

**Name** : **Council Charter**

**Approved by** : **Council**

**Contact** : **Council Secretary**

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**COUNCIL CHARTER**

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## **Preamble**

- 1.1 The Council of Swinburne University of Technology (the University) was established as the University's governing body by the Swinburne University of Technology Act 2010 (Vic) (the Act), s8(2a).
- 1.2 Under the Act s8(2b and c), the Council of the University as the governing authority of the University is responsible for the general direction and superintendence of the University, and may exercise all the powers, functions and duties of the University. This includes setting and overseeing the implementation of the strategy of the University to realise its vision, mission and social responsibility
- 1.3 This Charter is adopted by Council as a non-legislative instrument to provide a coherent articulation of the role, functions and power of Council in line with the intentions of the Swinburne University Act 2010 (the Act) and its accountabilities as required under regulatory obligations as the corporate governing body of the University.
- 1.4 This Charter outlines how the Council ensures that governance and management delegations, processes and practices are in place and are effective to discharge its responsibilities.
- 1.5 Under the Act (s20), the Council must establish an academic board (or equivalent) including determining the powers, functions and membership. As such, the Academic Senate has been established by the Council and is delegated as the peak academic governing body of the University. The Academic Senate reports to the Council and is subject to its overarching accountability.
- 1.6 Under the Act (s9a), the Council appoints a Vice-Chancellor who is delegated as the most senior executive of the University. The Vice-Chancellor is accountable to the Council which in turn, is responsible for monitoring the performance and conduct of the Vice-Chancellor in line with the University's strategic objectives and fiscal and social responsibility.
- 1.7 Whilst the Council may delegate responsibility and authority Council maintains ultimate accountability for holistic and effective oversight of these areas.
- 1.8 In carrying out its responsibilities and powers, the Council will at all times recognise its overriding responsibility to act with integrity, diligence and in accordance with the law.

## **2. Responsibilities of Council**

- 2.1 The primary legislative (s.3) and regulatory responsibilities of the Council are:
  - a) appointing and monitoring the performance of the Vice-Chancellor of the University including the structure of the Vice-Chancellor's direct report senior executive team in line with the strategic objectives and fiscal and social responsibility
  - b) approving, and overseeing the implementation of the organisational strategy to realise and meet the mission and strategic direction of the University;
  - c) approving, and overseeing the implementation of, the annual budget and business plan including monitoring the University's financial position;
  - d) overseeing and reviewing the management of the University (including establishing remuneration principles for senior executive) and its performance;

- e) establishing policy and procedural principles for the operation of the University consistent with legal requirements, government policy and community expectations, to ensure business continuity;
  - f) approving and monitoring systems of control and accountability of the University, including overview of commercial activities, controlled entities and third party delivery partners;
  - g) overseeing and monitoring the assessment and management of risk across the University, including but not limited to financial, operational, student, staff, critical incidents (including cyber), complaints, reputation and regulatory risks;
  - h) overseeing and monitoring the academic activities of the University including ensuring the monitoring and reporting of breaches to academic and research integrity;
  - i) ensuring that the University has in place policies and practices to ensure participation of, and sensitivity to, First Nations peoples, knowledge and culture;
  - j) approving any significant commercial activities.
- 2.2 The Council must arrange for an audit of the income and expenditure of the University, in accordance with the guidelines (s.47).
- 2.3 In executing these responsibilities, as the corporate governing body of a registered Australian University, the Council must exercise competent governance oversight to ensure ongoing compliance with relevant laws, regulations and requirements and be accountable for all of the University's operations in and from Australia including at third parties. This includes accountability for the award of higher education qualifications, for continuing to meet the requirements of the *Higher Education Standards Framework 2021* (the Threshold Standards in the TEQSA Act), maintaining compliance with other relevant regulatory provisions, and for the representation of the University.
- 2.4 Additionally, the Council must oversee the institutional environment of the University to ensure that freedom of speech and academic freedom are protected in line with the University's relevant policy framework governing rights and responsibilities of conduct; that staff and students are treated equitably, that the University is free from discrimination, and that wellbeing and safety is fostered; and that students are provided opportunities to participate in decision making processes at the University.

