



**SWINBURNE STUDENT AMENITIES ASSOCIATION LIMITED**  
ACN 117 060 232

*A company limited by guarantee*

*Incorporated in Victoria*

## **CONSTITUTION**

*under the Corporations Act 2001*

As approved by Swinburne Council on  
19 June 2006

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# CONSTITUTION

DATE:

## 1. DEFINITIONS AND INTERPRETATION

### 1.1 Definitions

In this Constitution, unless the context requires otherwise:

“**Act**” means the *Swinburne University of Technology Act 1992* (Vic).

“**Board**” means the board of Directors of the company.

“**Business Day**” means a day which is not a Saturday, Sunday, a public holiday or a bank holiday in the State of Victoria.

“**Constitution**” means this constitution.

“**Corporations Act**” means the *Corporations Act 2001* (Cth).

“**Council**” means the Council of the University as constituted under the Act.

“**Director**” means a person appointed to the office of Director of the company in accordance with this Constitution.

“**Expenditure Threshold**” means the expenditure limit above which the approval of Council or a standing committee of Council is required, as published from time to time in the University’s Policy on Delegation of Expenditure Authority.

“**Funding Acts**” means the *Tertiary Education Act 1993* (Vic), the *Higher Education Funding Act 1988* (Cth) and the *Higher Education Support Act 2003* (Cth).

“**International Student**” means a Swinburne Student from overseas who holds a student or Commonwealth sponsored visa to undertake or continue their course of study at the University.

“**Member Present**” means, in connection with a meeting, the member present in person at the venue or venues for the meeting or by proxy, by attorney and, where the member is a body corporate, by representative.

“**Postgraduate Student**” means a Swinburne Student enrolled in a postgraduate course at the University.

“**Prescribed Rate**” means the base interest rate charged by the company's principal banker to corporate customers from time to time in respect of overdraft loans in excess of \$100,000 calculated on a daily basis and a year of 365 days.

“**Protocol**” means any protocol adopted by the Council setting out the expectations of Swinburne Students and the University regarding the role and performance of the company and, in particular, the ways in which the Student Services can at all times be provided so that they are of direct benefit to Swinburne Students, in addition to any other appropriate objects and purposes of the company.

“**Seal**” means any common seal or duplicate common seal of the company.

“**Student Services**” means facilities, services or activities provided for the direct benefit of Swinburne Students such as student academic advice and advisory services, orientation,

information services, support services and facilities, clubs, publications, social activities, representative committees and ancillary facilities, services, activities and amenities.

“**Swinburne Students**” means students enrolled at the University.

“**TAFE Student**” means a Swinburne Student enrolled in a technical and further education certificate, diploma or degree course at the University.

“**Tax Act**” means the *Income Tax Assessment Act 1936* (Commonwealth) or the *Income Tax Assessment Act 1997* (Commonwealth) as the case may be.

“**Undergraduate Student**” means a Swinburne Student enrolled in a higher education undergraduate degree course at the University.

“**University**” means Swinburne University of Technology, a body politic and corporate constituted under the Act.

“**University Secretary**” means the person holding that position from time to time at the University.

“**Vice-Chancellor**” means the person holding that position from time to time at the University.

## 1.2 Interpretation

In this Constitution, unless the context requires otherwise:

- (a) the singular includes the plural and vice versa;
- (b) a gender includes the other genders;
- (c) the headings and table of contents are used for convenience only and do not affect the interpretation of this Constitution;
- (d) a reference to a person includes a natural person, any body or entity whether incorporated or not, partnership, government authority, any executor, administrator or successor in law of the person;
- (e) a reference to a statute or other law includes regulations and other instruments made under it and includes consolidations, amendments, re-enactments or replacements of any of them;
- (f) except in so far as a contrary intention appears in this Constitution, an expression has, in a provision of this Constitution which relates to a particular provision of the Corporations Act, the same meaning as in that provision of the Corporations Act;
- (g) a reference to an authority, institution, association or body (“original entity”) that has ceased to exist, been reconstituted, renamed or replaced or whose powers or functions have been transferred to another entity, is a reference to the entity that most closely serves the purposes or objects of the original entity; and
- (h) grammatical forms of defined words or expressions have corresponding meanings.

