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## EXPLANATORY STATEMENT

### AUSTRALIAN NATIONAL UNIVERSITY (GOVERNANCE) STATUTE 2023

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#### 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 the *Australian National University Act 1991*, section 50 (Statutes).
- 2.2 This instrument may rely 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 commenced on 1 July 2023.

#### 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.

#### 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 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 (see section 4).
- 5.4 The *Australian National University Act 1991* (the **ANU Act**) continues the establishment of the University and makes provision, among other things, about its functions, powers, organisation, senior officers, and finances.
- 5.5 The ANU Act also continues the Council of the University in existence as the governing authority of the University and makes provision, among other things, for the Council's powers (including its powers to make statutes, rules and orders), composition, members, and operation.

- 5.6 The ANU Act does not provide a complete code of all the matters that it deals with. Rather it makes provision about some matters and authorises the Council to make provision, by statute, rule or order, about other matters and details related to the governance of the University. The provisions made by this instrument are consistent with, and supplement, the provisions of the ANU Act, and are consistent with the Council's role as the governing authority of the University.
- 5.7 This instrument makes provision for a broad range of matters relevant to the governance of the University, including, for example, the following:
- the organisation of the University
  - the functions, powers and proceedings of the Council and its committees
  - the composition of the Council, the election of the staff and student members of the Council, and the appointment of other members of the Council
  - the Chancellor, Pro-Chancellor, and Vice-Chancellor of the University
  - delegations and subdelegations by the Council, Vice-Chancellor, and other University officials
  - rules and orders of the University.
- 5.8 The substantive changes made by this instrument to the existing Governance Statute are limited in scope and relate mainly to the following matters.
- 5.9 First, this instrument makes changes consequential on ANUSA (The Australian National University Student Association) becoming, from 1 July 2023, the sole student representative association for the University's postgraduate and undergraduate students. As the sole student representative association, ANUSA is responsible for conducting elections for the postgraduate student member of Council as well as the undergraduate student member of Council.
- 5.10 Second, this instrument makes changes to how elections for the student members of Council are to be conducted. Under this instrument future elections for the student members are required to be conducted under this instrument (and the Governance Rule) rather than under ANUSA's constitution. This change brings elections for the student members of Council into line, in this respect, with elections for the staff members of the Council (other than the deans and research school heads member).
- 5.11 Third, this instrument clarifies the term of a student member of Council who is elected otherwise than to fill a casual vacancy.
- 5.12 There are no documents incorporated by reference.

## **6. Consultation**

- 6.1 This instrument affects staff and students of the University, as well as student associations.
- 6.2 As a self-governing institution of higher learning, the University has well-developed internal consultation protocols that are followed in developing and making University legislation. The University Legal Office and the Corporate Governance and Risk Office, as key managers of the University's governance frameworks, were consulted and provided advice to the University's Council in its consideration of this instrument.
- 6.3 The then University's student associations were consulted extensively about future student association representative roles. ANUSA was consulted about the changes to be made to the Governance Statute and Rule and its comments were taken into account in the development of those changes. ANUSA made consequential changes to its constitution. These changes have been approved by the University's Council.

- 6.4 The Council of the University is established by the ANU Act and is the governing authority of the University. The Council includes members appointed by the Minister for Education as well as members from all the major stakeholder groups at the University, including academic and professional staff and the student body.
- 6.5 The University Council considered and made this instrument at its meeting on 2 June 2023.

## **7. About The Australian National University**

- 7.1 The Australian National University is continued in existence by the ANU Act (see section 4(1)).
- 7.2 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)).
- 7.3 The Act gives the University responsibilities as Australia's national university (see section 5(1)(b) and (2)).
- 7.4 The Council of the University is the governing authority of the University (see section 8) and functions independently of the Commonwealth executive.
- 7.5 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).
- 7.6 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)).
- 7.7 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)).
- 7.8 University statutes, rules and orders are legislative instruments and must be tabled in both Houses of the Parliament.
- 7.9 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).
- 7.10 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)).

## **8. Exemption from sunseting**

- 8.1 This instrument is exempt from sunseting under the *Legislation (Exemptions and Other Matters) Regulation 2015*, section 12, table, item 9.
- 8.2 However, this instrument includes an expiry provision (see section 80) 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*.

## 9. Exemption from disallowance

- 9.1 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.
- 9.2 The University's Council is responsible for both the University's overall performance and its ongoing independence.
- 9.3 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.
- 9.4 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.
- 9.5 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.

## 10. Further details of this instrument

- 10.1 Further details of this instrument are set out in **Attachment A**.
- 10.2 The University follows the practice of remaking its legislation with changes rather than making amendments. Significant changes made in this instrument are mentioned in **Attachment A**. This practice assists in ensuring that the provisions of University statutes, rules and orders are reviewed on a regular basis and kept up to date.

## 11. Statement of Compatibility

- 11.1 A Statement of Compatibility with Human Rights is set out in **Attachment B**.

