

# **THE AUSTRALIAN NATIONAL UNIVERSITY**

## **Appeals Rule 2023**

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I, Professor Brian P. Schmidt, Vice-Chancellor, make the following rule.

Dated 5 JULY 2023

Professor Brian P. Schmidt AC FAA FRS  
Vice-Chancellor

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## Part 1—Preliminary

### 1 Name

This is the *Appeals Rule 2023*.

### 2 Commencement

This instrument commences on the later of the following:

- (a) the day after it is registered;
- (b) 1 July 2023.

### 3 Authority

This instrument is made under the *Australian National University (Governance) Statute 2023*, section 68(1) (General power to make rules and orders).

### 4 Definitions

In this instrument:

***academic integrity decision***: see section 7 (Academic integrity decisions).

***Appeals Committee*** means an Appeals Committee appointed under section 13 (Appeals Committee).

***course*** means a subject of scholarly study, whether it is taught:

- (a) in a connected series of classes or demonstrations; or
- (b) by means of practical work, including, for example, the production by students of essays, theses or case studies or the attendance and participation by students in seminars or workshops; or
- (c) by clinical or professional practice; or
- (d) in another way or in a combination of ways.

***discipline decision***: see section 6 (Discipline decisions).

***property*** includes any form of real or personal property.

#### **Example of property**

Intellectual property, including intellectual property in any data or information.

***reviewable decision***: see section 5 (Meaning of *reviewable decision*).

***Secretary***, to an Appeals Committee, means the person appointed as Secretary to the Appeals Committee under section 13(6) (Appeals Committee).

***student*** means a person who is or was enrolled in, or seeking enrolment in, a program or course offered by the University, or who is or was given permission by the University to audit a program or course offered by the University.

[Note: For definitions applying to University legislation generally, see the dictionary in the Legislation Statute. That dictionary defines terms relevant to this instrument, including the following:

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- breach
  - University legislation (see section 6)
  - working day.]

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## Part 2—Reviewable decisions

### 5 Meaning of *reviewable decision*

A decision is a *reviewable decision* under this instrument if it is:

- (a) a discipline decision; or
- (b) an academic integrity decision.

### 6 Discipline decisions

A decision is a *discipline decision* if it is declared to be a reviewable decision by the Discipline Rule.

### 7 Academic integrity decisions

A decision is an *academic integrity decision* if it is declared to be a reviewable decision by the Academic Integrity Rule.

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## **Part 3—Application for review**

### **8 Grounds for review of reviewable decisions**

- (1) An application by a student for review of a reviewable decision must be made on 1 or more of the following grounds:
  - (a) that a procedural irregularity happened that may have affected the decision made by the decision-maker;
  - (b) that the decision-maker was biased;
  - (c) that the decision was manifestly wrong;
  - (d) that the decision was made in a mistaken application of applicable University legislation;
  - (e) that there is substantial relevant evidence that:
    - (i) was not taken into account by the decision-maker; and
    - (ii) could not have been known to the student and provided to the decision-maker before the decision was made;
  - (f) that a penalty imposed on the student, or any other action taken in relation to the student, under the Academic Integrity Rule or Discipline Rule was manifestly excessive.
- (2) If an application for review includes the ground mentioned in subsection (1)(f), the penalty or other action is taken to form part of the decision for this instrument.

### **9 Affected student may make application for review**

- (1) A student may make an application for review of a decision if the decision is a reviewable decision affecting the student in the student's capacity as a student.
- (2) The application must:
  - (a) be in writing; and
  - (b) specify the grounds on which the student relies; and
  - (c) include, or be accompanied by a statement setting out, the student's reasons in support of those grounds; and
  - (d) be given to the Registrar within 20 working days after the day the student:
    - (i) is told in writing under the Academic Integrity Rule or Discipline Rule about the decision; and
    - (ii) given a statement of reasons under Academic Integrity Rule or Discipline Rule for the decision.

