The University of Newcastle (UON) - Student-Led Organisation
Explanatory Memorandum - Proposed draft Constitution and Directors' Duties

For candidates standing for election as Student Directors at the inaugural Board election

This Explanatory Memorandum has been prepared to assist students who are considering standing for election to the Board of the new student-led organisation (**SLO**) to understand the legal and governance framework they would be joining. It forms part of the Candidate Information Pack and should be read together with the Candidate Information Pack, the Position Description for the role you are seeking, the Election Rules and the draft constitution of the SLO (**Constitution**). Unless otherwise defined, capitalised terms in this Explanatory Memorandum have the meaning given to them in the draft Constitution.

This Explanatory Memorandum is an important document and should be read carefully before you nominate. It outlines and explains the following:

(a) the background to the establishment of the SLO and the laws that shape it;

(b) the key duties you would owe as a company director if elected, and what can happen if those duties are not met; and

(c) a non-exhaustive summary of the key terms of the draft Constitution.

If you are elected, you will become a company director with real legal responsibilities. You do not need to be a governance expert to nominate, and induction and training will be provided, but you should understand what the role involves before you stand for election.

1 Background

1.1 What is the SLO?

The SLO is a new organisation being established by UON to enhance the non-academic student experience. Its focus areas are food and affordability, sport and recreation, health and welfare, careers and future readiness, and student activation and engagement across all of UON's campuses (including for online and postgraduate students).

The SLO will be a not-for-profit public company limited by guarantee registered under the *Corporations Act 2001* (Cth) (**Corporations Act**). In simple terms, this means:

(a) it is a separate legal entity from the University, with its own Board, finances and legal obligations;

(b) it has no shareholders and cannot pay dividends or distribute profits – all of its income and property must be used to pursue its objects; and

(c) its members (initially, only UON) each guarantee a small amount ($20) if the company is ever wound up.

The SLO will be governed by a Board on which democratically elected Student Directors hold the majority of positions.

UON will be the initial member of the SLO and will provide funding to the SLO under a funding agreement. UON may also provide administrative support (for example, an interim Operations Manager), but the Board – not UON – will make the SLO's decisions.

1.2 Why is the SLO being established?

Universities may charge students a Student Services and Amenities Fee (**SSAF**) to fund non-academic services and amenities for students. The rules about SSAF are set out in the *Higher Education Support Act 2003* (Cth) (**HESA**) and the Student Services, Amenities, Representation and Advocacy Guidelines (**SSARA Guidelines**).

In 2025, the HESA was amended to require universities to allocate at least 40% of their SSAF revenue each year to one or more "student led organisations". The proposed new student-led organisation is being established to give students a greater role in shaping and delivering services funded through the Student Services and Amenities Fee (SSAF). Drawing on student feedback, findings from an independent review and planning for future student services, the model is designed to expand the range of student-led programs, activities and support available to students

Following legal advice, UON decided that a company limited by guarantee was the most appropriate structure for the SLO, because it prohibits profit distributions, allows UON to be the sole member, can operate nationally, and provides a well-understood governance framework under the Corporations Act.

1.3 What the law requires of a student-led organisation

To qualify as a student-led organisation under the HESA and the SSARA Guidelines, the SLO must meet a number of requirements. The key ones for candidates are set out below.

Requirement	What it means for the SLO
Student majority	A majority of the Board must be current students. The Board has five Student Directors out of eight Directors.
Democratic election	A majority of the Board must be democratically elected by students. All five Student Directors are elected by Students through an election conducted by the Returning Officer. The election process will be independently scrutinised by an appointed Election Scrutineer to ensure the integrity and fairness of the election.
Independence	The Board must make decisions independently from UON. The draft Constitution expressly protects this (see section 3.4 below).
Accountability	The SLO must keep and publish annual audited accounts (including transactions with UON) and have policies on record keeping, risk management, fraud prevention and financial controls.
Allowable purposes	SSAF money may only be spent on the purposes listed in the HESA – for example, food and drink for students on campus, sport and recreation, student health and welfare, careers advice, clubs, childcare, legal services and orientation. SSAF cannot be spent to support a political party or a candidate for election to any parliament or local council.