### **3. Powers of the Council**

- 3.1 As the governing authority of the University, the Council has wide powers and is authorised under the Act to:
- a) make statutes, including the provision for the making of regulations, for all matters relating to the organisation, management and good governance of the University and revoke or amend any University statute, subject to approval by the Minister (Part 5 of the Act);
  - b) appoint the Chancellor, Deputy Chancellor and the Vice-Chancellor under s.9(1a)
  - c) establish policies relating to the governance of the University s.9(1b)
  - d) oversee and review the management of the University and its performance s.9(1c)
  - e) oversee the management and control of the property and business affairs of the

University s.9(1d)

- f) oversee the management and control of the University's finances s.9(1e)
  - g) execute any other powers and functions conferred by the Act or any University statute or regulation including but not limited to:
    - i. confer and revoke degrees, and other awards issued by the University (s.10)
    - ii. borrow and invest funds on behalf of the University (s.45 and s.46);
    - iii. apply University funds on behalf of the University;
    - iv. form and participate in the formation of companies (s.48).
- 3.2 The Council has the power to formally delegate its powers and functions to a member of Council, a committee of Council, the Academic Senate, a member of staff or any other entity identified in a University Statute, with the exception of the following reserved powers (s.18):
- a) this power of delegation;
  - b) the power to appoint the Chancellor, Deputy Chancellors and the Vice-Chancellor;
  - c) the power to make a University Statute. Whilst Council may delegate responsibility and authority to other committees and/or the Academic Senate in relation to the abovementioned areas, Council maintains ultimate accountability for holistic and effective oversight of these areas.
- 3.3 In line with the s20 of the Act, and as set out in the *Governance and Administration Statute* (2016) (s10.1b), the Council appoints the Chair of the Academic Senate on the recommendation of the Vice-Chancellor.
- 3.4 To assist in discharging these powers, the Council will review and approve delegated discretions every three-years, including discretions over financial expenditures, to committees and to University management.

#### **4. Council's powers to seek assistance**

- 4.1 In order to fulfil its role, and oversee its system of delegations, the Council:
- a) will seek independent professional advice from external parties with relevant experience and expertise;
  - b) is entitled to unrestricted access to members of University management, employees and relevant information including records, data and reports that it considers necessary to discharge its duties;
  - c) can request attendance at a Council meeting by any members of University management or staff, including internal and external auditors, subject to any relevant contractual arrangements;
  - d) can meet with internal and external auditors without University management present;
  - e) can request any University management or staff to provide a written and/or verbal brief to the Council on key matters relating to their functions; and
  - f) is provided access to dedicated University resources necessary to undertake its functions and duties

- 4.2 Other than in the case of its Key Management Contacts (defined below), Council members should first consult the Chancellor and the Vice-Chancellor before making a request of University management or staff.
- 4.3 University management and staff are required to cooperate with Council requests to the extent reasonably practicable.

## **5. Key Management Contacts**

- 5.1 While each maintains their position within the management structure of the University, the following persons will be the Key Management Contacts of Council and there is established be a direct line of communication between each of these persons and Council (through the Chancellor or Vice-Chancellor):
  - a) Executive Group members;
  - b) Chief Financial Officer;
  - c) General Counsel; and
  - d) University Secretary
- 5.2 The University Secretary is established under the Governance and Administration Statute (2016), is appointed by the Vice-Chancellor with functions including the administration of elections and other functions set by the Vice-Chancellor.
- 5.3 As such, Council and the Chancellor should be informed of any people management issues relating to the Key Management Contacts (including any movement and, if appropriate, performance management issues).

## **6. Composition of the Council**

- 6.1 Under the Act, Council membership comprises:
  - a) Three ex officio members (Chancellor as Chair of the Council, Vice-Chancellor & Academic Senate Chair);
  - b) At least four Government-appointed members;
  - c) Four Council-appointed members; and
  - d) Two elected members (one elected staff member and one elected student member).
- 6.2 The Chancellor shall function as the chair of Council, including as chair of Council meetings.
- 6.3 In the absence of the Chancellor, the Deputy Chancellor will act as meeting chair.
- 6.4 At all times, there will be at least two independent (as defined by [TEQSA](#)) members of Council. Councillors are generally considered not independent after ten consecutive years of membership.
- 6.5 All Councillors must provide Fit and Proper Declarations as part of due diligence processes upon appointment.
- 6.6 Appointment and removal processes for Council members are set out in the Act.
- 6.7 The Act sets out a number of situations in which a Councillor would cease to hold office.

