



# Explanatory memorandum

Jacaranda Housing ABN 30 815 638 618 (**Company**)

- The constitution for a company limited by guarantee (**CLG**) registered under the *Corporations Act 2001* (Cth) (**Corporations Act**) documents a set of rules to govern the company. The constitution also provides the nature and purpose of the company as a charity, along with the rights and obligations of the company directors and members.
- The constitution provided to the members is based on the 'model' constitution made available by the Australian Charities and Not-for-profits Commission (**ACNC**), but has been modified, including (for example) to retain the 'higher threshold' rules listed under the existing constitution (e.g. charitable purposes, winding up, not-for-profit nature, and membership being non-transferrable).
- This explanatory table below summarises the rules of the proposed constitution with the existing constitution and an \*Asterisk is next to the rules that will be subject to the higher threshold change provisions contemplated under rule 16. The 'higher threshold' rules have not been amended.

Item	Old Rule	New Rule	Commentary
<b>Name of company</b>	<b>1</b>	<b>1</b>	<ul style="list-style-type: none"> <li>• The company name remains: Jacaranda Housing.</li> </ul>
<b>Nature of company</b>	<b>*2</b>	<b>*2</b>	<ul style="list-style-type: none"> <li>• The nature of the company is a not-for-profit CLG that does not have a share capital. There is no change.</li> </ul>
<b>Guarantee</b>	<b>8</b>	<b>3</b>	<ul style="list-style-type: none"> <li>• A CLG must specify the amount that each member will guarantee to pay towards the company's debts upon its winding up. The new constitution contemplates a guarantee amount of \$10, which is a reasonably standard amount for this type of company. The existing constitution provided for \$5. For clarity, this is a distinct concept from any membership application fee.</li> </ul>
<b>Objects / charitable purposes</b>	<b>*4</b>	<b>*4</b>	<ul style="list-style-type: none"> <li>• To maintain endorsement as a charity with the ACNC, the constitution must specify the intended purposes of the charity. The purposes will determine the associated tax status of the organisation. The objects have not changed.</li> </ul>
<b>Income and Property</b>	<b>*6</b>	<b>*6</b>	<ul style="list-style-type: none"> <li>• The proposed new constitution retains rule 6 which includes a reasonably standard not-for-profit rule specifying that the income and property of the company must be used solely for achieving the objects of the company. The rule also restricts income and property of the company being applied to members except in limited instances, e.g. reimbursement of reasonable out-of-pocket expenses incurred on behalf of the company or a reasonable sum for services actually performed, etc.</li> </ul>

<b>Winding-up requirements</b>	<b>7A</b>	<b>7A</b>	<ul style="list-style-type: none"> <li>• All community housing providers registered under the National Regulatory System for Community Housing (NRSCH) must have an appropriate winding-up rule in their constitution.</li> <li>• This rule requires that any remaining community housing assets of the company on winding up must be transferred in accordance with the rule.</li> <li>• This rule remains the same.</li> </ul>
	<b>*7</b>	<b>*7</b>	<ul style="list-style-type: none"> <li>• In addition to the NRSCH winding up conditions, the constitution also contemplates a mandatory Deductible Gift Recipient (<b>DGR</b>) revocation rule, which provides that it is required to transfer any surplus gifts, deductible contributions and related money to another DGR if it is dissolved or wound up, or has its DGR endorsement revoked.</li> <li>• The winding up provisions have not been changed as this is a regulatory requirement. This rule remains the same.</li> </ul>
<b>Membership is non-transferable</b>	<b>*9.6</b>	<b>*9.6</b>	<ul style="list-style-type: none"> <li>• The new constitution retains a reasonably standard provision that provides that the rights of members are personal and not transferable.</li> </ul>
<b>No directors' fees</b>	<b>13.7</b>	<b>10</b>	<ul style="list-style-type: none"> <li>• Rule 10 of the new constitution contemplates that directors must not receive fees for acting as directors.</li> <li>• However, directors may be paid 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.</li> <li>• Any payment made to a director must be approved by the directors and would be subject to the usual conflict of interest policies and procedures.</li> </ul>
<b>Membership</b>	<b>9</b>	<b>11-15</b>	<ul style="list-style-type: none"> <li>• Under the Corporations Act, a CLG must have at least one member.</li> <li>• Rules 11-15 of the new constitution governs who can be a member, how they can become a member and when they stop being a member.</li> <li>• A member's rights in the constitution include the right to: <ul style="list-style-type: none"> <li>○ be given information about the charity's annual finances (rule 20.3);</li> <li>○ ask questions at general meetings (rule 20.4);</li> <li>○ request the directors to call a meeting, propose resolutions and make statements;</li> <li>○ receive notice of general meetings and attend general meetings;</li> <li>○ vote on resolutions, or appoint a proxy to vote on their behalf; and</li> <li>○ vote on a resolution to appoint or remove a director.</li> </ul> </li> </ul>

