**EXPLANATORY STATEMENT**

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

## 3. Commencement

3.1 This instrument 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 a legislative instrument for the purposes of the *Legislation Act 2003.*

5.3 The Board of the ANU Foundation includes a student member. The main purpose of this instrument is to make changes in relation to the appointment of the student member.

5.4 The ANU Postgraduate and Research Students' Association ceased operation in June 2023 and the ANU Students' Association Incorporated (***ANUSA***) is now the sole student representative association for the University's postgraduate and undergraduate students. The changes made by this instrument reflect ANUSA's enhanced role.

5.5 Under the statute repealed by this instrument, the student member could be any undergraduate or postgraduate student of the University appointed by the Vice-Chancellor, after consulting with the President of the relevant student association. Under this instrument, the student member is required to be one of the student members of the University's Council appointed by the Vice-Chancellor, after consulting with both student members of Council. This change formalises a longstanding practice in relation to the ANU Foundation and its predecessor (the ANU Endowment for Excellence).



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5.6 There are no documents incorporated by reference.

## 6. Consultation

6.1 The changes made in this statute are of a minor or technical nature and relate only to the University's governance framework for gifts made to the University. The changes formalise the longstanding practice of a student member of Council being appointed to the ANU Foundation and its predecessor (the ANU Endowment for Excellence).

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. The ANU Students' Association Incorporated, the student members of Council and the ANU Foundation Board were also consulted and provided support for the proposed amendments.

6.3 The University's Council is the rule-maker. 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.

## 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)).



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## 8. Exemption from sunsetting

8.1 This instrument is exempt from sunsetting 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 sunsetting 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

6 October 2023



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**Attachment A**

**PROVISION-BY-PROVISION EXPLANATION**

***AUSTRALIAN NATIONAL UNIVERSITY (ANU FOUNDATION) 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 (ANU Foundation) 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 – Definitions**
   4.1. The purpose of this section is to provide definitions for the instrument, including definitions for the following terms: ***appointed member***, ***assets***, ***Board, Council-appointed member*** (see also section 12(2)), ***gift made to the University*** (see section 5), ***Indigenous member***, ***proper*** and ***student member***.

   4.2. Definitions that are no longer needed have been omitted. Substantive changes have not been made to the remaining definitions.

   4.3. The section includes a standard note drawing the reader's attention to definitions in the Legislation Statute that are relevant to this instrument and University legislation generally, including definitions of the following terms: ***ANU Act***, ***entity***, ***function***, ***position***, ***statute*** and ***University legislation***.

5. **Section 5 – Gifts made to the University**

   5.1. This section defines the term ***gift made to the University***. The term is broadly defined for the instrument. Under the definition, a reference to a ***gift made to the University*** includes a reference to a gift made for the purposes of the University or to or for the purposes of a University entity or position. The term 'University entity or position' is defined in section 5(2) and the terms 'entity' and 'position' are defined in the Legislation Statute.

## Part 2 – The ANU Foundation

This Part includes provisions about the ANU Foundation, including its continuation in existence and purpose.

The Part includes minor consequential changes in section 7 (Gifts to be accounted for through the ANU Foundation). There are no substantive changes to the Part.

6. **Section 6 - Establishment and purpose of ANU Foundation**
   6.1. This section continues the ANU Foundation in existence (see Legislation Statute, dictionary, definition of ***establish***) and provides that the Foundation is established within the University to provide a governance framework for gifts made to the University to ensure that the University maintains the highest standards in relation to its fundraising activities and that gifts made to the University are properly used and appropriately accounted for.



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**7. Section 7 - Gifts to be accounted for through ANU Foundation**

7.1. This section provides that all gifts made to the University on or after 1 January 2019 must be accounted for through the ANU Foundation. This date is the application date for the equivalent provision of the statute repealed by this instrument and the express statement of the date in this section does not change the meaning or effect of this instrument.

7.2. The section also provides that all gifts made to the University before 1 January 2019, or the proceeds of such a gift remaining immediately before 1 January 2019, must be accounted for through the ANU Foundation.

**8. Section 8 - Gift determinations**

8.1. This section authorises the Vice-Chancellor to make determinations (***gift determinations***) for the purposes of the section.

8.2. This section specifies the conditions a gift determination must meet. These conditions include establishing a fund (***gift fund***) within the ANU Foundation, allowing or requiring specified gifts made to the University (or the proceeds or remaining proceeds of specified gifts) to be attributed to the gift fund, specifying the entity or position responsible for the gift fund, and setting purposes and procedures for the debiting or use of assets in the gift fund.

8.3. This section allows a gift determination to prescribe other matters in relation to the gift fund for the purpose of carrying out or giving effect to this instrument.

8.4. This section authorises the Vice-Chancellor to repeal and amend gift determinations and to establish bodies within the University for the purposes of the ANU Foundation.