These include being absent from three consecutive meetings of the Council without Council's prior approval, being disqualified from managing corporations, being declared an insolvent under administration or being convicted of any indictable offence.

- 6.8 More information about the appointment process, including the criteria and principles guiding the selection of Council members, is contained within the Governance Framework.
- 6.9 Secretariat Support to the Council will be provided by the Council Secretary who will:
  - a) provide ongoing secretarial support to Council and its members
  - b) attend all Council meetings, and
  - c) assist the Chancellor to develop and distribute agendas, papers, minutes and work plan.

## **7. Roles of the Chancellor and Deputy Chancellor**

- 7.1 As senior office bearers of the University, the role of the Chancellor and Deputy Chancellor play a strategic role in the promotion of the University's objects to serve its communities through valuable engagement with a range of stakeholders.
- 7.2 The Chancellor's role encompasses key ceremonial, statutory, and regulatory functions. The ceremonial role includes presiding over degree conferrals, attending official functions and participating in delegations as a representative of Council.
- 7.3 The Chancellor's statutory and regulatory functions include providing leadership and acting as the Chair of the Council, including ruling on questions of process at meetings of Council. Where appropriate the Chancellor may chair Council Committees and has delegated authority to make determinations to facilitate business between meetings of Council.
- 7.4 The Chancellor is responsible for monitoring the performance of the Vice- Chancellor and reporting outcomes to the Council.
- 7.5 The Council must appoint at least one Deputy Chancellor. In the absence of the Chancellor, or during any vacancy in the office of the Chancellor, a Deputy Chancellor acts as Chancellor.

## **8. Rights and Duties of Councillors**

- 8.1 Councillors' rights include but are not limited to:
  - a) being inducted appropriately with opportunities for further professional development during their term of office ;
  - b) being remunerated by fees in line with requirements of the Act or other statutes or regulations;
  - c) being indemnified as set out in the Act;
  - d) attending meetings of Committees of Council and Academic Senate as observers subject to the approval of the Chair of the Committee or Academic Senate; and
  - e) visiting all campuses of the University.
- 8.2 Councillors have ongoing duties and obligations including:

- a) acting reasonably to ensure that the Council carries out its functions and exercises its powers appropriately, effectively and efficiently
- b) acting in good faith, honestly and for proper purpose, consistent with the objects and interests of the University
- c) exercising reasonable skill, appropriate care and diligence
- d) taking reasonable steps to avoid all conflicts of interest unless they are declared in accordance with clause 11 of Schedule 1 of the Act
- e) not making improper use of their position nor of information acquired because of their position, to gain, directly or indirectly, an advantage for the member of Council or for another person or organisation
- f) acting fairly and impartially, including avoiding bias, discrimination, caprice or self-interest
- g) understanding the business of the University and the environment in which it operates
- h) ascertaining all relevant information, making reasonable enquiries, and understanding the financial, strategic and other implications of decisions
- i) understanding the financial reports, audit reports and other financial material that comes before Council and actively inquiring into this material
- j) ensuring information gained as a Council member is only used for Council purposes, is kept confidential and is not used to gain an advantage or cause detriment to the University
- k) attending meetings on a regular basis and diligently review all proposals and information put before Council
- l) demonstrating respect for others by acting in a professional and courteous manner
- m) undertaking their role as a Council member for the benefit of the University, rather than as a representative of any stakeholder group.
- n) the avoidance of conflicts of interest and an obligation to disclose a potential or perceived conflict of interest in matters considered by Council. If a Councillor has any doubt, these should be brought to the attention of the Chancellor in the first instance;
- o) maintaining Fit and Proper status and report any risk or change in circumstance to the Chancellor in the first instance.

