductible Contribution;
  - (4) the name of the donor or contributors;
  - (5) the fact that it was a Gift or Deductible Contribution (and if it was a Deductible Contribution, the relevant fundraising event and GST inclusive market value of the event or goods or services purchased).
- (d) The company must notify the Commissioner, as soon as practicable, of
  - (1) any changes to the purposes or the constitution; and
  - (2) any change to the name of the company.

### 8.3 Records and financial statements

- (a) The company must keep and maintain proper books of account and records (which are written up in accordance with generally accepted accounting standards and principles consistently applied) relating to all receipts and outgoings for the Public Fund and if required by the Commissioner maintain a separate bank account for the Public Fund.
- (b) For each financial year, the company must have financial statements (including a profit and loss account and balance sheet) prepared by a suitably qualified person (in accordance with generally accepted accounting standards and principles consistently applied) which detail the affairs of the company including Public Fund for that financial year.

### 8.4 Public Fund administration

- (a) The Public Fund must be administered by the directors. If there is not a majority of the directors who are Responsible Persons, the directors must delegate the



power to administer the Public Fund to a committee of at least 3 people, the majority of whom are Responsible Persons.

- (b) If at any time the requirement in rule 8.4(a) is not met, the board or committee must not exercise any discretion or power in respect to the administration of the public fund until the requirement is met, except to protect the Public Fund or in the case of urgency.

## **8.5 Winding up or revocation of deductible gift recipient endorsement**

- (a) Upon:
  - (1) the winding up of the company; or
  - (2) the company ceasing to be endorsed as a deductible gift recipient under the ITAA 97,whichever is earlier, any surplus funds in the Public Fund must be transferred to an entity:
  - (3) which is charitable at law; and
  - (4) gifts to which are deductible under Division 30 of the ITAA 97.
- (b) The identity of the entity referred to in rule 8.5(a) must be decided by the members, or if the members do not wish to decide or do not decide, it must be decided by the Supreme Court of the Australian Capital Territory.

## **9 Altering this constitution**

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- (a) The company must not pass a special resolution altering this constitution, if, as a result, the company would cease to be a charity.
- (b) A resolution purporting to alter this constitution in breach of rule 9(a) will have no effect.
- (c) The company must give notice of any alteration to the regulators as required.

## **10 General meetings**

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### **10.1 Accountability to the members**

- (a) The company must be accountable to the member within the terms of the law, including, as applicable, the Corporations Act, the ACNC Act and this constitution.
- (b) The directors may decide the manner in which the company will be accountable to the member and the manner in which they will provide an adequate opportunity for the member to raise any concerns about the governance, activities and finances of the company. Because Sidney Myer Fund and the Commonwealth of Australia are the only members, they will have opportunity to raise any concerns about the governance, activities and finances of the company at any time.



## 10.2 Convening general meetings

- (a) The directors may convene a general meeting at such time and place as the directors think fit.
- (b) At least 21 days' notice of every general meeting must be given in any manner authorised by rule 15 to each person who is at the date of the notice:
  - (1) a member;
  - (2) a director; and
  - (3) the auditor of the company, if applicable.
- (c) A notice of a general meeting must:
  - (1) specify the date, time and place of the meeting;
  - (2) state the general nature of the business to be transacted at the meeting and if a special resolution is proposed, state the full terms of the special resolution; and
  - (3) specify any details of voting such as proxies, as decided by the directors.
- (d) The members may waive notice of a general meeting or consent to shorter notice by giving notice to the company.
- (e) A quorum consists of both members.
- (f) A member who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (g) The members may appoint by notice to the company a proxy or representative to attend meetings and vote on behalf of that member.
- (h) The company may pass a resolution without a meeting by both members recording it and signing the record.

## 11 Directors

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### 11.1 Appointing directors

- (a) The minimum number of directors is 5 and the maximum is 15.
- (b) The directors may appoint any individual as a director, provided:
  - (1) the members have consented to the appointment;
  - (2) that individual has signed a consent to act as director;
  - (3) the individual is not disqualified from managing a corporation under the Corporations Act nor disqualified from being a responsible entity under the ACNC Act;
  - (4) if the individual is an employee of any government or government entity, or acts in another way in an office of profit under the crown, the individual agrees that in becoming a director, they will act in her or his personal capacity independently of the government.
- (c) The Commonwealth of Australia has the right from time to time to appoint an individual as a director and remove that director.