## Part 3 – ANU Foundation Board

### Division 3.1 – ANU Foundation Board and its functions and powers

This Division continues the ANU Foundation Board in existence (see Legislation Statute, dictionary, definition of ***establish***) and specifies its functions and powers.

There are no substantive changes to this Division.

**9. Section 9 – Establishment of ANU Foundation Board**

9.1. This section continues the ANU Foundation Board in existence as an entity within the University.

**10. Section 10 – ANU Foundation Board functions and powers**

10.1. This section sets out the functions and powers of the ANU Foundation Board. The section gives the Board a broad range of functions in relation to the ANU Foundation, the gift funds established within the Foundation, accountability to gift donors, and fundraising generally by the University. The functions include maintaining an effective oversight of, and advising Council and the Vice-Chancellor on, fund governance and fundraising-related matters as defined in the section.

10.2. The section allows the Board to operate with the assistance of specialist or special-purpose committees and authorises the Board to consult widely within the University for the exercise of its functions.

10.3. The section requires the Chair of the Board to provide the reports about the Board's operations that Council or the Vice-Chancellor requires.



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**11. Section 11 – Committees and working groups**

11.1. This section authorises the ANU Foundation Board to establish committees and working groups to assist it to exercise its functions.

## Division 3.2 – Board composition

This Division deals with the composition of the ANU Foundation Board.

The only changes made in this Division are in relation to the student member of the Board. The changes are explained in relation to the sections that are changed.

**12. Section 12 – Board membership**

12.1. This section specifies the membership of the ANU Foundation Board. The Board consists of at least 5 members appointed by the Council (the ***Council-appointed members***), 4 specified officers of the University, 2 executives of the University nominated by the Vice-Chancellor, and a student member. If there is no Indigenous person holding a position on the Board, the Vice-Chancellor may appoint a member of staff who is an Indigenous person as a member of the Board, after consulting with the Tjabal Indigenous Higher Education Centre.

12.2. Under the statute repealed by this instrument, the student member could be any undergraduate or postgraduate student of the University appointed by the Vice-Chancellor, after consulting with the President of the relevant student association.

12.3. Under this instrument, the student member is the postgraduate or undergraduate student member of Council appointed by the Vice-Chancellor, after consulting with both student members of Council.

**13. Section 13 - Chair and Deputy Chair**

13.1. This section provides that the ANU Foundation Board is to have a Chair and a Deputy Chair.

13.2. The section specifies that the Chair and Deputy Chair must be Council-appointed members of the Board and must be appointed as Chair or Deputy Chair by Council.

13.3. The section provides that the Chair and Deputy Chair automatically cease to hold their positions if they cease to be Council-appointed members of the Board.

13.4. The section authorises the Chair to take executive action on behalf of the Board where necessary and requires the Chair to report to the Board on any action taken as soon as practicable.

## Division 3.3 – Board members

This Division contains provisions about members of the ANU Foundation Board.

There are no substantive changes to this Division, apart from a consequential change to section 18(e). This change is explained in relation to section 18.

**14. Section 14 – Eligibility for appointment as Council-appointed members**

14.1. This section provides that a person must not be appointed as a Council-appointed member if the person is disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6 or is a member of staff, or a student, of the University.

**15. Section 15 – Terms of appointment of appointed members**

15.1. This section specifies the terms of appointment of the appointed members of the ANU Foundation Board. (An ***appointed member*** is a Council-appointed member, the student member, and any Indigenous member (see section 4).)

15.2. The section provides that a Council-appointed member is appointed for a period (no longer than 4 years) decided by Council.



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15.3. The section permits a Council-appointed member to be reappointed. However, a person may not be appointed as a Council-appointed member for consecutive periods of longer than 8 years, unless the Council considers it appropriate for the person to hold office as a Council-appointed member for longer than that period.

15.4. The section provides that the Chair and Deputy Chair are appointed for the period (no longer than 4 years) decided by Council, but may be reappointed.

15.5. The section provides that the student member is appointed for the period (no longer than 1 year) decided by the Vice-Chancellor, but may be reappointed.

15.6. The section provides that any Indigenous member is appointed for the period (no longer than 4 years) decided by the Vice-Chancellor, but may be reappointed.

**16. Section 16 – Remuneration and allowances of members**

16.1. This section provides that a member of the ANU Foundation Board is not entitled to be paid remuneration or allowances as a 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.

16.3. This section does not apply to the Chancellor, Pro-Chancellor or Vice-Chancellor. Alternative remuneration arrangements apply to these officers of the University.

**17. Section 17 – Application of PGPA Act and Rule**

17.1. This section provides for the application to ANU Foundation Board members of specified provisions of the *Public Governance, Performance and Accountability Act 2013* (the ***PGPA Act***) and the *Public Governance, Performance and Accountability Rule 2014* (the ***PGPA Rule***). The applied provisions are about the general duties of officials of Commonwealth entities, including duties in relation to conflicts of interest. The provisions apply with the modifications specified in the section.