### **10 Registrar may reject invalid applications**

- (1) The Registrar may reject an application for review of a decision if it appears:
  - (a) that the decision is not a reviewable decision; or
  - (b) that the application is not made on 1 or more of the grounds required by this instrument; or
  - (c) that the application has not been made within the time required by this instrument.
- (2) However, the Registrar may reject the application only if the Registrar has given the applicant an opportunity to make a written submission about the proposed rejection.



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(3) If the Registrar rejects the application under this section, the Registrar must, as soon as is practical:

- (a) tell the applicant and the decision-maker in writing about the decision; and
- (b) give them a written statement of reasons for the decision.

[Note: For the service (however described) of notices and other documents, see the Legislation Statute, section 24.]

## **11 Registrar must refer valid applications to Appeals Committee**

- (1) This section applies if the Registrar does not reject an application for review of a decision under section 10 (Registrar may reject invalid applications).
- (2) The Registrar must refer the application to an Appeals Committee.

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## Part 4—Appointment of Appeals Committee

### 12 Appeals Panel

- (1) There is to be an Appeals Panel appointed by the Academic Board.
- (2) The Appeals Panel is to consist of at least 6 persons in each of the following categories:
  - (a) students appointed after consultation with the student association;
  - (b) persons who have knowledge or experience in the teaching, research, or visual and performing arts, functions of the University.
- (3) A member of the Appeals Panel:
  - (a) holds office, subject to this instrument, for 2 years; and
  - (b) is eligible for reappointment; and
  - (c) may resign by written notice given to the Registrar.
- (4) If a student who has been appointed to the Appeals Panel ceases to be a student, the person ceases to be a member of the Appeals Panel.
- (5) In this section:

*student* means a person who is enrolled in a program or course offered by the University.

### 13 Appeals Committee

- (1) This section applies if the Registrar is required to refer an application for review of a decision to an Appeals Committee.
- (2) The Registrar must appoint an Appeals Committee for the review.
- (3) The Appeals Committee must include at least 4 members of the Appeals Panel, including:
  - (a) 1 member (the *student member*) appointed to the Appeals Panel under section 12(2)(a) (Appeals Panel) and
  - (b) 3 members appointed to the Appeals Panel under section 12(2)(b).
- (4) A person appointed to the Appeals Committee must not be the original decision-maker.
- (5) The Registrar must appoint a person (other than the student member) to be the Chair of the Appeals Committee.
- (6) The Registrar must appoint a person (other than a member of the Appeals Committee) to be the Secretary to the Appeals Committee.
- (7) The Registrar may appoint a person (other than a member of the Appeals Committee) to assist the Appeals Committee in the hearing of the application for review.
- (8) If the Appeals Committee is appointed to consider an application for review relating to an academic integrity decision, the Appeals Committee must include a person from the relevant academic discipline or, if this is not possible, a related academic discipline.
- (9) The quorum for a meeting of the Appeals Committee (including a hearing) is 3 members, including the Chair.

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## **Part 5—Consideration by Appeals Committee**

### **14 Additional material**

- (1) If material is made available to the Appeals Committee that was not before the original decision-maker, the Appeals Committee may assess the material in a summary way on the papers without conducting a hearing.
- (2) If, on review of the material, the Appeals Committee considers the information to be cogent, relevant or substantial, it may refer the decision back to the original decision-maker to remake the decision.
- (3) A decision remade following a referral back to the original decision-maker under this section:
  - (a) stands in place of the original decision; and
  - (b) to remove any doubt, may be the subject of an application for review under this instrument if it is a reviewable decision.

### **15 Material to be provided to student**

The Secretary to the Appeals Committee must provide the student applicant for the review with a copy of the material on which the Appeals Committee intends to rely no later than 5 working days before the day the application for review is to be heard.

### **16 Notification of hearing etc.**

- (1) Before the Appeals Committee hears the application for review, the student may, if the student wishes, tell the President of the student association about the hearing.
- (2) The Appeals Committee must:
  - (a) fix a date, time and place for the hearing of the application for review; and
  - (b) give not less than 5 working days written notice of the date, time and place of the hearing to the student.