- (d) The Sidney Myer Fund has the right from time to time to appoint an individual as a director and to remove that director.
- (e) Subject to rule 11.2, a director holds office for a maximum of 9 years from the date of appointment, unless the members otherwise decide for any particular director.

## 11.2 Vacation of office

The office of a director becomes vacant:

- (a) if the director dies;
- (b) if the director resigns by notice to the company;
- (c) if the director is removed from office by special resolution of the members;
- (d) if the director is disqualified from managing a corporation under the Corporations Act or disqualified from being a responsible entity under the ACNC Act;
- (e) except to the extent of a leave of absence granted by the directors, if the director fails to attend at least three consecutive meetings of the directors or at least four meetings over a period of one year;
- (f) in the circumstances outlined in the Corporations Act;
- (g) if a person is appointed to make decisions on behalf of the director under a law relating to mental health.

## 11.3 Powers and duties of directors

- (a) The directors are responsible for managing the company's affairs and carrying out the company's purposes set out in rule 2.
- (b) The directors may exercise all the company's powers which are not required, by the Corporations Act or by this constitution, to be exercised by the members in a general meeting.
- (c) The directors must ensure they are aware of, and comply with their duties as directors, including the ACNC governance standards.
- (d) The directors must ensure the company's financial affairs are managed responsibly, including:
  - (1) maintaining financial records that correctly record and explain its transactions and financial performance, and enable true and fair financial statements to be prepared annually;
  - (2) deciding how payments are to be approved or executed by or on behalf of the company; and
  - (3) ensuring the company does not operate while insolvent.
- (e) The directors may delegate any of their powers or functions to one or more of the directors, a committee, an employee, agent or other person as the directors decide.

## 11.4 Directors conflict of interest

- (a) A director must disclose a perceived or actual material conflict of interest to the other directors.



- (b) Unless the directors decide otherwise and where permitted by law, a director who has a material personal interest in a matter that is being considered at a directors meeting must not:
  - (1) be present while the matter is being considered; or
  - (2) vote on the matter.
- (c) The directors may make a policy or rules relating to disclosure of interests and subsequent requirements of the directors. Any policy or rules will bind all directors.
- (d) An act, transaction, agreement, instrument, resolution or other thing with a third party is not invalid or voidable only because a director fails to comply with the policy or rules.
- (e) A director is not disqualified from contracting or entering into an arrangement with the company as vendor, purchaser or in another capacity merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (f) A contract or arrangement entered into by or on behalf of the company in which a director is in any way interested is not invalid or voidable merely because the director holds office as a director or because of the fiduciary obligations arising from that office.
- (g) A director who has an interest in an arrangement involving the company is not liable to account to the company for any profit realised under the arrangement merely because the director holds office as a director or because of the fiduciary obligations arising from that office, provided that the director complies with applicable disclosure requirements under this constitution, any policy or rules of the company and the law.
- (h) A director may hold any other office or position (except auditor) in the company or a related body corporate in conjunction with their directorship and may be appointed to that office or position on terms (including remuneration and tenure) that the directors decide.

## 11.5 Committees

- (a) The directors may delegate their powers to one or more committees consisting of any number of directors and/or others.
- (b) A committee must exercise its powers within the terms of the delegation.
- (c) The procedures in rule 12 apply as far as possible to the decision-making of any committees.

## 11.6 Validity of acts

An act done by a person acting as a director, a meeting of directors, or a person exercising a power or function delegated to them by a director is not invalidated merely because of one of the following circumstances, if that circumstance was not known by that person, the directors or the committee (as applicable) when the act was done:

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



## 12 Decision-making procedures

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### 12.1 Convening meetings

- (a) A director may call a meeting by giving reasonable notice to the other directors, or by the secretary giving notice of the meeting to all directors.
- (b) A notice of meeting:
  - (1) must specify the time and place of the meeting;
  - (2) need not state the nature of the business to be transacted at the meeting;
  - (3) may be given immediately before the meeting; and
  - (4) must be given in accordance with rule 15.1.
- (c) The non-receipt of notice of a meeting, or a failure to give notice of a meeting, does not invalidate any thing done or resolution passed at the meeting if:
  - (1) the non-receipt or failure occurred by accident or error;
  - (2) the director waives notice of that meeting before or after the meeting;
  - (3) the director notifies the company of their agreement to that thing or resolution personally or by post, telephone, email or other electronic means before or after the meeting; or
  - (4) the director attended the meeting.

