



# **Memorandum for Constitutional Changes**

Justifications for constitutional amendments proposed at the Annual General Meeting of the University of Sydney Union (USU) in May, 2016.

## **Memorandum for Constitutional Changes**

These changes represent the first significant update to the USU Constitution in almost a decade. Although numerous, they are not radical. They aim to ensure that the Constitution remains relevant to the objects and structure of the USU, and is kept up to date with the environment in which the USU actually operates. Taken together, the changes reduce ambiguity and resolve some key governance challenges of recent years.

### **Definitions**

A number of new definitions have been added to the definitions section of the constitution. These include: Board Year, Incoming Board, Member, Notice Board and Office Bearer. These new definitions offer clarity to previously undefined words in the Constitution.

These are words that already appear in the Constitution but benefit from precise definition. For example, questions have arisen as to the extent of the Incoming Board's functions and powers, which is resolved by defining that otherwise nebulous body. Instead of repeatedly referring to and defining Notice Boards in the document, a formal definition is included in this title section.

The definition of 'Member' is currently in the constitution but has been unwittingly combined with the definition of 'in camera'.

A reference to the Act of NSW Parliament which establishes the University of Sydney has been included as part of the definition of 'University'. This Act was previously defined separately, which was simply unnecessary.

### **Article 3: Objects**

#### **Article 3.1**

This Article has been reformed to achieve the following ends:

- Make the section more succinct.
  - o Where possible, relevant sub-sections have been amalgamated. For example, sub-sections (d), (f), (g), and (h) have all been combined into one sub-section (e), in view of their common themes.
- Make the meaning of each object clearer and reflective of operational realities.
  - o This can be seen in the slight wording changes in 3.1(d) and (h).

### **Article 4: The Patron**

#### **Article 4.1**

This Article clarifies how the Patron of the USU is to be appointed (i.e. ‘by a Special Resolution of the Board’) and what this purpose of this position actually is (i.e. the agreement of a person to ‘to lend their name to the Union in order to support its reputation and standing for the advancement of its objects’). Neither the Patron’s appointment process nor the purpose of their role has been previously defined in the Constitution.

## **Article 5: Membership**

### **Article 5.1: Eligibility**

Persons enrolled in non-award courses conducted by the University will no longer be eligible for ordinary membership as seen in Article 5.1 (d). This includes courses taught at the Centre for Continuing Education. These people are rarely enrolled in these courses for more than a few months at a time and have low contact hours. They may still, however, become affiliate members by purchase of an ACCESS card and be entitled to the discounts offered at USU outlets.

Members of the Centre for English Teaching (CET) will, however, remain eligible under Article 5.1(d) for ordinary membership given the longer teaching-periods for these courses, their high contact-hours and the increasing integration of CET into the university.

### **Article 5.2: Classes of Membership**

Slight re-wording to the categories of membership has occurred here to help reduce ambiguity. In particular, ‘full members’ have been re-titled ‘ordinary members’.

#### **Article 5.2.1: Ordinary Membership**

Article 5.2.1 (b) has been reformed to clarify the rights of ordinary members of the USU. This should also assist in distinguishing the rights of ordinary members from other categories of membership (e.g. Associate Members or Life Members). These rights are not new, but instead represent the codification within the Constitution of rights which ordinary members (previously ‘full members’) have enjoyed for some time. It is important that the rights attaching to each class of membership are clearly defined in the founding document of an unincorporated association, as this document defines the rights of members as between one another and the organization.

#### **Article 5.2.3: Affiliate Membership**

Affiliate members are those who do fit into any of the categories established in Article 5.1 but have purchased an ACCESS card. Article 5.2.3(b) clarifies that they are entitled to benefits determined by the Board from time to time (e.g. discounts at USU outlets) but not to nominate for election to the Board of Directors or vote in any USU meetings.

#### **Article 5.2.4: Life Membership**

Life Membership is to be re-instituted following its repeal as a cost-saving measure at the time Voluntary Student Unionism was introduced. The rights of Life Members are clarified in this Article, giving a broad power to the Board to define those rights. This ensures that the Board can control whether and the extent to which Life Membership creates a financial burden.

#### **Article 5.2.5: Honorary Life Membership**

This Article clarifies that the Board may grant Honorary Life Members special privileges (by special resolution of the Board) and also specifies restrictions placed on the rights of Honorary Life Members.

#### **Article 5.3: Membership Year**

A slight addition was necessary here to clarify that membership begins at the time an individual obtains membership.

