

THE AUSTRALIAN NATIONAL UNIVERSITY

Australian National University (Governance) Statute 2020

The Council of the University makes the following statute.

Dated 20 October 2020



The Hon Julie Bishop
Chancellor

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Part 1—Preliminary

1 Name

This is the *Australian National University (Governance) Statute 2020*.

2 Commencement

This instrument commences on 1 January 2021.

3 Authority

This instrument is made under the *Australian National University Act 1991*, section 50 (Statutes).

4 Object

The object of this instrument is to provide governance arrangements for the University that are of the highest standard and appropriate for its role as Australia's national university and its status as one of the world's great universities.

[Note: The ANU Act and this instrument give effect to the *Voluntary Code of Best Practice for the Governance of Australian Public Universities*. At the commencement of this instrument, the code of practice was available at <https://services.anu.edu.au/business-units/corporate-governance-risk-office>.]

5 Definitions

In this instrument:

academic staff (Faculties) member: see section 11(1).

academic staff (Institute) member: see section 10(1).

appointed member means a Council member appointed by the Minister.

close of nominations, for an election conducted under this instrument, means the date and time by which nominations in the election must reach the returning officer for the election.

constitution, of a student association, means the objects and rules of the association under the *Associations Incorporation Act 1991* (ACT), and includes any regulations or other instrument made under those rules applying to the election of a student member.

dean: see the ANU Act, section 3 (Interpretation).

deans and research school heads member: see section 9(1).

executive office: see the ANU Act, section 3 (Interpretation).

Institute: see the ANU Act, section 3 (Interpretation).

member, of the Council, includes the Chancellor and the Vice-Chancellor.

postgraduate student association means The Australian National University Postgraduate and Research Students' Association Incorporated, an association incorporated under the *Associations Incorporation Act 1991* (ACT).

postgraduate student member: see section 13(1).

professional staff means members of staff of the University other than:

- (a) the holders of the executive offices; and
- (b) the academic staff of the Institute; and
- (c) the academic staff of The Faculties.

[Note: The professional staff are referred to in the ANU Act as the ‘general staff’.]

professional staff member: see section 12(1).

returning officer, for an election conducted under this instrument, means the person who is the returning officer appointed under section 28(1) (Appointment of returning officer etc.) to conduct the election.

staff or student member means any of the following Council members:

- (a) the academic staff (Faculties) member;
- (b) the academic staff (Institute) member;
- (c) the deans and research school heads member;
- (d) the postgraduate student member;
- (e) the professional staff member;
- (f) the undergraduate student member.

student association means:

- (a) the postgraduate student association or the undergraduate student association; and
- (b) in relation to the postgraduate student member or the election of the postgraduate student member—the postgraduate student association; and
- (c) in relation to an undergraduate student member or the election of the undergraduate student member—the undergraduate student association.

student member means the postgraduate student member or the undergraduate student member.

The Faculties: see the ANU Act, section 3 (Interpretation).

undergraduate student association means The Australian National University Students’ Association Incorporated, an association incorporated under the *Associations Incorporation Act 1991* (ACT).

undergraduate student member: see section 14(1).

Part 2—The University

General note for Part 2

The University is continued in existence by the ANU Act (see section 4(1)).

Under the Act, the University is, and has the functions of, an independent, self-governing institution of higher learning that conducts research and teaching at the undergraduate and graduate level (see especially section 5(1)).

The University is a body corporate (see section 4(2)(a)), and has a broad range of particular functions and powers (see especially sections 5 and 6).

The Act gives the University responsibilities as Australia's national university (see section 5(1)(b) and (2)).

Subject to the ANU Act, the Council decides how the University is to be organised (see section 7).

6 Organisation of the University

- (1) The University has the institutes, research schools, colleges and other bodies established, from time to time, within the University by the Council in accordance with the ANU Act.
- (2) A body established within the University by the Council has the fields of learning and name decided, from time to time, by the Council in accordance with the ANU Act.
- (3) Without limiting subsection (1), the Academic Board of the University is established.

Part 3—The Council

Division 3.1—Council functions and powers

General note for Division 3.1

As the governing authority of the University under the ANU Act (see section 8), the Council has general oversight of the University and is responsible for its general direction.

Subject to the Act and the statutes (including this statute), the Council has the entire control and management of the University (section 9(1)).

The ANU Act requires the Council to act in all matters concerning the University in the way it thinks will best promote the interests of the University (see section 9(2)).

The Act gives the Council a range of specific powers (including the power to make statutes under sections 50 and 51).

7 Degrees and awards

The Council may, from time to time, decide the degrees and other awards that the University may confer.

8 Honorary degrees

- (1) The Council may approve the award of honorary degrees, and may revoke an approval.
- (2) The Council may, from time to time, determine the following:
 - (a) the degrees that may be awarded as honorary degrees;
 - (b) conditions of eligibility for the award of honorary degrees;
 - (c) the privileges conferred by honorary degrees and the conditions to which honorary degrees are subject;
 - (d) conditions for the use of the honorary title ‘Doctor’ (or any abbreviation of that title), or any postnominal, by the holders of honorary degrees;
 - (e) procedures for the making, and consideration, of nominations for the award of honorary degrees;
 - (f) procedures for revoking approval of the award of honorary degrees.

Division 3.2—Council composition

General note for Division 3.2

Under the ANU Act (see section 10), the Council consists of the Chancellor, the Vice-Chancellor, 6 elected staff and student members, and 7 members appointed by the Minister on the recommendation of the Nominations Committee. The Act includes provisions about the election or appointment of Council members (also see section 10). This Division includes provisions about the staff and student members.

9 Deans and research school heads member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(k) (the *deans and research school heads member*).

[Note: This Council member must be either a dean or the head of a research school and must be elected, in either case, by the deans and the heads of the research schools voting together (see ANU Act, section 10(1)(k)).]

- (2) For the ANU Act and this instrument, a rule or order may prescribe the bodies that are to be regarded, for all or stated purposes, as faculties or research schools and the persons who are to be regarded, for all or stated purposes, as the dean or head of such a body.
- (3) The deans and research school heads member must be:
 - (a) a dean or the head of a research school; and
 - (b) elected by the deans and the heads of the research schools voting together.
- (4) The election must be conducted under this instrument.
- (5) The deans and research school heads member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 2 years.

[Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]
- (6) The deans and research school heads member may be re-elected.
- (7) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

10 Academic staff (Institute) member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(l) (the *academic staff (Institute) member*).

[Note: This Council member must be a member of the academic staff of the Institute elected by members of that staff (see ANU Act, section 10(1)(l)). For the persons who are to be regarded as members of the academic staff of the Institute, see the Governance Rule, section 8 (Eligibility: election for academic staff members).]
- (2) For the ANU Act and this instrument, a rule or order may prescribe the persons who are to be regarded, for all or stated purposes, as members of the academic staff of the Institute.
- (3) The academic staff (Institute) member must be:
 - (a) a member of the academic staff of the Institute; and
 - (b) elected by members of that staff.
- (4) The election must be conducted under this instrument.
- (5) The academic staff (Institute) member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 2 years.

[Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]
- (6) The academic staff (Institute) member may be re-elected.
- (7) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

11 Academic staff (Faculties) member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(m) (the *academic staff (Faculties) member*).
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[Note: This Council member must be a member of the academic staff of The Faculties elected by members of that staff (see ANU Act, section 10(1)(m)). For the persons who are to be regarded as members of the academic staff of The Faculties, see the Governance Rule, section 8 (Eligibility: election for academic staff members).]

- (2) For the ANU Act and this instrument, a rule or order may prescribe the persons who are to be regarded, for all or stated purposes, as members of the academic staff of The Faculties.
- (3) The academic staff (Faculties) member must be:
 - (a) a member of the academic staff of The Faculties; and
 - (b) elected by members of that staff.
- (4) The election must be conducted under this instrument.
- (5) The academic staff (Faculties) member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 2 years.

[Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]
- (6) The academic staff (Faculties) member may be re-elected.
- (7) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

12 Professional staff member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(n) (the *professional staff member*).

[Note: This Council member must be a member of the professional staff of the University elected by members of the professional staff (see ANU Act, section 10(1)(n)). The professional staff are referred to as the 'general staff' in the ANU Act.]
- (2) For the ANU Act and this instrument, a rule or order may prescribe the persons who are to be regarded, for all or stated purposes, as members of the professional staff of the University.
- (3) The professional staff member must be:
 - (a) a member of the professional staff of the University; and
 - (b) elected by members of that staff.
- (4) The election must be conducted under this instrument.
- (5) The professional staff member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 2 years.

[Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]
- (6) The professional staff member may be re-elected.
- (7) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

13 Postgraduate student member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(o) (the *postgraduate student member*).
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[Note: This Council member must be a postgraduate student of the University elected by the postgraduate students of the University (see ANU Act, section 10(1)(o)).]

- (2) For the ANU Act and this instrument, a rule or order may prescribe the persons who are to be regarded, for all or stated purposes, as postgraduate students of the University.
- (3) The postgraduate student member must be:
 - (a) a postgraduate student of the University; and
 - (b) elected by the postgraduate students of the University.
- (4) The election must be conducted by the postgraduate student association under the association's constitution.

[Note: The association must ensure that the conditions mentioned in section 31(2) (Conditions for conduct of elections by student associations) are complied with in relation to the election.]

- (5) However, if a direction is in force under section 32(3) (Conduct of student member elections under this instrument) in relation to elections for the postgraduate student member, the election must be conducted under this instrument.
- (6) The postgraduate student member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 1 year. However, if the postgraduate student association's constitution provides (or has the effect of providing) a different term for the member that is no longer than 15 months, that term.

[Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]

- (7) The term of the postgraduate student member mentioned subsection (6) commences:
 - (a) 6 weeks after the day (the **declaration day**) the returning officer for the election in which the member is elected declares the result of the election; or
 - (b) if the postgraduate student association's constitution provides (or has the effect of providing) a different date for the commencement of the member's term that is not later than 4 months after the declaration day—that date.
- (8) To remove any doubt, if the postgraduate student member is elected to fill a casual vacancy under the ANU Act, the member's term commences on the day the returning officer for the election declares the result of the election.
- (9) The postgraduate student member may be re-elected.
- (10) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

14 Undergraduate student member

- (1) This section applies in relation to the Council member mentioned in the ANU Act, section 10(1)(p) (the **undergraduate student member**).

[Note: This Council member must be an undergraduate student of the University elected by the undergraduate students of the University (see ANU Act, section 10(1)(p)).]

- (2) For the ANU Act and this instrument, a rule or order may prescribe the persons who are to be regarded, for all or stated purposes, as undergraduate students of the University.
- (3) The undergraduate student member must be:
 - (a) an undergraduate student of the University; and
 - (b) elected by the undergraduate students of the University.

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- (4) The election must be conducted by the undergraduate student association under the association's constitution.
- [Note: The association must ensure that the conditions mentioned in section 31(2) (Conditions for conduct of elections by student associations) are complied with in relation to the election.]
- (5) However, if a direction is in force under section 32(3) (Conduct of student member elections under this instrument) in relation to elections for the undergraduate student member, the election must be conducted under this instrument.
- (6) The undergraduate student member is elected (otherwise than to fill a casual vacancy under the ANU Act) for a term of 1 year. However, if the undergraduate student association's constitution provides (or has the effect of providing) a different term for the member that is no longer than 15 months, that term.
- [Note: A person elected to fill a casual vacancy holds office for the remainder of the term of office of the person's predecessor (see ANU Act, section 16(2)).]
- (7) The term of the undergraduate student member mentioned subsection (6) commences:
- (a) 6 weeks after the day (the **declaration day**) the returning officer for the election in which the member is elected declares the result of the election; or
 - (b) if the undergraduate student association's constitution provides (or has the effect of providing) a different date for the commencement of the member's term that is not later than 4 months after the declaration day—that date.
- (8) To remove any doubt, if the undergraduate student member is elected to fill a casual vacancy under the ANU Act, the member's term commences on the day the returning officer for the election declares the result of the election.
- (9) The undergraduate student member may be re-elected.
- (10) This section is subject to section 15 (Limitation on election or re-election of staff and student members).

15 Limitation on election or re-election of staff and student members

- (1) A person who is a staff or student member may not be elected or re-elected as a staff and student member if, at the end of the person's current term as a staff or student member, the person will have been a staff or student member, in any position (or combination of positions) as a staff or student member, for at least 8 consecutive years.
- (2) Subsection (1) does not apply in relation to the election or re-election of a person as a staff or student member at an election if the Council has decided, before the close of nominations in the election, that the person is eligible to be elected in the election.
- (3) In making a decision under subsection (2), the Council must have regard to the following matters (so far as the Council considers that they are relevant and appropriate):
 - (a) the skills and expertise necessary for the Council to exercise its functions, including the need for:
 - (i) at least 2 Council members to have a high level of relevant financial expertise; and
 - (ii) at least 1 Council member to have a high level of relevant commercial expertise;
 - (b) the need for the Council to reflect the diversity of the Australian population, including in relation to gender and Australia's Indigenous peoples;

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- (c) the appropriate balance of the places of residence of the Council members to reflect the University's role as Australia's national university;
 - (d) the appropriate balance between renewal and continuity in the constitution of the Council;
 - (e) the understanding and appreciation that Council members must have of:
 - (i) the functions of the University;
 - (ii) its independence and academic freedom;
 - (iii) its role as Australia's national university;
 - (iv) the needs and expectations of the Australian Capital Territory, Australia and the international community.

Division 3.3—Council members

General note for Division 3.4

The ANU Act includes provisions about qualifications for Council membership and vacation of office (see sections 11 and 15).

These provisions do not apply to the Chancellor or Vice-Chancellor. The Act has separate provisions for the Chancellor and Vice-Chancellor (see sections 32 and 34) and additional provisions for the Pro-Chancellor (see section 33).

16 Remuneration and allowances of staff and student members

- (1) A staff or student member is not entitled to be paid remuneration or allowances as a Council member.
- (2) To remove any doubt, this section does not prevent the reimbursement of a staff or student member for expenses reasonably incurred by the member in performing the duties of a Council member.
- (3) This section does not apply to:
 - (a) allowances decided by the Council to reimburse a Council member on account of expenses incurred (or that the Council considers may reasonably be expected to be incurred) by the member in performing the duties of a Council member; or
 - (b) the payment of amounts, or reimbursement of amounts paid, for directors and officers liability insurance; or
 - (c) the payment of amounts under any deed of indemnity provided by the University to a Council member.

Examples for subsection (3)(a)

1 travelling allowances

2 training and development allowances

17 Staff or student member ceasing to be qualified to be elected

Under the ANU Act (see section 15(1)(g)), a staff or student member's position as staff or student member becomes vacant if the member ceases to be qualified to be elected to that position.

18 Resignation of Council members

- (1) A Council member may resign by written notice to the Council given to the Chancellor.
- (2) This section does not apply to the Chancellor or Vice-Chancellor.
[Note: See section 44 (Resignation of Chancellor) and section 61 (Resignation of Vice-Chancellor).]

Division 3.4—Council procedures

19 Holding Council meetings

- (1) The Council is to meet at the times and places that it decides.
- (2) However, the Council must meet at least 6 times a year.
- (3) Also, the Chancellor may at any time call a Council meeting and must call a meeting if asked by at least the required number of Council members.
- (4) When calling a meeting, the Chancellor must give the other Council members reasonable notice of the time and place of the meeting.
- (5) In this section:
required number, of Council members, means:
 - (a) a quarter of the number of persons for the time being holding office as Council members; or;
 - (b) if that number is not a whole number—the next higher number.

20 Presiding at Council meetings

- (1) The ANU Act (see section 12(1), (2) and (3)) deals with presiding at Council meetings.
- (2) Under the ANU Act, the Chancellor presides at all Council meetings at which the Chancellor is present.
- (3) If the Chancellor is absent, the Pro-Chancellor presides.
- (4) However, if the Chancellor and Pro-Chancellor are both absent, the Council member elected by the members present presides.

21 Quorum at Council meetings

Under the ANU Act (see section 12(4)), a quorum at a Council meeting is constituted by a majority of the persons for the time being holding office as Council members.

[Note: The Council may permit Council members to participate in meetings by telephone, close-circuit television or any other means of communication. A member who participates in a meeting under a permission is taken to be present at the meeting (see Acts Interpretation Act, section 33B).]

22 Voting at Council meetings

- (1) Subject to the ANU Act and this instrument, a question arising at a Council meeting is to be decided by a majority of the Council members present and voting.
[Note: Under the ANU Act and this instrument certain resolutions require special majorities. For example, see the ANU Act, section 15(1A), which is about the termination of the appointment of a Council member on certain grounds.]

