
EXPLANATORY STATEMENT

AUSTRALIAN NATIONAL UNIVERSITY (LIQUOR) STATUTE 2022

1. Making of this instrument

- 1.1 This instrument was made by the Council of The Australian National University (the **rule-maker**).

2. Legal authority for this instrument

- 2.1 This instrument was made by the rule-maker under subsection 50(1) of the *Australian National University Act 1991*.

AND

- 2.2 This instrument relies on subsection 33(3) of the *Acts Interpretation Act 1901*. Under subsection 33(3), where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations and by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

3. Commencement

- 3.1 This instrument commences the day after it is registered on the Federal Register of Legislation.

4. Compliance cost assessment

- 4.1 The cost of achieving/maintaining compliance with the instrument will be minor – there will be minimum impact for both implementation and ongoing compliance costs due to a robust support framework in place, which includes policies and procedures.
- 4.2 The instrument relates to subject matter that the University has contributed significant attention and funding towards in recent years to ensure safety, compliance and the wellbeing of staff and students.

5. About this instrument

- 5.1 This explanatory statement has been approved by the rule maker.
- 5.2 This instrument is legislative instrument for the purposes of the *Legislation Act 2003*.
- 5.3 The purpose and operation of this instrument is to govern and regulate the sale of liquor or low-alcohol liquor on or in an Australian National University premises located within the ACT.
- 5.4 The ACT Liquor Act exempts the University from provisions of the Liquor Act in part by virtue of section 8 [sale of liquor at universities].

- 5.5 This instrument is to provide specific power to the Vice Chancellor in relation to the sale of liquor through authorisation. The Statute permits the Vice-Chancellor to place conditions on an authorisation, and to allow for revocation of an authorisation.
- 5.6 The Statute will govern the sale of liquor on campus, and in residential halls. It will affect staff, students and visitors while on campus.
- 5.7 The Statute does not cover commercial premises on campus, which are required to apply for a liquor permit or licence under the ACT Liquor Act.

6. Documents incorporated by reference

- 6.1 The University's suite of legislation has the status of Federal Law, and is registered on the Federal Register of Legislation in accordance with the *Legislation Act 2003* and may be freely accessed and used by the public. The below documents (that are not Commonwealth legislation) are directly referenced within the instrument;
 - 6.1.1 *Liquor Act 2010* (ACT) is incorporated within the instrument from the commencement of the instrument.

7. Consultation

- 7.1 Internal consultation proceeded for two weeks (03 August to 17 August 2022) on the draft instrument.
- 7.2 Consultation with the broader University on the instrument included; ANU General Legal Counsel, Corporate Governance and Risk Office, ANU Service Division Directors, General Managers of the Schools and Colleges, Facilities and Services, the Chief Residential Services and Operating Officer, Heads of Residential Schools and Colleges, Burgmann College and John XXIII College and the Australian National University Students Association.
- 7.3 Experts consulted on the development of the instrument was the University's legislative drafter who has extensive experience with University legislation, ANU General Legal Counsel who has oversight of the legal implications of the sale of liquor and Corporate Governance and Risk Office who manage the governance and risk for the University.
- 7.4 The issues raised during consultation were addressed within policy, no required changes were in the instrument.
- 7.5 Australian Federal Police were consulted in the instrument update and are in support of this decision. The Australia Federal police will continue to support the sale of liquor on campus to minors.

8. About The Australian National University

- 8.1 The Australian National University is continued in existence by the *Australian National University Act 1991* (the **ANU Act**) (see section 4(1)).
- 8.2 Under the ANU Act, the University is, and has the functions of, an independent, self-governing institution of higher learning that conducts research and teaching at undergraduate and graduate levels (see especially section 5(1)).
- 8.3 The Act gives the University responsibilities as Australia's national university (see section 5(1)(b) and (2)).
- 8.4 The Council of the University is the governing authority of the University (see section 8) and functions independently of the Commonwealth executive.

