

## Appendix 3: Explanation of Changes

*Disclaimer: The changes proposed at this meeting are only those that are necessary to implement before the 2025 Annual Election. It is the intent of the USU Board that the remainder of these changes be proposed at the AGM on 30 May 2025, alongside a vote to actually incorporate the USU. This vote is a necessary prerequisite for that process.*

<b>Basis For Incorporation.....</b>	<b>2</b>
<b>What Incorporation is Not.....</b>	<b>2</b>
<b>Overview Of Timeline and Changes For Consideration At SGM.....</b>	<b>3</b>
<b>Why The Changes and Their Timing Are Necessary.....</b>	<b>4</b>
<b>Support From The Board.....</b>	<b>5</b>
<b>Consultation To Date.....</b>	<b>6</b>
<b>Frequently Asked Questions.....</b>	<b>7</b>

## Basis For Incorporation

As an unincorporated entity, the USU's ability to provide quality and affordable services to students is under constant, extreme risk. Unincorporated organisations **cannot own assets or enter contracts in their own name**, making us reliant on workarounds that increase risk and reduce transparency. The USU, and by extension its student members, may not in its current unincorporated state be able to enforce its purported legal rights. We are **ineligible for many government grants**, vulnerable to exploitation by third-party providers, and expose our directors and members to **uncapped personal liability**.

Incorporation **solves all of these problems**. It brings the USU into line with best practice for charities and not-for-profits of our size, and grants us **legal personhood**—allowing us to manage assets, enter contracts, and plan for the future with clarity and confidence. It enables us to claim grants we've already won but couldn't accept—like one for Verge Gallery to support student artists. It helps us to avoid being defrauded out of amounts consistently over \$100,000 by third-parties through the legally enforceable right to contract in our own name. Incorporation protects our membership and directors from legal liability, and will encourage more USU Members to participate in the Union's governance.

Incorporation has **almost no drawbacks**. Apart from expenditure on legal advice, the only arguments against incorporation are that the USU has more formal reporting obligations to the ACNC to prove we are a charitable organisation, and more defined accountability structures and duties for directors which some may argue as 'stricter' than the current arrangement. However, the Board strongly argues that these are not weaknesses—they are strengths. The Board believes these measures will strengthen accountability, improve governance, and ensure the USU is fit for the future.

