

THE AUSTRALIAN NATIONAL UNIVERSITY

Appeals Rule 2017

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

Dated 13 September 2017

Professor Brian P. Schmidt AC FAA FRS
Vice-Chancellor

Contents

Part 1— Preliminary	1
1 Name, commencement and authority	1
2 Definitions	1
Part 2— Reviewable decisions	2
3 Meaning of <i>reviewable decision</i>	2
4 Discipline decision	2
5 Academic misconduct decision	2
Part 3— Grounds for review	3
6 Grounds for review	3
Part 4— Application for review	4
7 Affected person may lodge an application for review	4
Part 5— Consequences of lodging an appeal	5
8 Appeal by a student whose enrolment has been terminated	5
9 Appeal by a student who has been excluded or denied access	5
Part 6— Preliminary consideration of applications	6
10 Rejection of invalid applications	6
11 Referral of application to Appeals Committee	6
12 Interim measures may be taken by Vice-Chancellor	6
Part 7— Appointment of Appeals committee	7
13 Appeals Panel	7
14 Appeals Committee	7
Part 8— Consideration by Appeals Committee	8
15 Additional material	8
16 Material to be provided to student	8
17 Notification of hearing	8
18 Decision whether to conduct an oral hearing	8
19 Appeals relating only to penalty	8
20 Hearing procedure	8
21 Student's rights on appeal	9
22 Non-appearance before Appeals Committee	10
23 Decision by the Appeals Committee	10
24 Student undertakings	10
25 Decision final	11
Part 9— Miscellaneous	12
26 Nominees for Vice-Chancellor and Registrar	12
27 Extension of time	12
28 Service of notices etc.	12
29 Repeal etc	13
30 Transitional	13

Part 1—Preliminary

1 Name, commencement and authority

- (1) This is the *Appeals Rule 2017*.
- (2) This instrument commences on the day after it is registered.
- (3) This instrument is made under section 3 of the *Appeals Statute 2014*.

2 Definitions

In this instrument:

Academic Board means the Board established under the Academic Board Statute.

academic misconduct decision has the meaning given to it in section 5.

appeal means a review under this instrument.

Appeals Committee means a committee constituted under section 14.

discipline decision has the meaning given to it in section 4.

exercise a function includes perform the function.

function includes authority, duty and power.

reviewable decision has the meaning given to it in section 3.

Secretary means the person appointed as Secretary under section 14(5).

student:

- (a) means any person who is or was enrolled in, or seeking enrolment in, a program or a course offered by the University, or who is or has been given permission by the University to audit a course offered by the University; and
- (b) in Part 8, includes a person who is the applicant in relation to an appeal.

working day means a day that is not a Saturday, a Sunday, a public holiday in the Australian Capital Territory, or a University holiday.

Part 2—Reviewable decisions

3 Meaning of *reviewable decision*

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

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

4 Discipline decision

A decision is a ***discipline decision*** if it is specified to be a reviewable decision in the Discipline Rule.

5 Academic misconduct decision

A decision is an ***academic misconduct decision*** if it is specified to be a reviewable decision in the Academic Misconduct Rule.

Part 3—Grounds for review

6 Grounds for review

- (1) An application for review must be on one or more of the following grounds:
 - (a) that a procedural irregularity occurred which may have affected the decision-maker's decision;
 - (b) that the decision-maker was biased;
 - (c) that the decision was manifestly wrong;
 - (d) that the decision was made in a mistaken application of the applicable rules;
 - (e) that there is substantial relevant evidence that:
 - (i) was not taken into consideration by the decision-maker; and
 - (ii) could not have been known to the person and provided to the decision-maker before the decision was made;
 - (f) that a penalty imposed on the person was manifestly excessive.
- (2) If an application includes the ground referred to in subsection (1)(f), the penalty is to be considered to form part of the decision for the purposes of this instrument.

Part 4—Application for review

7 Affected person may lodge an application for review

- (1) A person may lodge an application for review of a decision if:
 - (a) the decision was a reviewable decision affecting the person in the person's capacity as a student; and
 - (b) subject to subsection (3), the application is made within 20 working days after the person was notified of the decision.
- (2) An application must:
 - (a) specify the grounds on which the applicant relies; and
 - (b) be lodged with the Registrar.
- (3) An application for review may be made later than is allowed by subsection (1)(b) if the time limit has been extended under section 27.

Part 5—Consequences of lodging an appeal

8 Appeal by a student whose enrolment has been terminated

The termination of a student's enrolment does not take effect until any application for review in respect of the relevant decision or penalty has been concluded.

9 Appeal by a student who has been excluded or denied access

The exclusion of a student, or denial of access to facilities or premises or activities of the University, under the Academic Misconduct Rule or the Discipline Rule continues to have effect notwithstanding that an application for review of the relevant decision or penalty is lodged.