<b>What are the classes of members?</b>	<b>9.3</b>	<b>11</b>	<ul style="list-style-type: none"> <li>• The constitution has three classes of membership. <ul style="list-style-type: none"> <li>○ Class A membership – Founding members;</li> <li>○ Class B membership – Interested Persons; and</li> <li>○ Class C membership – Significant Contributors.</li> </ul> </li> <li>• These classes have not been changed under the proposed new constitution.</li> <li>• For completeness, it is possible that over time the composition of membership classes may reduce in size. If a particular class ceases to have any members, then that class will simply become redundant. The Company and board may continue to operate despite that class not containing any members, provided the company meets the statutory minimum.</li> <li>• For example, if the number of members under Class A (Founding Members) falls to zero, then the board may wish to adopt a policy to ensure that the Nominations Committee seeks to identify suitable candidates as company directors on the board or a sub-committee with 'lived experience' of social or affordable housing. This may include a preference for an individual director who is either a present or past tenant of the Company. These directors would need to continue to adhere to the usual conflict of interest policies and procedures.</li> </ul>
<b>Membership eligibility</b>	<b>9.4</b>	<b>12</b>	<ul style="list-style-type: none"> <li>• Rule 12 of the proposed constitution contemplates that a person must be supportive of the objects of the company, have the written support of two other members, and pay an application or membership fee.</li> </ul>
<b>Applying for membership</b>	<b>9.8</b>	<b>13</b>	<ul style="list-style-type: none"> <li>• Applications for membership are to be made in writing to the secretary of the company, where the applicant would specify the relevant 'class' that it wishes to fall under.</li> </ul>
<b>Approving membership</b>	<b>9.9</b>	<b>14</b>	<ul style="list-style-type: none"> <li>• The board must approve any new applications, apart from any automatic 'Founding Members'.</li> <li>• The existing constitution requires a 90% quorum and 100% support for new members, whereas the proposed constitution contemplates it would be approved as a simple majority of the board (more than 50% in accordance with rule 54).</li> </ul>
<b>Changing the constitution</b>	<b>*16</b>	<b>*16</b>	<ul style="list-style-type: none"> <li>• The constitution maintains the same rule on the process to amend the constitution, including the general and higher threshold processes for certain 'key' rules (identified in this document with an Asterisk).</li> </ul>
<b>Calling a meeting</b>	<b>14</b>	<b>18-19</b>	<ul style="list-style-type: none"> <li>• The proposed new constitution provides that members with at least 25% of the votes may call a meeting, which is slightly higher than the existing 5% of the votes under the existing constitution.</li> </ul>

<b>When must an AGM be held?</b>	<b>14.1.2</b>	<b>20</b>	<ul style="list-style-type: none"> <li>• Rule 14.1.2 of the existing constitution provides that an AGM must be held each calendar year and within five months after the end of the financial year.</li> <li>• Rule 20 of the new constitution contemplates that an AGM must be held at least once in every calendar year.</li> </ul>
<b>What notice must be provided for an AGM?</b>	<b>14.2.1</b>	<b>21</b>	<ul style="list-style-type: none"> <li>• Rule 14.2.1 of the existing constitution provides that members must be given 90 days' notice of the date of the AGM, and 21 days' notice of the time and place for the AGM.</li> <li>• Rule 21 of the proposed constitution simplifies this provision by providing that notice must be provided at least 21 days before the meeting. This removes the onerous requirement for the additional 90 days' notice for the AGM.</li> </ul>
<b>Quorum at a General Meeting</b>	<b>14.3</b>	<b>22</b>	<ul style="list-style-type: none"> <li>• There must be a minimum number of people present in person or by proxy for a meeting to be held. Rule 14.3 of the existing constitution requires a quorum of not less than 30 members (i.e. fixed quorum), whereas the proposed new constitution contemplates the quorum to be at least two times the current serving directors plus one (i.e. quorum by reference to the board number).</li> </ul>
<b>Chairperson</b>	<b>14.5</b>	<b>26</b>	<ul style="list-style-type: none"> <li>• The chairperson is responsible for the conduct of general meetings.</li> </ul>
	<b>14.4.3</b>	<b>27</b>	<ul style="list-style-type: none"> <li>• Although decisions at general meetings are often made by consensus of the members, voting by number may be required. In the unlikely event that a tie occurs, it is proposed that the Chairperson hold a casting vote to resolve the deadlock, which is a common mechanism in modern constitution to ensure the business of the company can be properly progressed.</li> <li>• Rule 14.4.3 of the old constitution was deficient and did not include any mechanism on how to resolve deadlocks.</li> </ul>
<b>Voting</b>	<b>9.5</b>	<b>32</b>	<ul style="list-style-type: none"> <li>• Both constitutions provide each member with one vote.</li> </ul>
<b>Directors</b>	<b>10</b>	<b>38</b>	<ul style="list-style-type: none"> <li>• A director is responsible for governing the company's activities and making sure it works towards achieving its charitable purpose.</li> <li>• Both constitutions contemplate at least three and no more than twelve directors, comprising: <ul style="list-style-type: none"> <li>○ up to three Stakeholder Directors who are persons nominated and elected by the Class A Founding Members who are tenants at a meeting of the members;</li> <li>○ up to three Stakeholders Directors who are persons nominated and elected by Class C Significant Contributor Members; and</li> <li>○ up to six Independent Directors nominated by any Member or the Board and elected by the members at a general meeting.</li> </ul> </li> </ul>