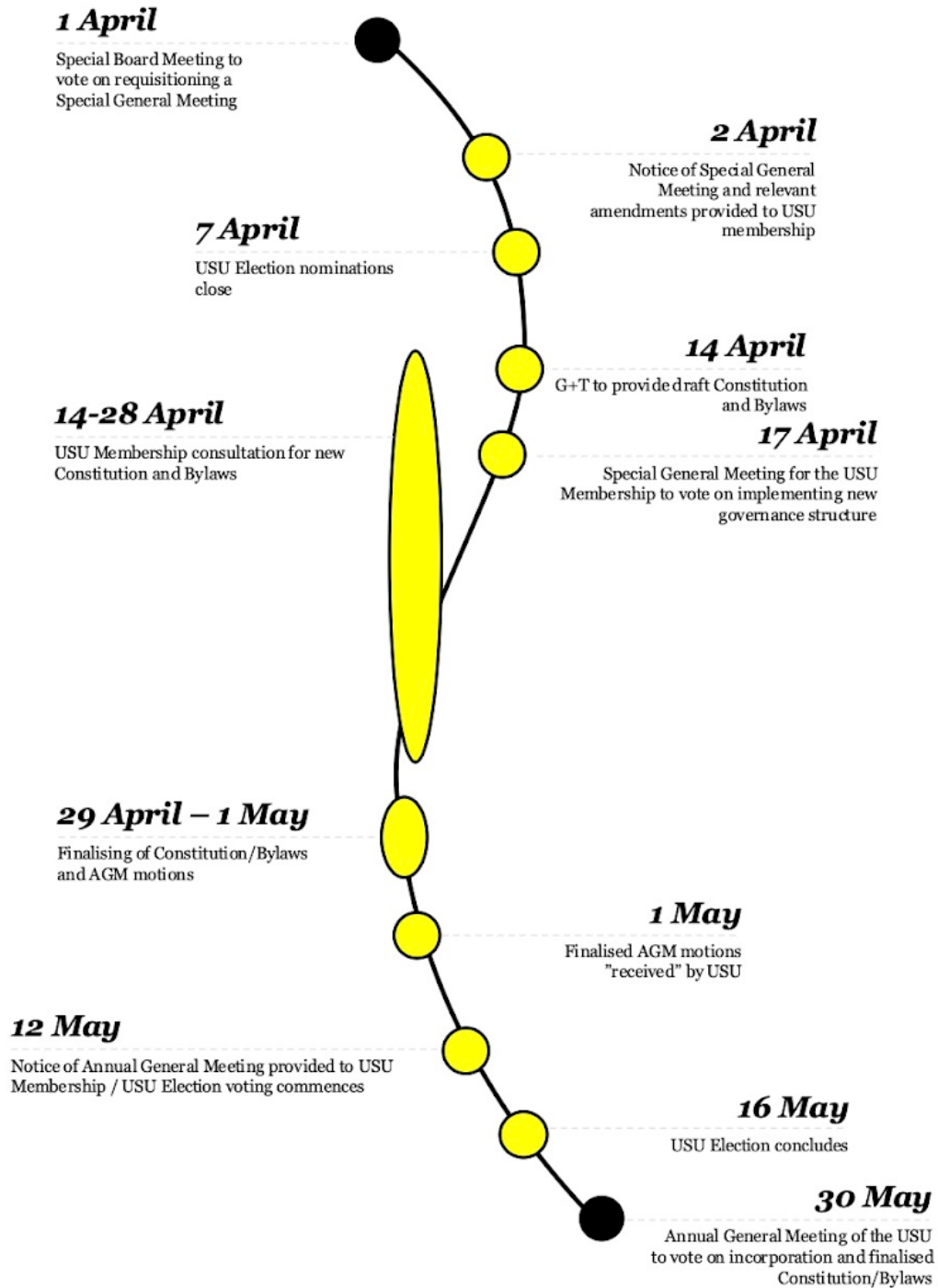
## What Incorporation is Not

Incorporation is not **corporatisation or commercialisation**. These are completely unrelated concepts. The latter two refer to the prioritisation of revenue generation and profit-seeking. We are a **not-for-profit charity**, and must remain so. Pursuing profit over purpose would not only violate our values—it would be **illegal**. Incorporation is simply a legal structure that gives the USU independent legal standing. It has nothing to do with becoming a business or compromising our mission.

Incorporation does not reduce **student representation** or **student decision making**. Our incorporation model, in fact, slightly increases the percentage say in positions students have from 84.6% under our current model to 89.3% under the new model. The changes being voted upon at the SGM will not alter student representation at all, with student directors making up 11 of the 13 positions in both the old and current model.

## Overview Of Timeline and Changes For Consideration At SGM

The USU's incorporation timeline is as follows.

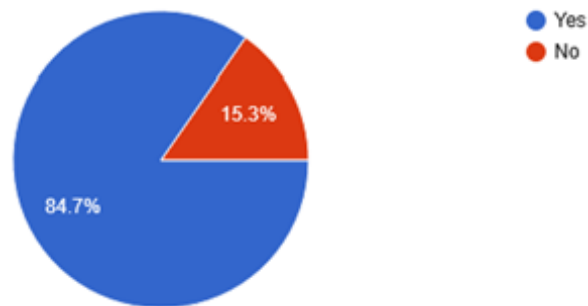


The USU Board is very conscious of **ensuring that the current elections are both fair and align the USU with the incorporation model endorsed by our membership and the Board.** Indeed, the first and second incorporation surveys of the membership demonstrated huge support for the proposal. As evidenced below, 84.7% of the membership are in favour of the model.

