
EXPLANATORY STATEMENT

APPEALS RULE 2023

1. Making of this instrument

- 1.1 This instrument was made by the Vice-Chancellor 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 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 later of the following:
- (a) the day after it is registered;
 - (b) 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 provides for the review of certain decisions affecting students that are made under the Academic Integrity Rule or Discipline Rule. Those rules specify the decisions that are reviewable. The main purpose of this instrument is to make changes consequential on changes made recently by the *Australian National University (Governance) Statute 2023* and the *Governance Rule 2023* in relation to the representative functions of student associations.
- 5.4 There are no documents incorporated by reference.

6. Consultation

- 6.1 This instrument directly affects only students and staff 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. These protocols include consideration of academic matters by the University's Academic Board.
- 6.3 The Academic Board is established by the Australian National University (Governance) Statute. It is tasked with ensuring that the University maintains the highest standards in teaching, scholarship and research, and undertakes a pivotal role in the academic governance of the University. The Academic Board includes membership from all the major stakeholder groups at the University, including academic and professional staff and the student body.
- 6.4 The Academic Board, through its Steering Committee, considered and endorsed this instrument for making by the Vice-Chancellor.

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 34) 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

5 July 2023

PROVISION-BY PROVISION EXPLANATION

APPEALS RULE 2023**Part 1 – Preliminary****1. Section 1 – Name**

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

2. Section 2 – Commencement

2.1. This section provides for the instrument to commence on the later of the following:

- (a) the day after it is registered;
- (b) 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. The purpose of this section is to provide definitions for the instrument, including definitions for the following terms: **academic integrity decision**, **discipline decision** and **reviewable decision** (see respectively sections 7, 6 and 5 of the instrument). The definitions for these terms (and other defined terms) are unchanged.

4.2. The section includes a note drawing attention to definitions in the Legislation Statute that are relevant to this instrument and University legislation generally, including definitions of the following terms: **University legislation** and **working day**. The note has been undated consequentially.

Part 2 – Reviewable decisions

This Part includes key definitions that set the scope of the decisions that can be reviewed under the instrument. The definitions are unchanged.

5. Section 5 – Meaning of reviewable decision

5.1. This section specifies what decisions are **reviewable decisions**.

6. Section 6 – Discipline decisions

6.1. This section specifies what decisions are **discipline decisions**.

7. Section 7 – Academic integrity decisions

7.1. This section specifies what decisions are **academic integrity decisions**.

Part 3 – Application for review

This Part contains provisions about applications for review. There are no substantive changes to the provisions of the Part.

8. Section 8 – Grounds for review of reviewable decisions

8.1. This section specifies the grounds on which a student may apply for review of a reviewable decision.

9. Section 9 – Affected student may make application for review

9.1. Subsection (1) provides that a student may apply for review of a reviewable decision if the decision is a reviewable decision affecting the student in the student's capacity as a student.

- 9.2. Subsection (2) gives instructions on what must be included in or with an application, who it must be given to, and the relevant deadlines that apply.

10. Section 10 – Registrar may reject invalid applications

- 10.1. This section specifies the grounds on which the Registrar may reject an application for review of a decision.
- 10.2. The section also specifies the process the Register must follow before the Register can reject the application.

11. Section 11 – Registrar must refer valid applications to Appeals Committee

- 11.1. This section provides that, if the Registrar does not reject an application under the previous section, the Registrar must refer the application to an Appeals Committee.

