

THE AUSTRALIAN NATIONAL UNIVERSITY

Australian National University (ANU Foundation) Statute 2023

The Council of the University makes the following statute.

Dated 6 OCTOBER 2023

The Hon Julie Bishop
Chancellor

Contents

Part 1— Preliminary	1
1 Name	1
2 Commencement	1
3 Authority	1
4 Definitions.....	1
5 Gifts made to the University	2
Part 2— The ANU Foundation	3
6 Establishment and purpose of ANU Foundation	3
7 Gifts to be accounted for through ANU Foundation.....	3
8 Gift determinations	3
Part 3— ANU Foundation Board	4
Division 3.1— ANU Foundation Board and its functions and powers	4
9 Establishment of ANU Foundation Board	4
10 ANU Foundation Board functions and powers.....	4
11 Committees and working groups	5
Division 3.2— Board composition	5
12 Board membership	5
13 Chair and Deputy Chair	5
Division 3.3— Board members	5
14 Eligibility for appointment as Council-appointed member.....	5
15 Terms of appointment of appointed members	6
16 Remuneration and allowances of members	6
17 Application of PGPA Act and Rule	6
18 Termination of appointment of appointed members by Council	7
19 Resignation of appointed members.....	7
Division 3.4— Board procedures	8
20 Holding Board meetings	8
21 Presiding at Board meetings	8
22 Quorum at Board meetings	8
23 Voting at Board meetings	8
24 Board decisions without meetings	8
25 Board proceedings generally.....	9
Part 4— Repeal, transitional provisions and expiry	10
Division 4.1— Repeal	10
26 Repeal of instrument	10
Division 4.2— Transitional provisions	10
27 Transitional: existing student member.....	10
28 Transitional rules.....	10
29 Application of Legislation Statute, section 26.....	10
30 Transitional provisions additional.....	10
Division 4.3— Expiry	11
31 Expiry of instrument	11

Part 1—Preliminary

1 Name

This is the *Australian National University (ANU Foundation) Statute 2023*.

2 Commencement

This instrument commences on the day after it is registered.

3 Authority

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

4 Definitions

In this instrument:

appointed member means a Council-appointed member, the student member, or any Indigenous member.

assets include money and any other kind of property.

Board means the ANU Foundation Board.

Chair means the Chair of the ANU Foundation Board.

Council-appointed member: see section 12(2) (Board membership) and, to remove any doubt, includes the Chair and Deputy Chair.

Deputy Chair means the Deputy Chair of the ANU Foundation Board.

Foundation means the ANU Foundation.

gift made to the University: see section 5.

Indigenous member: see section 12(6) (Board membership).

member means a member of the ANU Foundation Board and, to remove any doubt, includes the Chair, the Deputy Chair, and any other appointed member.

proper use means use that is efficient, effective, economical and ethical.

student member: see section 12(4) (Board membership).

[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:

- ANU Act
- entity
- function
- position
- statute
- University legislation (also see section 6).]

5 Gifts made to the University

- (1) For this instrument, 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.
- (2) In this section:

University entity or position means an entity or position in or for the University, and includes, for example, an entity or position established within the University:

- (a) under the ANU Act or University legislation; or
- (b) by the Council or Vice-Chancellor.

Part 2—The ANU Foundation

6 Establishment and purpose of ANU Foundation

The ANU Foundation is established within the University to provide a governance framework for gifts made to the University to ensure that:

- (a) the University maintains the highest standards in relation to its fundraising activities; and
- (b) gifts made to the University are properly used and appropriately accounted for.

[Note: See the definition of *proper* use in section 4.]

7 Gifts to be accounted for through ANU Foundation

- (1) All gifts made to the University on or after 1 January 2019 must be accounted for through the ANU Foundation.
- (2) 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 Gift determinations