### **Article 7: The Board**

#### **Article 7.2: Conflicts of Interest and Director Remuneration**

The Constitution, as it currently stands, is very unclear about Director remuneration. It has been suggested in the past that the current wording of Article 7.2 may be inconsistent with practices of paying Directors honoraria and offering them meal card allowances.

The article is reformed to bring the USU into line with similar membership associations, by allowing director remuneration to be set according to best practice governance principles.

The new-wording of Article 7.2(b)(ii) offers the following benefits:

- It allows for the Board to receive defined remuneration and fringe benefits, resolving the potential problems with the current wording of Article 7.2.

- It prevents a genuine conflict of interest (i.e. the Board setting benefits for themselves) by outsourcing the determination of these benefits to a specialist remuneration committee. A similar committee already exists and advises the Board on the appropriate remuneration for the CEO. Although the Board is necessarily involved in the deliberations of this committee, the process ensures specialist knowledge is brought to those deliberations. Moreover, the ultimate oversight of director remuneration is placed in the hands of the AGM, as is standard practice.

### **Article 7.3: Composition**

Article 7.3(a)(i) has removed the words “by and from those Members eligible to vote at USU elections” because provisions relating to the individuals eligible to run for election to the Board and the individuals eligible to vote in that election exist elsewhere. Moreover, those eligible to run for election to the Board are a more narrow class than those eligible to vote in those elections. This may seem unusual, but it is so because of the peculiar context of the organisation. All students are given a vote, but only ordinary members may nominate for Board. As such, the existing form of words is inconsistent with other provisions of the document.

Article 7.3(a)(ii) has been reformed to suggest that the University Senate only appoint Board Directors ‘after inviting and considering any recommendations put to it by Special Resolution of Board’. This should help ensure that the Board has the opportunity to inform the Senate of its current needs and priorities before any appointment is made. Such recommendations would not be binding on the Senate. However, the reform ensures a process whereby the appointment of a new Director is in the best interests of the Board.

### **Article 7.4: Voting at Board Meetings**

Article 7.4(a) clarifies exactly who may vote at the Board’s monthly meetings.

Article 7.4(b) has been reworded to do justice to the interaction between Directors and staff at Board meetings. Staff do far more than simply ‘attend and speak’ at these meetings and this is better recognized by acknowledging that they ‘participate’ in Board meetings.

Article 7.5(a)(iii) clarifies that a Director who ceases to hold office under Article 7.5 may continue to act as a Director until a successor is appointed under Article 10.2. Previously the article suggested that the Board appoints a successor, but in fact a successor is appointed by operation of the Constitution.

## **Article 8: Office Bearers and Their Roles**

### **8.2: Role of President**

The article has been consolidated to avoid duplication with the General Meeting provisions later in the document. It has also been altered to state that the President “shall” rather than “may” exercise the functions specified in the Regulations. The latter change has also been applied to the articles dealing with the other Office Bearers.

## **8.4 Role of Treasurer**

Two very important aspects of the Honorary Treasurer’s role are not currently defined in the constitution: facilitating the Board’s understanding of the organization’s finances and overseeing the formation of the organization’s annual budget. Articles 8.4(e) and (f) now outline these responsibilities. They will help to ensure good governance.

## **Article 9: Powers of Board and Office Bearers**

### **Article 9.2: The Board**

In Article 9.2(d), the word ‘University’ has been replaced with ‘Board’. In the now distant past, the University would recognize Clubs and Societies rather than the USU. This constitutional amendment reflects that the USU is now the exclusive organization involved in Club and Society recognition.

Article 9.2(f) outlines the instances in which the Board may take legal action against a member of the USU. It also provides for the rights of the member against whom legal action is being taken (i.e. the opportunity to be informed of the action against them and to respond to it, and the capacity to appeal to the University Senate against any decision made). The provision has more clearly defined the Board’s power to take legal action and a member’s rights in these circumstances.

Article 9.2(g) has been deleted and replaced. The justification for removing the requirement that ‘if such a matter is raised against any member of the Board, such a member shall be suspended from the Board for the duration of the Board’s deliberations on that matter’ is as follows:

- No individual should be suspended from their responsibilities as a Director prior to the determination of their guilt. This violates the presumption of innocence and makes Directors the potential subjects of frivolous claims for political advantage.
- We have a strong system of declaring conflicts of interest which would preclude any Board Director from involvement in Board discussions which pertained to a legal case against them.

Article 9.2(g) allows the Board to create Committees with delegated decision-making authority. It further defines the procedural requirements attaching to such a delegation. This provides

constitutional recognition of a practice which already occurs and ensures proper regulation of this practice. These committees are an invaluable asset to the Board as they allow far more efficient decision-making on particular matters and are important for good governance.