Corporate Governance and Risk Office

The Australian National University

28 July 2023

## PROVISION-BY PROVISION EXPLANATION

## AUSTRALIAN NATIONAL UNIVERSITY (GOVERNANCE) STATUTE 2023

## Part 1 – Preliminary

## 1. Section 1 – Name

1.1. This section provides that the name of the instrument is the *Australian National University (Governance) Statute 2023*.

## 2. Section 2 – Commencement

2.1. This section provides for the instrument to commence on 1 July 2023.

## 3. Section 3 – Authority

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

## 4. Section 4 – Object

4.1. This section sets out the object of the instrument. The object is unchanged in this instrument.

4.2. The object of the 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.

4.3. The section includes a note that provides that the ANU Act and this instrument give effect to the *Voluntary Code of Best Practice for the Governance of Australian Public Universities*.

## 5. Section 5 – Definitions

5.1. This section provides definitions for the following terms used in the instrument: **academic staff (Faculties) member** (see section 11(1)), **academic staff (Institute) member** (see section 10(1)), **ANUSA**, **appointed member**, **close of nominations**, **dean** (see ANU Act, section 3), **deans and research school heads member** (see section 9(1)), **executive office** (see ANU Act, section 3), **Institute** (see ANU Act, section 3), **member** of the Council, **postgraduate student member** (see section 13(1)), **professional staff**, **professional staff member** (see section 12(1)), **returning officer**, **staff or student member**, **student member**, **The Faculties** (see ANU Act, section 3), and **undergraduate student member** (see section 14(1)).

5.2. To assist the reader the section includes signpost definitions for definitions in the ANU Act that apply to this instrument (see e.g. **dean**) and definitions of general application elsewhere in the instrument (see e.g. **academic staff (Faculties) member**).

5.3. This section makes the following changes to the definitions section in the *Governance Statute 2020*:

- a new definition of **ANUSA** has been added
- the definition of **close of nominations** has been revised because all elections for the staff and student members of Council will in future be conducted under this instrument
- the previous definition of **constitution** has been omitted because the defined term is now only needed in section 31 (Conditions for conduct of student member elections by ANUSA)

- the previous definitions of *postgraduate student association*, *student association* and *undergraduate student association* have been omitted because they are no longer needed in this instrument.

## Part 2 – The University

This Part includes a section about the organisation of the University. The provisions of the section are unchanged in this instrument.

The Part also includes a general note drawing the reader's attention to general provisions of the ANU Act about the University and its organisation. Similar general notes are included in relation to other provisions of the instrument (e.g. see the general note for Division 3.1).

From a legal point of view the general notes do not form part of the instrument (see Legislation Statute, section 12 (Notes in or to University legislation)). The notes have been included for informational purposes only to assist the reader, particularly by increasing awareness of relevant related provisions of the ANU Act and of the relationship between the provisions of the ANU Act and this instrument. The notes do not create rights, impose liabilities, affect the meaning of provisions of the ANU Act, or otherwise change the law.

### 6. Section 6 – Organisation of the University

- 6.1. This section provides for the organisation of the University by the Council in accordance with the ANU Act.
- 6.2. The ANU Act makes some provision for how the University is to be organised, including for the constitution of an Institute of Advanced Studies and the group to be known as 'The Faculties' (see section 7). Section 6 of this instrument has effect subject to any provision made by the ANU Act about the University's organisation and, in particular, requires the Council to act in accordance with the ANU Act in establishing bodies within the University and giving them fields of learning and names.
- 6.3. The section also establishes the Academic Board of the University.

## Part 3 – The Council

### Division 3.1 – Council functions and powers

This Division includes provisions about the specific powers of the Council in relation to the conferral of degrees and awards (including honorary degrees) by the University.

The Division also includes a general note about general and specific powers of the Council under the ANU Act.

This instrument does not make any changes to the provisions of this Division.

### 7. Section 7 – Degrees and awards

- 7.1. This section authorises the Council to decide the degrees and other awards that the University may confer.

### 8. Section 8 – Honorary degrees

- 8.1. This section authorises the Council to approve the award of honorary degrees, and to revoke an approval that it has given.
- 8.2. The section also authorises the Council to determine a range of matters in relation to honorary degrees, including, for example, conditions of eligibility for the award of honorary degrees, and procedures for the making, and consideration, of nominations for the award of honorary degrees.

## **Division 3.2 – Council composition**

This Division includes a general note about the composition of the Council under the ANU Act.

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 established under the ANU Act. The staff and student members consist of the following:

- the academic staff (Faculties) member;
- the academic staff (Institute) member;
- the deans and research school heads member;
- the postgraduate student member;
- the professional staff member;
- the undergraduate student member.

Each of the staff and student members is elected by the members of a staff or student body of the University.

This Division contains provisions about the staff and student members of Council. This instrument makes a number of specific changes to these provisions. The changes are explained in relation to relevant sections of the Division.

### **9. Section 9 – Deans and research school heads member**

- 9.1. Under the ANU Act (see section 10(1)(k)), the deans and research school heads 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.
- 9.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the deans and research school heads member. The provisions of this section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule and the Governance Order.
- 9.3. This section has been changed to expressly provide that the election for this Council member must be conducted 'by the University'. This is the existing position.