- (1) The Vice-Chancellor may make a determination (a *gift determination*) for the purposes of this section.
- (2) A gift determination must do all the following:
 - (a) establish a fund (the *gift fund*) within the ANU Foundation;
 - (b) allow or require specified gifts made to the University, or the proceeds or remaining proceeds of specified gifts made to the University, to be attributed (in whole or part) to the gift fund;
 - (c) provide for the crediting to the gift fund of assets (or specified assets) relating to those gifts;
 - (d) specify the purposes for which assets credited to the gift fund are allowed or required to be debited or otherwise used;
 - (e) specify the entity, or the occupant of the position, in or of the University responsible for the gift fund (the *responsible authority*);
 - (f) specify the procedures required to be followed, by the responsible authority and others, in relation to the debiting or other use of assets credited to the gift fund.
- (3) The gift determination may also prescribe other matters necessary or convenient to be prescribed in relation to the gift fund for the purpose of carrying out or giving effect to this instrument.
- (4) The Vice-Chancellor may make a determination that repeals or amends a determination made under subsection (1).
- (5) The Vice-Chancellor may establish bodies within the University for the purposes of the ANU Foundation, including, for example, a body that is to be the responsible authority for a gift fund.
- (6) This section is additional to, and does not limit, any function that the Vice-Chancellor has apart from this section.

Part 3—ANU Foundation Board

Division 3.1—ANU Foundation Board and its functions and powers

9 Establishment of ANU Foundation Board

The ANU Foundation Board is established within the University.

10 ANU Foundation Board functions and powers

- (1) The ANU Foundation Board has the following functions:
 - (a) maintaining an effective oversight of, and advising the Council and the Vice-Chancellor on, the following matters (*fund governance and fundraising-related matters*):
 - (i) the ANU Foundation and the gift funds established within it, including the governance, management and performance of the ANU Foundation;
 - (ii) the assets of those funds, including their application, investment and proper use;
 - (iii) accounting for, and reporting on, the application, investment and proper use of the assets of those funds;
 - (iv) accountability to donors for gifts made to the University, including consultation with, and reporting to, donors about the application, investment and proper use of their gifts;
 - (v) the oversight and management of risks associated with the ANU Foundation and the University's fundraising activities;
 - (vi) the strategic direction, coordination, management and performance of the University's fundraising activities;
 - (b) keeping the University's policies and procedures relating to fund governance and fundraising-related matters under review, and advising the Council and the Vice-Chancellor on any changes that should be made to them from time to time;
 - (c) assisting the Council and the Vice-Chancellor to ensure that the University maintains the highest standards in relation to fund governance and fundraising-related matters;
 - (d) participating in the University's fundraising activities in accordance with the University's policies relating to fund governance and fundraising-related matters;
 - (e) reporting to the Council and the Vice-Chancellor on the exercise of its functions, including at the times, and in the way, required by the Council or Vice-Chancellor;
 - (f) undertaking any other functions given to it by this instrument or that the Council or the Vice-Chancellor from time to time directs.
- (2) In exercising its functions, the Board may operate with the assistance of specialist or special-purpose committees.
- (3) For the exercise of its functions, the Board may consult with committees and members of the Council, committees and working groups of the Board, other University committees, officers or staff of the University, or other University entities or their members.
- (4) The Chair of the Board must provide the Council or Vice-Chancellor with the reports relating to the operations of the Board that the Council or Vice-Chancellor requires.

11 Committees and working groups

The ANU Foundation Board may establish committees and working groups to assist it to exercise its functions.

Division 3.2—Board composition

12 Board membership

- (1) The ANU Foundation Board consists of the following members:
 - (a) at least 5 members appointed by the Council;
 - (b) the Chancellor;
 - (c) the Pro-Chancellor;
 - (d) the Vice-Chancellor;
 - (e) the Provost;
 - (f) 2 other persons occupying executive positions in the University nominated under subsection (3);
 - (g) the postgraduate student member of Council, or the undergraduate student member of Council, appointed, in writing, by the Vice-Chancellor, after consulting with both student members of Council;
 - (h) any member appointed under subsection (5).
- (2) Each of the members mentioned in subsection (1)(a) is a ***Council-appointed member***.
- (3) For subsection (1)(f), the Vice-Chancellor must, in writing, nominate 2 executive positions in the University.
- (4) The member appointed under subsection (1)(g) is the ***student member***.
- (5) If there is no Indigenous person holding a position on the Board, the Vice Chancellor may, in writing, 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.
- (6) If a member is appointed under subsection (5), the member is the ***Indigenous member***.

13 Chair and Deputy Chair

- (1) The ANU Foundation Board is to have a Chair and a Deputy Chair.
- (2) The Council must appoint a Council-appointed member as the Chair and another Council-appointed member as the Deputy Chair.
- (3) The Chair or Deputy Chair automatically ceases to be Chair or Deputy Chair if the Chair or Deputy Chair ceases to be a Council-appointed member.
- (4) The Chair may, where necessary, take executive action on behalf of the Board between meetings and must report to the Board as soon as practicable on any executive action taken.