## 1.3 Replaceable rules

The replaceable rules contained in the Corporations Act do not apply to the company.

## **1.4 Actions Authorised by Corporations Act**

Where the Corporations Act authorises or permits a company to do any matter or thing if so authorised by its Constitution, the company is and will be taken by this Rule to be authorised or permitted to do that matter or thing, despite any other provisions of this Constitution.

## **2. OBJECTS**

The objects for which the company is established are to advance the education of Swinburne Students by providing amenities, services and facilities for the benefit of Swinburne Students and in particular to:

- (a) perform the Student Services for the benefit of Swinburne Students;
- (b) receive funding from the University and distribute and administer such funding as the Directors consider appropriate in accordance with the requirements of the University and the Funding Acts;
- (c) reinvest any net returns generated from the company's activities, for the benefit of Swinburne Students by way of using such returns to deliver Student Services or decreasing the amount of funding received by the company from the University;
- (d) provide or ensure the provision of amenities, services and facilities for the benefit of Swinburne Students of a quality and kind that will enhance their experience and advance their studies at the University;
- (e) carry out the objects in a manner that ensures that to the extent consistent with its other obligations, the views of Swinburne Student representatives are considered in the planning, resourcing and evaluation of the functions of the company in providing amenities, services and facilities for the benefit of Swinburne Students;
- (f) where amenities, services and facilities are to be provided through funding allocated by the company to an association of Swinburne Students or other body, to ensure that the funds are allocated and applied to the purposes for which they are made available;
- (g) perform functions efficiently and effectively;
- (h) enter into such arrangements with the University or any third parties as the company considers necessary or desirable to facilitate the attainment of the objects set out in paragraphs (a) to (g) inclusive;
- (i) engage in any other activity or transaction which is incidental or conducive to the attainment of the objects set out in paragraphs (a) to (g) inclusive or otherwise considered by the Directors of the company for the time being to be in the interests of the company, provided that it is incidental or conducive to the attainment of the objects of the University under the Act.

## **3. INCOME AND PROPERTY**

### **3.1 Application of Income and Property**

- (a) The income and property of the company must be applied solely towards the promotion of the objects of the company set out in Rule 2 and no portion of it may be paid or transferred, directly or indirectly, to any member of the company whether by way of dividend, bonus or other profits of the company.

- (b) Nothing in Rule 3.1(a) prevents any payment in good faith by the company of:
- (i) reasonable and proper remuneration to any member, officer or servant for any services actually rendered or goods supplied in the ordinary and usual course of business to the company;
  - (ii) the payment or reimbursement of out-at-pocket expenses incurred by a member, officer or servant of the company on behalf of the company where the amount payable does not exceed an amount previously approved by the Directors of the company;
  - (iii) reasonable and proper rent for premises let by any member of the company to the company;
  - (iv) moneys to any member, officer or servant, being a solicitor, accountant or other person engaged in any profession, for all usual professional or other charges for work done by that person or that person's firm or employer, where the provision of the service has the prior approval of the Directors and where the amount payable is approved by the Directors and is not more than an amount which commercially would be reasonable payment for the service; or
  - (v) interest at a rate not exceeding the Prescribed Rate on money borrowed from members of the company.

### **3.2 Dissolution of Company**

For the avoidance of doubt, in the event of a winding up or dissolution of the company, the amount that remains after such winding up or dissolution and the satisfaction of all debts and liabilities of the company shall be dealt with in accordance with Rule 18.

## **4. LIABILITY**

### **4.1 Limited Liability**

The liability of the members is limited.

### **4.2 Extent of Liability**

Each member undertakes to contribute to the property of the company if the company is wound up while a member, or within 1 year after ceasing to be a member, an amount not exceeding \$100.00 for payment of:

- (a) the company's debts and liabilities contracted before that member ceased to be a member;
- (b) the costs, charges and expenses of winding up; and
- (c) the adjustment of the rights of the contributories among themselves.

## **5. AMENDMENT OF CONSTITUTION**

No addition, alteration or amendment to this Constitution will be effective unless such addition, alteration or amendment has been authorised by a prior resolution of the Council.

## **6. MEMBERSHIP**

### **6.1 Members**

The members of the company will be:

- (a) the University; and
- (b) any other persons admitted to membership in accordance with this Constitution.

