
EXPLANATORY STATEMENT

GOVERNANCE RULE 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 (Governance) Statute 2023*, section 68(1) (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 commenced on 1 July 2023.

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 This instrument makes provision about the election of staff and student members of the University's Council. The provision made by this instrument is in addition to the provision about these elections made by the *Australian National University Act 1991* and the *Australian National University (Governance) Statute 2023*.
- 5.4 The main purpose of making this instrument is to make changes consequential on, and arising out of, changes made from 1 July 2023 in relation to the representative functions of the University's student associations. From that date 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 affects staff and students of the University, as well as the University's student associations.
- 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 University's student associations were extensively consulted, both generally about future student association representative roles and the changes to be made to the Governance Statute and Rule. ANUSA made consequential changes to its constitution. These changes have been approved by the University's Council.
- 6.4 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.
- 6.5 The University Council considered and made this instrument at its meeting on 2 June 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 45) 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

GOVERNANCE RULE 2023

Part 1 – Preliminary

1. Section 1 – Name

1.1. This section provides that the name of the instrument is the *Governance Rule 2023*.

2. Section 2 – Commencement

2.1. This section provides for the instrument to commence on 1 July 2023.

3. Section 3 – Authority

3.1. This section provides that the instrument is made under the *Australian National University (Governance) Statute 2023*, section 68(1) (General power to make rules and statutes).

4. Section 4 – Definitions

4.1. This section contains notes about definitions relevant to this instrument, including the definitions in section 6 (of this instrument), in the Governance Statute (see section 5 of that statute) and in the Legislation Statute (see the dictionary to Schedule 1 to that statute). The note about the Governance Statute definitions has been updated consequentially. The other notes are unchanged.

Part 2 – Elections for staff and student members of Council

This Part contains provisions applying to elections for the staff and student members of the University's Council.

The principal change made to the Part in this instrument is to provide for future elections for the student members of Council to be conducted under the Governance Statute (and this instrument) rather than under the constitution of the relevant student association(s).

The Part has also been revised because from 1 July 2023 ANUSA became the sole student representative association for the University's postgraduate and undergraduate students and responsible for conducting elections for the postgraduate and undergraduate student members of Council. Previously ANUSA was only responsible for conducting elections for the undergraduate student member of Council.

Division 2.1 – Staff and student member elections

5. Section 5 – Application of Part 2

5.1. This section specifies that this Part applies to an election for a staff or student member of Council. Previously the section specified that the Part only applied to an election conducted under the Governance Statute and did not apply to an election for a student member of Council conducted by a student association under the association's constitution.

Division 2.2 – Election definitions

6. Section 6 – Definitions for Part 2

6.1. This section defines the following terms for Part 2: 'declaration day', 'election provisions', 'nominations invitation day', 'payday' and 'relevant payday'.

6.2. The definitions are unchanged in this instrument. However, the application of the definitions is no longer expressly limited to elections conducted under the Governance Statute.

Division 2.3 – Eligibility to be elected and vote

This Division specifies who is eligible to be elected to, and vote for, each of the staff and student member positions on Council. This instrument does not change any of the eligibility requirements for election or voting.

7. Section 7 – Eligibility: election for deans and research school heads member

7.1. This section prescribes the persons who are to be regarded as dean or research school heads for the purposes of an election for the deans and research school heads member of Council.

8. Section 8 – Eligibility: election for academic staff members

8.1. This section prescribes the persons who are to be regarded as members of the academic staff of the Institute for the purposes of an election for the academic staff (Institute) member of Council.

8.2. This section also prescribes the persons who are to be regarded as members of the academic staff of The Faculties for the purposes of an election for the academic staff (The Faculties) member of Council.

9. Section 9 – Eligibility: election for professional staff member

9.1. This section prescribes the persons who are to be regarded as members of the professional staff of the University for the purposes of an election for the professional staff member of Council.

10. Section 10 – Eligibility: election for postgraduate student member

10.1. This section prescribes the persons who are to be regarded as postgraduate students of the University for the purposes of an election for the postgraduate student member of Council.

