
EXPLANATORY STATEMENT

AUSTRALIAN NATIONAL UNIVERSITY (LEGISLATION) STATUTE 2023

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 provides that it commences on the day after it is registered.

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 main object of this instrument is to make University legislation as simple, succinct and accessible as possible (see section 4(1)). This is to be achieved particularly by facilitating the shortening and simplifying of University legislation, promoting consistency in the form and language of University legislation, and providing interpretative, administrative and machinery provisions for University legislation (see section 4(2)). 'University legislation' is defined in section 6 and includes University statutes, rules and orders.
- 5.4 The main reason for remaking this instrument is to make changes to definitions used in University legislation consequential on changes made recently by the *Australian National University (Governance) Statute 2023* and the *Governance Rule 2023* in relation to the representative functions of student associations. From 1 July 2023 ANUSA (The Australian National University Students' Association Incorporated) became the sole student representative association for the University's postgraduate and undergraduate students.

5.5 There are no documents incorporated by reference.

6. Consultation

- 6.1 This instrument makes changes of a minor consequential or technical nature only.
- 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, including University legislation made by the Council of the University. 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 Council of the University is established by the *Australian National University Act 1991* 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.
- 6.4 The Council considered and made this instrument at its meeting on 28 July 2023.

7. About The Australian National University

- 7.1 The Australian National University is continued in existence by the *Australian National University Act 1991* (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 31) 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 at **Attachment B**.

Corporate Governance and Risk Office

The Australian National University

28 July 2023

PROVISION-BY PROVISION EXPLANATION

AUSTRALIAN NATIONAL UNIVERSITY (LEGISLATION) STATUTE 2023**Part 1 – Preliminary**

This Part includes important general provisions in sections 4 to 7. This instrument does not make changes to these provisions.

1. Section 1 – Name

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

2. Section 2 – Commencement

2.1. This section provides for the instrument to commence on the day after it is registered.

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 – Objects

- 4.1. This section specifies the main object of the instrument and set out ways in which it will be achieved.
- 4.2. The main object of the instrument is to make University legislation as simple, succinct and accessible as possible.

5. Section 5 – Application of this instrument

5.1. This section specifies that this instrument applies to all University legislation (including the instrument itself).

6. Section 6 – Meaning of *University legislation*

6.1. This section specifies the meaning of *University legislation*.

6.2. *University legislation* means any of the following:

- a statute (**ANU statute**) made under the *Australian National University Act 1991* (the **ANU Act**);
- a rule (**ANU rule**) made under an ANU statute;
- an order (**ANU order**) made under an ANU statute or rule;
- any instrument (whether or not legislative or notifiable) made under the ANU Act or an ANU statute, rule or order.

7. Section 7 – Provisions of this instrument must be applied

- 7.1. This section requires a provision of the instrument to be applied to all University legislation, in accordance with the terms of the provision, except so far as the provision is displaced.
- 7.2. The section provides that the application of a provision of this instrument to any University legislation may be displaced expressly by, or by a contrary intention in, the University legislation or any other University legislation. The section specifies, to remove any doubt, that **displaced** includes modified.
- 7.3. The section also includes notes drawing the reader's attention to the application of Commonwealth legislation to University legislation and the displacement of certain Commonwealth legislation.

Part 2 – Interpretation

This Part includes provisions relevant to the meaning of terms used in University legislation and the legal effect of examples and notes. This instrument does not make substantive changes to the provisions of this Part.

8. Section 8 – Application of definitions in dictionary in Schedule 1

- 8.1. This section specifies that the definitions in the dictionary in Schedule 1 apply to all University legislation.
- 8.2. The section enables terms defined in the dictionary to have the same consistent meaning across University legislation without the need to repeat definitions for the terms in other items of University legislation.

9. Section 9 – Terms used in authorising legislation etc.

- 9.1. This section provides for terms used in University legislation to have the same meaning as they have, from time to time, under the Act or University legislation (or relevant provisions of the Act or University legislation) under which the University legislation is made. The section helps to ensure that terms in University legislation and its authorising legislation are used consistently.
- 9.2. The section provides an exception for University legislation that makes provision for other University legislation. In such a case, terms used in the first University legislation have the same meaning as they have, from time to time, in the other University legislation (or the relevant provisions of the other University legislation). The section helps to ensure that terms used in ‘connected’ items of University legislation are used consistently.
- 9.3. The section expressly provides that it is additional to, and does not limit, the *Legislation Act 2003*, section 13(1)(b). Section 13(1)(b) provides that, if enabling legislation confers on a person the power to make a legislative or notifiable instrument, then, unless the contrary intention appears, expressions used in any instrument so made have the same meaning as in the enabling legislation as in force from time to time.