### **6.2 Application for Membership**

- (a) Unless otherwise determined by the Council, the only member of the company will be the University.
- (b) If new members are approved for membership by the Council, the procedure for and date of admission and conditions of membership will be determined by the Council at the relevant time.

## **7. CESSATION OF MEMBERSHIP**

### **7.1 Cessation of Membership**

A member may at any time, by giving notice in writing to the secretary, resign as a member of the company. The resignation will be effective from the date of receipt of the notice by the secretary. That member's name must be removed from the register of members.

A member's membership of the company automatically ceases:

- (a) in the case of a member who is a natural person, on the date that the member:
  - (i) dies;
  - (ii) becomes of unsound mind or a person whose estate is liable to be dealt with in any way under the laws relating to mental health;
  - (iii) becomes bankrupt; or
- (b) in the case of a member which is a body corporate, on the date that:
  - (i) a liquidator is appointed in connection with the winding-up of the member; or
  - (ii) an order is made by a court for the winding-up or de-registration of the member.

### **7.2 Liability for amounts**

Any member ceasing to be a member:

- (a) will remain liable for and must pay to the company any moneys which were due and unpaid on the date of ceasing to be a member; and
- (b) will remain liable for amounts which the member is or may become liable to pay under Rule 4.



## **8. GENERAL MEETINGS**

### **8.1 Power of Directors to Convene**

- (a) The Board may convene a general meeting whenever the Board thinks fit.
- (b) The Board may cancel by notice in writing to all members any meeting convened by the Board, except that a meeting convened on the requisition of a member or members must not be cancelled without the consent of the relevant member or members.
- (c) The Directors may postpone a general meeting or change the place at which it is to be held by notice not later than 72 hours prior to the time of the meeting to all persons to whom the notice of meeting (the *first notice*) was given. The postponing notice must specify the place, date and time of the meeting. The meeting is taken to be duly convened under the first notice.

### **8.2 Notice of General Meetings**

- (a) Each notice convening a general meeting must contain the information required by the Corporations Act.
- (b) The non-receipt of a notice convening a general meeting by, or the accidental omission to give notice to, any person entitled to receive notice does not invalidate the proceedings at or any resolution passed at the meeting.

### **8.3 Business of General Meetings**

Unless all members are present as Members Present and agree otherwise, business must not be transacted at any general meeting except as set out in the notice of meeting.

### **8.4 Quorum**

- (a) Business must not be transacted at any general meeting unless a quorum of members is present at the time when the meeting proceeds to business.
- (b) Except as otherwise provided in this Constitution, one Member Present constitutes a quorum. If new members are admitted under Rule 6, then a quorum must include the University as a Member Present.
- (c) If a quorum is not present within 20 minutes after the time appointed for the meeting:
  - (i) where the meeting is convened on the requisition of members, the proposed meeting is automatically dissolved (subject to Rule 8.6);
  - (ii) in any other case:
    - (A) the meeting stands adjourned to a day and at a time and place as the Directors decide or, if no decision is made by the Directors, to the same day in the next week at the same time and place; and
    - (B) if at the adjourned meeting a quorum is not present within 20 minutes after the time appointed for the meeting, the meeting is automatically dissolved.

## 8.5 Chairperson

- (a) Subject to Rule 8.5(b), the chairperson of Directors or, in the chairperson's absence, the deputy chairperson will preside as chairperson at every general meeting.
- (b) Where a general meeting is held and:
  - (i) there is no chairperson or deputy chairperson; or
  - (ii) the chairperson or deputy chairperson is not present within 15 minutes after the time appointed for the meeting or does not wish to act as chairperson of the meeting,

the Directors present may choose one of their number or, in the absence of all Directors or if none of the Directors present wish to act, the Members Present may elect one of their number to be chairperson of the meeting.

## 8.6 Adjournments

- (a) The chairperson may and must if so directed by the meeting adjourn the meeting from time to time and from place to place.
- (b) The only business which may be transacted at any adjourned meeting is the business left unfinished at the meeting from which the adjournment took place.
- (c) When a meeting is adjourned for 30 days or more, notice of the adjourned meeting must be given as in the case of an original meeting.
- (d) Except as provided by Rule 8.6(c), it is not necessary to give any notice of an adjournment or of the business to be transacted at an adjourned meeting.