17.2. However, the section only applies the provisions to a member if the provisions do not already apply, by force of the PGPA Act or PGPA Rule, to the member as an official of a Commonwealth entity.

**18. Section 18 – Termination of appointment of appointed members of Council**

18.1. This section sets out the circumstances in which the Council must terminate the appointment of an appointed member of the ANU Foundation Board.

18.2. Under the statute repealed by this instrument, Council was required to terminate the appointment of the student member if, among other circumstances specified in this section, the member ceased to be a student of the University. Under this instrument (see section 18(e)), Council is required to terminate the appointment of the student member if, among other circumstances, the student member ceases to be a student member of Council. This change is consequential on the changed eligibility to be appointed as the student member (see section12(1)(g)).

**19. Section 19 – Resignation of appointed members**

19.1. This section provides for the resignation of appointed members of the ANU Foundation Board.

## Division 3.4 – Board procedures

This Division contains provisions about the procedures (including meetings) of the ANU Foundation Board.

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



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**20. Section 20 – Holding Board meetings**

20.1. This section makes provision for the holding of ANU Foundation Board meetings, including the calling and giving notice of meetings.

**21. Section 21 – Presiding at Board meetings**

21.1. This section relates to presiding at ANU Foundation Board meetings.

**22. Section 22 – Quorum at Board meetings**

22.1. This section specifies the quorum that applies at meetings of the ANU Foundation Board.

22.2. The section includes a note drawing attention to the provision of the *Acts Interpretation Act 1901* under which the Board may permit members to participate in meetings by telephone, closed-circuit television, or any other means of communication.

**23. Section 23 – Voting at Board meetings**

23.1. This section provides for voting at meetings of the ANU Foundation Board.

**24. Section 24 – Board decisions without meetings**

24.1. This section specifies the conditions under which the ANU Foundation Board may make decisions otherwise than at meetings of the Board.

24.2. The section expressly provides that a member must not indicate the member's agreement with a proposed decision otherwise than at a Board meeting if the member would be required not to be present or vote on the question if the question were to be considered at a Board meeting. The section includes a note drawing attention to the obligation of a member under the PGPA Rule not to be present or vote at a Board meeting if the member has a material personal interest in matter being considered at the meeting.

**25. Section 25 – Board proceedings generally**

25.1. This section provides that, subject to this instrument, the ANU Foundation Board may conduct its proceedings (including its meetings) as it considers appropriate.

25.2. The section includes a note drawing attention to the obligations of Board members under the PGPA Act and PGPA Rule in relation to material personal interests.

## Part 4 – Repeal, transitional provisions and expiry

This Part includes details that are specific to this instrument e.g. the repeal provided by section 26.

This instrument omits provisions, included in the statute repealed by this instrument, giving power to make rules and orders, and also omits transitional provisions included in the repealed statute that are no longer needed. The power to make rules and orders for this instrument is now included in the Governance Statute, Part 8 (Rules, orders and other legislative instruments). Any ongoing operation of the transitional provisions is saved by the Legislation Statute, section 26 (Effect of repeal of University legislation).

### Division 4.1 – Repeal

**26. Section 26 – Repeal of instrument**

26.1. This section repeals the *Australian National University (ANU Foundation) Statute 2018*.

### Division 4.2 – Transitional provisions

**27. Section 27 – Transitional: existing student member**

27.1. This section provides transitional arrangements that apply, to remove any doubt, to the person who held office as the student member of the ANU Foundation Board immediately before the commencement of the section.



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27.2. Under the section the person continues to hold office as the student member for the balance of the person's term of office that remained immediately the commencement of the section.

27.3. The section expressly provides that it is subject to section 18 (Termination of appointment of appointed members by Council) and section 19 (Resignation of appointed members).

**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(1) (General power to make rules and orders). Under section 68(1) 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 Legislation Statute, section 26**

29.1. 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 applies.

29.2. 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.

**30. Section 30 – Transitional provisions additional**

30.1. This section makes it clear that the transitional provisions of Division 4.2 are additional to other legislation applying to transitional matters.

## Division 4.3 – Expiry

**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 sunsetting.



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**Attachment B**

## Statement of Compatibility with Human Rights

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

### *AUSTRALIAN NATIONAL UNIVERSITY (ANU FOUNDATION) 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**
This instrument continues the ANU Foundation in existence within the Australian National University. The purpose of the Foundation is to provide a governance framework for gifts made to the University to ensure that the University maintains the highest standards in relation to its fundraising activities and that gifts made to the University are effectively used and appropriately accounted for.

**Human rights implications**
The instrument promotes human rights by ensuring that the Australian National University maintains an appropriate, accountable, transparent and consistent governance framework for gifts made to the University.

**Conclusion**
This instrument is compatible with human rights because it promotes the protection of human rights by ensuring an appropriate, accountable, transparent and consistent governance framework for gifts made to the University by past and present staff members, alumni and members of the public.



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