10. Section 10 – Application of general references to University entities etc.

- 10.1. This section simplifies how entities, positions and other things in or for the University may be referred to in University legislation and other documents of the University. **Document**, of the University, is defined in Schedule 1 and includes any appointment, delegation or subdelegation made in writing under the ANU Act, another Act as it applies in relation to the University, or University legislation.
- 10.2. Under the section:
 - a reference to an entity or position by name or description is a reference to the entity or position by that name or description in or for the University; or
 - if there are 2 or more such entities or positions—the entity or position with responsibility for the matter to which the reference applies.
- 10.3. A reference to anything else by name or description is a reference to the thing of that name or description in or for the University.
- 10.4. The section includes examples of the operation of these provisions and provides that it is not necessary for a reference to include words or other material referring to the University even if the material is part of the name of the relevant entity, position or other thing.
- 10.5. The section also includes a provision (subsection (3)) dealing with name changes. Under the provision a reference to anything by its previous name is taken, after the change, to be a reference to the thing by its new name. The provision corrects a minor typographical error.

11. Section 11 – Examples in University legislation

- 11.1. This section deals with the legal effect of examples in University legislation.
- 11.2. Under the section, an example in University legislation:
 - is not exhaustive; and

- may extend, but does not limit, the meaning of the University legislation, or the particular provision to which it relates; and
 - is part of the University legislation.
- 11.3. The section provides examples of the forms that an example may take.

12. Section 12 – Notes in or to University legislation

- 12.1. This section deals with the legal effect of notes in or to University legislation.
- 12.2. From a legal point of view, a note in or to University legislation does not form part of the legislation. Notes are not used in or to University legislation to create rights, to impose liabilities or to otherwise change the law. Notes are instead used for informational purposes to assist the reader: for example, to draw the reader’s attention to other relevant provisions of the University legislation, or other relevant legislation, that the reader should be aware of. This treatment of the legal effect of notes is different to the position applying under other Commonwealth laws (see *Acts Interpretation Act 1901*, section 13(1) (Material that is part of an Act)).
- 12.3. Notes in University legislation are usually included in square brackets to remind the reader of their legal status. However, the section applies to notes in or to University legislation whether or not the notes are in square brackets.

Part 3 – Referring to University legislation

This Part contains provisions about referring to University legislation. This instrument does not make substantive changes to the provisions of this Part.

13. Section 13 – Reference to University legislation includes the legislation containing reference

- 13.1. This section provides that, in University legislation, a reference in general terms to University legislation of the same kind includes reference to the legislation itself. For example, a reference in a University statute to ‘any provision of a statute’ includes a reference to a provision of the statute containing the reference.

14. Section 14 – Reference to University legislation includes provision of the legislation

- 14.1. This section provides that a reference (either generally or specifically) to University legislation includes a reference to a provision of the legislation. The purpose of the section is to simplify University legislation and other documents of the University by avoiding the need to refer to provisions of University legislation as well as the legislation itself (for example, ‘the statute or a provision of the statute’).
- 14.2. The section has been amended to clarify that the section applies to references in University legislation and references in other documents of the University.

15. Section 15 – Reference to *the statute or the rule* etc.

- 15.1. This section provides that, in relevant University legislation, a reference to ***the statute*** or ***the rule*** is a reference to the statute or rule for or under which the instrument is made. ***For*** and ***under*** are defined in the dictionary in Schedule 1.
- 15.2. Subsection (2) has been revised slightly to bring the word order into line with subsection (1).

16. Section 16 – Referring to particular University legislation

- 16.1. This section deals with how particular University legislation may be referred to in other University legislation and other documents of the University.
- 16.2. As a starting point, the section provides that University legislation may be referred to by the name that it gives itself. However, the section allows the reference to be simplified by the omission of certain material forming part of that name: for example, the year of its making.
- 16.3. The section makes it clear that University legislation can also be referred to in the same way other Commonwealth legislation (see subsection(3)).