## 8.7 Voting at General Meetings

- (a) Any resolution to be considered at a meeting must be decided on a show of hands unless a poll is demanded.
- (b) A declaration by the chairperson that a resolution has on a show of hands been carried or lost and an entry to that effect in the minutes of the meeting are conclusive evidence of the fact without the need to show the number or proportion of the votes recorded in favour of or against the resolution.
- (c) Despite the Corporations Act, a poll for a resolution may be demanded by at least 5% of Members Present and entitled to vote on the resolution.
- (d) A poll may not be demanded on the election of a chairperson or on a resolution for adjournment.

## 8.8 Procedure for Polls

- (a) A poll when demanded must be taken in the manner and at the time the chairperson directs.
- (b) The result of the poll is a resolution of the meeting at which the poll was demanded.
- (c) If a poll has been demanded at a meeting, the meeting may continue with the transaction of business other than the resolution on which the poll was demanded.

### 8.9 Chairperson's Casting Vote

In the case of an equality of votes on a show of hands or on a poll the chairperson of the meeting has a casting vote.

### 8.10 Representation and Voting

Subject to this Constitution

- (a) at meetings of members each member entitled to attend and vote may attend and vote in person or by proxy or attorney and (where the member is a body corporate) by representative;
- (b) a member is not entitled to vote at a general meeting unless all sums (if any) presently payable by the member in respect of membership in the company have been paid; and
- (c) on a show of hands and on a poll, every Member Present having the right to vote at the meeting has 1 vote.

### 8.11 Number of Proxies

- (a) A member may appoint 1 proxy.
- (b) A proxy need not be a member.

### 8.12 Form of Proxy

- (a) An instrument appointing a proxy must:
  - (i) be in writing under the hand of the appointor or of the appointor's attorney duly authorised in writing; or
  - (ii) if the appointor is a corporation, be either under seal or under the hand of a duly authorised officer or attorney.
- (b) A proxy may vote as the proxy thinks fit on any motion or resolution in respect of which no manner of voting is indicated.
- (c) An instrument appointing a proxy may be in any form that the Directors may accept or stipulate.

### 8.13 Lodgement of Proxies

- (a) For an instrument appointing a proxy to act on behalf of a member at a meeting of the company (or at all meetings for a specified period) to be effective the following documents must be received by the company not less than 48 hours (or any shorter period as the Directors may permit) before the commencement of the meeting or adjourned meeting at which the proxy proposes to vote:
  - (i) the proxy or a certified copy of that proxy; and
  - (ii) any evidence that the Directors may require of the validity and non-revocation of that proxy.
- (b) For the purposes of Rule 8.13(a), the company receives these documents when they are received at any of the following:

- (i) the company's registered office;
- (ii) a fax number at the company's registered office; or
- (iii) a place, fax number or electronic address specified for the purpose in the notice of meeting.

#### **8.14 Right of Officers and Advisers to Attend General Meeting**

- (a) A Director who is not a member is entitled to be present and to speak at any general meeting.
- (b) A secretary who is not a member is entitled to be present and, at the request of the chairperson, to speak at any general meeting.
- (c) Any other person (whether a member or not) requested by the Directors to attend any general meeting is entitled to be present and, at the request of the chairperson, to speak at that general meeting.

#### **8.15 Single Member**

- (a) Nothing in this Constitution limits the company's power under the Corporations Act to pass a resolution as a circulating resolution or, while the company has only 1 member, by recording the resolution and signing the record.
- (b) Where the company has 1 member only, a document signed by that member which records a decision of the member:
  - (i) constitutes a decision of the company and is valid and effective as if it were a resolution duly passed at a meeting of members; and
  - (ii) has effect as a minute of that decision.

### **9. APPOINTMENT, REMOVAL AND REMUNERATION OF DIRECTORS**

#### **9.1 Appointment and Removal**

- (a) The Board will comprise:
  - (i) 4 people nominated by the Vice-Chancellor;
  - (ii) 4 Swinburne Student nominees:
    - (A) one of whom must be an Undergraduate Student;
    - (B) one of whom must be a TAFE Student;
    - (C) one of whom must be a Postgraduate Student; and
    - (D) one of whom must be an International Student.
  - (iii) the Vice Chancellor.
- (b) The Vice-Chancellor may remove and replace any Director appointed under Rule 9.1 (a)(i).