### **10. Section 10 – Academic staff (Institute) member**

- 10.1. Under the ANU Act (see section 10(1)(l)), academic staff (Institute) member must be a member of the academic staff of the Institute elected by members of that staff.
- 10.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the academic staff (Institute) member. The provisions of this section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule.
- 10.3. This section has been changed to expressly provide that the election for this Council member must be conducted 'by the University'. This is the existing position.

### **11. Section 11 – Academic staff (Faculties) member**

- 11.1. Under the ANU Act (see section 10(1)(m)), the academic staff (Faculties) member must be a member of the academic staff of The Faculties elected by members of that staff.
- 11.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the academic staff (Faculties) member. The provisions of this section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule.
- 11.3. This section has been changed to expressly provide that the election for this Council member must be conducted 'by the University'. This is the existing position.

## **12. Section 12 – Professional staff member**

- 12.1. Under the ANU Act (see section 10(1)(n)), the professional staff member must be a member of the professional staff of the University elected by members of that staff. The professional staff are referred to as the 'general staff' in the ANU Act.
- 12.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the professional staff member. The provisions of this section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule.
- 12.3. This section has been changed to expressly provide that the election for this Council member must be conducted 'by the University'. This is the existing position.

## **13. Section 13 – Postgraduate student member**

- 13.1. Under the ANU Act (see section 10(1)(o)), the postgraduate student member must be a postgraduate student of the University elected by the postgraduate students of the University.
- 13.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the postgraduate student member. The provisions of this section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule.
- 13.3. This instrument makes the following 2 substantive changes to the section.
- 13.4. First, future elections for the postgraduate student member must be conducted by ANUSA under this instrument (see subsection (4)). Previously these elections were conducted by the relevant student association under its constitution. (However, if a direction is in force under section 32(3) in relation to the election, the election must be conducted by the University under this instrument (see subsection (5)). This change will provide greater certainty in the conduct of elections for the postgraduate student member and ensure that elections for the staff and student members (apart from the deans and research schools member) are conducted under a common set of provisions.
- 13.5. Second, the postgraduate student member is to be elected (otherwise than to fill a casual vacancy) for a term of 1 year commencing on 1 December of the year in which the member is elected. Previously the term of the postgraduate student member, and the commencement of that term, could be affected by the constitution of the relevant student association. This change will provide greater certainty in the term of the postgraduate student member and ensure consistency between the terms of the postgraduate student member and the undergraduate student member. The change does not affect the term of the existing postgraduate student member (see section 76).

## **14. Section 14 – Undergraduate student member**

- 14.1. Under the ANU Act (see section 10(1)(p)), the undergraduate student member must be an undergraduate student of the University elected by the undergraduate students of the University.
- 14.2. This section contains provisions about the election (including eligibility to vote and be elected), and the term of office, of the undergraduate student member. The provisions of the section complement the provisions of the ANU Act and are complemented by provisions of the Governance Rule.
- 14.3. This instrument makes the following 2 substantive changes to the section.
- 14.4. First, future elections for the undergraduate student member must be conducted by ANUSA under this instrument (see subsection (4)). Previously these elections were conducted by ANUSA under its constitution. (However, if a direction is in force under section 32(3) in relation to the election, the election must be conducted by the University under this instrument (see subsection (5)). This change will provide greater certainty in the conduct of elections for the undergraduate student member and ensure that elections for the staff and student members (apart from the deans and research schools member) are conducted under a common set of provisions.



- 14.5. Second, the undergraduate student member is to be elected (otherwise than to fill a casual vacancy) for a term of 1 year commencing on 1 December of the year in which the member is elected. Previously the term of the undergraduate student member, and the commencement of that term, could be affected by ANUSA's constitution. This change will provide greater certainty in the term of the undergraduate student member and ensure consistency between the terms of the undergraduate student member and the postgraduate student member. The change does not affect the term of the existing undergraduate student member (see section 76).

**15. Section 15 – Limitation on election or re-election of staff and student members**

- 15.1. This section provides that a staff or student member of Council may not be elected or re-elected as a staff or student member for a total of 8 or more consecutive years unless the Council decides, in accordance with the section, that the person is eligible to be elected.

**Division 3.3 – Council members**

This Division includes provisions applying to Council members.

The Division also includes a general note drawing the reader's attention to the provisions of the ANU Act about qualifications for Council membership and vacation of office (see sections 11 and 15). The general note also reminds the reader that the provisions of the Division do not apply to the Chancellor or Vice-Chancellor. The ANU 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).

This instrument does not make any changes to the provisions of the Division.

**16. Section 16 – Remuneration and allowances for staff and student members**

- 16.1. This section provides that a staff or student member of Council is not entitled to be paid remuneration or allowances as a Council member.
- 16.2. However, the section makes it clear that the section does not prevent reimbursement of expenses reasonably incurred as a member and does not apply to certain specified kinds of allowances, payments, or reimbursements.

**17. Section 17 – Staff or student member ceasing to be qualified to be elected**

- 17.1. This section provides that, under the ANU Act (see section 15(1)(g)), a staff or student member's position on Council becomes vacant if the member ceases to be qualified to be elected to that position. The section draws attention to the operation of the ANU Act provision for informational purposes.

