
EXPLANATORY STATEMENT

GOVERNANCE ORDER 2024

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 Governance Statute of the University¹, section 68 (General power to make rules and orders).
- 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 implementation as the instrument relates to an election process that generally takes place once every two years.

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 Under the *Australian National University Act 1991* (the **ANU Act**), the University's Council includes 'one person who is either a dean or the head of a research school and is elected, in either case, by the deans and heads of the research schools voting together' (see section 10(1)(k)). This Council member is referred to in University legislation, including this instrument, as the deans and research school heads member.
- 5.4 This instrument specifies the bodies that are to be regarded as faculties or research schools of the University, and the persons holding positions who are to be regarded as their dean or head, for the election of the deans and research school heads member. The provision made by this instrument is in addition to the provision about these elections made by the ANU Act and the Governance Statute and Governance Rule.

¹ The *Australian National University (Governance) Statute 2024*.

- 5.5 The main purpose of making this instrument is to bring the list of relevant bodies and positions up to date with the University's current organisational structure.
- 5.6 There are no documents incorporated by reference.

6. Consultation

- 6.1 This instrument directly affects deans and research school heads of the University.
- 6.2 As a self-governing institution of higher learning, the University has well-developed internal consultation protocols that are followed in developing and making University legislation. The University Legal Office and the Corporate Governance and Risk Office, as key managers of the University's governance frameworks, were consulted and provided advice to the University's Council in its consideration of this instrument.
- 6.3 The Council of the University is established by the ANU Act and is the governing authority of the University. The Council includes members appointed by the Minister for Education as well as members from all the major stakeholder groups at the University, including academic and professional staff and the student body.

7. About The Australian National University

- 7.1 The Australian National University is continued in existence by the ANU Act (see section 4(1)).
- 7.2 Under the ANU Act, the University is, and has the functions of, an independent, self-governing institution of higher learning that conducts research and teaching at undergraduate and graduate levels (see especially section 5(1)).
- 7.3 The Act gives the University responsibilities as Australia's national university (see section 5(1)(b) and (2)).
- 7.4 The Council of the University is the governing authority of the University (see section 8) and functions independently of the Commonwealth executive.
- 7.5 Subject to the ANU Act and statutes made by the Council under the Act, the Council has the entire control and management of the University (see section 9(1)). Subject to the Act, the Council decides how the University is organised (see section 7).
- 7.6 The Act does not contemplate that the Commonwealth executive may direct the University, the Council or Council members in relation to the exercise of functions or powers under the Act but requires the Council to act in all matters concerning the University in the way it thinks will best promote the interests of the University (see section 9(2)).
- 7.7 The ANU Act gives the Council power to make statutes and, by statute, to authorise the making of rules or orders (see sections 50 and 51). The Council is only permitted to authorise the making of rules and orders by authorities and officers of the University (see section 50(3)).
- 7.8 University statutes, rules and orders are legislative instruments and must be tabled in both Houses of the Parliament.
- 7.9 University statutes, rules and orders do not have general application, but focus on matters of particular concern to the University. These include its management, organisation and good governance, its staff and students, its degrees and other awards, and most importantly its values (especially academic freedom and integrity).
- 7.10 Under the *Higher Education Support Act 2003*, the Parliament has recognised 'that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university's overall performance and its ongoing independence' (see section 2-1(b)).

8. Exemption from sunseting

- 8.1 This instrument is exempt from sunseting under the *Legislation (Exemptions and Other Matters) Regulation 2015*, section 12, table, item 9.
- 8.2 However, this instrument includes an expiry provision (see section 10) 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

PROVISION-BY PROVISION EXPLANATION

GOVERNANCE ORDER 2024

Part 1 – Preliminary

1. Section 1 – Name

1.1. This section provides that the name of the instrument is the *Governance Order 2024*.

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 Governance Statute, section 68 (General power to make rules and statutes).

4. Section 4 – Definitions

4.1 This section includes standard notes drawing the reader's attention to definitions in the Governance Statute and Legislation Statute that are relevant to this instrument or to University legislation generally, including the definition of ***deans and research school heads member***.

Part 2 – Elections for deans and research school heads member

5. Section 5 – Eligibility for election and voting

5.1. For the purposes of the ANU Act, the Governance Statute and the Governance Rule, this section specifies that the bodies mentioned in column 2 of Schedule 1 are the bodies that are to be regarded as faculties or research schools, and that the person holding the position mentioned in column 1 of an item in the table is to be regarded as the dean or head of the body mentioned in column 2 of the item.

Part 3 – Repeal, transitional provisions and expiry

Division 3.1 – Repeal

6. Section 6 – Repeal of instrument

6.1. This section repeals the *Governance Order 2020*.

Division 3.2 – Transitional provisions

7. Section 7 – Transitional orders

7.1. This section allows for transitional measures to be prescribed by orders made under the Governance Statute, section 68. Under the Governance Statute orders may be made by the Vice-Chancellor as well as the University's Council.

7.2. The section will, for example, enable the Vice-Chancellor to make urgent transitional orders to deal with any unforeseen transitional issues arising out of the transition from the repealed order to this instrument. Any orders made by the Vice-Chancellor must be tabled at a Council meeting (see Governance Statute, section 70 (Tabling of rules, orders etc.)).

8. Section 8 – Application of Legislation Statute, section 26

8.1. This section has been included to apply the Legislation Statute, section 26 to the repeal of the existing order. Section 26 has provisions saving the effect of action taken under repealed University legislation to which it applies.

8.2. The section also declares the provisions of the Division to be transitional provisions for that section. Section 26 preserves the continuing effect of transitional provisions on their repeal.

9. Section 9 – Transitional provisions additional

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

Division 3.3 – Expiry

10. Section 10 – Expiry of instrument

- 10.1. 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 – Deans and research school heads

This Schedule provides a table of deans and research school heads for elections for the dean or research school head member of the University's Council.

The Schedule has been revised to reflect the University's current organisational structure.

Statement of Compatibility with Human Rights

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

GOVERNANCE ORDER 2024

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 purpose of this instrument is to ensure that elections for the dean or research school head position on the University's Council are conducted fairly and in accordance with the *Australian National University Act 1991* and the Governance Statute and Governance Rule.

Human rights implications

The instrument promotes human rights by ensuring that elections for the dean or research school head member of the University's Council are conducted fairly, with clarity and in accordance with applicable law and the University's current organisational structure.

Conclusion

This instrument is compatible with human rights because it promotes fair and lawful elections for dean or research school head members of the University's Council.