Considering all the information provided to you, do you support the USU's incorporation?

 [Copy chart](#)

170 responses



To reflect this support and meet our target of incorporating by 1 July, the Board has proposes to make the following changes at the SGM:

- Alter the number of student directors elected at the USU Election in May from 6 to 4; and
- Increase the number of voting third year directors on the Board of Directors from 0 to 2, in the form of an Immediate-Past President (voting) and Immediate-Past Vice President (voting).

This means that the voting composition of the Board, as a ratio of students to non-students, will be unaffected. We will move from 11 voting students to 11 voting students, but in doing so will increase the expertise and institutional knowledge contained within those students. Importantly, this means we do not have to supplement this continuity and knowledge with additional non-student Directors.

### **Why The Changes and Their Timing Are Necessary**

The composition of the Board is fundamentally altered each May with the annual USU Elections. To the extent we are seeking to alter this composition to enact this important and beneficial change, it is important that we do not do so in a way that is inconsistent with those elections.

If we were to wait until after these elections to pass the full incorporation model at the 30 May AGM, we would be unfairly and retrospectively cutting the 5th and 6th elected students at this year's USU Elections from the Board. By enacting these changes now, we seek to **avoid this harmful and unnecessary step.**

Whilst the alternative option would be to remove already elected Directors later down the line, as often occurs in industry, the Board is of the opinion that it would be **fairer** to make these changes now, before the election takes place, to provide as much **transparency** to the membership and candidates as possible.

By providing the notice of these changes before the nomination period for the upcoming elections close, candidates who wish to withdraw will still have time to do so. Indeed, they are still able to nominate and withdraw if they did not like the outcome of the Special General Meeting. These changes were **flagged both in the Notice of Election and at the Candidates' Information Session**, meaning any candidate who nominated would likely be aware of them.

Perhaps most importantly, whilst the Board is cognisant of the fact that this may impact the electoral calculus for potential candidates, it is unanimous in its view that in the short, medium, *and* long term these changes are not only best for the USU, but necessary for the USU. It is the fundamental duty of all USU Directors to put the interests of the organisation first, even above one's own, and we hope that candidates seeking election to this role and to seeking to take on this responsibility therefore do the same.

Ultimately, a candidate runs for a position on the Board. They do not run for one of six positions on the Board. **Candidates in the 2025 election will not lose anything. They have the ability to nominate and to withdraw with full information of these potential changes.** They have the ability to be elected to one of a significant plurality of positions.

The Board would like to stress our support for all candidates to continue their campaigns regardless of the outcome of this meeting to promote as lively a democracy as possible.

## **Support From The Board**

The process of incorporating the USU is an incredibly important one, as discussed above, and it is not one that the Board would wish to undertake unless it had the **full and strong support of the membership and the elected Directors who represent them.** To that extent, it has been a priority during this process that the proposals produced and discussed were tweaked and tinkered with to ensure that they received this widespread support.

We are proud to say that the incorporation model which is being put to the membership has received the **support of the Board** at each juncture of consideration **without a single vote against it.**

The proposed changes to the governance structures of the USU, of which some are being proposed to the membership at this Special General Meeting, received the **unanimous assent, approval, and support of the Board at the February Board Meeting.** This was a fantastic result, and demonstrated that Board Directors of **all backgrounds** – political or otherwise – were united in appreciating and advocating for the benefits of this proposed model for the USU.

Similarly, the motion to call this Special General Motion seeking the implementation of the parts of the governance model that were required to be implemented before the 2025 USU election passed **without a single vote against at the Special Board Meeting called in April** to ensure that these changes would be implemented in time.

Far too often in a climate of student politics it is the case that motions and initiatives that are incredibly important fall victim to external considerations and myopia. The USU Board is so grateful that for these changes, being changes which have failed consistently in the past, this was not the case. The **USU Board has been united in its support for these proposals**, and we hope that the membership can see this as an endorsement of their importance, their efficacy, and their necessity.