**18. Section 18 – Resignation of Council members**

- 18.1. This section provides for the resignation of Council members (other than the Chancellor or Vice-Chancellor).

**Division 3.4 – Council procedures**

This Division contains provisions about the procedures (including meetings) of Council.

This instrument does not make any changes to the provisions of this Division.

**19. Section 19 – Holding Council meetings**

- 19.1. This section makes provision for the holding of Council meetings, including the calling and giving notice of meetings.

**20. Section 20 – Presiding at Council meetings**

- 20.1. This section relates to presiding at Council meetings. The section draws attention to the relevant provisions of the ANU Act (see section 12(1), (2) and (3)) for informational purposes.

**21. Section 21 – Quorum at Council meetings**

21.1. This section relates to the quorum at Council meetings. The section draws attention to the relevant provision of the ANU Act (see section 12(4)) for informational purposes.

**22. Section 22 – Voting at Council meetings**

22.1. This section provides for voting at Council meetings.

**23. Section 23 – Council decisions without meetings**

23.1. This section provides that, under the ANU Act (see section 13), the Council may pass certain resolutions without a meeting. The section draws attention to the relevant ANU Act provision for informational purposes.

**24. Section 24 – Council proceedings generally**

24.1. This section provides that, subject to the ANU Act and this instrument, the Council may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

24.2. The section includes a note drawing attention to provisions of other relevant Commonwealth legislation.

**Division 3.5 – Council committees**

This Division makes provision for Council committees. This instrument does not make any changes to the provisions of this Division.

**25. Section 25 – Council committees**

25.1. This section authorises the Council to establish committees of the Council and to make decisions about their functions, membership, operation, and reporting.

**Part 4 – Elections for staff and student members of Council**

**Division 4.1 – Staff and student member elections**

This Division contains provisions applying to elections for staff and student members of Council. This instrument makes a number of consequential changes to the provisions of this Division. These changes are explained in relation to the relevant provisions of the Division.

**26. Section 26 – Application of Division 4.1**

26.1. This section has been revised to provide that the Division applies to all elections for the staff and student members of Council. Previously it did not apply to an election for a student member of Council if the election was conducted by the relevant student association under its constitution.

**27. Section 27 – Preferential voting and secret ballots for conduct of elections**

27.1. This section requires an election for a staff or student member of Council to be conducted by a method of preferential voting and by secret ballot. This requirement is given effect to by the detailed election procedures specified in the Governance Rule.

**28. Section 28 – Appointment of returning officer etc**

28.1. This section authorises, and requires, the appointment of a returning officer to conduct an election for a staff or student member of Council. The appointment is made by the Vice-Chancellor if the election is to be conducted by the University or by ANUSA if the election is to be conducted by ANUSA. Appointments may be made for a single election or for a number of elections. A returning officer may appoint deputies to assist the returning officer.

28.2. This section was changed in this instrument to recognise ANUSA's role in relation to the appointment of returning officers for elections conducted by it and to make other consequential changes.

## **29. Section 29 – Conduct of elections by returning officer**

- 29.1. This section expressly requires the returning officer for an election to ensure that the election is conducted fairly.
- 29.2. The returning officer must, in particular, take reasonable steps to ensure that persons eligible to become candidates and vote in the election:
  - are given reasonable opportunity to become candidates and vote; and
  - are given reasonable information about how and when they may become candidates and vote; and
  - have a reasonable opportunity to become candidates and vote in the election.

## **30. Section 30 – Decisions of returning officer final etc**

- 30.1. This section specifies that a decision of the returning officer about the conduct or result of the election is final and not subject to appeal or review in any way.
- 30.2. This section has been included to ensure that decisions made by the returning officer have a degree of finality. However, it is intended that judicial review of decisions of the returning officer should continue to be available in appropriate cases, particularly cases where the requirements of the ANU Act, this instrument or the Governance Rule are alleged not to have been complied with.

## **Division 4.2 – Elections for student members**

This Division contains provisions applying to elections for student members of Council. This instrument makes a number of consequential changes, and some other changes, to the provisions of this Division. These changes are explained in relation to the relevant provisions of the Division.

## **31. Section 31 – Conditions for conduct of student member elections by ANUSA**

- 31.1. This section requires ANUSA to comply with specified conditions in relation to an election conducted by it for a student member of the Council. The conditions are specified in subsection (2) and are intended to ensure that the elections are conducted fairly and in accordance with the requirements of the ANU Act, this instrument and the Governance Rule.
- 31.2. The section includes a subsection (subsection (3)) to make it clear that the conditions do not prevent the matters specified in the subsection. For example, the subsection provides that the conditions do not prevent an election from being conducted for ANUSA by an authority of the Commonwealth or a State of Territory (e.g. an electoral commission).
- 31.3. Most of the changes made to this section by this instrument are of a consequential nature and reflect, for example, that ANUSA is now the sole representative student association for the University and is to conduct elections for the student members of the Council under this instrument.
- 31.4. The section also includes the following changes.
- 31.5. First, a note has been added to subsection (2)(a) to make it clear that the reference in the paragraph to 'this instrument' includes a reference to the Governance Rule.
- 31.6. Second, subsection (3)(d) has been added to make it clear that an election for a student member of Council may be conducted by ANUSA in accordance with:
  - the provisions of ANUSA's constitution that are not inconsistent with the provisions of the ANU Act or this instrument; as well as
  - the provisions of the ANU Act and this instrument.