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- (2) The member presiding and the other members present each have a single vote on each question to be decided.

23 Council decisions without meetings

Under the ANU Act (see section 13), the Council may pass certain resolutions without a meeting.

24 Council proceedings generally

Subject to the ANU Act and this instrument, the Council may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

[Note: The *Public Governance, Performance and Accountability Act 2013* (see section 29) and the *Public Governance, Performance and Accountability Rule 2014* (see Part 2-2, Division 2) contain provisions requiring Council members to disclose details of material personal interests and dealing with the consequences of a disclosure, including not being present while a matter in which a member has an interest is being considered at a Council meeting or voting on the matter.]

Division 3.5—Council committees

25 Council committees

- (1) The Council may do any of the following:
- (a) establish committees of the Council;
 - (b) set the functions and membership of Council committees;
 - (c) decide how:
 - (i) Council committees are to be managed, operated and controlled; and
 - (ii) meetings and other proceedings of Council committees are to be conducted;
 - (d) set reporting and other accountability arrangements for Council committees.

[Note: **Function** includes authority, duty and power (see Legislation Statute, dictionary).]

- (2) A Council committee may consist of:
- (a) Council members; or
 - (b) Council members and other persons; or
 - (c) persons who are not Council members.

Part 4—Elections for staff and student members of Council

Division 4.1—Elections conducted under this instrument

26 Application of Division 4.1

- (1) This Division applies to an election for a staff or student member conducted under this instrument.
- (2) To remove any doubt, this Division does not apply to an election for a student member conducted by a student association under the association's constitution, but does apply to the election for a student member conducted under this instrument.

27 Preferential voting and secret ballots for conduct of elections

An election must be conducted by:

- (a) a method of preferential voting; and
- (b) secret ballot.

28 Appointment of returning officer etc.

- (1) The Vice-Chancellor may, in writing, appoint a person as returning officer to conduct an election or elections under this instrument.
- (2) The Vice-Chancellor must ensure that there is a returning officer appointed for each election for a staff or student member conducted under this instrument.
- (3) The returning officer may, in writing, appoint deputies to assist the returning officer to conduct an election or elections under this instrument.

29 Conduct of elections by returning officer

The returning officer for an election must ensure that the election is conducted fairly, and, in particular, the returning officer must take reasonable steps to ensure that persons eligible to become candidates and vote in the election:

- (a) are given reasonable notice of the opportunity to become candidates and vote; and
- (b) are given reasonable information about how and when they may become candidates and vote; and
- (c) have a reasonable opportunity to become candidates and vote in the election.

30 Decisions of returning officer final etc.

A decision of the returning officer for an election about the conduct or result of the election is final and not subject to appeal or review in any way.

Division 4.2—Elections for student members

31 Conditions for conduct of elections by student associations

- (1) This section applies to an election for a student member conducted by the student association under the association's constitution.

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- (2) The student association must ensure that the following conditions are complied with in relation to the election:
- (a) the election must be conducted by the association under the association's constitution;
 - (b) a person is not eligible to nominate a candidate for election, be nominated as a candidate for election, vote, or be elected, in the election unless the person is:
 - (i) for an election conducted by the postgraduate student association—a postgraduate student of the University; or
 - (ii) for an election conducted by the undergraduate student association—an undergraduate student of the University;
 - (c) the student member must be directly elected as the student member by:
 - (i) for an election conducted by the postgraduate student association—the postgraduate students of the University; or
 - (ii) for an election conducted by the undergraduate student association—the undergraduate students of the University;
 - (d) if the election is not for a casual vacancy—the election must be conducted at the same time as the annual elections for elected positions in the association;
 - (e) the student association must appoint a returning officer for the election;
 - (f) the returning officer must ensure that the election is conducted fairly, and, in particular, the returning officer must take reasonable steps to ensure that persons eligible to become candidates and vote in the election:
 - (i) are given reasonable notice of the opportunity to become candidates and vote; and
 - (ii) are given reasonable information about how and when they may become candidates and vote; and
 - (iii) have a reasonable opportunity to become candidates and vote in the election;
 - (g) the returning officer must also ensure that the election otherwise complies with this instrument;
 - (h) the student association must take the steps necessary, or that the returning officer reasonably requires, to assist the returning officer ensure that the election is conducted fairly and otherwise complies with this instrument;
 - (i) the election must be by a method of preferential voting and by secret ballot;
 - (j) after the conclusion of the election, the returning officer must declare the result of the election;
 - (k) the returning officer must report to the Vice-Chancellor on the conduct, and the result, of the election within 2 working days after the day the result of the election is declared by the returning officer;
 - (l) the election must otherwise comply with this instrument.
- (3) To remove any doubt, subsection (2) does not prevent:
- (a) the election from being conducted for the student association by an authority of the Commonwealth or a State or Territory; or
 - (b) the association from conducting the election for the student member at the same time as, and in association with, elections for positions in the association; or
 - (c) the student member from being elected to another position in the association by a separate election conducted by the association at the same time as, and in association with, the election for the student member; or
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- (d) the returning officer for the election for the student member from being the returning officer for elections for positions in the association that are conducted at the same time.

32 Conduct of student member elections under this instrument

- (1) This section applies if the Vice-Chancellor is satisfied in relation to the election of a student member (the *relevant election*) that:
 - (a) a condition mentioned in section 31(2) (Conditions for conduct of elections by student associations) has not been complied with, is not being complied with, or will not be complied with, in relation to the election; and
 - (b) noncompliance with the condition is contrary to the interests of the University, its good governance or the interests of the relevant student community.
- (2) Without limiting subsection (1)(b), the Vice-Chancellor may be satisfied about a matter mentioned in that paragraph if the Vice Chancellor is satisfied that any of the following applies in relation to the election:
 - (a) the person elected is not eligible to have been elected or has been elected by persons not eligible to vote in the election;
 - (b) the election has not been conducted, is not being conducted, or will not be conducted, in a way that results the person elected being directly elected as the student member;
 - (c) the election has not been conducted, is not being conducted, or will not be conducted, by a method of preferential voting or by secret ballot (or both);
 - (d) there has been a serious irregularity in the course or conduct of the election;
 - (e) the result of the election is not, or is not likely to be, reliable;
 - (f) the conduct of the election is not, or will not be, fair.

Examples for paragraph (f)

1 the returning officer could not reasonably be considered to be impartial or has behaved in a way that could reasonably be considered to be biased

2 the returning officer is failing, or has failed, to conduct the election in an orderly way, maintain the secrecy of the ballot or ensure the integrity of the voting

3 persons eligible to become candidates and vote in the election have not been given reasonable notice of the opportunity to become candidates and vote or reasonable information about how and when they may become candidates and vote

4 persons eligible to become candidates and vote in the election have not been given a reasonable opportunity to become candidates and vote in the election

- (3) The Vice-Chancellor may, in writing, direct that elections for the student member must be conducted under this instrument and not by the student association under the association's constitution.
- (4) If the relevant election has commenced but the result of the election has not been declared by the returning officer for the election, and the election process ends, anything done for or in relation to the election ceases to have effect, and a fresh election must be conducted under this instrument.
- (5) Subsection (6) applies if:
 - (a) the result of the relevant election has been declared by the returning officer for the election; and

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- (b) either:
- (i) the returning officer has not reported to the Vice-Chancellor on the conduct and the result of the election; or
 - (ii) the returning officer has reported to the Vice-Chancellor on the conduct and the result of the election but less than 10 working days have elapsed after the day the report was made.
- (6) If this subsection applies (see subsection (5)), anything done for or in relation to the election ceases to have effect, the person declared to be elected as the student member is taken not to have been elected, and a fresh election must be conducted under this instrument.
- (7) The direction under subsection (3) remains in effect for a specified period of no longer than 12 months unless it is revoked sooner.
- (8) Subsection (7) does not prevent the Vice-Chancellor from giving a further direction under subsection (3) in relation to the conduct of elections for the student member.
- (9) If the Vice-Chancellor makes, revokes, or varies the period of effect of, a direction under subsection (3), the Vice-Chancellor must:
- (a) inform the Council at its next meeting; and
 - (b) give written notice of the action taken by the Vice-Chancellor to the President of the student association within 5 working days after the day the action is taken.
- (10) If, as result of the making of a direction under subsection (3), a person declared to be elected as the student member is taken not to have been elected, the Vice-Chancellor must also give written notice of the making of the direction to that person within 5 working days after the day the direction is made.