[Note: For the service (however described) of notices and other documents, see the Legislation Statute, section 24.]

### **17 Decision whether to conduct oral hearing**

- (1) The application for review may be decided with or without an oral hearing.
- (2) In deciding whether the application for review is to be decided with or without an oral hearing, the Appeals Committee may take into account:
  - (a) whether the parties can participate in an oral hearing within a reasonable time; and
  - (b) whether an oral hearing would unnecessarily subject a party or a witness to stress; and
  - (c) any other relevant factor.

[Note: A person may be permitted or required to participate in the review remotely (see section 21 (Remote participation in review)).]

- (3) The Chair of the Appeals Committee must decide how the review is to be conducted.

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## 18 Applications for review relating only to penalty or other action taken

If the application for review relates only to the penalty imposed, or other action taken, under the Academic Integrity Rule or the Discipline Rule, the Appeals Committee must consider only the question of the penalty or other action.

## 19 Hearing procedure

- (1) At the hearing of the application for review:
  - (a) the procedure to be followed is, subject to this Part, at the discretion of the Appeals Committee; and
  - (b) the Appeals Committee:
    - (i) may inform itself on any matter in relation to the review in any way it considers appropriate; and
    - (ii) is bound by the rules of procedural fairness but is not bound by rules of evidence; and
    - (iii) must take into account any submission made by the student or the Registrar.
- (2) At the hearing of the application for review, the Registrar may:
  - (a) appear in person or, with the express approval of the Chair of the Appeals Committee, through an advocate; and
  - (b) call and question witnesses; and
  - (c) make written or oral submissions.

[Note 1: The Registrar may delegate the function of appearing in person and other functions under this subsection (see Governance Statute, section 67 (Delegation and subdelegation of functions of other University officials)).]

[Note 2: A function exercised by a delegate (or subdelegate) of the Registrar is taken to have been exercised by the Registrar (see Acts Interpretation Act, section 34AB(1)(c)).]
- (3) The hearing of evidence by the Appeals Committee may be adjourned from time to time and from place to place.
- (4) Unless the Appeals Committee otherwise directs, a person is not entitled to be present at the hearing of the application for review unless the person is:
  - (a) a member of the Appeals Committee; or
  - (b) the Registrar or an advocate for the Registrar; or
  - (c) the student or the person nominated by the student under section 20(2) (Student's rights on review); or
  - (d) the Secretary to the Appeals Committee; or
  - (e) a person giving evidence before the Appeals Committee; or
  - (f) a person appointed under section 13(7) (Appeals Committee) to assist the Appeals Committee.
- (5) The hearing of the application for review is not ineffective only because of a formal defect or irregularity in the convening or conduct of the Appeals Committee.

## 20 Student's rights on review

- (1) At the hearing of the application for review, the student may:
    - (a) appear in person; and
    - (b) call and question witnesses; and
    - (c) make oral or written submissions.
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- (2) At the hearing of the application for review, the student may be accompanied by another person nominated by the student who may:
    - (a) observe the proceedings; and
    - (b) with the express approval of the Chair of the Appeals Committee, act as an advocate for the student.
  - (3) If the Chair of the Appeals Committee gives an approval under subsection (2)(b) and the Registrar is not present at the hearing (in person or through an advocate), the Chair must immediately tell the Registrar about the approval and adjourn the hearing to allow the Registrar to appear.

## 21 Remote participation in review

- (1) The Chair of the Appeals Committee may, in writing, permit or require a person to participate in the review remotely by a method of communication, and in accordance with any arrangements, specified by the Chair.