Subsection (4) clarifies the meaning of 'inconsistent' for the paragraph. Subsection (5) defines **ANUSA's constitution** to mean 'ANUSA's objects and rules under the *Associations Incorporation Act 1991 (ACT)*'. Changes to ANUSA's constitution are subject to approval by the University's Council.

## **32. Section 32 – Conduct of student member elections by University**

- 32.1. This section sets out the circumstances in which the Vice-Chancellor may direct that elections for a student member of Council must be conducted by the University instead

of ANUSA. The section also includes provisions about ancillary matters, including the effect of a direction, its period of operation, and notification of the Council and ANUSA.

32.2. This section only includes changes of a consequential nature.

## **Part 5 – Nominations Committee**

This Part contains provisions and general note about the Nominations Committee.

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.

This instrument does not make changes to the provisions of this Part.

### **33. Section 33 – Terms of appointment of Nominations Committee members**

33.1. This section provides for the terms of appointment of members of the Nominations Committee appointed by the Chancellor. The Chancellor is automatically a member of the Nominations Committee.

### **34. Section 34 – Remuneration and allowances of certain Nominations Committee members**

34.1. This section provides that a member of the Nominations Committee is not entitled to be paid remuneration and allowances as a Nominations Committee member if the member is a member of staff or student of the University.

34.2. However, the section makes it clear that the section does not prevent reimbursement of expenses reasonably incurred as a member and does not apply to certain specified kinds of allowances.

### **35. Section 35 – Termination of appointment of Nominations Committee members by Council**

35.1. This section sets out when the Council must terminate the appointment of a Nominations Committee member appointed by the Chancellor.

### **36. Section 36 – Resignation of Nominations Committee members**

36.1. This section provides for the resignation of Nominations Committee members appointed by the Chancellor.

### **37. Section 37 – Holding Nominations Committee meetings**

37.1. This section makes provision for the holding of Nominations Committee meetings, including the calling and giving notice of meetings.

### **38. Section 38 – Presiding at Nominations Committee meetings**

38.1. This section makes provision for presiding at Nominations Committee meetings.

### **39. Section 39 – Nominations Committee proceedings generally**

39.1. This section makes provision for the conduct of the proceedings (including meetings) of the Nominations Committee.

## **Part 6 – Officers of the University**

### **Division 6.1 – Chancellor**

This Division includes provisions and a general note about the Chancellor.

This instrument does not make substantive changes to the provisions of this Division.

### **40. Section 40 – Role of Chancellor**

40.1. This section specifies the Chancellor's primary and specific responsibilities.

### **41. Section 41 – Appointment of Chancellor**

41.1. This section specifies categories of persons ineligible for appointment as Chancellor.

**42. Section 42 – Term of Chancellor’s appointment**

42.1. This section provides for the Chancellor’s term of appointment and for the Chancellor’s reappointment.

**43. Section 43 – Termination of Chancellor’s appointment**

43.1. This section sets out when the Council must terminate the Chancellor’s appointment.

**44. Section 44 – Resignation of Chancellor**

44.1. This section provides for the resignation of the Chancellor.

**45. Section 45 – Other conditions of Chancellor’s appointment**

45.1. This section specifies that, subject to the ANU Act and this instrument, the Chancellor holds office on the conditions determined by Council. These conditions may, but need not, be specified in the Chancellor’s instrument of appointment.

**46. Section 46 – Pro-Chancellor acting as Chancellor**

46.1. This section provides for the Pro-Chancellor to automatically act as Chancellor in the circumstances specified in the section.

46.2. The section includes a note drawing attention to the provisions of the *Acts Interpretation Act 1901* applying to acting arrangements.

**Division 6.2 – Pro-Chancellor**

This Division includes provisions and a general note about the Pro-Chancellor.

This instrument does not make substantive changes to the provisions of this Division.

**47. Section 47 – Role of Pro-Chancellor**

47.1. This section specifies the Pro-Chancellor’s primary and specific responsibilities.

**48. Section 48 – Term of Pro-Chancellor’s appointment**

48.1. This section provides for the Pro-Chancellor’s term of appointment.

48.2. The section includes a note drawing attention to the provisions of the *Acts Interpretation Act 1901* relating to reappointment.

**49. Section 49 – Termination of Pro-Chancellor’s appointment**

49.1. This section sets out when the Council must terminate the Pro-Chancellor’s appointment.

**50. Section 50 – Resignation of Pro-Chancellor**

50.1. This section provides for the resignation of the Pro-Chancellor.

**51. Section 51 – Other conditions of Pro-Chancellor’s appointment**

51.1. This section specifies that, subject to the ANU Act and this instrument, the Pro-Chancellor holds office on the conditions determined by Council. These conditions may, but need not, be specified in the Pro-Chancellor’s instrument of appointment.