17. Section 17 – Reference to University legislation includes the legislation as in force from time to time

- 17.1. This section provides that, in University legislation or another document of the University, a reference to University legislation includes a reference to the legislation (or to the relevant provision of the legislation) at any stage of its legislative ‘life cycle’, including (in broad terms) the following:
- the legislation as originally made;
 - the original legislation as amended from time to time;
 - if the legislation has been repealed and remade—the remade legislation, and the remade legislation as subsequently amended from time to time;
 - if a relevant provision of the legislation has been omitted and remade in other University legislation—the other legislation as in force when the provision was remade, and the other legislation as subsequently amended from time to time.

The section applies to University legislation that has been remade more than once. In such a case, a reference to the legislation includes a reference to the legislation as last remade, and as amended from time to time since then.

- 17.2. The section makes equivalent provision for references to provisions of University legislation.
- 17.3. The section also includes a provision (see subsection (3)) to deal with cases where the name of University legislation is amended, or where University legislation is repealed and remade with a changed name. In such a case, a reference to the University legislation using its previous name includes a reference to the legislation using its amended or changed name.

18. Section 18 – Reference to University legislation includes instruments under the legislation

- 18.1. This section provides that, in University legislation, a reference (either generally or specifically) to University legislation includes a reference to the instruments (if any) made under the legislation. For example, under the section a reference in University legislation to a specified statute includes a reference to any rules or orders made under the statute. The definitions of *made* and *under* in the dictionary in Schedule 1 apply to the section.
- 18.2. It is not uncommon for different parts of a particular University legislative scheme to be found in a statute and a rule or order (or both a rule and an order) made under it, or in a rule and an order made under it. The section facilitates treating different parts of a legislative scheme as a whole and simplifies references to provisions applying to the scheme.
- 18.3. The section treats provisions or other matter applied, adopted or incorporated under University legislation in the same way as instruments made under University legislation.

Part 4 – Facilitative provisions

This Part includes provisions to facilitate the operation of University legislation. This instrument does not make substantive changes to the provisions of this Part.

19. Section 19 – Power to make instruments

- 19.1. This section provides that, if University legislation gives a power that can be exercised by making an instrument, the legislation gives power to make the instrument. *Instrument* is defined in the dictionary in Schedule 1.
- 19.2. Some powers under University legislation can only be exercised in relation to matters done by instrument. For example, the power under section 20 to amend or repeal something only applies if the thing has been done by instrument (and not e.g. orally). The section removes the need to state in provisions of University legislation that can be exercised by making an instrument that the power must (or may) be exercised by instrument.

20. Section 20 – Power to make instrument includes power to amend or repeal

- 20.1. This section provides that power given under University legislation to make an instrument includes power to amend or repeal the instrument. **Instrument**, **amend** and **repeal** are defined in the dictionary in Schedule 1.
- 20.2. The section specifies that the power to amend or repeal an instrument is exercisable in the same way, and subject to the same conditions, as the power to make the instrument.
- 20.3. The section clarifies the effect of ongoing conditions that cease to be satisfied and provides an example of the operation of the section in relation to such conditions.
- 20.4. The section removes the need for individual items of University legislation to deal with the amendment or repeal of instruments made under them.
- 20.5. The section is additional to, and does not limit, the *Acts Interpretation Act 1901*, section 33(3) and (3AA). This means that instruments made under University legislation can be amended or repealed under the power provided by the Acts Interpretation Act or this section (or both).

21. Section 21 – Functions of University bodies

- 21.1. This section provides that, if a University body (as defined in the section) does something in the exercise of a function given to the body, the effect of the thing done by the body does not end only because the membership of the body changes. The membership of a University body would change, for example, if new members were appointed to the body or existing members ceased to be members (e.g. because their terms expired). **Exercise** and **function** are defined in the dictionary in Schedule 1.
- 21.2. The section provides examples of things done by a University body to which the section could apply.
- 21.3. The section expressly provides that the section does not prevent something done by a University body being ended or changed by the body as subsequently constituted for the time being.

22. Section 22 – Power to extend time

- 22.1. This section applies to a time limit under University legislation that can be extended. The section provides that the time limit can be extended even if the time limit has passed.

23. Section 23 – Approved forms

- 23.1. This section allows the Vice-Chancellor to approve forms for University legislation and specifies that an approved form must be used for the purpose for which it was approved.
- 23.2. The section also specifies compliance requirements for the proper completion of approved forms and the consequences for not complying with those requirements.
- 23.3. The section requires the Vice-Chancellor to ensure the availability of approved forms.