Division 3.3—Board members

14 Eligibility for appointment as Council-appointed member

A person must not be appointed as a Council-appointed member if the person:

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- (a) is disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6; or
 - (b) is a member of staff, or a student, of the University.

15 Terms of appointment of appointed members

- (1) A Council-appointed member is appointed as a Council-appointed member for the period (no longer than 4 years) decided by the Council.
- (2) A Council-appointed member may be reappointed as a Council-appointed member for a period. However, a person must not hold office as a Council-appointed member (in any position or combination of positions) for longer than 8 consecutive years, unless the Council considers it appropriate for the person to hold office as a Council-appointed member for longer than that period.
- (3) The Chair is appointed as the Chair, and the Deputy Chair is appointed as the Deputy Chair, for the period (no longer than 4 years) decided by the Council, but may be reappointed.
- (4) The student member is appointed for the period (no longer than 1 year) decided by the Vice-Chancellor, but may be reappointed.
- (5) Any Indigenous member is appointed for the period (no longer than 4 years) decided by the Vice-Chancellor, but may be reappointed.

16 Remuneration and allowances of members

- (1) A member of the ANU Foundation Board is not entitled to be paid remuneration or allowances as a member.
- (2) To remove any doubt, this section does not prevent the reimbursement of a member for expenses reasonably incurred by the member in performing the duties of a member.
- (3) This section does not apply to:
 - (a) allowances decided by the Council to reimburse a member on account of expenses incurred (or that the Council considers may reasonably be expected to be incurred) by a member in performing the duties of a member; or
 - (b) the payment of amounts, or reimbursement of amounts paid, for directors and officers liability insurance; or
 - (c) the payment of amounts under any deed of indemnity provided by the University to a member; or
 - (d) the Chancellor, Pro-Chancellor or Vice-Chancellor.

Examples for subsection (3)(a)

- 1 travelling allowances
- 2 training and development allowances

17 Application of PGPA Act and Rule

- (1) In this section:

PGPA Act means the *Public Governance, Performance and Accountability Act 2013*.

PGPA Rule means the *Public Governance, Performance and Accountability Rule 2014*.

relevant provisions mean the following provisions:

- (a) for the PGPA Act—Part 2-2, Division 3, Subdivision A (General duties of members);
 - (b) for the PGPA Rule—Part 2-2, Division 2, Subdivision D (Other requirements to disclose material personal interests).
- (2) This section applies to a member of the ANU Foundation Board if, but only if, the relevant provisions do not apply, by force of the PGPA Act and PGPA Rule, to the member as an official of a Commonwealth entity.
- (3) The relevant provisions of the PGPA Act and the PGPA Rule apply, by force of this subsection, to the member as if the member were an official of a Commonwealth entity.
- (4) Without limiting subsection (3), the provisions apply to the member as if:
- (a) the University were the Commonwealth entity; and
 - (b) the affairs of the ANU Foundation and ANU Foundation Board were part of the affairs of the University; and
 - (c) all members of the Board were officials of the University who were appointed under this instrument as members of the Board; and
 - (d) each meeting of the Board were a meeting of the appointed members of the Board.

18 Termination of appointment of appointed members by Council

The Council must terminate the appointment of an appointed member of the ANU Foundation Board if:

- (a) the member is absent, except on leave of absence given by the Board, from 3 consecutive meetings of the Board; or
- (b) the member is disqualified from managing corporations under the *Corporations Act 2001*, Part 2D.6; or
- (c) the member, in the Council's opinion formed by resolution passed at a meeting of the Council:
 - (i) has breached the member's duties under the *Public Governance, Performance and Accountability Act 2013*, Part 2-2, Division 3, Subdivision A as a member (including those provisions as applied by this instrument); or
 - (ii) is incapable (otherwise than on a temporary basis) of performing the duties of a member; or
- (d) if the member is a Council-appointed member—the member becomes a member of staff, or a student, of the University; or
- (e) if the member is the student member—the member ceases to be a student member of Council; or
- (f) if the member is the Indigenous member—the member ceases to be a member of staff of the University.

19 Resignation of appointed members

- (1) The Chair or Deputy Chair may resign as Chair or Deputy Chair by written notice to the Council given to the Chancellor.
- (2) A Council-appointed member may resign as Council-appointed member by written notice to the Council given to the Chancellor.