## Consultation To Date

The formulation of the incorporation model, and the current plan to implement it, are not merely ideas which began, grew, and ended within the USU Board. Rather, they have been subject to **extensive consultation** with both the USU membership and wider professionals with specific knowledge of this area.

Initially, a survey of members, staff, and the Board was conducted. As can be seen on our website, that survey **demonstrated overwhelming support for incorporating the USU**. It also demonstrated, however, that more information needed to be provided to members. Concerns existed that “incorporation” meant making the USU more corporate, or that the step was unnecessary. What was clear, however, was that a central issue for USU members was student leadership. The Board heard this message loud and clear, and entered the process with the knowledge that maintaining **the strength of student leadership was a non-negotiable**.

From there, armed with the information of our initial survey, the Board began work formulating an initial incorporation plan and structure. Not content to rest on its own skills, the Board consulted widely with external stakeholders to adjust and tweak this plan. This consultation included working with, and incorporating the responses of:

- Legal advisors from a highly reputable law firm;
- A Governance Consultant with decades of experience in the Sydney University Sector;
- Former USU Executive Directors across all roles and all political persuasions;
- Former Senate Appointed Directors;
- Former and current Chief Governance Officers of G8 Universities;
- Other student organisations at the University of Sydney;
- Members of the Law School Faculty;
- Numerous Barristers including Senior Counsel;
- Current and Former High Court and Court of Appeal Justices; and
- Former Prime Ministers/Party Leaders.

Having spoken to these individuals and groups, **the USU did not receive any response that was not supportive of the proposal to incorporate.** In fact, the response was one of shock and amazement that the USU had not yet incorporated, and overwhelming desire to see that happen. Responses from former USU Board Directors demonstrated that the plan had been in motion across at least each of the last four decades, but no Board could secure the support of the University to do so. They were incredibly excited that it appears we now have done so.

The result of this consultation was the current proposal. The structure that is now before the membership, and the process for implementing it, were compiled in a state that was ready to be made public for comment.

Thus after this extended external consultation process, the Board again turned back to the membership. The engagement with this survey was fantastic, and far outstripped surveys conducted by the USU and other student organisations in recent memory. The most recent survey had a **70-times better respondent-to-population ratio** than Newspoll. As part of our final round of consultation conducted in March, as stated earlier, **approximately 85% voted that they were in favour of incorporation given the model and overall ramifications.** This was an overwhelming mandate, far exceeding the two-thirds required to implement the changes to the *Constitution*, far outstripping the required number had the change been put to a referendum, and demonstrating to the Board that not only did the membership understand this change, but **they demanded it.**

The Board has been humbled by the level of engagement with this process, both internally within its membership and externally from experts willing to give their time to assist this process. We are so glad that this incorporation model is supported by so many, and see that we would be failing our duty as representatives to not seek to implement it now.

## Frequently Asked Questions

### *What is incorporation?*

Incorporation is the legal process by which an association becomes a distinct legal entity from its members. This process allows the organisation itself to own property, enter into contracts, and continue its existence independent of changes in the Board or management. It also means that the organisation, rather than its members, bears legal responsibility for its actions. This allows for greater flexibility and certainty for the USU, protection for members, and an improved ability for the USU to receive grants and other benefits which require the USU to exist as a legal entity.

### *Doesn't the USU do all of those things already?*

Whilst it may seem like the USU is able to do all of the things described above, it actually cannot do so as the USU. As the USU is not incorporated, legally it doesn't have the capacity to do those things. That means that presently, whenever it seems like the USU does them, it is actually an individual or individuals, usually a staff or Board member, who bears the legal responsibility. The USU does not have any legal right or responsibility. This means its members,

including the board and staff, could be personally liable for any debts or legal actions against the Union. Additionally, the USU would not have the same legal standing to own property or enter into contracts, making its operations more complex and riskier. There is also significant legal uncertainty surrounding unincorporated associations which may put our operations at risk. If the USU had a purported legal interest that it wanted to enforce, it might be held that actually, as the USU has no legal personality and therefore cannot possess legal rights, it cannot enforce it. This could be existentially devastating for the USU!