- 8.5 Subject to the ANU Act and statutes made by the Council under the Act, the Council has the entire control and management of the University (see section 9(1)). Subject to the Act, the Council decides how the University is organised (see section 7).
- 8.6 The Act does not contemplate that the Commonwealth executive may direct the University, the Council or Council members in relation to the exercise of functions or powers under the Act but 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)).
- 8.7 The ANU Act gives the Council power to make statutes and, by statute, to authorise the making of rules or orders (see sections 50 and 51). The Council is only permitted to authorise the making of rules and orders by authorities and officers of the University (see section 50(3)).
- 8.8 University statutes, rules and orders are legislative instruments and must be tabled in both Houses of the Parliament.
- 8.9 University statutes, rules and orders do not have general application, but focus on matters of particular concern to the University. These include its management, organisation and good governance, its staff and students, its degrees and other awards, and most importantly its values (especially academic freedom and integrity).
- 8.10 Under the *Higher Education Support Act 2003*, the Parliament has recognised 'that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university's overall performance and its ongoing independence' (see section 2-1(b)).

9. Exemption from sunseting

- 9.1 This instrument is exempt from sunseting under the *Legislation (Exemptions and Other Matters) Regulation 2015*, section 12, table, item 9.
- 9.2 However, this instrument includes an expiry provision (see section 18) that provides for its expiry 10 years after the day it commences. This provision achieves the same effect as sunseting under the *Legislation Act 2003*.]

10. Exemption from disallowance

- 10.1 This instrument is exempt from disallowance under the *Legislation (Exemptions and Other Matters) Regulation 2015*, section 10, table, item 6, in consequence of the University being an independent, self-governing institution of higher learning.
- 10.2 The University's Council is responsible for both the University's overall performance and its ongoing independence.
- 10.3 The University, its Council and the members of its Council are not subject to direction by the Commonwealth executive in relation to the exercise of the University's power to make statutes, rules, and orders under the ANU Act.
- 10.4 The foundational values of academic freedom and integrity would be put at risk if the University's statutes, rules, and orders were not exempt from disallowance. The independence of the University would be unduly affected if its legislation, and indeed separate provisions of its legislation, were open to disallowance by either House of the Parliament.
- 10.5 The University recognises the important role of the Senate Standing Committee for the Scrutiny of Delegated Legislation and strives to ensure that the Committee's requirements in relation to the technical scrutiny of delegated legislation are met for University statutes, rules, and orders.

11. Further details of this instrument

11.1. Further details of this instrument are set out in ***Attachment A***.

12. Statement of Compatibility

12.1. A Statement of Compatibility with Human Rights is at ***Attachment B***.

Corporate Governance and Risk Office

The Australian National University

31 August 2022

PROVISION-BY PROVISION EXPLANATION

AUSTRALIAN NATIONAL UNIVERSITY (LIQUOR) STATUTE 2022

1. Section 1 – Name

1.1. This section provides that the name of the instrument is the *Australian National University (Liquor) Statute 2022*.

2. Section 2 – Commencement

2.1. This section provides for the instrument to commence on 01 January 2023.

3. Section 3 – Authority

3.1. This section provides that the instrument is made under the *Australian national University Act 1991, section 50 (Statutes)*.

4. Section 4 – Definitions

4.1. This section provides definitions for the instrument, including definitions for the following terms: ACT Liquor Act, at, authorisation, authorised premises, child, existing ACT Liquor Act, holder, liquor, liquor authorisation, low-alcohol liquor, premises, sell, supply, University building, University premises and young person.

4.2. An explanation is provided for **key** definitions that a reader needs to be aware of to understand the instrument.

4.3. The section includes a note drawing attention to definitions in the Legislation Statute that are relevant to this instrument, including the following: affiliated college, breach, entity, hall of residence, order and rule.