11. Section 11 – Eligibility: election for undergraduate student member

11.1. This section prescribes the persons who are to be regarded as undergraduate students of the University for the purposes of an election for the undergraduate student member of Council.

Division 2.4 – Elections for deans and research school heads member

This Division makes provision for elections for the deans and research school heads of Council. This instrument does not make any changes to this Division.

12. Section 12 – Application of Division 2.4

12.1. This section specifies that the Division applies to an election for the deans and research school heads member.

13. Section 13 – Meeting to elect deans and research school heads member

13.1. The Governance Statute requires the deans and research school heads member of Council to be 'elected by the deans and the heads of the research schools voting together' (see section 9(3)(b)).

13.2. If an election for the deans and research school heads member is necessary, the section requires the returning officer for the election to call a meeting of the deans and research school heads to elect the member. The section requires the returning officer for the election to give notice of the meeting and specifies the minimum and maximum times that must be allowed between the day notice is given of the meeting and the day of the meeting.

13.3. The section also specifies the quorum required for the meeting.

14. Section 14 – Method of electing deans and research school heads member

14.1. This section specifies how the deans and research school heads member must be elected at the meeting called under section 13.

Division 2.5 – Conduct of other elections

This Division specifies how elections for a staff or student member of Council (other than the deans and research school heads member) are to be conducted. This instrument does not make substantive changes to the provisions of the Division (apart from consequential changes and a change to section 16(2)(a)(i), which is mentioned below).

15. Section 15 – Application of Division 2.5

15.1. This section specifies that the Division applies to the conduct of an election for a staff or student member (other than the deans and research school heads member).

16. Section 16 – Elections conducted electronically

16.1. This section permits the returning officer to conduct an election electronically using the internet.

16.2. The section contains modifications of provisions of the Division that apply if the election is conducted using the internet. The modification in section 16(2)(a)(i) has been changed in this instrument to permit ANUSA to use its website in elections that it conducts. The section requires the returning officer to ensure that the ballot is secret, and that the identity of each person voting is kept separately from the person's vote.

17. Section 17 – Intervals to be allowed by returning officer

17.1. This section sets the intervals that must be allowed by the returning officer between the notice of the election, the nomination deadline, the issue of voting papers, and the date by which voting papers must be received by the returning officer.

18. Section 18 – Notice of election

18.1. This section requires the returning officer to give notice of the election, including to each person eligible to vote in the election. The section sets out the requirements that a notice must comply with.

19. Section 19 – Nominations to be made to returning officer

19.1. This section specifies that nominations of candidates in the election must be made to the returning officer.

20. Section 20 – Nomination requirements

20.1. This section specifies the requirements for nominations. A nomination must be signed by 2 people eligible to vote in the election (other than the candidate) and must contain the signed consent of the candidate to the nomination.

21. Section 21 – Single nomination

21.1. This section applies to an election if only 1 valid nomination is received from a person eligible to be elected in the election.

21.2. The section requires the returning officer to declare the person elected.

22. Section 22 – Voting papers and notice

22.1. This section applies to an election if more than 1 valid nomination is received from a person eligible to be elected in the election.

22.2. The section requires the returning officer to give a voting paper, and a notice about voting, to each person eligible to vote in the election. The section sets out requirements for the notice.

23. Section 23 – Envelopes to be issued with voting paper

23.1. This section requires the returning officer to issue 2 specified envelopes with every voting paper: a 'Voting Paper' envelope and a voting declaration envelope.

24. Section 24 – Voting papers to contain candidate names etc.

24.1. This section specifies requirements for candidate names on voting papers. The order of the candidate names must be decided by the returning office in public by lot.

25. Section 25 – Lost or destroyed voting papers

25.1. This section requires the returning officer to provide a duplicate voting paper, on application, if a person's voting paper is lost or destroyed.

26. Section 26 – Instructions on voting papers

26.1. This section specifies the instructions must be set out at the head of every voting paper.

27. Section 27 – Voting must comply with instructions

27.1. This section requires voters to vote in accordance with the instructions specified on voting papers.

28. Section 28 – Disclosure of vote prohibited

28.1. This section prohibits the returning officer, a deputy of the returning officer or a scrutineer from disclosing, or assisting in disclosing, how any voter has voted.

