



**Australian Government**

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**Department of Industry  
Innovation, Science, Research  
and Tertiary Education**

# **Funding Agreement**

between the

**COMMONWEALTH OF AUSTRALIA**

as represented by the

**Minister for Tertiary Education, Skills, Science and Research**

and

**Swinburne University of Technology**

regarding funding

**under the Commonwealth Grant Scheme in respect of the 2013  
grant year**

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## **Parties and Recitals**

**THIS AGREEMENT** is made on the date on which it is executed by the Commonwealth of Australia

### **BETWEEN**

**THE COMMONWEALTH OF AUSTRALIA** represented by the Minister for Tertiary Education, Skills, Science and Research ('the Commonwealth') [ABN 74 599 608 295]

### **AND**

**SWINBURNE UNIVERSITY OF TECHNOLOGY**, PO Box 218, HAWTHORN VIC 3122 ('University') [ABN 13 628 586 699]

### **WHEREAS:**

- A. The University meets the requirement of sub-paragraph 30-1(1)(b) of HESA.
- B. This funding agreement is made under sub-section 30-25(1) of HESA in respect of the 2013 Grant Year.
- C. Entering this agreement is a requirement under sub-paragraph 30-1(1)(b)(ii) of HESA for a Commonwealth Grant to be payable to the Provider under Part 2-2 of HESA.
- D. Subject to subsections 30-25(2A) and 30-25(2B) of HESA, this funding agreement specifies conditions to which the Commonwealth Grant is subject that are additional to the conditions that apply to the Commonwealth Grant under Division 36 of HESA.
- E. Under section 36-65 of HESA, the Provider must comply with this funding agreement.

## **NOW IT IS AGREED** as follows:

### **PART A: Introduction**

#### *Commonwealth Grant Scheme funding amount and payment arrangements*

1. The Commonwealth will pay to the University the Commonwealth Grant Scheme (CGS) funding amount for the 2013 Grant Year for the University, calculated in accordance with division 33 of HESA.
2. The Commonwealth will notify the University before the start of the 2013 Grant Year about the CGS advances in respect of amounts expected to be payable for:
  - 2.1. designated courses of study;
  - 2.2. non-designated courses of study;
  - 2.3. transitional loading; and
  - 2.4. medical student loading.
3. The Commonwealth will notify the University before the start of the 2013 Grant Year about the CGS amounts payable for:
  - 3.1. regional loading; and
  - 3.2. enabling loading.
4. CGS advances may be adjusted throughout the grant year based on information provided to the Commonwealth by the University.
5. CGS advances made in respect of the 2013 Grant Year will be reconciled with CGS funding payable to the University for the 2013 Grant Year. This reconciliation will occur in 2014 when actual 2013 student enrolment data is finalised.

#### *Non-designated courses of study and the Government's attainment target*

6. The University acknowledges that a key objective of the Commonwealth in providing funding for non-designated courses of study is to achieve the attainment target of 40 percent of the Australian population aged 25 to 34 years old having a bachelor level qualification or above by 2025.

#### *Estimates of Commonwealth supported places*

7. The University must provide accurate and timely estimates of Commonwealth supported places (EFTSL) for the current year and future years, as required by the Commonwealth.

## **PART B: Designated courses of study**

### *Maximum basic grant amount for designated courses of study*

8. In accordance with sub-paragraph 30-27(1)(a)(i) of HESA, the maximum basic grant amount for designated courses of study for 2013 is \$8,755,729.

### *Allocation of Commonwealth supported places for designated courses of study*

9. The total number of Commonwealth supported places for designated courses of study allocated to the University under sub-section 30-10(1)(a) for each Funding Cluster for the grant year covered by this agreement is shown below in Table 1.
10. Any places allocated at the postgraduate level are for non-research Courses of Study and exclude any course subject to Ministerial determination under paragraph 36-15(2)(b) of HESA.
11. If the University is unable to deliver the places detailed in Table 1 it must notify the Commonwealth as soon as practical and not later than at the next update of estimates of Commonwealth supported places required by the Commonwealth under clause 7.
12. The University is not to transfer any allocation of Commonwealth supported places for designated courses of study between undergraduate and postgraduate courses.

Table 1: Allocation of Commonwealth supported places for designated courses of study<sup>1</sup>

Cluster No.	Funding cluster	Total Number of designated undergraduate places for 2013 grant year (EFTSL) <sup>2</sup>	Total Number of undergraduate medical places for 2013 grant year (EFTSL)	Total Number of non-research postgraduate places for 2013 grant year (EFTSL) <sup>3</sup>	Total Number of postgraduate medical places for 2013 grant year (EFTSL)	Total number of Commonwealth supported places for 2013 grant year
1	Law, accounting, administration, economics, commerce	165	0	42	0	207
2	Humanities	20	0	0	0	20
3	Mathematics, statistics, behavioural science, social studies computing, built environment, other health	446	0	23	0	469
4	Education	0	0	0	0	0
5	Clinical psychology, allied health, foreign languages, visual and performing arts	111	0	11	0	122
6	Nursing	0	0	0	0	0
7	Engineering, science, surveying	135	0	1	0	136
8	Medicine, dentistry, veterinary science, agriculture	0	0	0	0	0
	<b>Total</b>	<b>877</b>	<b>0</b>	<b>77</b>	<b>0</b>	<b>954</b>

## NOTES:

1. Calculation of the Maximum Basic Grant Amount for Designated Courses for the 2013 grant year has been made using unrounded figures. However, only the rounded figures are shown in the above table.
2. Designated undergraduate places include places in associate degrees, advanced diplomas, diplomas, and enabling courses but not medical places.
3. Excludes medical places. See subsection 30-12(1) of HESA.