**52. Section 52 – Acting Pro-Chancellor**

52.1. This section authorises the Council to appoint an acting Pro-Chancellor.

52.2. The section includes a note drawing attention to the provisions of the *Acts Interpretation Act 1901* applying to acting arrangements.

**Division 6.3 – Vice-Chancellor**

This Division includes provisions and a general note about the Vice-Chancellor.

This instrument does not make substantive changes to the provisions of this Division.

**53. Section 53 – Appointment of Vice-Chancellor**

53.1. This section specifies categories of persons ineligible for appointment as Vice-Chancellor.

**54. Section 54 – President of the University**

54.1. This section authorises the Vice-Chancellor to use, or be referred to using, the title President of the University, with or without any other title.

**55. Section 55 – General functions etc. of Vice-Chancellor**

55.1. This section provides that the Vice-Chancellor is the principal academic officer and chief executive officer of the University, and is responsible for the academic standards, management and administration of the University.

55.2. The section specifies the general functions and powers of the Vice-Chancellor. These include any function or power given to the Vice-Chancellor under the ANU Act or any other Commonwealth law, University legislation or a Council decision.

**56. Section 56 – Exercise of functions etc. by Vice-Chancellor**

56.1. This section provides that, in exercising a function, duty, power or authority, the Vice-Chancellor must act in accordance with:

- the ANU Act or any other Commonwealth law; and
- any other applicable laws; and
- University legislation; and
- Council decisions.

**57. Section 57 – Executive appointments**

57.1. This section provides that the Council may authorise the Vice-Chancellor, on behalf of the University, to make appointments to executive positions and to set the conditions of appointments to executive positions.

57.2. The section also allows the Council to designate executive positions as positions to which appointments must be made by the Council on the Vice-Chancellor's recommendation.

57.3. Under the section the Vice-Chancellor must provide the reports in relation to executive position appointments (including their conditions of appointment) that the Council requires.

**58. Section 58 – Intellectual property powers of Vice-Chancellor**

58.1. This section provides powers for the Vice-Chancellor to act for the University in the administration of the University's intellectual property.

**59. Section 59 – Term of Vice-Chancellor's appointment**

59.1. This section provides for the Vice-Chancellor's term of appointment.

59.2. The section includes a note drawing attention to the provisions of the *Acts Interpretation Act 1901* relating to reappointment.

**60. Section 60 – Termination of Vice-Chancellor's appointment**

60.1. This section sets out when the Council must terminate the Vice-Chancellor's appointment.

**61. Section 61 – Resignation of Vice-Chancellor**

61.1. This section provides for the resignation of the Vice-Chancellor.

**62. Section 62 – Other conditions of Vice-Chancellor's appointment**

62.1. This section specifies that, subject to the ANU Act and this instrument, the Vice-Chancellor holds office on the conditions determined by Council. These conditions may, but need not be, specified in the Vice-Chancellor's instrument of appointment.

### **63. Section 63 – Acting Vice-Chancellor**

63.1. This section provides that, under the ANU Act (see section 37), the Council may appoint a person to act as Vice-Chancellor. The section draws attention to the relevant provision of the ANU Act for informational purposes.

### **64. Section 64 – Exercise of Vice-Chancellor’s functions by Provost**

64.1. This section makes provision for exercise of certain of the Vice-Chancellor’s functions by the Provost.

## **Part 7 – Delegations and subdelegations**

### **General**

This Part contains provisions about the delegation of functions of the Council, the Vice-Chancellor and certain other University officials. The provisions are intended to remove the need to include separate delegation and subdelegation powers in individual items of University legislation and to allow the application of consistent governance arrangements across the University for delegations and subdelegations.

This Part includes a general note drawing attention to the provisions on the ANU Act (see sections 17 and 18) that give the Council power to delegate certain of its functions and powers under the ANU Act. As mentioned in the note, 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.

This instrument does not make any changes to the provisions of this Part.

### **Background to provisions of Part 7**

The University is a large, complex organisation that needs delegated authorities to operate effectively. Part 7 was drafted to meet this need. However, the University is equally concerned to ensure that delegated authorities are exercised properly and support the application of high standards of governance consistently across the University.

It is for this reason that the University has been progressively removing separate delegation and subdelegation powers in individual items of University legislation and moving to reliance on general provisions that can be used in a consistent way across the University.

It is important to recognise that the delegation provisions of Part 7 do not operate in isolation, but instead form part of a comprehensive Delegations Framework for delegating authority within the University.

The Delegations Framework is managed centrally and at a high level within the University. The University’s Council has delegated authority to the Vice-Chancellor to oversee management of the framework and to approve amendments to it from time to time. Proposals for new delegations, and modifications of existing delegations, must be approved by the Vice-Chancellor on the recommendation of the Delegations Administrator.

The Delegations Framework provides important limitations and safeguards for the delegation and subdelegation of functions. The framework is governed by policy and procedure approved by the University’s Council.

The Delegations Framework includes the following features:

- The Delegations Framework covers all delegations of authority within the University and is not limited to, but includes, delegations under Part 7 of functions under University legislation and under decisions of the University’s Council and Vice-Chancellor.