UON remains legally responsible for making sure SSAF is spent properly. For that reason, UON will set the parameters for SSAF-funded activities in a funding agreement with the SLO and may act if SSAF funds are not being used for allowable purposes. Within those parameters, the Board decides how the SLO operates and what it funds.

2 Directors' duties - key basics

If elected, you will be a director of a company. Directors owe legal duties to the company itself – not to UON, to a particular campus, program or student group, or to the people who voted for you. These duties come from the Corporations Act and from the general law (known as "fiduciary" duties), and the draft Constitution confirms them. Each Student Director must also not allow the SLO to break the Corporations Act, the HESA or other laws.

2.1 Core duties

Duty	Source	What it means practically
Act in good faith, in the best interests of the SLO and for a proper purpose	Corporations Act, section 181	Make decisions honestly, for the benefit of the SLO as a whole and for the reasons your powers were given – not to benefit yourself, your friends, a club or a campaign promise.
Act with care and diligence	Corporations Act, section 180	Prepare for meetings, read Board papers, ask questions when something is unclear and understand the SLO's finances. A director who makes an informed, good faith decision in which they have no personal interest, and which they rationally believe is in the SLO's best interests, will generally meet this duty (the "business judgment rule").
Avoid conflicts of interest	Corporations Act, sections 181 and 191–195; Draft Constitution clause 5.8	Tell the Board about any personal interest that could conflict with your duty to the SLO (for example, if a club you lead applies for funding). You must not vote on, or be present for, a matter in which you have a material personal interest.
Not misuse your position	Corporations Act, section 182	Do not use your role to gain an advantage for yourself or anyone else, or to harm the SLO.
Not misuse information	Corporations Act, section 183; Draft Constitution clause 6.4	Information you receive as a director is confidential. Do not use or share it to gain an advantage or to harm the SLO.

2.2 Other important responsibilities

(a) **Insolvent trading:** directors must not allow the SLO to incur debts when there are reasonable grounds to suspect it cannot pay them (Corporations Act, section 588G).

(b) **Financial records and reporting:** directors must take reasonable steps to ensure the SLO keeps proper financial records and complies with its reporting obligations (Corporations Act, section 344). You should form your own view of the financial statements rather than simply relying on others.

(c) **Delegation**: the Board may delegate tasks (for example, to the Operations Manager or a committee), but directors remain responsible for overseeing how delegated powers are used.

(d) **Other laws:** directors can also have personal responsibilities under other laws, such as work health and safety, tax and superannuation, and consumer laws.

2.3 What happens if duties are breached?

Most directors who act honestly, prepare properly and ask questions will never face these consequences. However, it is important to understand that breaches can be serious. Depending on the circumstances, consequences may include:

(e) court orders requiring a director to pay financial penalties or compensation to the SLO;

(f) being disqualified by a court or ASIC from managing companies;

(g) in serious cases involving dishonesty or recklessness, criminal charges, which can result in fines or imprisonment;

(h) removal from the Board; and

(i) damage to your personal reputation and to the SLO's reputation with students and UON.

The Draft Constitution requires the SLO to indemnify its directors against certain liabilities and legal costs, and allows it to take out insurance for directors (clause 14). However, the law does not allow a company to protect directors against some liabilities – for example, penalties under the Corporations Act, liabilities arising from conduct that was not in good faith, and certain liabilities for misusing their position or information.

3 Key features of the Draft Constitution

The Draft Constitution is the SLO's "rule book". Set out below is a summary of the key provisions that candidates should understand. Clause references are to the Draft Constitution, which should be read in full and prevails over this summary.

3.1 Objects and membership

Clause	Explanation
Objects Clause 2.5	To enhance the non-academic student experience, focusing on food and affordability, sport and recreation, health and welfare, careers and future readiness, and engagement across all campuses (including Central Coast, NUspace, Tamworth, online and postgraduate cohorts).
Not for profit Clauses 2.2–2.3	All income and property must be used for the objects. No shares or profit distributions to members.
Membership Clauses 4.1–4.3, 4.8, 4.10	UON is the sole initial member; others need University Council consent. Student Directors admitted as members cannot resign membership while in office, and their membership ends automatically when they stop being a Student Director.