Part 6—Preliminary consideration of applications

10 Rejection of invalid applications

- (1) The Registrar may reject an application for review if it appears that:
 - (a) the application does not relate to a reviewable decision; or
 - (b) the application does not set out one or more grounds specified in this instrument; or
 - (c) the application has not been made within the time required by this instrument, and the Registrar has not decided to extend time under section 27.
- (2) The Registrar must not reject an application under this section unless the Registrar has provided the person with the opportunity to make a submission in writing in relation to the proposed decision.
- (3) If the Registrar rejects an application under this section, the Registrar must, as soon as is practical, provide notification of that determination, with reasons to:
 - (a) the applicant; and
 - (b) the relevant decision-maker.

11 Referral of application to Appeals Committee

Subject to section 10, the Registrar must, if the Registrar determines that a decision is a reviewable decision, refer the application for review to the Appeals Committee.

12 Interim measures may be taken by Vice-Chancellor

If an application for review is made by a student whose candidature or enrolment in a program of study or course has been terminated by reason of the decision which is the subject of the appeal, the Vice-Chancellor may direct that the student be permitted to continue to undertake that program of study or course pending the determination of the appeal.

Part 7—Appointment of Appeals committee

13 Appeals Panel

- (1) There is to be an Appeals Panel appointed by the Academic Board.
- (2) The Appeals Panel is to be comprised of not fewer than two persons in each of the following categories:
 - (a) persons appointed after consultation with the President of the Australian National University Students' Association Inc.;
 - (b) persons appointed after consultation with the President of the Australian National University Postgraduate and Research Students' Association Inc.;
 - (c) persons who have knowledge or experience of the teaching, research or visual and performing arts functions of the University.
- (3) Subject to subsection (4), a member of the Appeals Panel:
 - (a) holds the position for 2 years and is eligible for reappointment; but
 - (b) may resign at any time by writing to the Registrar.
- (4) If a student who has been appointed under subsection (2)(a) or (b) ceases to be a student, the person ceases to be a member of the Appeals Panel.

14 Appeals Committee

- (1) The Registrar must appoint an Appeals Committee if an application for review has been received (unless the application has been rejected by the Registrar under section 10).
- (2) An Appeals Committee must include at least 4 members of the Appeals Panel, including:
 - (a) one student member from the appropriate category; and
 - (b) three members appointed to the Appeals Panel under section 13(2)(c).
- (3) A person appointed to an Appeals Committee must not be the original decision-maker.
- (4) The Registrar must appoint a person, not being a student, to be the Chair of an Appeals Committee.
- (5) The Registrar must appoint a person (not being a member of the Appeals Committee) to be the Secretary to the Appeals Committee.
- (6) The Registrar may appoint a person (not being a member of the Appeals Committee) to assist the Appeals Committee in the hearing of an appeal.
- (7) An Appeals Committee appointed to consider an application relating to an academic misconduct decision must include a person from the relevant academic discipline or, where this is not possible, a related academic discipline.
- (8) The quorum for a meeting of an Appeals Committee (including a hearing) is 3 members, including the Chair.

Part 8—Consideration by Appeals Committee

15 Additional material

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

16 Material to be provided to student

The Secretary to an Appeals Committee must provide the student with a copy of the substantive material upon which the Appeals Committee intends to rely not less than 5 working days before the day on which the appeal is to be heard.

17 Notification of hearing

- (1) Before the Appeals Committee hears an appeal and, if the student so wishes, the student may advise the President of the relevant Students' Association of the hearing.
- (2) The Appeals Committee must:
 - (a) fix a date, time and place for the hearing of an appeal; and
 - (b) give not less than 5 working days notice of the hearing to the student.

18 Decision whether to conduct an oral hearing

- (1) An appeal may be determined with or without an oral hearing.
- (2) In deciding whether an appeal is to be determined with or without an oral hearing, an Appeals Committee may take into consideration:
 - (a) whether the parties are able to participate in an oral hearing within a reasonable time; and
 - (b) whether an oral hearing would unnecessarily subject a party or a witness to stress; and
 - (c) any other relevant factor.
- (3) The Chair of an Appeals Committee must decide how the appeal is to be conducted.

19 Appeals relating only to penalty

At an appeal in relation to penalty, the Appeals Committee must consider only the question of penalty.

20 Hearing procedure

- (1) At the hearing of an appeal:
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- (a) the procedure to be followed is at the discretion of the Appeals Committee; and
 - (b) the Appeals Committee:
 - (i) may inform itself on any matter in relation to an appeal in any manner it thinks appropriate; and
 - (ii) is bound by the rules of procedural fairness but is not bound by rules of evidence; and
 - (iii) must take into consideration any submission made by the student or the Registrar.
- (2) At the hearing of an appeal, the Registrar may:
- (a) appear in person or, with the express approval of the Appeals Committee, through an advocate; and
- [Note: The Registrar may appoint a nominee under section 26 to appear in person for the Registrar.]
- (b) call and question witnesses; and
 - (c) make written or oral submissions.
- (3) The hearing of evidence by the Appeals Committee may be adjourned from time to time and from place to place.
- (4) Unless the Appeals Committee otherwise directs, a person is not entitled to be present at the hearing of an appeal unless the person is:
- (a) a member of the Appeals Committee; or
 - (b) the Registrar or an advocate for the Registrar; or
 - (c) the student or the person nominated by the student under section 21(2); or
 - (d) the Secretary to the Appeals Committee; or
 - (e) a person giving evidence before the Appeals Committee; or
 - (f) a person appointed under section 14 in relation to the Appeals Committee.
- (5) An appeal hearing under this instrument is not ineffective by reason only of a formal defect or irregularity in the convening or conduct of the Appeals Committee.