### **Examples of methods of communication for remote participation**

- 1 teleconference
  - 2 videoconference
- (2) However, the Chair may require the person to participate in the review remotely only if the Chair considers that the requirement is necessary or desirable for all or any of the following reasons:
    - (a) to avoid or reduce the risk of harm to the health, safety or wellbeing of any person;
    - (b) to allow the review to be conducted in a fair and orderly way;
    - (c) to avoid or reduce any other risk of harm to the University or its students, staff or property.
  - (3) If the student, or a person nominated by the student to accompany the student, (the *relevant person*) participates in the review remotely under a permission or requirement under this section, the Chair must endeavour to ensure that, as far as practicable, the relevant person is able to participate in the review to the same extent as the person would have been able to participate if the person had attended the hearing of the review in person.
  - (4) If the student participates in the review remotely under a permission or requirement under this section, the student is taken to have appeared in person at the review.
  - (5) If a person nominated by the student participates in the review remotely under a permission or requirement under this section, the person is taken to be accompanying the student, whether or not the student attends the hearing of the review in person.
  - (6) This section does not limit any other power of the Chair to permit or require a person, other than the student or a person nominated by the student, to participate in the review remotely by teleconference, videoconference or any other method of communication.
  - (7) In this section:

*review* includes any part of the review.

## 22 Non-appearance etc. before Appeals Committee

- (1) This section applies to the application for review of the decision of the original decision-maker if the student:

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- (a) does not appear in person at the hearing of the application for review; and
  - (b) is not otherwise represented at the hearing; and
  - (c) does not make a written submission under section 20(1)(c) (Student's rights on review).
- (2) Immediately after the conclusion of the hearing:
- (a) the review is taken to have been finalised; and
  - (b) the decision of the original decision-maker takes effect unless it has already taken effect.

### **23 Decision by Appeals Committee**

- (1) After considering the application for review, the Appeals Committee may:
- (a) confirm the decision of the original decision-maker; or
  - (b) vary the decision; or
  - (c) set aside the decision and make a fresh decision in substitution for the decision set aside; or
  - (d) set aside the decision.
- (2) The Appeals Committee may:
- (a) accept an undertaking from the student; or
  - (b) make recommendations arising from its consideration of the application for review, including recommendations for:
    - (i) counselling; or
    - (ii) intervention; or
    - (iii) corrective or other measures that should be taken.
- (3) The Appeals Committee may vary the decision under subsection (1)(b), or substitute a fresh decision under subsection (1)(c), only if the decision as varied, or the fresh decision, is a decision that the original decision-maker could have made.
- (4) In deciding a question in relation to the penalty imposed, or other action taken, in relation to the student under the Academic Integrity Rule, the Appeals Committee must take all relevant matters into account, including, for example, the following:
- (a) the nature and severity of the student's breach of the academic integrity principle;
  - (b) the effect of the breach, including any loss, damage or harm caused to the University or its students, staff or property;
  - (c) the objectives of punishment, deterrence and rehabilitation;
  - (d) the health and safety of students and staff of the University, and the protection of University property.
- (5) Without limiting subsection (4), the Appeals Committee may, for example, take into account any other finding of a breach of the academic integrity principle made in relation to the student and the action (if any) taken in relation to that finding.
- (6) In deciding a question in relation to the penalty imposed, or other action taken, in relation to the student under the Discipline Rule, the Appeals Committee must take all relevant matters into account, including, for example, the following:
- (a) the nature and severity of the respondent's misconduct;
  - (b) the effect of the misconduct, including any loss, damage or harm caused to the University or its students, staff or property;
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- (c) the objectives of punishment, deterrence and rehabilitation;
  - (d) the health and safety of students and staff of the University, and the protection of University property.
- (7) Without limiting subsection (6), the Appeals Committee may, for example, take into account any other finding of misconduct made in relation to the student and the action (if any) taken in relation to that finding.
- (8) The decision of the Appeals Committee and the reasons for the decision must be given in writing to the student and the Registrar by the Secretary to the Appeals Committee within 10 working days after the day the decision is made.

[Note: For the service (however described) of notices and other documents, see the Legislation Statute, section 24.]

## **24 Undertaking by student**

- (1) This section applies if the Appeals Committee accepts a student's undertaking under section 23(2)(a) (Decision by Appeals Committee).
- (2) The Appeals Committee must give a written copy of the undertaking to the student and the Registrar.
- (3) If the student breaches the undertaking, the Appeals Committee may:
  - (a) revoke its earlier decision; and
  - (b) make any decision it could have made under section 23(1).
- (4) In deciding what action (if any) to take under subsection (3)(b) because of the breach of the undertaking, the Appeals Committee may take the breach, and any explanation provided by the student for the breach, into account.
- (5) Subsection (4) does not limit the matters that the Appeals Committee must or may take into account.
- (6) This section does not limit any other action that may be taken in relation to the breach.