8.3 In line with the objects of the University to serve the Victorian, Australian and international communities and the public interest, the Council and all Councillors, are encouraged to engage proactively with relevant stakeholders to further and promote the interests of the University, such activities should be conducted in line with duties and obligations as set out above. Of note, Councillors should at all times follow and observe University protocols and processes for due diligence, probity and avoidance (and declaration) of potential or perceived conflict of interest.

## 9. Conflicts of Interest

- 9.1 Council members are required to declare any actual or potential conflicts of interest including a conflict between their status as a Council member and their status where it could be perceived they represent any stakeholder group including being a staff or student elected member.
- 9.2 A Council member who has an interest in a matter being considered or about to be considered, must, as soon as practicable, declare the nature of the interest at a meeting of the Council or in writing addressed to the Chancellor.
- 9.3 The Chancellor must report or cause to be reported any written declaration received at the next meeting of the Council. A record of the declaration is to be made in the minutes of the meeting.
- 9.4 The relevant Council member must not be present during any deliberation on the matter (unless the Council otherwise directs) and must not vote on the matter.
- 9.5 Council members should also refer to the University's *People, Culture and Integrity Policy*, which deals with conflicts of interest.

## **10. Indemnities**

- 10.1 Section 19 of the Act provides for the University to indemnify Council members, including against all actions or claims in respect of any act or thing done in good faith in the purported exercise of any power or duty conferred or imposed by or under the Act on the Council or Council member.
- 10.2 The University will not indemnify any Council member in respect of any act or omission that is not in good faith.

## **11. Confidentiality requirements for Council**

- 11.1 The existence and details of any management information, data, materials, discussions and decisions that are not publicly released are confidential information of the University.
- 11.2 All confidential information acquired by a Councillor while performing duties must be kept confidential. A Councillor must not disclose Council or University related information to a third party except where the disclosure is authorised by the Chancellor.
- 11.3 All Council members must observe and comply with any legal instructions for privilege or confidentiality.
- 11.4 All attendees and observers at Council meetings have a duty to keep all information and discussions of Council confidential. The Vice-Chancellor, Executive Group members and Council Secretary may disseminate pertinent information and decisions made by the Council to relevant University staff to ensure the proper approvals and objectives of the Council are implemented.

## **12. Removal of members**

- 12.1 Schedule 1 of the Act sets out the power and procedure for the removal of a member from office.
- 12.2 Council supports the principle that the Chancellor and Deputy Chancellor should hold office subject to retaining the confidence of Council and notes that if Council determines that such confidence is no longer held the requirements and procedure for the removal



from office set out in clause 3 of Schedule 1 of the Act will apply.

### **13. Council Meetings**

- 13.1 Council will meet as required throughout the year with a minimum of five (5) meetings to be held each calendar year.
- 13.2 A quorum of Council will consist of half the members of Council. No decisions shall be made by Council unless quorum requirements are met as set out in the Act.
- 13.3 Each member of the Council will have one vote and decisions shall be made on a majority basis.
- 13.4 The following non-members of Council will be provided with a standing invitation to attend Council meetings:
  - a) Chief Operating Officer;
  - b) Senior Deputy Vice Chancellor and Chief Academic Office;
  - c) Deputy Vice Chancellor, Research;
  - d) Vice President, Innovation and Enterprise;
  - e) Deputy Vice Chancellor, External Engagement; and
  - f) Deputy Vice Chancellor, Education, Experience and Employability.
- 13.5 Any University employee (including management and staff) or external professional adviser may attend any meeting of Council or part thereof, if invited by the Chancellor.
- 13.6 Attendees at Council meetings, including those with standing invitations, are not eligible to vote on any matter and may be asked to withdraw from all or any part of any meeting. The Council may convene 'in-camera' meetings whereby Council may meet with any employee, associate, officer or external party without any other University management representative being present. Minutes and actions from in-camera discussions will be provided to the Council Secretary by the Chancellor, on behalf of the Council, to ensure discussion and actions are correctly documented in the minutes.
- 13.7 Council meeting papers should be distributed to Councillors at least seven calendar days prior to each meeting to enable Councillors to read the papers and properly prepare for the meeting.
- 13.8 All matters seeking Council approval must be done via a written paper. For matters raised verbally, the decision of the Council will be recorded in the minutes by the Council Secretary. Where necessary, a post-meeting paper will be provided to the Council prior to the approval of minutes.
- 13.9 The Chancellor is responsible for Chairing meetings and ensuring these are conducted in a professional manner where all members are able to contribute as independent individuals, that decisions taken and recommended actions are clear at the meeting, and that the minutes accurately document deliberations, record all decisions and items for noting.
- 13.10 The Chancellor and the Vice-Chancellor each has the authority to call a special meeting of Council on any notice for business which he or she wishes to submit to Council as a