## **PART C: Other conditions and requirements**

### *Closure of courses*

13. Before Closing a Course to which this clause applies, the University must consult the Commonwealth and obtain the Commonwealth's approval for the closure.
  - 13.1. In this clause, 'Course' means a Course of Study, or a major within a Course of Study.
  - 13.2. This clause applies to Courses at the undergraduate and postgraduate levels in which Commonwealth supported students have been enrolled in either of the 2 preceding years.
  - 13.3. This clause does not apply to a Course for which the University has had an intake for less than four consecutive academic years.
  - 13.4. This clause applies to Courses in the following categories:
    - 13.4.1. Courses that prepare students for entry to any occupation that is experiencing a National Skill Shortage;
    - 13.4.2. Courses, the closure of which, would be likely to create a National Skill Shortage in an occupation because the University is a sole or dominant provider of the national skill base for that occupation;
    - 13.4.3. specialised Courses directed at the regional economy, the closure of which would be likely to create serious detriment to the Skills Base of a Regional Economy; and
    - 13.4.4. Courses for a Nationally Strategic Language.
  - 13.5. In making a decision regarding a Course Closure, the Commonwealth will:
    - 13.5.1. seek to reach a mutually agreeable arrangement with the University regarding the Course Closure;
    - 13.5.2. have regard to student demand for the Course, the financial viability of the Course, the justification provided for a proposed Course Closure by the University and other relevant factors;
    - 13.5.3. assist the University to explore options to retain the Course, including through cooperation with another provider or the movement of Commonwealth supported places to another provider (where applicable); and
    - 13.5.4. not unreasonably withhold approval for a Course Closure so as to place an unreasonable financial burden on the University or place the University in a financially unviable position in regard to the University's overall financial status.
  - 13.6. For the purposes of clause 13.4.3, the skill shortage lists published by the Department of Education, Employment and Workplace Relations at State, Territory and National levels and the Department of Immigration and Citizenship's Skilled Occupation Lists must be taken into account in deciding if Closing a Course is likely to create serious detriment to the Skills Base of a Regional Economy.

*New campuses and campus closures*

14. The University must seek the Commonwealth's prior written approval if the University proposes to enrol Commonwealth supported students in a course of study that is, or is to be undertaken, primarily at an educational facility, other than one of the following university campuses:

Croydon  
Hawthorn  
Lilydale  
Melbourne CBD  
Prahran  
Wantirna

15. The University must seek the Commonwealth's prior written approval before closing or otherwise disposing of a campus of the University at which students are or have been enrolled in Commonwealth supported places.

*Clinical placements and practicums*

16. The Commonwealth Grant Scheme contribution amounts for a place in a nursing and education funding cluster include amounts in recognition of the costs of nursing clinical placement and teaching practicum (\$1,213 and \$833 per EFTSL respectively in 2013). The University must use these amounts only for those purposes.
17. For a course that is accredited under section 49 of the National Law, the University must ensure that each student enrolled in a course has access to clinical placements in accordance with the approved accreditation standard for the profession.

*Applicable law and jurisdiction*

18. The laws of the Australian Capital Territory apply to the interpretation of this agreement.
19. The parties agree to submit to the non-exclusive jurisdiction of the courts of the Australian Capital Territory and any courts which have jurisdiction to hear appeals from any of these courts in respect to any dispute under this agreement.

*Entire agreement, variation and severance*

20. This agreement and *the Higher Education Support Act 2003* record the entire agreement between the parties in relation to its subject matter.
21. Except for action the Commonwealth is expressly authorised or required to take elsewhere in this agreement or HESA, no variation of this agreement is binding unless it is agreed in writing and signed by the parties.
22. If a court or tribunal says any provision of this agreement has no effect or interprets a provision to reduce an obligation or right, this does not invalidate, or restrict the operation of, any other provision.

*Notices*

23. A party giving notice under this agreement must do so in writing or by Electronic Communication:
- 23.1. if given by the University, marked for the attention of the Head of the Higher Education Division of the Department of Industry, Innovation, Science, Research and Tertiary Education or other person as notified in writing by the Commonwealth to the University; or



- 23.2. if given by the Commonwealth, marked for the attention of the Vice-Chancellor and President of the University or other person as notified in writing by the University to the Commonwealth; and

hand delivered or sent by pre-paid post or Electronic Communication to the address specified in subclause 23.3 of this agreement.