24. Section 24 – Service of notices etc.

- 24.1. This section makes provision for the service of notices and other documents on individuals under University legislation. **Under** is defined in the dictionary in Schedule 1.
- 24.2. Under the section a notice or other document may be served on an individual by:
 - giving it to the individual; or
 - sending it by post to the individual; or
 - sending it to an email address provided by, or known to, the University.
- 24.3. The section sets out rules for the time of service by post or to an email address.
- 24.4. The section expressly provides that it does not affect the operation of any other University legislation, or any other law, that authorises or requires service of a document otherwise than as provided under the section. The section includes a note drawing the reader's attention to the *Acts Interpretation Act 1901*, section 28A. Section 28A also permits the service of documents for the purposes of Commonwealth laws, including University legislation.

25. Section 25 – Exercise of Associate Dean’s functions by College Dean

- 25.1. This section allows the College Dean of an ANU College to exercise certain functions given to an Associate Dean of the ANU College under University legislation or a decision of the University’s Council or the Vice-Chancellor.
- 25.2. Anything done by or in relation to the College Dean under the section in the exercise of a function of the Associate Dean is taken to have been done by or in relation to the Associate Dean.
- 25.3. The section removes the need for individual items of University legislation to deal with the exercise of the functions of Associate Deans by College Deans.

Part 5 – Repeal of University legislation

26. Section 26 – Effect of repeal of University legislation

- 26.1. This section sets out comprehensive transitional arrangements that may apply on the repeal of University legislation. The section applies in relation to the repeal of University legislation if the repealing University legislation or other University legislation declares that this section applies to the repeal.
- 26.2. Under the section the repeal of University legislation to which the section applies operates an amendment rather than a repeal. This has the effect, in broad terms, of preserving, to the greatest extent possible, things done under the repealed University legislation and carrying them over to the University legislation that replaces the repealed University legislation (if carrying them over to the replacement legislation would be consistent with the repealing and replacement legislation). The section provides comprehensive examples of the matters that may be carried over from the repealed University legislation to the replacement University legislation. These include the following: appointments, decisions, instruments, delegations, approvals or other things, whether done under the replacement legislation by the same or a different entity.
- 26.3. The section also expressly preserves the effect of transitional provisions contained in University legislation that is repealed. **Transitional provision** is defined in the section.
- 26.4. The section is additional to, and does not limit, the *Acts Interpretation Act 1901*, section 7, as applied by the *Legislation Act 2003*.

Part 6 – Repeal, transitional provisions and expiry

This Part includes details that are specific to this instrument e.g. the repeal provided by section 27.

Division 6.1 – Repeal of existing instrument

27. Section 27 – Repeal of Legislation Statute 2020

- 27.1. This section repeals the *Australian National University (Legislation) Statute 2020*.

Division 6.2 – Transitional provisions

28. Section 28 – Transitional rules

- 28.1. This section allows for transitional measures to be prescribed by rules made under the Governance Statute, section 68. Under the Governance Statute rules may be made by the Vice-Chancellor as well as the University’s Council.
- 28.2. 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 Governance Statute, section 70 (Tabling of rules, orders etc.)).

29. Section 29 – Application of section 26

- 29.1. This section has been included to apply section 26 of this instrument to the repeal of the existing statute.

30. Section 30 – Transitional provisions additional

30.1. This section makes it clear that the transitional provisions of Division 6.2 are additional to other legislation applying to transitional matters.

Division 6.3 – Expiry

31. Section 31 – Expiry of instrument

31.1. 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.

Schedule 1 – Dictionary

The dictionary in Schedule 1 specifies definitions that apply generally to University legislation (see section 8). The definitions are mainly of a clarifying, technical nature. Relevant important definitions are drawn the reader's attention by notes included throughout University legislation.

The only substantive changes to the dictionary made by this instrument relate the representative functions of student associations. Thus:

- a definition of the following term has been added:
ANUSA
- definitions of the following terms have been omitted:
postgraduate student association
undergraduate student association
- the existing definition of the following term has been revised:
student association.

The changes reflect the fact that ANUSA is now the sole student representative association for the University's postgraduate and undergraduate students.

Statement of Compatibility with Human Rights

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

AUSTRALIAN NATIONAL UNIVERSITY (LEGISLATION) 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 main object of this instrument is to make University legislation as simple, succinct and accessible as possible.

Human rights implications

The instrument promotes human rights by facilitating clearer, simpler, and more accessible and consistent, University legislation, including University legislation that affects the University's staff and students and the public.

Conclusion

This instrument is compatible with human rights because it promotes the protection of human rights by promoting clearer, simpler, and more accessible and consistent, University legislation.