- (c) The Vice-Chancellor may appoint any person as an alternate Director to act in the Vice-Chancellor's place and may remove and replace such alternate Director at any time.
- (d) The Vice Chancellor will be taken to have exercised the power under Rules 9.1(b) and (c) by written notice to the company delivered to its registered address.
- (e) Unless otherwise determined by the company in general meeting, a Director need not be a member of the company as a qualification for office.
- (f) The Directors must not be paid any remuneration in respect of their office as a Director.
- (g) The Directors are entitled to be paid or reimbursed for all travelling and other expenses properly incurred by them in attending and returning from any meeting of the Directors, committee of the Directors, general meeting of the company or otherwise in connection with the business or affairs of the company.
- (h) A Director may be engaged by the company as an employee or in any other capacity (other than auditor) and in respect of that engagement may be appointed on terms as to remuneration, tenure of office and otherwise as agreed by the Directors.

## 9.2 Tenure

- (a) The Directors appointed under Rule 9. 1(a)(i) will hold office until removed or until the office of the Director otherwise becomes vacant in accordance with this Constitution.
- (b) Subject to Rule 9.5, the Directors appointed under Rule 9.1(a)(ii) will hold office for a term of one year commencing on 1 January and terminating on 31 December each year.
- (c) The Directors appointed under Rule 9.1(a)(ii) may be re-elected.
- (d) Any Director may retire from office upon giving notice in writing to the company of the Director's intention to do so.

## 9.3 Vacation of Office

In addition to the circumstances in which the office of a Director becomes vacant:

- (a) under the Corporations Act;
- (b) under Rule 9.1(b);
- (c) under Rule 9.2(b) or (d),

the office of a Director becomes vacant if the Director:

- (d) becomes of unsound mind or a person whose person or estate is liable to be dealt with in any way under the Corporations Act relating to mental health;
- (e) resigns by notice in writing to the company;
- (f) is absent without the consent of the Directors from 3 consecutive meetings of the Directors;
- (g) dies;

- (h) ceases to be a Swinburne Student in the case of any Director holding office pursuant to Rule 9. 1(a)(ii); or
- (i) ceases to be:
  - (i) an Undergraduate Student in the case of any Director holding office pursuant to Rule 9. 1(a)(ii)(A);
  - (ii) a TAFE Student in the case of any Director holding office pursuant to Rule 9. 1(a)(ii)(B);
  - (iii) a Postgraduate Student in the case of any Director holding office pursuant to Rule 9. 1(a)(ii)(C);
  - (iv) an International Student in the case of any Director holding office pursuant to Rule 9. 1(a)(ii)(D).

#### **9.4 Vacancies**

- (a) If any vacancy occurs in the board for any reason, that vacancy must be filled within 2 calendar months (or such longer period as the Directors may otherwise resolve) by the remaining Directors, who must in each case appoint a person nominated by the Vice- Chancellor. In the case of Directors appointed pursuant to Rule 9.1(a)(ii), the Directors will appoint a person nominated by the Vice-Chancellor being a person of the same classification under Rule 9.1(a)(ii)(A)-(D) as the Director who created the vacancy. The person filling the vacancy is appointed for the remainder of the term of office of the Director who created the vacancy.
- (b) All such appointments must be made by instrument signed by a majority of the continuing Directors.
- (c) The continuing Directors may act despite any vacancy in the Board. If however the number of Directors falls below 4 Directors, or the composition of the Board is such that quorum cannot be constituted under 11.3, the Directors may only act:
  - (i) for the purpose of increasing the number of Directors to at least the minimum by summoning a general meeting of the company; or
  - (ii) in emergencies,
 but for no other purpose.

#### **9.5 Swinburne Student Nominees**

- (a) Subject to Rules 9.4 and 9.5(c), Swinburne Student nominees appointed under Rule 9.1(a)(ii) must be appointed in accordance with elections conducted by or under the direction of the University Secretary.
- (b) The company will determine the electoral process to apply.
- (c) Up to the time when the first 4 elected Swinburne Student nominee Directors are appointed under this Rule, the Swinburne Student nominees appointed under Rule 9.1(a)(ii) will comprise 4 Swinburne Students nominated by the Vice-Chancellor being persons of the classifications under Rule 9.1(a)(ii)(A)-(D), whether nominated on or after incorporation.