- The Delegations Framework reflects the University’s position-based organisational structure. Given the complexity of the organisation that is the University, it is not possible to effectively manage it otherwise than through the flexible, structured, consistent use of delegations. It is not practicable for the details of these delegations to be set out in University legislation.
- Under the Delegations Framework the University’s delegations are managed in a systematic, transparent way. All delegations are published on an internal University Delegations Website. Delegation assignments are recorded and managed within the University’s HR Management System and recorded against position data.
- Delegations are assigned on a position rather than an individual basis. A staff member appointed to a position is able to exercise the position’s delegations. The delegations may also extend to a person acting in the period for a specified period. The delegations for a position are generally established when a position is created and can be updated if duties change. Banded (Generic) Delegations (e.g. delegations authorising expenditure of funds) are assigned in accordance with the level of responsibility for a position.
- The University follows a merits-based appointments policy. The University would not appoint a person to a position within the University unless it was satisfied that the person had the skills, qualifications and experience required for the position, including the skills, qualifications and experience required to exercise the position’s delegations.
- The Delegations Framework includes important provisions for the responsibilities of delegates, disclosure of interests, regular monitoring, oversight and review of delegations, and training.

#### **Section 65 – Delegation and subdelegation of Council’s functions under statutes etc**

- 64.2. This section allows the Council to delegate any or all of its functions under University legislation to an eligible entity. **Eligible entity** is defined in subsection (1) and **function** is defined in the Legislation Statute (see dictionary in Schedule 1).
- 64.3. The section also allows the subdelegation of functions and specifies when subdelegation is permissible.
- 64.4. The section provides that, in exercising functions under a delegation or subdelegation under the section, a delegate or subdelegate must comply with any directions of the Council and, for a subdelegate, the subdelegator.
- 64.5. The section applies specified provisions of the *Acts Interpretation Act 1901* to subdelegations under the section.

#### **65. Section 66 – Delegation and subdelegation of Vice-Chancellor’s functions**

- 65.1. This section allows the Vice-Chancellor to delegate any or all of the Vice-Chancellor’s functions under University legislation and Council decisions to an eligible entity. **Eligible entity** is defined in subsection (1) and **function** is defined in the Legislation Statute (see dictionary in Schedule 1).
- 65.2. However, the section does not allow the Vice-Chancellor to delegate a function if University legislation, or a Council decision, requires the Vice-Chancellor to exercise the function personally.
- 65.3. The section also allows the subdelegation of functions and specifies when subdelegation is permissible.
- 65.4. The section provides that, in exercising functions under a delegation or subdelegation under the section, a delegate or subdelegate must comply with any directions of the Vice-Chancellor and, for a subdelegate, the subdelegator.
- 65.5. The section applies specified provisions of the *Acts Interpretation Act 1901* to subdelegations under the section.

#### **66. Section 67 – Delegation and subdelegation of functions of other University officials**

- 66.1. This section allows a University official to delegate any or all of the official’s functions under University legislation and Council decisions to an eligible entity. **University official** and **eligible entity** are defined in subsection (1) and **function** is defined in the Legislation Statute (see dictionary in Schedule 1).



- 66.2. However, the section does not allow a University official to delegate a function if University legislation, or a decision of the Council or the Vice-Chancellor, requires the official to exercise the function personally.
- 66.3. The section also allows the subdelegation of functions and specifies when subdelegation is permissible.
- 66.4. The section provides that, in exercising functions under a delegation or subdelegation under the section, a delegate or subdelegate must comply with any directions of the Vice-Chancellor and the relevant University official and, for a subdelegate, the subdelegator.
- 66.5. The section also gives the Vice-Chancellor a wide power to issue directions with respect to the delegation and subdelegation of functions under the section, and requires University officials, delegates and subdelegates to comply with the Vice-Chancellor's directions.
- 66.6. The section applies specified provisions of the *Acts Interpretation Act 1901* to subdelegations under the section.

## **Part 8 – Rules, orders and other legislative instruments**

This Part contains provisions about the making of rules, orders and other legislative instruments.

This instrument changed section 68(1) to permit the making of rules and orders under the section by the Council as well as the Vice-Chancellor. This instrument did not make any other changes to the provisions of this Part.

### **67. Section 68 – General power to make rules and orders**

- 67.1. This section provides a general power for the Council and the Vice-Chancellor to make rules and orders by legislative instrument. The power complements the statute-making power provided to the Council under the ANU Act (see sections 50 and 51). The provisions of the section are intended to remove the need to include separate rule and order-making powers in individual items of University legislation.
- 67.2. The general power provided by the section to make rules and orders is intended to be as broad as the power provided by the ANU Act to make statutes, with 3 important exceptions. First, the section does not permit the making of rules and orders by the Council or the Vice-Chancellor to which the ANU Act, section 50(5) applies. Section 50(5) relates to the making of rules or orders about traffic, parking, and related matters (see section 51(1)). Second, the Vice-Chancellor is not permitted to make rules or orders under the section prescribing matters about the exercise by the Council of a function or power under the ANU Act that the Council must not delegate. These matters are specified in the ANU Act, sections 17 and 18. Third, the application of the general power may be displaced expressly by, or by a contrary intention in, a statute or, for an order, by a rule.
- 67.3. The section expressly provides that the general power under the section to make rules and orders is not limited to making rules or orders for the purposes of this instrument, and that rules and orders may be made under the section for other purposes (including, for example, for the purposes of any other statute or for purposes that are not related to a statute).
- 67.4. The section also includes additional powers for the Council and Vice-Chancellor to make rules about program requirements and the granting of degrees and other awards and for an 'authority' (as defined in subsection (7)) specified in the rules to make orders about these matters. These powers related to repealed University legislation and are no longer of any practical significance.