Part 5—Nominations Committee

General note for Part 5

The ANU Act establishes the Nominations Committee and provides for its composition and functions (see section 10). The Nominations Committee recommends persons for appointment by the Minister as Council members.

33 Terms of appointment of Nominations Committee members

- (1) This section applies to a Nominations Committee member appointed by the Chancellor.
[Note: The Chancellor is automatically a Nominations Committee member (see ANU Act, section 10(2)(a).]
- (2) Subject to this instrument, the member holds office for the period specified in the member's instrument of appointment. The period must not exceed 3 years.
- (3) The member may be reappointed as a Nominations Committee member for a period. However, the member must not hold office as a Nominations Committee member for longer than 6 consecutive years.
- (4) Subsection (3) does not apply to the Pro-Chancellor or Vice-Chancellor if the Pro-Chancellor or Vice-Chancellor is a Nominations Committee member.

34 Remuneration and allowances of certain Nominations Committee members

- (1) This section applies to a Nominations Committee member if the member is a member of staff or student of the University.
- (2) The member is not entitled to be paid remuneration or allowances as a Nominations Committee member.
- (3) To remove any doubt, this section does not prevent the reimbursement of the member for expenses reasonably incurred by the member in performing the duties of a Nominations Committee member.
- (4) This section does not apply to allowances decided by the Council to reimburse a Nominations Committee member on account of expenses incurred (or that the Council considers may reasonably be expected to be incurred) by the member in performing the duties of a Nominations Committee member.

Examples for subsection (4)

- 1 travelling allowances
- 2 training and development allowances

35 Termination of appointment of Nominations Committee members by Council

The Council must terminate the appointment of a Nominations Committee member appointed by the Chancellor if:

- (a) the member is absent, except on leave of absence given by the Nominations Committee, from 3 consecutive meetings of the committee; or

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- (b) the member becomes disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6; or
 - (c) the member, in the Council's opinion formed by resolution passed at a Council meeting:
 - (i) has breached the member's duties under the *Public Governance, Performance and Accountability Act 2013*, Part 2-2, Division 3, Subdivision A as a Nominations Committee member; or
 - (ii) is incapable (otherwise than on a temporary basis) of performing the duties of a Nominations Committee member.

[Note: The appointment of a Nominations Committee member may also be terminated under the *Public Governance, Performance and Accountability Act 2013*, section 30 (which deals, among other things, with terminating the appointment of an official of the University for contravening the general duties of officials).]

36 Resignation of Nominations Committee members

- (1) A Nominations Committee member may resign by written notice given to the Chancellor.
- (2) This section does not apply to the Chancellor.

[Note: See section 44 (Resignation of Chancellor).]

37 Holding Nominations Committee meetings

- (1) The Nominations Committee is to meet at the times and places that it decides.
- (2) However, the Chancellor may at any time call a Nominations Committee meeting and must call a meeting if asked by at least the required number of committee members.
- (3) When calling a meeting, the Chancellor must give the other Nominations Committee members reasonable notice of the time and place of the meeting.
- (4) In this section:

required number, of Nominations Committee members, means:

- (a) half of the number of persons for the time being holding office as committee members; or
- (b) if that number is not a whole number—the next higher whole number.

38 Presiding at Nominations Committee meetings

- (1) The Chancellor presides at all Nominations Committee meetings at which the Chancellor is present.
- (2) If the Chancellor is absent and the Pro-Chancellor is a Nominations Committee member, the Pro-Chancellor presides.

39 Nominations Committee proceedings generally

- (1) Business may be carried out at a Nominations Committee meeting only if:
 - (a) a majority of the persons for the time being holding office as committee members are present; and
 - (b) the members present include the Chancellor or, if the Pro-Chancellor is a Nominations Committee member, the Pro-Chancellor.

[Note: The Nominations Committee may permit committee members to participate in meetings by telephone, close-circuit television or any other means of communication. A member who participates in a meeting under a permission is taken to be present at the meeting (see Acts Interpretation Act, section 33B).]

- (2) At a Nominations Committee meeting, the member presiding and the other members present each have vote.
- (3) A resolution is passed at a Nominations Committee meeting if a majority of the committee members present and voting vote in favour of the resolution.
- (4) A resolution of the Nominations Committee is a valid resolution, even though it is not passed at a meeting of the committee, if:
 - (a) notice of the resolution is given, and committee members vote on the resolution, under procedures decided by the committee; and
 - (b) a majority of the persons for the time being holding office as committee members agree, in writing, to the resolution.
- (5) Subject to the ANU Act and this instrument, the Nominations Committee must conduct its proceedings (including its meetings) as otherwise directed by the Council.

[Note: The *Public Governance, Performance and Accountability Act 2013* (see section 29) and the *Public Governance, Performance and Accountability Rule 2014* (see Part 2-2, Division 2) contain provisions requiring Nominations Committee members to disclose details of relevant material personal interests and dealing with the consequences of a disclosure, including not being present while a matter in which a member has an interest is being considered at a Nominations Committee meeting or voting on the matter.]

Part 6—Officers of the University

Division 6.1—Chancellor

General note for Division 6.1

The ANU Act provides for there to be a Chancellor of the University (see section 32(1)).

The Chancellor is appointed by the Council (section 32(1)).

The Chancellor is a member of the Council and the Nominations Committee (section 10(1)(a) and (2)(a)).

The Act provides for the Chancellor to cease to hold office as Chancellor if the Chancellor becomes a student or employee of the University (section 32(1A)).

Subject to the ANU Act and the statutes, the Chancellor holds office for the period, and on the conditions, that the Council determines (section 32(2)).

40 Role of Chancellor

- (1) The primary responsibilities of the Chancellor are:
 - (a) to provide leadership to the Council; and
 - (b) to ensure the highest standards of good corporate governance within the University; and
 - (c) to ensure that the Council fulfils:
 - (i) its responsibilities under the ANU Act and other Commonwealth laws; and
 - (ii) any other responsibilities that it sets for itself, by statute or otherwise.
- (2) The Chancellor also has the following specific responsibilities:
 - (a) subject to this instrument, to preside at all meetings of the Council and Nominations Committee at which the Chancellor is present, and facilitate discussion within the meetings;
 - (b) to represent the views of the Council to the University community, government, business, civil society and the public;
 - (c) to maintain a regular dialogue and mentoring relationship with the Vice-Chancellor and senior University management, serving as a primary link between the Council and management and providing continuity between Council meetings;
 - (d) to work with the Vice-Chancellor in relation to the Council's requirements for information to contribute effectively to the Council decision-making process;
 - (e) to monitor the effective implementation of Council decisions;
 - (f) to preside at all ceremonial occasions of the University at which the Chancellor is present, including the Conferring of Awards ceremonies;
 - (g) to fulfil any other responsibilities:
 - (i) under the ANU Act and other Commonwealth laws; or
 - (ii) given by the Council, by statute or otherwise.
- (3) However, to remove any doubt, the Chancellor does not hold an executive role within the University.

41 Appointment of Chancellor

The Council must not appoint any of the following as Chancellor:

- (a) a member of the Commonwealth Parliament, a State Parliament or the legislature of a Territory;
- (b) a person who is disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6;
- (c) the Vice-Chancellor;
- (d) a student or employee of the University.

42 Term of Chancellor's appointment

- (1) The Chancellor is appointed for the period (no longer than 4 years) decided by the Council.
- (2) The period of the Chancellor's appointment may, but need not, be specified in the Chancellor's instrument of appointment.
- (3) A person may be reappointed as the Chancellor for a period. However, a person must not hold office as Chancellor for longer than 8 consecutive years, unless the Council considers it appropriate for the person to hold office as Chancellor for longer than that period.

43 Termination of Chancellor's appointment

- (1) The Council must terminate the Chancellor's appointment if:
 - (a) the Chancellor becomes:
 - (i) a member of the Commonwealth Parliament, a State Parliament or the legislature of a Territory; or
 - (ii) disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6; or
 - (b) the Chancellor is absent, except on leave of absence given by the Council, from 3 consecutive Council meetings; or
 - (c) the Chancellor, in the Council's opinion formed by resolution passed at a Council meeting as provided by subsection (2):
 - (i) no longer has the Council's confidence; or
 - (ii) is incapable (otherwise than on a temporary basis) of performing the duties of the Chancellor's office; or
 - (d) the Chancellor is appointed as the Vice-Chancellor.

[Note: The Chancellor also ceases to hold office if the Chancellor becomes a student or employee of the University (see ANU Act, section 32(1A)).]