- (d) Initial elections under this Rule must be held no later than October 2006 for the first elected Swinburne Student nominees to hold office from 1 January 2007.
- (e) If in any year an election under this Rule does not elect 4 Swinburne Student nominee Directors for appointment under Rule 9.1(a)(ii)(A)-(D), then the Vice-Chancellor will nominate such number of Swinburne Student nominee Directors to bring the number to 4 and being persons of the classifications under Rule 9.1(a)(ii)(A)-(D).
- (f) Subject to Rule 9.4(c), if for any reason there are not Swinburne Students willing to act as Swinburne Student nominee Directors under Rule 9.1(a)(ii), then the other Directors holding office under Rule 9.1(a)(i) and (iii) may continue to act.

## **9.6 Consent to Act**

Each person appointed as a Director must sign a written consent to act.

## **10. POWERS AND DUTIES OF DIRECTORS**

### **10.1 Directors**

Subject to the Corporations Act and this Constitution, the business of the company is managed by the Directors, who may exercise all powers of the company which are not by the Corporations Act or this Constitution required to be exercised by the company in general meeting.

### **10.2 CEO**

The Directors may on the terms and conditions and with any restrictions as they think fit:

- (a) appoint and confer powers upon on a chief executive officer; and
- (b) appoint a person as acting chief executive officer during any period of temporary absence of the chief executive officer.

## **11. PROCEEDINGS OF DIRECTORS**

### **11.1 Proceedings**

- (a) The Directors may meet together for the dispatch of business and adjourn and otherwise regulate their meetings as they think fit.
- (b) A Director may at any time and, on the request of a Director the secretary must, convene a meeting of the Directors.
- (c) The Directors must be given a minimum of 5 Business Days notice of the place, date and time of any meeting of Directors or such shorter notice as the Directors, by majority, agree.
- (d) Where any Director is for the time being outside of Australia, notice need only be given to that Director if contact details have been given.

### **11.2 Meetings by Technology**

Meetings of Directors may be held using any technology which permits each Director to communicate with every other Director.

### 11.3 Quorum

- (a) At a meeting of Directors, a quorum is constituted by 4 Directors entitled to vote, at least:
  - (i) 2 of whom must be a Director appointed under Rule 9.1(a)(i) and another the Director holding office under Rule 9.1(a)(iii) or that Director's alternate appointed under Rule 9.1(c); and
  - (ii) 1 Director appointed under Rule 9.1(a)(ii).
- (b) If a quorum is not present within 20 minutes after the time appointed for the meeting then the meeting stands adjourned to a day and time as the chairperson decides and if at the adjourned meeting a quorum is not present the meeting may proceed and be considered quorate provided there are 3 Directors entitled to vote, at least:
  - (i) 2 of whom must be a Director appointed under Rule 9.1(a)(i) and another Director holding office under Rule 9.1(a)(iii) or that Director's alternate appointed under Rule 9.1(c); or
  - (ii) 3 of whom must be appointed under Rule 9.1(a) (i).

### 11.4 Chairperson of Directors

- (a) The Vice Chancellor, the Vice-Chancellor's alternate Director appointed under Rule 9.1(c) or another Director nominated by the Vice-Chancellor will be chairperson of the board of Directors.
- (b) Where a meeting of Directors is held and the chairperson is not present at the time appointed for the holding of the meeting or does not wish to chair the meeting, the Directors present may elect one of their number to be chairperson of the meeting.

### 11.5 Proceedings at Meetings

- (a) Questions arising at a meeting of Directors are decided by a majority of votes of Directors present and voting.
- (b) In the case of an equality of votes, the chairperson of the meeting has a second or casting vote in addition to the chairperson's deliberative vote.

### 11.6 Conflicts of Interest

- (a) A Director who has a material personal interest in a matter that relates to the affairs of the company must give the other Directors notice of his or her interest.
- (b) Notices of material personal interest given by Directors:
  - (i) must give details of the nature and extent of the Director's interest and the relation of the interest to the affairs of the company;
  - (ii) must be given at a Directors' meeting as soon as practicable after the Director becomes aware of their interest in the matter;
  - (iii) must be recorded in the minutes of the Directors' meeting at which the notice is given; and
  - (iv) may be a standing notice of the nature and extent of the interest in accordance with the Corporations Act.