<b>Election of Directors</b>	<b>11</b>	<b>39</b>	<ul style="list-style-type: none"> <li>• The existing constitution provides directors will be elected at an AGM (see also the rule above on election by the relevant Class).</li> <li>• Rule 39 of the proposed constitution sets out that a person is eligible to be elected as a director if they: <ul style="list-style-type: none"> <li>○ have been first recommended by the Nominations Committee in accordance with the board’s nominations policy and procedure (see commentary below);</li> <li>○ are not an employee of the company;</li> <li>○ in the opinion of the board, be supportive of the objects of the company;</li> <li>○ give the company their signed consent to act as a director of the company; and</li> <li>○ are not ineligible to be a director under the Corporations Act or the ACNC Act.</li> </ul> </li> </ul>
<b>Nominations Committee</b>	-	<b>39.6</b>	<ul style="list-style-type: none"> <li>• The legal and regulatory responsibilities of company directors in Australia are significant and complex. The role requires substantial time and necessary expertise for directors to properly discharge their duties, the company to meet the standards at law, and for best practice in corporate governance.</li> <li>• The law requires directors to hold a working knowledge of the complex legal and regulatory framework under which it is operating, including (for example) the <i>Corporations Act 2001</i> (Cth), <i>Housing Act 2003</i> (Qld), <i>Work Health and Safety Act 2011</i> (Qld), <i>Superannuation Act 1976</i> (Cth), <i>Income Tax Assessment Act 1997</i> (Cth), the <i>Australian Charities and Not-for-profits Commission Act 2012</i> (Cth), in addition to the many significant contractual agreements with Government and the private sector.</li> <li>• Given the importance of these laws, potential personal liability is also imposed on directors in some cases, which is why the board believes it is important that the company establish a process to identify highly component and skilled company directors.</li> <li>• It is proposed that a Nominations Committee would allow for a process of identifying gaps in necessary skills (e.g. accounting, legal, compliance and risk), as well as recruiting and nominating new directors.</li> <li>• Rule 39 of the proposed constitution contemplates that the Nominations Committee to consist of at least one director and such other persons determined by the board from time to time.</li> </ul>
<b>Ceasing to be a director</b>	<b>12</b>	<b>42</b>	<ul style="list-style-type: none"> <li>• A company needs its directors to be actively involved in managing the company, which includes attending meetings.</li> <li>• Rule 42 of the of the proposed constitution provides that a director will automatically stop being a director in a number of circumstances, including (for example) upon notice, if they are removed by the members, if they are absent for three consecutive directors’ meetings without approval from the directors, among others.</li> </ul>

<b>Duties of directors</b>	-	<b>47</b>	<ul style="list-style-type: none"> <li>The proposed new constitution includes a reference to the duties detailed under ACNC Governance Standard 5.</li> </ul>
<b>Quorum at a Directors Meeting</b>	<b>17.2</b>	<b>52</b>	<ul style="list-style-type: none"> <li>Rule 17.2 of the existing constitution and rule 52 of the proposed constitution contemplates a quorum of a simple majority (more than 50%) of the directors to hold a directors' meeting.</li> </ul>
<b>Company Secretary</b>	<b>13.6</b>	<b>56</b>	<ul style="list-style-type: none"> <li>The constitution contemplates that the Company must have at least one secretary, who may also be a director.</li> <li>The role of the secretary includes (for example): <ul style="list-style-type: none"> <li>maintaining a register of the company's members; and</li> <li>maintaining the minutes and other records of general meetings (including notices of meetings), directors' meetings and circular resolutions.</li> </ul> </li> </ul>
<b>Financial Year</b>	-	<b>64</b>	<ul style="list-style-type: none"> <li>The new constitution provides that the financial year of the company is 1 July to 30 June. This is the standard financial year.</li> </ul>