### 12.2 Digital meetings

- (a) A director who takes part in a meeting by telephone or digital means is taken to be present in person at the meeting.
- (b) The simultaneous linking together by telephone or digital means of a sufficient number of the directors to constitute a quorum constitutes a meeting.
- (c) All the provisions in this constitution relating to meetings apply, as far as they can and with any necessary changes, to meetings by telephone or digital means.
- (d) A meeting by telephone or digital means is taken as held at the place decided by the chair of the meeting, as long as at least one person involved was at that place for the duration of the meeting.
- (e) If a technical difficulty occurs which means that one or more directors cannot participate, the chair may adjourn the meeting until the difficulty is remedied or may, if a quorum remains present, continue with the meeting.

### 12.3 Quorum

- (a) No business may be transacted at a meeting unless a quorum is present at the time the business is dealt with.
- (b) A quorum consists of a majority of directors.
- (c) If the number of directors in office is less than the minimum number of directors fixed under this constitution, the remaining directors must act as soon as possible to appoint additional directors, as required, and, until that has



happened, may only act if and to the extent that there is an emergency requiring them to act.

#### **12.4 Chair**

- (a) The directors may elect one of the directors as chair and may decide the period for which that person is to be the chair.
- (b) The chair must preside as chair at each meeting if present within 10 minutes after the time appointed for the meeting and willing to act.
- (c) If there is no chair or the conditions in rule 12.4(b) have not been met, the directors present must elect one of the directors as chair of the meeting.

#### **12.5 Decisions of directors**

- (a) A resolution at a meeting of directors must be decided by a majority of votes cast by the directors present.
- (b) Where the votes on a proposed resolution are equal, the chair of the meeting does not have a second or casting vote, and the vote is taken as lost.

#### **12.6 Written resolutions of directors**

- (a) A resolution is taken to have been passed if:
  - (1) all of the directors who would be entitled to receive notice of a meeting and to vote on a resolution are given a document setting out that resolution;
  - (2) a majority of the directors sign or consent to the resolution within the time specified, or if no time is specified, within 14 days of the document being sent to the directors; and
  - (3) the directors who sign or consent to the resolution would have constituted a quorum at a meeting held to consider that resolution.
- (b) A director may consent to a resolution by:
  - (1) signing the document containing the resolution (or a copy of that document);
  - (2) giving the company notice agreeing to the resolution and either setting out its terms or otherwise clearly identifying them; or
  - (3) telephoning the secretary or the chair and signifying assent to the resolution and clearly identifying its terms.
- (c) The resolution is taken as passed when the last director required to constitute a majority of the directors signs or consents to that resolution within the time period specified in rule 12.6(a)(2).

#### **12.7 Minutes and records**

- (a) The directors must ensure:
  - (1) minutes of general meetings, directors meetings and committee meetings (including all resolutions proposed); and
  - (2) records of resolutions passed by members, directors and committees without a meeting,



are recorded and kept as part of the company's records. The records must be made within one month after the relevant meeting is held or resolution passed.

- (b) The minutes of a meeting must be signed within a reasonable time by the chair of the meeting or the chair of the next meeting.

## 13 Secretary

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- (a) The directors must appoint at least one secretary who ordinarily resides in Australia and who may also be a director.
- (b) The secretary must provide consent to the appointment.
- (c) The secretary can be removed by the directors.

## 14 Indemnity and insurance

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### 14.1 Persons to whom the indemnity and insurance apply

The indemnity and insurance referred to in this rule 14 applies to Indemnified Officers.

### 14.2 Indemnity

- (a) The company must indemnify, on a full indemnity basis and to the full extent permitted by law, each Indemnified Officer against all losses or liabilities (including costs and expenses) incurred by the person as an officer of the company.
- (b) This indemnity:
  - (1) is a continuing obligation and is enforceable by an Indemnified Officer even though that person has ceased to be an officer of the company;
  - (2) is enforceable without that person having first to incur any expense or make any payment; and
  - (3) operates only to the extent that the loss or liability in question is not covered by insurance.

### 14.3 Insurance

The company may, to the extent permitted by law:

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

for any Indemnified Officer against any liability incurred by the person as an officer of the company where the directors consider it appropriate to do so.