- 23.3. Address for notices to the Commonwealth:

Head of Division  
Higher Education Division  
Level 2, 16 Mort Street  
Department of Industry, Innovation, Science, Research & Tertiary Education  
GPO Box 9839  
Canberra ACT 2601  
Email: cgs@innovation.gov.au

Address for notices to the University:

Vice-Chancellor and President  
Swinburne University of Technology  
PO Box 218  
HAWTHORN VIC 3122

24. A notice given under clause 23 is taken to be received:

- 24.1. if hand delivered, on delivery;  
24.2. if sent by pre-paid post, 5 business days after the date of posting; or  
24.3. if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* if a notice was being given under a law of the Commonwealth.

#### *Interpretation*

25. In this agreement, unless the contrary intention appears:

**'ABN'** has the same meaning as it has in section 41 of the *A New Tax System (Australian Business Number) Act 1999*;

**'Closing a Course'** or **'Closure'** means the cessation of intake of students to a course by the University without its immediate replacement by a Course that leads to the same occupation or provides a similar specialised skill and includes any suspension of intake of students for more than one consecutive academic year;

**'Commonwealth Grant'** is the grant payable to the University under Part 2-2 of HESA;

**'Course Completion'** is the point at which an enrolled student satisfies the requirements for a particular qualification;

**'Course of study'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Designated course of study'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'EFTSL'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Funding Clusters'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Grant Year'** refers to the calendar year for which the University has entered into this funding agreement;

**'HESA'** means the *Higher Education Support Act 2003*, as amended;

**'Maximum Basic Grant Amount'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'National Law'** means (a) for a state or territory other than Western Australia – the Health Practitioner Regulation National Law as set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009 (Qld)* as it applies (with or without modification) as a law of the State or Territory; and (b) for Western Australia – the legislation enacted by the *Health Regulation National Law (WA) Act 2010* that corresponds to the Health Practitioner Regulation National Law;

**'Nationally Strategic Language'** means Arabic or Indonesian and any other language notified in writing by the Commonwealth;

**'National Skill Shortage'** refers to the skill shortage lists published by the Department of Education, Employment and Workplace Relations at State, Territory and National levels and the Department of Immigration and Citizenship's Skilled Occupation Lists;

**'Non-designated courses of study'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Number of Commonwealth Supported Places'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Postgraduate Course of Study'** has the same meaning as set out in item 1 of Schedule 1 of HESA;

**'Skills Base of a Regional Economy'** will be assessed on a case by case basis;

**'Undergraduate Course of Study'** has the same meaning as set out in item 1 of Schedule 1 of HESA.

26. In this agreement, unless the contrary intention appears:

26.1. words in the singular include the plural and vice versa;

26.2. clause headings or words in bold format are inserted for convenience only, and have no effect in limiting or extending the language of provisions;

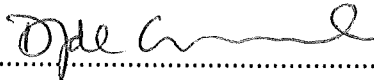
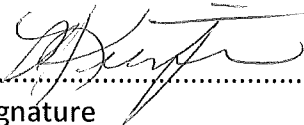
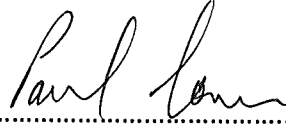
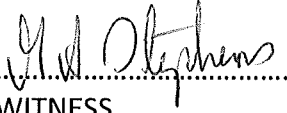
26.3. all references to dollars are to Australian dollars;

26.4. unless stated otherwise, a reference to legislation is to legislation of the Commonwealth, as amended from time to time;

26.5. an uncertainty or ambiguity in the meaning of a provision of this agreement will not be interpreted against a party just because that party prepared that provision; and

26.6. where a word or phrase is given a defined meaning, any other part of speech or grammatical form of that word or phrase has a corresponding meaning.

26.7. where a word or phrase is not specifically defined in this agreement and the word or phrase occurs in the Higher Education Support Act 2003, the word or phrase will have the same meaning as in that Act.

<p>SIGNED for and on behalf of</p> <p>THE COMMONWEALTH OF AUSTRALIA</p> <p>by David de Carvalho the Head of the Higher Education Division of the Department of Industry, Innovation, Science, Research and Tertiary Education as delegate of the Minister for Tertiary Education, Skills, Science and Research.</p> <p> .....</p> <p>Date <u>13.12.12</u>.....</p>	<p>SIGNED for and on behalf of</p> <p>SWINBURNE UNIVERSITY OF TECHNOLOGY</p> <p> .....</p> <p>Signature</p> <p><u>LINDA KRISTJANSON</u> .....</p> <p>Full name (please print)</p> <p><u>VICE CHANCELLOR &amp; PRESIDENT</u> .....</p> <p>Position (e.g., Vice-Chancellor)</p>
<p>In the presence of:</p> <p> .....</p> <p>WITNESS</p> <p><u>PAUL CONCORAN</u> .....</p> <p>Full name (please print)</p> <p><u>ASST DIRECTOR, FPV</u> .....</p> <p>Position or profession of witness (please print)</p>	<p>In the presence of:</p> <p> .....</p> <p>WITNESS</p> <p><u>MICHELLE A STEPHENS</u> .....</p> <p>Full name (please print)</p> <p><u>EXECUTIVE OFFICER, OFFICE OF VC</u> .....</p> <p>Position or profession of witness (please print)</p>