- (c) A Director who has a material personal interest in a matter that is being considered at a Directors' meeting must not be present while the matter is being considered at the meeting or vote on the matter, except if the Directors who do not have a material personal interest in the matter have passed a resolution that:
  - (i) identifies the Director, the nature and the extent of the Director's interest in the matter and its relation to the affairs of the company; and
  - (ii) states that those Directors are satisfied that the interest should not disqualify the Director from voting or being present.
- (d) For the purposes of this Rule 11.6, a Director will not be deemed to have a material personal interest in a matter simply by virtue of that Director being a member of Council, an employee of the University or an officer, member or employee of any Swinburne Student representative body or organisation.

### 11.7 Committees

- (a) The Directors may delegate any of their powers to a committee or committees consisting of such number of them and other people as they think fit. A committee must consist of at least 2 people.
- (b) A committee to which any powers have been so delegated must exercise the powers delegated in accordance with any directions of the Directors. A power so exercised is taken to be exercised by the Directors.
- (c) The number of members whose presence at a meeting of the committee is necessary to constitute a quorum is the number determined by the Directors and, if not so determined is 2.
- (d) The minutes of all the proceedings and decisions of every committee must be made, entered and signed in the same manner in all respects as minutes of proceedings of the Directors are required by the Corporations Act to be made, entered and signed.

### 11.8 Written Resolutions

- (a) If a majority of Directors including at least:
  - (i) 3 Directors appointed under Rule 9.1(a)(i) and the Director holding office under Rule 9.1(a)(iii) or that Director's alternate appointed under Rule 9.1(c); or
  - (ii) 4 Directors appointed under Rule 9.1(a)(i)
 have signed a document containing a statement that they are in favour of a resolution in terms set out in the document, a resolution in those terms is treated as having being passed.
- (b) The effective date of the resolution will be the day on which the document was signed by the Director making up the majority, unless the resolution by its terms is specified to take effect from a particular date.
- (c) Each Director, other than one not entitled to vote under the terms of this Constitution or the Corporations Act, may sign the document.
- (d) An electronic transmission purporting to be signed by or carry the vote of a Director is treated as being signed by that Director.

- (e) Two or more separate documents containing the same resolution are together treated as constituting one document.
- (f) The document or documents referred to in paragraph (e) constitute a minute and should be entered in the company's books for that purpose.

### **11.9 Defects**

All acts done by any meeting of the Directors, committee of Directors, or person acting as a Director are valid notwithstanding any defect in the appointment of a person.

### **11.10 Protocols**

The Directors must have regard to any Protocol when performing their role and functions.

## **12. SECRETARIES AND OTHER OFFICERS**

### **12.1 Secretaries**

- (a) A secretary of the company holds office on the terms and conditions set by the Directors.
- (b) The Directors may at any time terminate the appointment of a secretary.

### **12.2 Other Officers**

- (a) The Directors may:
  - (i) create any other position or positions in the company with the powers and responsibilities as the Directors may confer; and
  - (ii) appoint any person, whether or not a Director, to any such position or positions created.
- (b) The Directors at any time may vary the powers and responsibilities or terminate the appointment of a person holding a position created under Rule 12.2(a) and may abolish the position.

## **13. SEALS AND EXECUTING DOCUMENTS**

### **13.1 Seals and their use**

- (a) The company may have a common seal.
- (b) If the company has a common seal, it may also have a duplicate common seal.
- (c) A Seal may be used only by the authority of the Directors, or of a committee of the Directors authorised by the Directors to authorise the use of the Seal.
- (d) Every document to which the Seal is affixed must be signed by:
  - (i) 2 Directors; or
  - (ii) a Director and a secretary.
- (e) This Rule does not limit the ways in which the company may execute a document.

**14. CAPACITY**

Subject to the Corporations Act, the company has the legal capacity of a natural person including the capacity to exercise the powers set out in section 124 of the Corporations Act. It is the intention that this Constitution will not restrict or prohibit the exercise by the company of any of these powers.