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- (3) To remove any doubt, the Chair or Deputy Chair may resign as Chair or Deputy Chair and remain a Council-appointed member or may resign both as Chair or Deputy Chair and as a Council-appointed member.
 - (4) The student member may resign by written notice given to the Vice-Chancellor.
 - (5) Any Indigenous member may resign by written notice given to the Vice-Chancellor.

Division 3.4—Board procedures

20 Holding Board meetings

- (1) The ANU Foundation Board is to meet at the times and places that it decides.
- (2) However, the Board must meet at least 3 times a year.
- (3) Also, the Chair may at any time call a Board meeting and must call a Board meeting if asked by at least a quarter of the persons for the time being holding office as members.
- (4) The Chair must, when calling a meeting, give the other members reasonable notice of the time and place of the meeting.

21 Presiding at Board meetings

- (1) The Chair presides at all ANU Foundation Board meetings at which the Chair is present.
- (2) If the Chair is absent, the Deputy Chair presides.
- (3) If the Chair and Deputy Chair are both absent, the member chosen by the members present presides.

22 Quorum at Board meetings

Business may be carried out at an ANU Foundation Board meeting only if a majority of the persons for the time being holding office as members are present.

[Note: The Board may permit members to participate in meetings by telephone, closed-circuit television, or any other means of communication. A member who participates in a meeting under a permission is taken to be present at the meeting (see Acts Interpretation Act, s 33B).]

23 Voting at Board meetings

- (1) A question arising at an ANU Foundation Board meeting is to be decided by a majority of the members present and voting.
- (2) The member presiding and the other members present each have a single vote on each question to be decided.

24 Board decisions without meetings

- (1) A decision of the ANU Foundation Board is a valid decision, even though it is not made at a Board meeting, if:
 - (a) the decision is of a kind that the Board has previously decided could be made without a meeting; and
 - (b) all members were given notice, or reasonable efforts were made to give all members notice, of the proposed decision; and

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- (c) the notice was given, or reasonable efforts were made to give the notice, in accordance with procedures previously decided by the Board; and
 - (d) a majority of the persons for the time being holding office as members indicated their agreement with the proposed decision; and
 - (e) the agreement was indicated in accordance with a method previously decided by the Board.
- (2) For subsection (1), a member must not indicate the member's agreement with a proposed decision 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.

[Note: Under the *Public Governance, Performance and Accountability Rule 2014* (see section 16B(2)), if a member has a material personal interest that relates to the affairs of the University (including the ANU Foundation or ANU Foundation Board), the member must not be present at a Board meeting if a matter in which member has the interest is being considered at the meeting and must not vote on the matter.]

25 Board proceedings generally

Subject to this instrument, the Board may conduct its proceedings (including its meetings) as it otherwise considers appropriate.

[Note: The *Public Governance, Performance and Accountability Act 2013* (see section 29) and the *Public Governance, Performance and Accountability Rule 2014* (see Part 2-2, Division 2) contain provisions requiring members to disclose details of material personal interests and dealing with the consequences of a disclosure, including not participating in Board meetings or voting on a matter in which the member has an interest.]

Part 4—Repeal, transitional provisions and expiry

Division 4.1—Repeal

26 Repeal of instrument

The *Australian National University (ANU Foundation) Statute 2018* is repealed.

Division 4.2—Transitional provisions

27 Transitional: existing student member

- (1) This section applies to the person who held office as the student member immediately before the commencement of this section.
- (2) To remove any doubt, the person continues to hold office as the student member for the balance of the person's term of office that remained immediately before the commencement of this section.
- (3) However and to remove any doubt, this section is subject to section 18 (Termination of appointment of appointed members by Council) and section 19 (Resignation of appointed members).

28 Transitional rules

- (1) Rules 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 *Australian National University (ANU Foundation) Statute 2018*;
or
 - (b) the making of this instrument.
- (2) This instrument (other than this section) does not limit the matters that may be prescribed by rules made for subsection (1).
- (3) Rules made for subsection (1) have effect despite anything in this instrument (other than this section).

29 Application of Legislation Statute, section 26

- (1) The Legislation Statute, section 26 (Repeal of University legislation) applies to the repeal of the *Australian National University (ANU Foundation) Statute 2018*.
- (2) For the Legislation Statute, section 26 the provisions of this Division are transitional provisions.

30 Transitional provisions additional

This Division is additional to, and does not limit:

- (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 4.3—Expiry

31 Expiry of instrument

This instrument expires 10 years after the day it commences.