#### **68. Section 69 – Specific powers to make rules and orders**

- 68.1. This section specifies some of the particular matters about which rules and orders may make provision under the general rule and order-making power in section 68(1). The purpose of the section is to ensure that the general power is not displaced by the specific provisions of this instrument that make some provision for the matters.
- 68.2. The section expressly provides that it is additional to, and does not limit, section 68(1), another provision of this instrument or any other University legislation.

#### **69. Section 70 – Tabling of rules, orders etc.**

- 69.1. This section applies to rules, orders and legislative instruments made under University legislation otherwise than by the Council.
- 69.2. The section requires the Vice-Chancellor to arrange for copies of the rules, orders, and legislative instruments to be tabled at the first practicable Council meeting.
- 69.3. Failure to comply with the requirement in relation to an instrument does not affect the validity of the instrument (see subsection (3)).

### **Part 9 – Miscellaneous**

This Part includes provisions about the validity of acts and proceedings, the execution of contracts, and the University seal.

This instrument does not make any substantive changes to the provisions of this Part.

#### **70. Section 71 – Validity of certain acts etc.**

- 70.1. This section applies to a contravention of any instrument made under, or provided by, the ANU Act by the Council, the Vice-Chancellor or any of the other persons and bodies specified in subsection (1).
- 70.2. The section provides that the contravention does not affect the validity of any act, contract, instrument, or anything else.
- 70.3. The section is additional to, and does not limit, the ANU Act, section 39 (Validity of acts and proceedings).

#### **71. Section 72 – Execution of contracts**

- 72.1 This section relates to the execution of contracts on behalf of the University. The section draws attention to the relevant provisions of the ANU Act (see section 38(1) and (2)) for informational purposes.

#### **72. Section 73 – University seal**

- 72.1. This section makes provision about the custody and use of the University seal.

### **Part 10 – Repeal and transitional provisions**

This Part includes details and transitional provisions that are specific to this instrument e.g. the repeal provided by section 74.

This instrument omits transitional provisions included in the repealed statute that are no longer needed. Any ongoing operation of these provisions is saved by the Legislation Statute, section 26.

#### **Division 10.1 – Repeal**

##### **73. Section 74 – Repeal of instrument**

- 73.1. This section repeals the *Australian National University (Governance) Statute 2020*.

#### **Division 10.2 – Transitional provisions**

##### **74. Section 75 – Meaning of *commencement day***

- 74.1. This section defines the meaning of *commencement day* for Division 10.2. The commencement day is 1 July 2023.

**75. Section 76 – Transitional: existing staff and student members**

- 75.1. This section provides transitional arrangements that apply to a person who held office as a staff or student member of Council immediately before 1 July 2023.
- 75.2. Under the section 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.
- 75.3. 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.

**76. Section 77 – Transitional rules**

- 76.1. This section allows for transitional measures to be prescribed by rules made under section 68(1). Under the subsection rules may be made by the Vice-Chancellor as well as the University's Council.
- 76.2. The section will, for example, enable the Vice-Chancellor to make urgent transitional rules to deal with any unforeseen transitional issues arising out of the transition from the repealed statute to this instrument. Any rules made by the Vice-Chancellor must be tabled at a Council meeting (see section 70 (Tabling of rules, orders etc.)).

**77. Section 78 – Application of Legislation Statute, section 26**

- 77.1. This section has been included to apply the Legislation Statute, section 26 to the repeal of the existing statute. Section 26 has provisions saving the effect of action taken under repealed University legislation to which it applies.
- 77.2. The section also declares the provisions of the Division to be transitional provisions for that section. Section 26 preserves any ongoing operation of transitional provisions on their repeal.

**78. Section 79 – Transitional provisions additional**

- 78.1. This section makes it clear that the transitional provisions of Division 3.2 are additional to other legislation applying to transitional matters.

**Division 10.3 – Expiry**

**79. Section 80 – Expiry of instrument**

- 79.1. This section is a general expiry provision that provides for the expiry of the instrument after 10 years. The section achieves the same effect as sunseting.

**Statement of Compatibility with Human Rights**

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

**AUSTRALIAN NATIONAL UNIVERSITY (GOVERNANCE) STATUTE 2023**

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 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.

**Human rights implications**

The instrument promotes human rights by providing clear, robust and consistent governance arrangements for the University.

**Conclusion**

This instrument is compatible with human rights because it promotes the protection of human rights by facilitating good University governance.