- (2) For subsection (1)(c), the Council forms its opinion by resolution passed at a Council meeting if the resolution is passed at the meeting by at least a two-thirds majority of the Council members.
- (3) Without limiting subsection (1)(c)(i), the Council may form its opinion mentioned in the subparagraph on the ground that the Chancellor has breached the Chancellor's duties under the *Public Governance, Performance and Accountability Act 2013*, Part 2-2, Division 3, Subdivision A as a member of the Council or Nominations Committee.

[Note: Subdivision A is about the general duties of officials (including Council and Nominations Committee members). The duties include a duty to act honestly, in good faith and for a proper purpose, and a duty to disclose interests.]

44 Resignation of Chancellor

The Chancellor may resign by written notice to the Council given to the Vice-Chancellor.

45 Other conditions of Chancellor's appointment

- (1) Subject to the ANU Act and this instrument, the Chancellor holds office on the conditions determined by the Council.
- (2) The conditions may, but need not, be specified in the Chancellor's instrument of appointment.

46 Pro-Chancellor acting as Chancellor

The Pro-Chancellor acts as Chancellor during all periods when:

- (a) there is a vacancy in the office of Chancellor; or
- (b) the Chancellor is absent on leave of absence given by the Council; or
- (c) the Chancellor is unable, for any reason, to perform the duties of the office.

[Note: The Acts Interpretation Act has provisions applying to acting arrangements (see sections 33AB and 33A(2) and (3)).]

Division 6.2—Pro-Chancellor

General note for Division 6.2

The ANU Act provides that the Council may appoint a Pro-Chancellor of the University (see section 33(1)).

The Pro-Chancellor must be an appointed member (see section 33(1) and (1A)).

In addition to being a Council member, the Pro-Chancellor may be appointed as a Nominations Committee member (see section 10(2)(b)).

Subject to the ANU Act and the statutes, the Pro-Chancellor holds office for the period, and on the conditions, that the Council determines (section 33(2)).

47 Role of Pro-Chancellor

- (1) The primary responsibilities of the Pro-Chancellor are to assist the Chancellor in:
 - (a) providing leadership to the Council; and
 - (b) ensuring the highest standards of good corporate governance within the University; and
 - (c) ensuring that the Council fulfils:
 - (i) its responsibilities under the ANU Act and other Commonwealth laws; and
 - (ii) any other responsibilities that it sets for itself, by statute or otherwise.
- (2) The Pro-Chancellor also has the following specific responsibilities:

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- (a) to preside at Council meetings at which the Pro-Chancellor is present if the Chancellor is absent, or while the meeting is considering a matter mentioned in paragraph (d), and to facilitate discussion in the meetings;
 - (b) if the Pro-Chancellor is a Nominations Committee member—to preside at Nominations Committee meetings at which the Pro-Chancellor is present if the Chancellor is absent, and to facilitate discussion in the meetings;
 - (c) to assist the Chancellor in carrying out the Chancellor's specific responsibilities;
[Note: See section 40(2) (Role of Chancellor).]
 - (d) to lead the Council in its deliberations on the appointment or reappointment of a Chancellor, the conditions of the Chancellor's appointment, or the termination of the Chancellor's appointment;
 - (e) to preside at all ceremonial occasions of the University at which the Pro-Chancellor is present if the Chancellor is absent, including the Conferring of Awards ceremonies;
 - (f) to fulfil any other responsibilities:
 - (i) under the ANU Act and other Commonwealth laws; or
 - (ii) given by the Council, by statute or otherwise.

48 Term of Pro-Chancellor's appointment

- (1) Subject to the ANU Act, the Pro-Chancellor is appointed for the period (no longer than 4 years) decided by the Council.
[Note: The Pro-Chancellor may be reappointed (see Acts Interpretation Act, section 33AA (Power to appoint includes power to reappoint).]
- (2) The period of the Pro-Chancellor's appointment may, but need not, be specified in the Pro-Chancellor's instrument of appointment.

49 Termination of Pro-Chancellor's appointment

- (1) The Council must terminate the Pro-Chancellor's appointment as Pro-Chancellor if the Pro-Chancellor becomes a member of staff or student of the University.
- (2) The Council must also terminate the Pro-Chancellor's appointment as Pro-Chancellor if the Pro-Chancellor, in the Council's opinion formed by resolution passed at a Council meeting as mentioned in subsection (3):
 - (a) no longer has the Council's confidence; or
 - (b) is incapable (otherwise than on a temporary basis) of performing the duties of the Pro-Chancellor's office.

[Note: The Pro-Chancellor also ceases to hold office as Pro-Chancellor if the Pro-Chancellor ceases to be a Council member (see ANU Act, section 33(1A)).]

- (3) For subsection (2), the Council forms its opinion by resolution passed at a Council meeting if the resolution is passed at the meeting by at least a two-thirds majority of the Council members.
- (4) Without limiting subsection (2)(a), the Council may form its opinion mentioned in the paragraph on the ground that the Pro-Chancellor has breached the Pro-Chancellor's duties under the *Public Governance, Performance and Accountability Act 2013*, Part 2-2, Division 3, Subdivision A as a member of the Council or Nominations Committee.

[Note: Subdivision A is about the general duties of officials (including Council and Nominations Committee members). The duties include a duty to act honestly, in good faith and for a proper purpose, and a duty to disclose interests.]

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- (5) To remove any doubt, the termination of the Pro-Chancellor's appointment as Pro-Chancellor under this section does not affect the Pro-Chancellor's appointment as a Council member unless that appointment is also terminated under the ANU Act.

50 Resignation of Pro-Chancellor

- (1) The Pro-Chancellor may resign as Pro-Chancellor by written notice to the Council given to the Chancellor.
- (2) To remove any doubt, the Pro-Chancellor may resign as Pro Chancellor and remain a Council member or may resign both as Pro-Chancellor and as a Council member.

51 Other conditions of Pro-Chancellor's appointment

- (1) Subject to the ANU Act and this instrument, the Pro-Chancellor holds office on the conditions determined by the Council.
- (2) The conditions may, but need not, be specified in the Pro-Chancellor's instrument of appointment.

52 Acting Pro-Chancellor

The Council may, in writing, appoint an appointed member to act as Pro-Chancellor during any period, or all periods, when:

- (a) there is a vacancy in the office of Pro-Chancellor; or
- (b) the Pro-Chancellor is:
- (i) acting as Chancellor; or
 - (ii) absent on leave of absence given by the Council; or
 - (iii) unable, for any reason, to perform the duties of the office.

[Note: The Acts Interpretation Act has provisions applying to acting appointments (see sections 33AB and 33A(1)).]

Division 6.3—Vice-Chancellor

General note for Division 6.3

The ANU Act provides for there to be a Vice-Chancellor of the University (see section 34(1)).

The Vice-Chancellor is appointed by the Council (section 34(1)).

The Vice-Chancellor is the University's chief executive officer (section 34(2)(a)).

The Vice-Chancellor has the powers and duties prescribed by the statutes or, subject to the statutes, as the Council determines (section 34(2)(b)).

The Vice-Chancellor is a Council member (section 10(1)(c)).

In addition to being a Council member, the Vice-Chancellor may be appointed as a Nominations Committee member (see section 10(2)(b)).

Subject to the statutes, the Vice-Chancellor holds office for the period, and on the conditions, that the Council determines (section 34(3)).

53 Appointment of Vice-Chancellor

The Council must not appoint any of the following as Vice-Chancellor:

- (a) a member of the Commonwealth Parliament, a State Parliament or the legislature of a Territory;
- (b) a person who is disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6.

54 President of the University

The Vice-Chancellor may use, or be referred to using, the title President of the University, with or without any other title.

55 General functions etc. of Vice-Chancellor

- (1) The Vice-Chancellor:
 - (a) is the principal academic officer and chief executive officer of the University; and
 - (b) is responsible for the academic standards, management and administration of the University; and
 - (c) has the other functions, duties and powers prescribed by the statutes or, subject to the statutes, as otherwise determined by the Council.
- (2) The Vice-Chancellor may:
 - (a) exercise any function or duty given to the Vice-Chancellor under:
 - (i) the ANU Act or any other Commonwealth law; or
 - (ii) University legislation; or
 - (iii) a Council decision; and
 - (b) do anything incidental or conducive to the exercise of that function or duty.
- (3) The Vice-Chancellor may:
 - (a) exercise any power or authority given to the Vice-Chancellor under:
 - (i) the ANU Act or any other Commonwealth law; or
 - (ii) University legislation; or
 - (iii) a Council decision; and
 - (b) do anything necessary or convenient to be done for, or in connection with, the exercise of that power or authority.