## **Article 10: Elections**

### **10.1: Who May Nominate for Board**

This Article specifies that Ordinary Members who are eligible for Ordinary Membership pursuant to certain provisions of Article 5.1 are eligible to nominate for Board. They are:

- Students enrolled in a course of study leading to the award of a degree or diploma from the University.
- Members of the full-time, part time or casual staff of the University.
- Persons enrolled in a course conducted by the University's Centre for English Teaching.

These are the classes of Ordinary Members who, as a matter of policy, should be solely eligible to run for election to Board. The reasons are best understood by looking at the other classes of Ordinary Members. Take, for example, the Visitor of the University or Senate Appointed Directors – while eligible for Ordinary Membership, it should not be a controversial position that they are ineligible for election to the Board (indeed, in the case of Senate Appointed Directors, this would make little sense). Other classes, such as Residents and staff of accommodation providers, are largely coextensive with the abovementioned classes of Ordinary Members eligible to nominate, but to the extent they are not, for example the staff of student accommodation providers, it again seems uncontroversial that they ought be ineligible for election to the Board.

### **10.2: Conduct of Elections to Board**

Article 10.2(d) outlines a number of rules which should apply in the case of a vacancy on Board. The previous rules were capable of producing undesirable results – such as the appointment of a person who ran in an election 10 months ago to a Board position with a remaining tenure of 2 months. The justifications for the new article's elements are as follows:

- (i) *if the tenure attaching to the vacancy is of less than six months, it shall not be filled;*

It is quite difficult to educate and train a Board Director sufficiently for them to serve as a member of the Board. In the case where that person would only serve for less

than 6 months, the effort required to do so would be excessive given how brief their term on Board would be. Note that this rule would only apply if a second-year Director resigned (as a first-year Director, by definition, would have at least one year left in their term).

- (ii) *if the tenure attaching the vacancy is of six months or more, it shall be filled from the candidates for election at either the previous Annual Election or the subsequent Annual Election, whichever is most proximate to the date on which the vacancy arises, by the next highest polling candidate at the relevant Annual Election who is willing and able to fill the vacancy.*

This procedure establishes exactly where the person asked to fill the vacancy on the Board should be found (i.e. in the unelected candidates from the most proximate election). It maximizes the possibility that a willing and able candidate will fill the vacancy, because unsuccessful candidates at the past election may only be called upon for the six months following the election, rather than twelve months under the previous provision.

- (iii) *if the vacancy arises from the departure of a Director who is wom\*n identifying, the vacancy must be filled by a wom\*n identifying candidate;*

This is consistent with the practice of Affirmative Action for wom\*n-identifying candidates on Board and has been enshrined in the Constitution previously.

- (iv) *if the vacancy cannot be fulfilled pursuant to (ii) and in compliance with (iii), the vacancy shall not be filled.*

This is a provision for a situation where there are no other candidates to fill the vacancy. This would occur where the most proximate Board Election has the same number of candidates as Directors elected (i.e. 6 people ran for election in a year of 6 and all were elected) or where the vacancy needs to be filled by a wom\*n-identifying person and no such person was part of the pool of unelected candidates at the most recent election.

### **10.3: Executive and USU Committees**

Article 10.3(b) clarifies that the electoral system employed in the USU Executive election is that published by the proportional Representation Society of Australia.

## **Article 11: Meetings of the Board and USU Committees**

### **11.1: Conduct of Meetings**

Article 11.1 has been amended to remove obsolete provisions – for example those relating to the meetings of USU Committees. These provisions are more properly found in the Terms of Reference of the relevant Committees and/or the Regulations/Standing Orders. Other amendments simply consolidate the existing provisions. The end result is the removal of eight sub-provisions without the loss of any utility/clarity.

## **Article 14: Conduct of Administration**

### **14.5: Reporting Obligations**

We have clarified that the audit need only be submitted before the Annual General meeting of the subsequent year (rather than before the 31<sup>st</sup> of May). This ensures the audit reports are available in time for the AGM, whenever it may be held.

## **Article 15: General Meetings of the USU**

### **15.1 General Requirements**

Article 15.1(b) clarifies that notice for a General Meeting shall be given ‘in a manner whereby all may access it, including on the USU website and by E-mail’. This will help to ensure that as many members as possible know that a General Meeting has been called in case they are interested in its content or would like to participate.

Article 15(g)(iv) determines that a General Meeting should be able to recommend a motion to the Board of Directors for their consideration at the next Board meeting. This allows students to more directly recommend motions which they would like the Board to consider and provides a more tangible outcome for a GM.