matter of urgency.

- 13.11 Special meetings of Council may be convened upon the written request of six Councillors. The Council Secretary must ensure that such meetings are called within fourteen calendar days of receipt of request from the members.
- 13.12 The Chancellor is responsible for establishing the agenda for Council meetings in line with an Annual Council Plan.
- 13.13 Councillors are welcome to contact the Chancellor directly or via the Council Secretary to request that items be added to the Agenda. Such requests should be made no fewer than ten calendar days in advance of the meeting, except that Council may, by majority vote, permit the introduction of any subject for discussion.
- 13.14 Should a matter arise between preparation of the Agenda and the meeting date, the matter shall be presented to Council at the Chancellor's discretion.
- 13.15 Circular Resolutions – The Chancellor may approve that a matter is urgent and cannot wait until the next scheduled meeting of Council. In such cases, documentation and a recommendation will be circulated to all Councillors for consideration. Circular resolutions will be reserved for matters that require no additional discussion by the Council. If a majority of Councillors support the recommendation, it is deemed to have passed at a meeting of Council. The results from a circular resolution, including specifics on how many votes were cast in favour, abstained or against the resolution will be provided to Councillors, ensuring transparency in voting. A motion to amend the minutes of a previous meeting may be made by any Councillor and is to be determined by a majority of votes of members present.
- 13.16 Subject to any amendments proposed and approved, the minutes of a previous meeting are to be regarded as a true and accurate record of that meeting, following a motion to approve the minutes.

#### **14. Council Committees and Academic Senate**

- 14.1 The Council will review Council Committee terms of reference and the Academic Senate Regulations annually.
- 14.2 The Council will approve Council Committee and the Academic Senate workplans annually.
- 14.3 On request of Council, the Council Committees and Academic Senate will submit reports to Council for consideration (including on items that require Council escalation).

#### **15. Council Review**

- 15.1 The Council commits to undertaking periodic independent review of the effectiveness of itself and academic governance processes at least every seven years, in accordance with the *Higher Education Standards Framework (Threshold Standards)* (2021). The Council will ensure that agreed actions are implemented.
- 15.2 The Chancellor will ensure that annual performance reviews are undertaken for Council and Councillors.
- 15.3 The Council will review and update this Charter on an annual basis.

## Key References

Type	Title	Link
<b>Enabling Legislation</b>	The Swinburne University of Technology Act (2010) (Victoria)	Swinburne University of Technology Act 2010
<b>External Legislation (as an Australian University)</b>	The TEQSA Act (2011) (Commonwealth)	Federal Register of Legislation - Tertiary Education Quality and Standards Agency Act 2011
	The Higher Education Standards Framework (Threshold Standards) (2021)	Federal Register of Legislation - Higher Education Standards Framework (Threshold Standards) 2021
<b>TEQSA Guidance</b>	Corporate Governance Guidance Note	Guidance note: Corporate governance   Tertiary Education Quality and Standards Agency (teqsa.gov.au)
<b>University Statute</b>	Governance and Administration Statute 2016	Governance and Administration Statute   Statutes and regulations   Swinburne
	Academic and Student Affairs Statute	Academic and Student Affairs Statute   Statutes and regulations   Swinburne
<b>University Policy</b>	Governance Framework	Governance framework   Policies and regulations   Swinburne
	People, Culture and Integrity Policy	People, Culture and Integrity Policy   Policies and regulations   Swinburne