56 Exercise of functions etc. by Vice-Chancellor

In exercising a function, duty, power or authority, the Vice-Chancellor must act in accordance with:

- (a) the ANU Act and other Commonwealth laws; and
- (b) any other laws applying to the exercise of the function; and
- (c) University legislation; and
- (d) Council decisions.

57 Executive appointments

- (1) The Council may authorise the Vice-Chancellor, on behalf of the University:
 - (a) to appoint a Provost, and appoint the Deputy Vice-Chancellors and Pro Vice-Chancellors, and make appointments to other executive positions within the University, that the Vice-Chancellor considers appropriate; and
 - (b) to set the conditions of appointments to executive positions within the University.
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- (2) However, if the Council designates an executive position within the University as a position to which this subsection applies, appointments to the position must be made by the Council on the Vice-Chancellor's recommendation.
 - (3) The Vice-Chancellor must provide the reports in relation to executive position appointments (including the conditions of those appointments) that the Council requires.

58 Intellectual property powers of Vice-Chancellor

- (1) Without limiting any other function of the Vice-Chancellor, the Vice-Chancellor may act for the University in the administration of any right or interest of the University in intellectual property.
- (2) Without limiting subsection (1) or any other function of the Vice-Chancellor, the Vice-Chancellor may, for that subsection:
 - (a) appoint agents and attorneys to act for the University; and
 - (b) do anything else the Vice-Chancellor considers appropriate in the interests of the University.
- (3) In this section:

administration, in relation to a right or interest in intellectual property, includes doing anything to obtain, maintain, defend or enforce the right or interest.

intellectual property includes any patent, trade mark, industrial design, copyright, public lending right, or other form of intellectual property, recognised under Australian law or the law of a foreign country.

59 Term of Vice-Chancellor's appointment

- (1) The Vice-Chancellor is appointed for the period (no longer than 5 years) decided by the Council.
[Note: The Vice-Chancellor may be reappointed (see Acts Interpretation Act, section 33AA (Power to appoint includes power to reappoint)).]
- (2) The period of the Vice-Chancellor's appointment may, but need not, be specified in the Vice-Chancellor's instrument of appointment.

60 Termination of Vice-Chancellor's appointment

- (1) The Council must terminate the Vice-Chancellor's appointment if:
 - (a) the Vice-Chancellor becomes:
 - (i) a member of the Commonwealth Parliament, a State Parliament or the legislature of a Territory; or
 - (ii) disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6; or
 - (b) the Vice-Chancellor, in the Council's opinion formed by resolution passed at a Council meeting as provided by subsection (2):

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- (i) no longer has the Council's confidence; or
 - (ii) is incapable (otherwise than on a temporary basis) of performing the duties of the Vice-Chancellor's office.
 - (2) For subsection (1)(b), the Council forms its opinion by resolution passed at a Council meeting if the resolution is passed at the meeting by at least a two-thirds majority of the Council members.
 - (3) Without limiting subsection (1)(b)(i), the Council may form its opinion mentioned in the subparagraph on the ground that the Vice-Chancellor has breached the Vice-Chancellor's duties under the *Public Governance, Performance and Accountability Act 2013*, Part 2-2, Division 3, Subdivision A.
[Note: Subdivision A is about the general duties of officials. The duties include a duty to act honestly, in good faith and for a proper purpose, and a duty to disclose interests.]

61 Resignation of Vice-Chancellor

The Vice-Chancellor may resign by written notice to the Council given to the Chancellor.

62 Other conditions of Vice-Chancellor's appointment

- (1) Subject to the ANU Act and this instrument, the Vice-Chancellor holds office on the conditions determined by the Council.
- (2) The conditions may, but need not, be specified in the Vice-Chancellor's instrument of appointment.

63 Acting Vice-Chancellor

Under the ANU Act (see section 37), the Council may appoint a person to act as Vice-Chancellor:

- (a) during a vacancy in the office; or
- (b) during any period, or during all periods, when the Vice-Chancellor:
 - (i) is absent from duty or from Australia; or
 - (ii) is, for any reason, unable to perform the duties of the office.

[Note: The Acts Interpretation Act has provisions applying to acting appointments (see sections 33AB and 33A(1)).]

64 Exercise of Vice-Chancellor's functions by Provost

- (1) The Provost may exercise any function given to the Vice-Chancellor under University legislation or a Council decision.
- (2) However, the Provost may not exercise a function under subsection (1) if:
 - (a) the function relates to the Vice-Chancellor's role as a Council member or, if the Vice-Chancellor is a Nominations Committee member or a member of another Council committee, as a Nominations Committee member or a member of the other committee; or
 - (b) the function relates to the accountability of the Vice-Chancellor to the Council; or
 - (c) the function is required, under University legislation or a decision of the Council or Vice-Chancellor, to be exercised personally by the Vice-Chancellor; or

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- (d) the function is a function of the Vice-Chancellor under any of the following provisions of this instrument:
- (i) section 44 (Resignation of Chancellor);
 - (ii) section 54 (President of the University);
 - (iii) section 57 (Executive appointments);
 - (iv) section 66 (Delegation and subdelegation of Vice-Chancellor's functions);
 - (v) section 68 (General power to make rules and orders);
 - (vi) section 70 (Tabling of rules, orders etc.);
 - (vii) section 73(6) (University seal); or
- (e) the function is a function of the Vice-Chancellor under a provision of any other University legislation prescribed by rule for this subsection.

[Note: **Function** includes authority, duty and power (see Legislation Statute, dictionary).]

- (3) To remove any doubt, subsection (2) does not prevent the Provost from exercising a function mentioned in that subsection otherwise than under subsection (1) (for example, under an appointment or delegation of the Council or Vice-Chancellor).
- (4) University legislation, and decisions of the Council and Vice-Chancellor, apply to the Provost in the exercise of a function under subsection (1) as if a reference to the Vice-Chancellor were a reference to the Provost.
- (5) Without limiting subsection (4), if the exercise of the function by the Vice-Chancellor is dependent on the Vice-Chancellor's state of mind, the function may be exercised by the Provost on the Provost's state of mind.
- (6) Anything done by or in relation to the Provost in the exercise of a function under subsection (1) is taken to have been done by or in relation to the Vice-Chancellor.
- (7) In this section:

state of mind includes knowledge, intention, opinion, belief and purpose.

Part 7—Delegations and subdelegations

General note for Part 7

The ANU Act gives the Council power to delegate certain of its functions and powers under the Act (see sections 17 and 18).

This Part does not deal with the delegation of these functions and powers, but deals instead with the delegation and subdelegation of the functions and powers of the Council under University legislation and the functions and powers of other University entities.

65 Delegation and subdelegation of Council's functions under statutes etc.

(1) In this section:

eligible entity means any of the following:

- (a) the Chancellor, Pro-Chancellor or Vice-Chancellor;
- (b) another Council member;
- (c) a member of staff of the University;
- (d) a body or other entity of the University;
- (e) a student of the University;
- (f) a person who holds an honorary, adjunct, visiting, seconded or emeritus position within the University;
- (g) a committee that includes any of the above.

(2) The Council may, in writing, delegate any or all of its functions under University legislation to an eligible entity.

[Note 1: The Council may also delegate certain functions and powers under the ANU Act (see ANU Act, sections 17 and 18).]

[Note 2: *Function* includes authority, duty and power (see Legislation Statute, dictionary).]

(3) If, under subsection (2), the Council delegates a function to an eligible entity:

- (a) the eligible entity may, in writing, subdelegate the function to another eligible entity if, under subsection (4), the function may be subdelegated; and
- (b) the function may, in writing, be further subdelegated by the other eligible entity to a different eligible entity (or successively further subdelegated to different eligible entities) if, under subsection (5), the function may be further subdelegated.

(4) For subsection (3)(a), the function may be subdelegated if:

- (a) the delegation states that the function is a function that may be subdelegated; and
- (b) the conditions, limitations or directions (if any) stated in the delegation for the subdelegation of the function are complied with.

(5) For subsection (3)(b), the function may be further subdelegated if:

- (a) the delegation states that the function is a function that may be further subdelegated; and
- (b) the conditions, limitations or directions (if any) stated in the delegation for the further subdelegation of the function are complied with.