## **25 Decision final**

The decision of the Appeals Committee is final.

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## **Part 6—Miscellaneous**

### **26 Joint, double or dual programs with other institutions etc.**

- (1) A provision of this instrument has no effect to the extent to which it is inconsistent with an agreement between the University and another university or institution that makes provision for or in relation to joint, double or dual programs offered by them (including cotutelle), or the joint, double or dual conferral of degrees or other awards by them, for students or a particular student.
- (2) For subsection (1), a provision of this instrument is not inconsistent with a provision of an agreement mentioned in that subsection to the extent to which both provisions can operate concurrently.

### **27 Certain functions not to be exercised personally by original decision-maker**

- (1) This section applies to a person in relation to a reviewable decision made personally by the person.
- (2) The person must not personally exercise any function under any of the following provisions in relation to the reviewable decision:
  - (a) section 10 (Registrar may reject invalid applications);
  - (b) section 11 (Registrar must refer valid applications to Appeals Committee);
  - (c) section 13 (Appeals Committee);
  - (d) section 19 (Hearing procedure);
  - (e) section 20 (Student's rights on review);
  - (f) section 28 (Extension of time).

### **28 Extension of time**

- (1) The Registrar may extend a time limit under this instrument.

[Note: The time limit may be extended even though the relevant time has ended (see Legislation Statute, section 22 (Power to extend time)).]
- (2) In deciding whether to extend a time limit, the Registrar must take into account:
  - (a) the reason an extension is sought; and
  - (b) the period of extension; and
  - (c) the prejudice (if any) that will be caused by the granting of the extension.
- (3) An extension must be for no longer than is reasonably necessary.



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## Part 7—Repeal, transitional provisions and expiry

### Division 7.1—Repeal

#### 29 Repeal

The *Appeals Rule 2021* is repealed.

### Division 7.2—Transitional provisions

#### 30 General application and savings

- (1) This section applies to conduct engaged in by a student if:
  - (a) the conduct was engaged in before 1 December 2021; or
  - (b) the following subparagraphs apply to the conduct:
    - (i) the conduct was engaged in on or after 1 December 2021; and
    - (ii) the *Academic Misconduct Rule 2015* applies to the conduct despite its repeal.

[Note: The *Academic Integrity Rule 2021*, section 74(3) (General application and savings: conduct in relation to courses) provides for the application of that rule for relevant conduct engaged in by a student in relation to a course that commenced before 1 December 2021.]

- (2) This instrument (other than this Division) does not apply to the conduct.
- (3) Despite the repeal of the *Appeals Rule 2018* by the *Appeals Rule 2021* but subject to this Division, the *Appeals Rule 2018* continues to apply to the conduct if that rule would have applied to the conduct had it and the *Appeals Rule 2021* not been repealed.

#### 31 Transitional orders

- (1) Orders made under the Governance Statute, 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 repeal of the *Appeals Rule 2021*; or
  - (b) the making of this instrument.
- (2) This instrument (other than this section) does not limit the matters that may be prescribed by orders made for subsection (1).
- (3) Orders made for subsection (1) have effect despite anything in this instrument (other than this section).

#### 32 Application of Legislation Statute, section 26

- (1) The Legislation Statute, section 26 (Repeal of University legislation) applies to the repeal of the *Appeals Rule 2021*.
- (2) For the Legislation Statute, section 26 the provisions of this Division are transitional provisions.

#### 33 Transitional provisions additional

This Division is additional to, and does not limit:

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- (a) the Legislation Statute, section 26 (Repeal of University legislation); 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).

### **Division 7.3—Expiry**

#### **34 Expiry of instrument**

This instrument expires 10 years after the day it commences.

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