3.2 The Board

Clause	Explanation
Eligibility Clauses 5.1(b), 5.5	Directors must be at least 18 and not legally disqualified. Student Directors must be enrolled in a UON award program when elected and throughout their term, or they automatically vacate office.
Campus Director Clause 5.4(b)–(c)	One seat is reserved for a Central Coast Campus Student. If none is appropriate or nominated, it goes to an Alternative Eligible Student (an undergraduate based off Callaghan or online, or any postgraduate coursework or research student), then to any eligible Student. The Campus Director must keep meeting the criterion they were elected under.
Chair and Deputy Chair Clause 7.5	Elected by the Directors from the Student Directors. The Chair needs at least one year's board or committee experience; this is desirable but not essential for the Deputy Chair. See the relevant Position Descriptions.
Terms Clause 5.1(e)	Two-year terms, maximum two terms. At the first election, three seats are for two years and two for one year (a one-year term counts as a term).
Election Clause 5.4	Run by the Returning Officer, whose decisions are final. Successful candidates are appointed when results are declared, without Vice-Chancellor endorsement.
Operations Manager Clause 5.6	Runs day-to-day operations under the Board's direction; not a Director. UON may provide interim staff in the first 12 months.
Vacancies and removal Clauses 5.3, 5.5	A Student Director vacancy is filled by countback or by-election, run by the Returning Officer; a by-election must generally be held within 70 days. The replacement serves the rest of the original term. Neither the Board nor UON can appoint a Student Director. Missing Board meetings for three months without leave vacates office. Members may remove a Director but cannot choose a removed Student Director's replacement.

3.3 Decision-making

Clause	Explanation
Voting Clauses 7.1, 7.6, 7.9	A board meetings, decisions are made by a simple majority of votes cast; the Chair has a casting vote in the event of a tie. Written resolutions need a majority of eligible Directors.
Quorum Clause 7.7	Four Directors, including at least three Student Directors and one University Director, with Student Directors in the majority. If no University Director attends, the meeting is adjourned; at the adjourned meeting three Student Directors are enough to constitute a quorum.

Clause	Explanation
Meetings and delegation Clauses 6.6, 7.4, 7.11	Meetings may be in person or online. The Board may set up committees and delegate, but delegates must follow the board's directions and the board remains ultimately responsible.

3.4 Independence and UON reserved powers

Clause	Explanation
Independence Clauses 1.4, 6.2	The Board makes decisions independently. UON's rights are protective only and cannot be used to direct day-to-day operations.
Reserved powers Clause 6.3	UON approval is needed only for major matters: changing the draft Constitution, objects, structure or name; winding up; using UON branding outside an agreed licence; material litigation; and the auditor or UON access to records.

3.5 Conflicts of interest

Clause	Explanation
Clause 5.8	A Director with a material personal interest must disclose it to the Board (standing notices are allowed) and must not vote or be present while the matter is considered. One example of where this may arise is when the Board assesses funding bids from clubs or groups you are involved in. If in doubt, disclose your interest(s).

3.6 Financial governance

Clause	Explanation
Accounts Clauses 12.2, 12.4	Proper records kept for seven years; audited statements (including UON transactions) published for Students.
Fees and expenses Clauses 2.2, 5.7	Student Directors may receive reasonable, nominal fees set by the Board within funding agreement limits. University Directors are unpaid. Proper expenses and Board-approved benefits (e.g. NUSport membership) may be provided; other payments need Board approval.
Confidentiality and winding up Clauses 6.4, 15	SLO dealings are confidential. Surplus assets on winding up (if that should eventuate in the future) must go to a similar not-for-profit UON-affiliated body, never to members.

3.7 Amending the Constitution

Clause	Explanation
Clause 1.3	Changes need a special resolution of members with prior University Council consent. Changes to core governance clauses (Board composition, elections, removal, independence, reserved powers, quorum) also need approval by a majority of Student Directors, so UON cannot change them alone.

For further information, or to ask a question about this Explanatory Memorandum, please contact newSLO@newcastle.edu.au.

Disclaimer: This document is prepared by Hall & Wilcox by way of summary and for the purpose of assisting the University of Newcastle to explain the governance framework of the proposed student-led organisation to candidates. It does not constitute legal advice to any candidate, does not waive legal professional privilege over any legal advice provided, and is not a substitute for reviewing the Constitution and other election documents in their entirety. Candidates should obtain their own advice if they have questions about their personal circumstances.