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- (6) In exercising functions under a delegation or subdelegation under this section, the delegate or subdelegate must comply with the directions (if any) of the Council and, for a subdelegation, the subdelegator of the function.
 - (7) The following sections of the Acts Interpretation Act apply, with all necessary changes, in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation:
 - (a) section 34AA (Delegation to persons holding, occupying or performing the duties of an office or position);
 - (b) section 34AB (Effect of delegation);
 - (c) section 34A (Exercise of powers and performance of functions or duties that depend upon the opinion etc. of delegates).

66 Delegation and subdelegation of Vice-Chancellor's functions

- (1) In this section:

eligible entity means any of the following:

- (a) the Chancellor or Pro-Chancellor;
 - (b) another Council member;
 - (c) a member of staff of the University;
 - (d) a body or other entity of the University;
 - (e) a student of the University;
 - (f) a person who holds an honorary, adjunct, visiting, seconded or emeritus position within the University;
 - (g) an entity prescribed by rule;
 - (h) a committee that includes any of the above.
- (2) The Vice-Chancellor may, in writing, delegate any or all of the Vice-Chancellor's functions under University legislation, and Council decisions, to an eligible entity.
[Note: *Function* includes authority, duty and power (see Legislation Statute, dictionary).]
 - (3) However, the Vice-Chancellor may not delegate a function if University legislation, or a Council decision, requires the Vice-Chancellor to exercise the function personally.
 - (4) If, under subsection (2), the Vice-Chancellor delegates a function to an eligible entity:
 - (a) the eligible entity may, in writing, subdelegate the function to another eligible entity if, under subsection (5), the function may be subdelegated; and
 - (b) the function may, in writing, be further subdelegated by the other eligible entity to a different eligible entity (or successively further subdelegated to different eligible entities) if, under subsection (6), the function may be further subdelegated.
 - (5) For subsection (4)(a), the function may be subdelegated if:
 - (a) the delegation states that the function is a function that may be subdelegated; and
 - (b) the conditions, limitations or directions (if any) stated in the delegation for the subdelegation of the function are complied with.
 - (6) For subsection (4)(b), the function may be further subdelegated if:
 - (a) the delegation states that the function is a function that may be further subdelegated; and

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- (b) the conditions, limitations or directions (if any) stated in the delegation for the further subdelegation of the function are complied with.
- (7) In exercising functions under a delegation or subdelegation under this section, the delegate or subdelegate must comply with the directions (if any) of the Vice-Chancellor and, for a subdelegation, the subdelegator of the function.
- (8) The following sections of the Acts Interpretation Act apply, with all necessary changes, in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation:
- (a) section 34AA (Delegation to persons holding, occupying or performing the duties of an office or position);
 - (b) section 34AB (Effect of delegation);
 - (c) section 34A (Exercise of powers and performance of functions or duties that depend upon the opinion etc. of delegates).

67 Delegation and subdelegation of functions of other University officials

- (1) In this section:

eligible entity means any of the following:

- (a) the Chancellor, Pro-Chancellor or Vice-Chancellor;
- (b) another Council member;
- (c) a member of staff of the University;
- (d) a body or other entity of the University;
- (e) a student of the University;
- (f) a person who holds an honorary, adjunct, visiting, seconded or emeritus position within the University;
- (g) an entity prescribed by rule;
- (h) a committee that includes any of the above.

University official means any of the following:

- (a) the Provost;
- (b) a Deputy Vice-Chancellor;
- (c) a Pro Vice-Chancellor;
- (d) the holder of another executive position within the University;
- (e) a College Dean;
- (f) an Associate Dean;
- (g) a Registrar;
- (h) the University Librarian;
- (i) a course convener;
- (j) another member of staff of the University (however described);
- (k) an entity prescribed by rule.

- (2) A University official may, in writing, delegate any or all of the official's functions under University legislation, and decisions of the Council or Vice-Chancellor, to an eligible entity.

[Note: *Function* includes authority, duty and power (see Legislation Statute, dictionary).]

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- (3) However, the University official may not delegate a function if University legislation, or a decision of the Council or Vice-Chancellor, requires the official to exercise the function personally.
 - (4) If, under subsection (2), a University official delegates a function to an eligible entity:
 - (a) the eligible entity may, in writing, subdelegate the function to another eligible entity if, under subsection (5), the function may be subdelegated; and
 - (b) the function may, in writing, be further subdelegated to a different eligible entity (or successively further subdelegated to different eligible entities) if, under subsection (6), the function may be further subdelegated.
 - (5) For subsection (4)(a), a function may be subdelegated if:
 - (a) the delegation states that the function is a function that may be subdelegated; and
 - (b) the conditions, limitations or directions (if any) stated in the delegation for the subdelegation of the function are complied with.
 - (6) For subsection (4)(b), a function may be further subdelegated if:
 - (a) the delegation states that the function is a function that may be further subdelegated; and
 - (b) the conditions, limitations or directions (if any) stated in the delegation for the further subdelegation of the function are complied with.
 - (7) In exercising functions under a delegation or subdelegation under this section, the delegate or subdelegate must comply with any directions of the Vice-Chancellor and the relevant University official and, for a subdelegation, the subdelegator of the function.
 - (8) A University official, delegate or subdelegate must comply with any other directions of the Vice-Chancellor with respect to the delegation and subdelegation of functions under this section, including, for example, directions about:
 - (a) the functions that may or must not be delegated or subdelegated; and
 - (b) the functions that must be exercised personally by a University official or eligible entity; and
 - (c) the circumstances in which a function may or must not be delegated or subdelegated; and
 - (d) the eligible entities to which a function may or must not be delegated or subdelegated; and
 - (e) any other conditions or limitations to which the exercise of the power to delegate or subdelegate is subject.
 - (9) The following sections of the Acts Interpretation Act apply, with all necessary changes, in relation to a subdelegation in a corresponding way to the way in which they apply in relation to a delegation:
 - (a) section 34AA (Delegation to persons holding, occupying or performing the duties of an office or position);
 - (b) section 34AB (Effect of delegation);
 - (c) section 34A (Exercise of powers and performance of functions or duties that depend upon the opinion etc. of delegates).
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Part 8—Rules, orders and other legislative instruments

68 General power to make rules and orders

- (1) The Vice-Chancellor may, by legislative instrument, make rules and orders:
 - (a) regulating, or providing for the regulation of, any of the following matters with respect to which statutes may be made:
 - (i) any matter required or permitted to be prescribed by a statute or, for an order, by a rule;
 - (ii) any other matter specified in the ANU Act, including section 50(2) (Statutes);
 - (iii) any other matter specified in this instrument or any other statute; or
 - (b) for carrying out or giving effect to the statutes.
- (2) However, subsection (1) does not permit the making of rules or orders to which the ANU Act, section 50(5) applies.

[Note: Section 50(5) relates to the making of rules or orders about traffic, parking and related matters.]
- (3) Also, the Vice-Chancellor must not make rules or orders prescribing matters about the exercise by the Council of a function or power under the ANU Act that the Council must not delegate.

[Note: The ANU Act, sections 17 and 18 specifies the functions and powers under that Act that the Council must not delegate.]
- (4) To remove any doubt, the power to make rules or orders under subsection (1) is not limited to the making of rules or orders for the purposes of this instrument, and rules and orders may be made under this section for other purposes (including, for example, for the purposes of any other statute or for purposes that are not related to a statute).
- (5) In addition, the Council or Vice-Chancellor may, by legislative instrument, make rules under this subsection regulating, or providing for the regulation of, any of the following matters:
 - (a) the requirements of programs, whether of study or research or both;
 - (b) the granting of degrees, diplomas, certificates and honours.
- (6) An authority specified in rules made under subsection (5) may make orders about matters mentioned in subsection (5)(a) and (b).
- (7) In subsection (6):

authority means:

- (a) a Deputy Vice-Chancellor; or
- (b) an Associate Dean of an ANU College.

[Note 1: Subsections (5) to (7) re-enact the *Programs and Awards Statute 2013* (repealed), sections 4.1(c) and (f) and 6.2 (see the Acts Interpretation Act, section 10 (References to amended or re-enacted Acts), as applied by the Legislation Act, section 13(1)(a) (Construction of legislative instruments and notifiable instruments)).]

[Note 2: Orders made under subsection (6) are not legislative instruments (see the *Legislation (Exemptions and Other Matters) Regulation 2015* (Cwlth), section 7 (Particular instruments that are not legislative instruments), table, item 23).]