**15. INSPECTION OF RECORDS**

- (a) The University may inspect books of the company at any time.
- (b) The Directors may authorise any other member to inspect books of the company to the extent, at the time and places and under the conditions that the Directors consider appropriate.
- (c) A member (other than a Director or the University) does not have the right to inspect any document of the company except as provided by the Corporations Act or as authorised by the Directors.

**16. ACCOUNTS AND AUDIT**

- (a) The Directors must cause the company to keep true accounts and proper records of the assets and liabilities of the company.
- (b) Books of accounts must be kept at the registered office of the company, or at such place or places as the Directors decide.
- (c) The company's financial year will be 1 January to 31 December.
- (d) The Directors must appoint an auditor of the company.
- (e) The Directors must ensure that the company will comply, and assist the University to comply, with the provisions of the Act relating to accounts and audit.
- (f) The company must, where its total annual income exceeds, or may reasonably be expected to exceed, \$100,000, cause a report by a registered company auditor on the accounts of the company to be made every 12 months and to be submitted to the Council within 3 months after the end of each 12 month period to which the report relates.

**17. NOTICES**

- (a) A notice may be given by the company to any member by:
  - (i) serving it on the member personally;
  - (ii) sending it by post to the member or leaving it at the member's address as shown in the register or the address supplied by the member to the company for the giving of notices;
  - (iii) serving it in any manner contemplated in this Rule on a member's attorney;
  - (iv) fax to the fax number supplied by the member to the company for the giving of notices; or
  - (v) transmitting it electronically to the electronic mail address given by the member to the company for giving notices.

- (b) Where a notice is sent by post, service of the notice is taken to be effected by properly addressing, preparing and posting a letter containing the notice and to have been effected:
  - (i) in the case of a notice of a meeting, on the day after the date of its posting; and
  - (ii) in any other case, at the time at which the letter would be delivered in the ordinary course of post.
- (c) Where a notice is sent by fax or electronic transmission, service of the notice is taken to be effected by properly addressing and sending or transmitting the notice and to have been effected on the day it is sent.
- (d) A member who has not provided an address, fax number or an electronic mail address at or to which all notices and documents of the company may be served or sent is not entitled to receive any notice.

## **18. WINDING UP**

If upon the winding up or dissolution of the company after satisfaction of all its debts and liabilities there remains any property, that property must not be paid to or distributed amongst the members of the company but must be given or transferred to some other fund, authority or institution determined by the University on the winding up or dissolution of the company (or failing which a Judge of the Supreme Court of Victoria) and having objects or purposes similar to the purpose of the company.

## **19. INDEMNITY**

### **19.1 Indemnity for Officers**

To the extent permitted by the Corporations Act, the company indemnifies each Director and secretary against any liability (including all costs, charges, losses, damages, expenses, penalties and legal costs) arising from the person serving as a Director or secretary.

### **19.2 Insurance**

The company may at any time pay premiums in respect of a contract insuring a person who is a Director or secretary or officer of the company.

## **20. COUNCIL AND FINANCE COMMITTEE**

- (a) This Rule applies for as long as the company is a controlled entity of the University.
- (b) Any decision of the company that falls within the following guidelines must be reported to the Finance Committee of Council (which may in turn refer it to Council) for approval before it is put into effect:
  - (i) the investment of an amount greater than the Expenditure Threshold by the company in any venture or capital acquisition;
  - (ii) the purchase or sale of an asset for an amount greater than the Expenditure Threshold;
  - (iii) the commencement or cessation or purchase or sale of an operation which, on a full year basis, represents or is budgeted to represent 15% or more of the revenue of the company; .

- (iv) the entering into of a contract which involves the expenditure of an amount greater than the Expenditure Threshold over the life of the contract;
- (v) the creation or closing by the company of any subsidiary or controlled entity .

**21. CONSENT TO TERMS OF THIS CONSTITUTION**

Each person named below as a member agrees to the terms of this Constitution.

<b>Name of member</b>	<b>Date</b>
Swinburne University of Technology	

**THE COMMON SEAL** of **SWINBURNE** )  
**UNIVERSITY OF TECHNOLOGY** was )  
affixed to this document by direction of )  
Council in the presence of: )

.....  
Council Member

.....  
Council Member