21 Student's rights on appeal

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

22 Non-appearance before Appeals Committee

- (1) This section applies to an appeal by a student where the student:
 - (a) does not appear in person at the hearing of the appeal; and
 - (b) is not otherwise represented at the hearing of the appeal; and
 - (c) does not make a written submission under section 21(1)(c).
- (2) If this section applies to an application, the original decision of the decision-maker takes effect immediately after the conclusion of the hearing.

23 Decision by the Appeals Committee

- (1) After considering an appeal, the Appeals Committee may:
 - (a) affirm the decision of the decision-maker; or
 - (b) vary the decision; or
 - (c) set aside the decision and make a fresh decision in substitution for the decision set aside; or
 - (d) set aside the decision.
- (2) When making a decision the Appeals Committee may:
 - (a) accept an undertaking from the student; or
 - (b) include recommendations arising from the consideration of the appeal, including recommendations for:
 - (i) counselling; or
 - (ii) intervention; or
 - (iii) corrective or other measures that should be taken.
- (3) If the Appeals Committee varies a decision under subsection (1)(b) or substitutes a fresh decision under subsection (1)(c), the decision so varied or substituted must be a decision that the original decision-maker could have made.
- (4) In deciding a question of penalty in relation to a student in relation to a discipline decision, the Appeals Committee must take all relevant matters into account, including, for example, the following:
 - (a) the health and safety of students and staff of the University, and the protection of University property;
 - (b) the objectives of punishment, deterrence and rehabilitation;
 - (c) the nature and severity of the student's misconduct;
 - (d) the effect of the misconduct, including any loss, damage or harm caused to the University or its students, staff or property.
- (5) Without limiting subsection (4), the Appeals Committee may take into account any other finding of misconduct (however described) made in respect of the student and any penalty imposed in relation to that finding.
- (6) The decision of the Appeals Committee and the reasons for the decision must be given in writing to the student and the Registrar by the Secretary to the Appeals Committee within 10 working days after the decision.

24 Student undertakings

If the Appeals Committee accepts a student's undertaking under section 23(2)(a):

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- (a) the Appeals Committee must ensure that a written copy of the undertaking is provided to the student and the Registrar; and
 - (b) if the student fails to comply with the undertaking, an Appeals Committee may exercise any power conferred by section 23(1), taking into account (where appropriate) the failure to comply with the undertaking and the reasons for that failure.

25 Decision final

The decision of an Appeals Committee is final.

Part 9—Miscellaneous

26 Nominees for Vice-Chancellor and Registrar

- (1) A University official may, in writing, appoint a member of the staff of the University (the *nominee*) to exercise all or any of the official's functions under this instrument (other than this section).
- (2) A function exercised by the nominee under the appointment is taken to have been exercised by the University official.
- (3) This section does not prevent the University official from exercising a function in relation which the nominee has been appointed.
- (4) In this section:

University official means:

- (a) the Vice-Chancellor; or
- (b) the Registrar.

27 Extension of time

- (1) The Registrar may extend a time limit under this instrument.
- (2) In deciding whether to extend a time limit, the Registrar must take into consideration:
 - (a) the reason why an extension is sought; and
 - (b) the period of extension; and
 - (c) the prejudice, if any, which will be caused by the granting of the extension.
- (3) An extension must be for no longer than is reasonably necessary.
- (4) The power to extend a time limit may be exercised notwithstanding that the time limit has expired.

28 Service of notices etc.

- (1) This section applies to a notice or other document that is required or permitted to be served on an individual under this instrument (whether the word 'give', 'notify', 'send', 'tell' or another word is used).
- (2) The document may be served on an individual:
 - (a) by giving it to the individual; or
 - (b) by sending it by prepaid post, addressed to the individual, to an address shown in the University's records as the individual's semester address, work address or permanent home address; or
 - (c) by emailing it to:
 - (i) if the individual is a student at the University—an email address provided by the University to the individual; or
 - (ii) if the individual is not a student at the University—an email address otherwise recorded by the University as the individual's email address.

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- (3) A document served by post on an individual under subsection (2)(b) is taken to have been served on the day it would have been delivered in the ordinary course of post.
 - (4) A document served by email on an individual under subsection (2)(c) is taken to have been served on the day it would have been received in the ordinary course of email transmission.

29 Repeal etc.

- (1) The *Appeals Rule 2015* is repealed.
- (2) To remove any doubt, a reference in a rule, order or other document of the University to the *Appeals Rules* (whether with or without the year of its making or the year and number of the year of its making) includes a reference to this instrument.

30 Transitional

- (1) To remove any doubt, this instrument applies to a decision taken, or a proceeding commenced but not concluded, before the commencement of this section.
 - (2) This section is additional to, and does not limit, the following provisions:
 - (a) section 7 of the *Acts Interpretation Act 1901*;
 - (b) section 7 of the Interpretation Statute.
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