*Will incorporation mean the USU is more corporatised or for-profit?*

No. Incorporation is a legal process that has nothing to do with corporatisation. It simply means the USU will be given legal personality and legal rights/powers. The USU is and will remain a not-for-profit organisation after incorporation. Incorporation has no connection to making the USU for-profit or shifting its focus away from student life. Under the Associations Incorporation Act - legislation specifically for NFPs and non-corporate entities – the USU would be prohibited from deviating from these non-corporatised roots. All revenue generated will continue to be reinvested into student programs, clubs, and services, ensuring that the USU's mission remains student-focused.

*Will this dilute the student voice?*

No. Under this proposed model, students retain 11 voting seats on the Board. Perhaps more importantly, unlike in the current unincorporated USU structure, once we fully implement the governance structures that are proposed only students will be able to vote on the Executive (including President/Chair). This new structure provides 89.3% student control compared to 84.6% student control under the current structure, reinforcing and even increasing student representation in governance. It also allows the USU to have a say into the appointment of all external members, which at present is a power that is solely possessed by the University itself.

*How will incorporation affect me?*

If the USU were to incorporate, it likely will not directly impact staff or students in any noticeable way. The USU will continue to operate, essentially, in exactly the same way as before. Incorporation is a legal process, rather than an operational one. Incorporation does not change the core mission of the USU to serve its members. It will still operate to provide services, events, and advocacy. However, being incorporated allows the USU to manage its affairs more efficiently and with legal protections from a governance perspective. As a student or staff member, you likely wouldn't notice any change (except for the fact you could no longer be sued as a member if someone took issue with the USU!).

*Are other organisations incorporated?*

It is highly unusual for an organisation the size of the USU not to be incorporated. It is even more unusual for an organisation with commercial operations like ours to not be incorporated. Incorporation is used by associations across an incredibly wide array of activities. Examples of incorporated associations are the Greens Party NSW, Woolworths, the St Vincent de Paul Society NSW, the Law Society of New South Wales, the University of Sydney, and a large



number of student unions equivalent to the USU in NSW. Even the Sydney University Law Society, the student club, is incorporated.

*Will incorporating reduce the USU's autonomy or independence?*

Incorporating the USU will not lead to the University or the Senate having a greater influence over the USU or its operations. It does not mean that student leadership will be removed. It does not mean that there will be less representation or that the Board will have less influence. It is not a political decision. It is not a process which has been instigated by the University, but instead is one that Boards for over two decades have sought to implement, owing to the importance of its protections and outcomes. Conversely, incorporation actually provides greater legal independence and statutory protections from external influence. It also provides the Board the opportunity to review our governance mechanisms and ensure that they are appropriate, and reflect the views and wishes of the membership. Ultimately, the Board will only proceed with incorporation if it is in a manner that is acceptable to the membership. It will not sacrifice crucial things such as independence or autonomy in this process. These remain key priorities of the Board during this process. Incorporation, if it is to occur, will only be possible after a vote in favour by the membership.

*Will future Constitutional changes be possible?*

Yes, incorporation does not hinder the ability to amend the association's constitution; in fact, it makes it even easier. Given the size and operations of the USU, and the current Not-For-Profit (NFP) status (including the USU's ACNC compliance), the USU is likely to be an incorporated association under the *Associations Incorporation Act 2009* (NSW). The Associations Incorporation Act permits incorporated associations to alter their constitutions, provided they follow the procedures outlined in their governing documents and comply with statutory requirements. Typically, this involves passing a special resolution during a general meeting and lodging the changes with NSW Fair Trading. By formalising governance structures and streamlining amendment procedures, incorporation facilitates constitutional change more efficiently and effectively.