69 Specific powers to make rules and orders

- (1) A rule or order may prescribe the bodies that are (or are not) to be regarded, for all or stated purposes, as faculties or research schools.
- (2) A rule or order may prescribe the persons who are (or are not) to be regarded, for all or stated purposes, as:
 - (a) the dean or research school head of a faculty or research school; or
 - (b) a member of the academic staff; or
 - (c) a member of the academic staff of the Institute; or
 - (d) a member of the academic staff of The Faculties; or
 - (e) a person holding an honorary, adjunct, visiting, seconded or emeritus position within the University; or
 - (f) a member of the professional staff of the University; or
 - (g) a student of the University; or
 - (h) a postgraduate student of the University; or
 - (i) an undergraduate student of the University.
- (3) A rule or order may make provision with respect to:
 - (a) the method of any election provided for under University legislation; and
 - (b) the determination of questions raised in relation to the conduct or result of such an election.
- (4) A rule or order may provide for any election provided for under University legislation to be conducted, in whole or part, by electronic means, including by the use of computers or the internet.
- (5) A rule or order may apply, or make provision with respect to the application of, provisions of Part 7 (Delegations and subdelegations), with or without modifications, to delegations and subdelegations, or appointments of nominees, made under other University legislation.
- (6) This section is additional to, and does not limit, section 68(1) (General power to make rules and orders), another provision of this instrument or any other University legislation.

70 Tabling of rules, orders etc.

- (1) This section applies to a rule, an order, or any other legislative instrument made under University legislation, other than:
 - (a) an instrument made by the Council; or
 - (b) an order that is not a legislative instrument.
- (2) The Vice-Chancellor must arrange for a copy of the instrument to be tabled at the next Council meeting after the making of the instrument or, if it is not practicable to table the instrument at that meeting, at the next following Council meeting at which it is practicable to table the instrument.
- (3) Failure to comply with subsection (2) does not affect the validity of the instrument.

Part 9—Miscellaneous

71 Validity of certain acts etc.

- (1) This section applies to a contravention of any instrument made under, or provided by, the ANU Act by any of the following persons or bodies:
 - (a) the Council;
 - (b) the Chancellor, the Pro-Chancellor or the Vice-Chancellor;
 - (c) the Nominations Committee;
 - (d) any other body of the University;
 - (e) any other officer under the ANU Act, a statute, a rule or an order;
 - (f) any other member of staff of the University.
- (2) The contravention does not affect the validity of any act, transaction, contract, agreement, instrument, resolution, or any other thing.
- (3) This section is additional to, and does not limit, the ANU Act, section 39 (Validity of acts and proceedings).

72 Execution of contracts

- (1) Under the ANU Act (see section 38(1)), any contract that, if made between private persons, would be required by law to be in writing under seal may be made on behalf of the University in writing under the University's seal.
- (2) Under the ANU Act (see section 38(2)), any other contract may be made on behalf of the University by anyone acting with the authority of the Council, express or implied, and, if such a contract is made in writing, it may be executed on behalf of the University by that person.

73 University seal

- (1) The seal of the University must be kept in the custody of the Vice-Chancellor or a person nominated, in writing, by the Vice-Chancellor.
- (2) A certificate or similar document issued to a person as evidence that a degree or other award has been conferred on the person by the University (an *award certificate*) must be sealed.
- (3) The seal may otherwise be used only as authorised by the Council.
- (4) However, if, in opinion of the Chancellor or Vice-Chancellor (the *relevant University officer*), it is necessary for a document be sealed but the sealing of the document is not required or authorised under subsection (2) or (3), the relevant University officer may direct that the document be sealed and may give any necessary directions about how the document is to be sealed and the sealing witnessed.
- (5) If a document is sealed under subsection (4), the relevant University officer must report the matter to the Council at the first practicable opportunity.
- (6) The sealing of an award certificate must be witnessed by the Chancellor and Vice-Chancellor.

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- (7) The Council may require the sealing of any other document to be witnessed (or witnessed in a particular way).
 - (8) Despite subsection (6), if a printed facsimile signature of the Chancellor or Vice-Chancellor appears on an award certificate, the Chancellor or Vice-Chancellor need not personally sign the award certificate to witness the sealing of the award certificate.

Part 10—Transitional provisions

74 Meaning of *commencement day*

In this Part:

commencement day means 1 January 2021.

75 Transitional: existing conditions of appointment for certain offices

- (1) This section applies to the person who held office (the *relevant office*) as the Chancellor, Pro-Chancellor or Vice-Chancellor immediately before the commencement day.
- (2) The Council is taken to have decided, on the commencement day, that the person is to hold the relevant office under the ANU Act on the conditions of appointment on which the person held the relevant office under the ANU Act immediately before the commencement day.
- (3) To remove any doubt, this section does not prevent the amendment of those conditions on or after the commencement day.

76 Transitional: existing staff and student members

- (1) This section applies to a person who held office as a staff or student member immediately before the commencement day.
- (2) To remove any doubt, the person continues to hold office as a staff or student member for the balance of the person's term of office that remained immediately before the commencement day.
- (3) However, if the person is the postgraduate student member or undergraduate student member, the person's term of office is taken to end on the day immediately before the next term of office of the postgraduate student member or undergraduate student member, as the case may be, commences under this instrument.

77 Transitional: existing Council committees

- (1) This section applies to a Council committee established by the Council under the ANU Act that was in existence immediately before the commencement day.
- (2) To remove any doubt, the committee continues in existence on and after the commencement day with the same functions and membership as it had immediately before that day.
- (3) However, this section does not limit the powers of the Council to make decisions about the continued existence of the committee, its membership or anything else relating to the committee.

78 Transitional: existing entities established by Council

- (1) This section applies to an institute, research school, college, another body or other entity (other than a Council committee) established by the Council under the ANU Act that was in existence immediately before the commencement day.

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- (2) To remove any doubt, the entity continues in existence on and after the commencement day with the same functions, fields of learning and name, as the case requires, as it had immediately before that day.
 - (3) However, this section does not limit the powers of the Council to make decisions about the continued existence of the entity, its functions, fields of learning or name, or anything else relating to the entity.

79 Transitional: existing appointments to executive positions

- (1) This section applies to an appointment to an executive position within the University made by the Council or Vice-Chancellor before the commencement day if the appointment had not ceased to be in force before the commencement day.
- (2) To remove any doubt, the appointment has effect on or after the commencement day, on the same conditions, as if this instrument and the *Australian National University (Repeal) Statute 2020* had not been made.
- (3) However, this section does not limit the powers of the Council or Vice-Chancellor to make decisions about the continuation of the appointment or the conditions of the appointment.

80 Transitional: existing rules and orders

- (1) This section applies to a rule or order that was in force under the ANU Act, section 50(3) (Statutes) immediately before the commencement day.
- (2) The rule or order continues in force (and may be dealt with) as if it were a rule or order, as the case may be:
 - (a) made by the Vice-Chancellor under section 68(1) (General power to make rules and orders); or
 - (b) for an order of the kind mentioned in section 68(6)—made by the relevant authority under that subsection.

81 Transitional: existing delegations and subdelegations

- (1) This section applies to a delegation or subdelegation of a function that was in force, immediately before the commencement day, under a statute, rule or order repealed by the *Australian National University (Repeal) Statute 2020*.
- (2) The delegation or subdelegation continues in force (and may be dealt with) as if it were a delegation or subdelegation made under this instrument.

82 Transitional rules

- (1) Rules made under section 68(1) (General power to make rules and orders) may prescribe matters of a transitional nature (including prescribing any savings or application provisions) relating to:
 - (a) the repeals made by the *Australian National University (Repeal) Statute 2020*; or
 - (b) the making of this instrument or the Legislation Statute.
- (2) This instrument (other than this section) does not limit the matters that may be prescribed by rules made for subsection (1).

83 Application of Legislation Statute, section 26

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- (1) The Legislation Statute, section 26 (Repeal of University legislation) applies to the repeal of each statute repealed by the *Australian National University (Repeal) Statute 2020*.
 - (2) For the Legislation Statute, section 26 the provisions of this Part are transitional provisions.

84 Transitional provisions additional

This Part is additional to, and does not limit:

- (a) the Legislation Statute, section 26 (Repeal of University legislation) and Part 6 (Transitional provisions); or
 - (b) the Acts Interpretation Act, section 7 (Effect of repeal or amendment of Act), as applied by the Legislation Act, section 13(1)(a) (Construction of legislative instruments and notifiable instruments).
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