29. Section 29 – Acceptance or rejection of voting papers

29.1. This section requires the returning officer to decide whether any voting paper is to be accepted or rejected. The returning officer must accept a voting paper if it is received by the returning officer before the close of the poll.

30. Section 30 – Opening of envelopes after close of poll etc

30.1. This section prescribes the process for opening voting envelopes at the close of the poll.

31. Section 31 – Nomination of scrutineers

31.1. This section provides for candidates to nominate a scrutineer.

32. Section 32 – Ineligible votes not to be accepted

32.1. This section provides that the returning officer must not accept a vote unless the returning officer is satisfied that it has been cast by a person eligible to vote and that the person has only voted once.

33. Section 33 – Deciding result of election

33.1. This section sets out the procedure that must be followed in deciding the result of the election.

34. Section 34 – Equal numbers of votes: exclusion of candidate

34.1. This section sets out the procedure that must be followed in deciding the result of the election if 2 or more candidates have the same number of votes and it becomes necessary to exclude one of them.

35. Section 35 – Deciding order of voter's preferences

35.1. This section specifies how, in deciding the result of the election, the candidate next in order of the voter's preference is to be decided.

36. Section 36 – Exhausted voting papers

36.1. This section specifies when a voting paper must be set aside as exhausted.

37. Section 37 – Recount

37.1. This section specifies when a recount of votes may occur.

38. Section 38 – Declaration that election void

38.1. This section permits the returning officer, before the poll is declared, to declare the election void from the commencement of the election or a specified point in the proceedings of the election. The returning officer may make the declaration if the

returning officer is satisfied that the election is, or will be, void because of an irregularity in the course or conduct of the election.

- 38.2. If the returning officer makes a declaration under the section, the section gives the returning officer the powers necessary to conduct a fresh election or to conduct (or reconduct) the proceedings in the election necessary to ensure that the election is conducted regularly.

Division 2.6 – Other election provisions

This Division contains other provisions that apply to the conduct of staff and student members of Council. This instrument does not make changes to section 40.

39. Section 39 – Casual vacancy elections for student members

- 39.1. This section applies if a casual vacancy arises in the position of a student member of Council.
- 39.2. The section requires ANUSA to conduct an election for the position if requested by the Vice-Chancellor.
- 39.3. This section has been added in this instrument and reflects ANUSA's role as the sole student representative association for the University.

40. Section 40 – Giving notices etc.

- 40.1. This section specifies how the returning officer may provide notices, voting papers, publications or anything else required or permitted to be provided by this instrument.
- 40.2. The section allows a person entitled to vote in an election to apply to the returning officer to apply for a replacement voting paper.
- 40.3. 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 Legislation Statute, section 24. Section 24 also permits the service of documents for the purposes of Commonwealth University legislation.

Part 3 – Repeal and transitional provisions

This Part includes details that are specific to this instrument e.g. the repeal provided by section 41.

Division 3.1 – Repeal

41. Section 41 – Repeal of instrument

- 41.1. This section repeals the *Governance Rule 2020*.

Division 3.2 – Transitional provisions

42. Section 42 – Transitional rules

- 42.1. 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.
- 42.2. 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 rule 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.).

43. Section 43 – Application of Legislation Statute, section 26

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

43.2 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.

44. Section 44 – Transitional Provisions additional

44.1. 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

45. Section 45 – Expiry of instrument

45.1. 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.

Statement of Compatibility with Human Rights

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

GOVERNANCE RULE 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 purpose of this instrument is to ensure that elections for the staff and student members of the University's Council are conducted fairly and in accordance with the *Australian National University Act 1991* and the Governance Statute.

Human rights implications

The instrument promotes human rights by ensuring that elections for the staff and student members of the University's Council are conducted fairly and in accordance with applicable law.

Conclusion

This instrument is compatible with human rights because it promotes fair and lawful elections for staff and student members of the University's Council.