5. Section 5 – Authorisation provided by liquor authorisation

5.1. The purpose of this section is to advise that an authorisation holder, of a liquor authorisation under this instrument, may sell liquor subject to the stated limitations within the authorisation and that this section has effect regardless of any other ACT law.

6. Section 6 – Issue of liquor authorisations etc.

6.1. This section advises who may issue a liquor authorisation, how an authorisation may be issued, to whom the authorisation is issued and noting all limitations within an authorisation to which the authorisation must be subject and provides the ability to incorporate additional limitations which may be included from time to time.

7. Section 7 – Replacement of lost etc. liquor authorisations

7.1. This section provides guidance on how to apply for a lost, stolen, destroyed or damaged authorisation and when an authorisation must be returned if a replacement authorisation is required.

8. Section 8 – Surrender of liquor authorisations

8.1. This section advises how to surrender an existing authorisation and to whom.

9. Section 9 – Revocation of liquor authorisations

9.1. This section advises how and why an authorisation can be revoked and by whom.

10. Section 10 – University policies and procedures

10.1. This section specifies that functions administered under this instrument must act in accordance with University policies and procedures in addition to the Governance Statute, section 56.

10.2. Additionally, this section provides reference to the various policies and procedures that support the operation of the instrument.

11. Section 11 – Children and young people at authorised premises

11.1. This section specifies that a person must not sell liquor or low-alcohol liquor to children and young people at an authorised premises.

11.2. This section specifies that children and young people must not consume or possess liquor or low-alcohol liquor at an authorised premises.

11.3. The purpose of subsection (3) is to specify when a child or young person **is** legally permitted possess liquor or low-alcohol liquor for employment or training purposes.

12. Section 12 – Rules and orders about liquor

12.1. This section specifies the general powers to prescribe rules and orders within the instrument, as per section 68(1) of the Governance Statute.

12.2. These powers include the sale, purchase, supply, possession, or consumption of liquor on University premises and matters specified within the ACT Liquor Act.

13. Section 13 – Service of Notices

13.1. This section specifies how a notice or document can be served on an entity under this instrument.

14. Section 14 – Repeal

14.1. This section repeals the previous instrument, specifically the *Liquor Statute 2015*.

15. Section 15 – Transitional provisions

15.1. This section allows for transitional measures to be implemented between the repeal of the *Liquor Statute 2015* and the commencement of the *Liquor Statute 2022*.

16. Section 16 – Application of legislation Statute, section 26

16.1. This section highlights the application of section 26 of the Legislation Statute which applies to the repeal of the *Liquor Statute 2015* and notes that the provisions are transitional.

17. Section 17 – Transitional Provisions additional

17.1. This section advises on additional transitional provisions.

18. University Legislation – Specific Issues

18.1. The information relating to issues that have been deemed relevant for this explanatory statement are set out at *19 – Conferral of discretionary powers*.

19. Conferral of discretionary powers

19.1. The discretionary powers conferred by the instrument include the authorisation and revocation of sale of liquor on ANU premises. Authorisation and revocation powers are required for the University to govern the sale of liquor on campus through the instrument.

19.2. The Vice Chancellor will hold the authority under the instrument to authorise and revoke the sale of liquor on campus. Through the University Delegations Framework both powers can be sub-delegated.

19.3. Any person who exercises a discretionary power under this instrument is required to do so with regard to applicable policies and procedures – as per section 10(1) of the instrument. Section 10(1) of the instrument is additional to section 56 of the Governance Statute.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

AUSTRALIAN NATIONAL UNIVERSITY (LIQUOR) STATUTE 2022

This instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

The Australian National University is committed to the furtherance of equity and inclusion in all pursuits and, in doing so, is respectful and supportive of all human rights.

Overview of the instrument

The purpose and operation of this instrument is to govern and regulate the sale of liquor or low-alcohol liquor on or in an Australian National University premises located within the ACT.

Human rights implications

The instrument does not have any impacts on human rights.

Conclusion

This instrument is compatible with human rights as it does not raise any human rights issues.