### 14.4 Savings

Nothing in this rule 14:



- (a) affects any other right or remedy that an Indemnified Officer may have in respect of any loss or liability referred to in this rule 14; or
- (b) limits the capacity of the company to indemnify or provide or pay for insurance for any person to whom this rule 14 does not apply.

## 15 Notice

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### 15.1 Notice from the company

The company may give notice and any communication:

- (a) personally;
- (b) by post to the person's nominated address;
- (c) by email or other electronic means; or
- (d) by notifying the person by email or other electronic means, that the notice or communication or publication is available at a specified electronic address.

### 15.2 Notice to the company

Notice may be given to the company:

- (a) by personal service at its registered address;
- (b) by post to its registered address; or
- (c) by sending it to the company's principal email address, or if there is no principal email address, to the email address of the secretary.

### 15.3 Time of service

- (a) A notice from the company properly addressed and posted is taken to be served at 10.00am on the day that is three Business Days after the date it was posted.
- (b) Where the company sends a notice by email or other electronic means, the notice is taken as served at the time it is sent.
- (c) If service under rule 15.3(b) is on a day which is not a Business Day or is after 4.00pm (addressee's time), the notice is regarded as having been received at 9.00am on the following Business Day.

### 15.4 Other communications and documents

Rules 15.1 to 15.3 apply, as far as they can, with any necessary changes, to the service of any communication or document.



## 16 Definitions and interpretation

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### 16.1 Definitions

<b>Term</b>	<b>Meaning</b>
<b>ACNC Act</b>	<i>Australian Charities and Not-for-profits Commission Act 2012 (Cth).</i>
<b>Business Day</b>	Monday to Friday inclusive, excluding New Years' Day, Australia Day, Good Friday, Easter Monday, ANZAC Day, Christmas Day and Boxing Day.
<b>Corporations Act</b>	<i>Corporations Act 2001 (Cth).</i>
<b>Commissioner</b>	the Commissioner of Taxation, a Second Commissioner of Taxation or a Deputy Commissioner of Taxation for the purposes of ITAA 97.
<b>Commonwealth of Australia</b>	Commonwealth of Australia represented by and acting through the Department of Infrastructure, Transport, Regional Development and Communications or its successor.
<b>Deductible Contribution</b>	a voluntary transfer of money or property in relation to an eligible fundraising event as described in item 7 or item 8 of the table in section 30-15 of the ITAA 97.
<b>Gift</b>	a voluntary transfer of money or property (including financial assets such as shares) where the donor receives no material benefit or advantage.
<b>Indemnified Officer</b>	<ol style="list-style-type: none"><li>1 each person who is or has been a director or executive officer of the company; and</li><li>2 any other officers or former officers of the company as the directors in each case decide.</li></ol>
<b>ITAA 97</b>	<i>Income Tax Assessment Act 1997 (Cth).</i>
<b>Responsible Person</b>	an individual who: <ol style="list-style-type: none"><li>1 performs a significant public function;</li><li>2 is a member of a professional body having a code of ethics or rules of conduct;</li></ol>

- 3 is officially charged with spiritual functions by a religious institution;
- 4 is a director of a company whose shares are listed on the Australian Securities Exchange;
- 5 has received formal recognition from government for services to the community;
- 6 is an individual before whom a statutory declaration may be made; or
- 7 is approved as a Responsible Person by the Commissioner.

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**The Sidney Myer Fund** M F Custodians Ltd as nominee for the trustees of The Sidney Myer Fund ABN 75 274 949 866.

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## 16.2 Interpretation

In this constitution:

- (a) a reference to any legislation includes all delegated legislation made under it and amendments, consolidations, replacements or re-enactments of any of them;
- (b) a word or expression defined or used in the Corporations Act, covering the same subject, has the same meaning in this constitution;
- (c) a reference to a member present at a general meeting is a reference to a member present in person or by proxy, attorney or representative; and
- (d) the singular includes the plural and the plural includes the singular.

## 17 Corporations Act and ACNC Act

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- (a) The replaceable rules set out in the Corporations Act do not apply to the company.
- (b) If at any time, the company is not a registered charity under the ACNC Act, the Corporations Act applies and (unless it is a replaceable rule) overrides any part of this constitution, or policy of the company, which is inconsistent with the Corporations Act.