Part 4 – Appointment of Appeals Committee

12. Section 12 – Appeals Panel

- 12.1. This section establishes an Appeals Panel appointed by the Academic Board.
- 12.2. The section specifies the categories of members for the Appeals Panel and the minimum number of members required to be appointed to each category.
- 12.3. Under the section, the number of member categories has been reduced from 3 to 2 and the required number of members in each category has been increased from 2 to 6.
- 12.4. The first of these changes reflect the fact that from 1 July 2023 there has been a single student association exercising representative functions for all the University's postgraduate and undergraduate students. The student association is consulted about the appointment of the student members of the Appeals Panel.
- 12.5. The other change is to ensure that the Appeals Panel contains sufficient members to enable Appeals Committees to be formed (see section 13(3)).
- 12.6. The section also includes provisions about the panel members, including the term of appointments, eligibility for reappointment, and resignation. The provisions have not changed.
- 12.7. Under subsection (4) a student who has been appointed to the Appeals Panel ceases to be member of the Appeals Panel if the member ceases to be a student. There has been no substantive change to the subsection.
- 12.8. Subsection (5) defines the term **student** for the purposes of the section. The definition displaces, for the section, the broader definition of student in section 4. The definition of student in subsection (5) is unchanged.

13. Section 13 – Appeals Committee

- 13.1. This section applies if the Registrar is required to refer an application for review to an Appeals Committee.
- 13.2. Subsections (2) and (3) require the Registrar to appoint an Appeals Committee for the review and specify the membership of the Committee. Subsection (3) makes only minor consequential changes to the required membership of the Committee.
- 13.3. The section includes provisions for the appointment of the Chair and Secretary of the Appeals Committee and allows the Registrar to appoint a person to assist the Appeals Committee in the hearing of the application for review. There are no substantive changes to these provisions.
- 13.4. The section also specifies quorum requirements for the Appeals Committee. These are unchanged.

Part 5 – Consideration by Appeals Committee

This Part contains provisions about the consideration of applications for review by the Appeals Committee. There are no substantive changes to the provisions of the Part.

14. Section 14 – Additional material

- 14.1. This section outlines the process that may be followed if material is made available to the Appeals Committee that was not before the original decision-maker.
- 14.2. The section specifies the circumstances in which the Appeals Committee may refer the relevant decision back to the original decision-maker to remake the decision and confirms the status of, and ability to appeal, that remade decision.

15. Section 15 – Material to be provided to student

- 15.1. This section requires the Secretary to provide of copies of review materials to the student.

16. Section 16 – Notification of hearing etc.

- 16.1. Subsection (1) permits the student to tell the President of the student association about the hearing. A minor consequential change has been made to the subsection to reflect the fact that there is now a single representative student association.
- 16.2. Subsection (2) requires the Appeals Committee to fix a date, time and place for the hearing of the application for review and to give the student notice of those details.

17. Section 17 – Decision whether to conduct oral hearing

- 17.1. This section provides guidance to the Appeals Committee on whether to decide on an application for review with or without an oral hearing.
- 17.2. The section specifies that the Chair of the Appeals Committee must make this decision.

18. Section 18 – Applications for review relating only to penalty or other action taken

- 18.1. This section limits the role of the Appeals Committee in relation to applications for review that relate only to the penalty imposed, or other action taken, under the Academic Integrity Rule or the Discipline Rule.

19. Section 19 – Hearing procedure

- 19.1. This section specifies the procedure to be followed at the hearing of an application for review, including who may be involved and what may and must be considered.
- 19.2. The section specifies, among other things, that the Appeals Committee is bound by the rules of procedural fairness, but not by the rules of evidence. The section requires the Appeals Committee to take into account any submission made by the student or the Registrar.
- 19.3. The section includes a note drawing attention to the power of the Registrar, under the ANU (Governance) Statute, to delegate the Registrar's functions under this section.

20. Section 20 – Student's rights on review

- 20.1. This section outlines the student's rights at the hearing of the application for review including the student's right to appear, call and question witnesses, make submissions, and nominate an observer.
- 20.2. The section provides for the Chair of the Appeals Committee to approve a nominated advocate to act for the student.

21. Section 21 – Remote participation in review

- 21.1. This section deals with remote participation in the hearing of an application for review.

22. Section 22 – Non-appearance etc. before Appeals Committee

- 22.1. This section makes provision for a case in which the student does not appear before the Appeals Committee or otherwise participate in the hearing of the application for review.

23. Section 23 – Decision by Appeals Committee

- 23.1. This section specifies the action that the Appeals Committee may take after considering the application for review.

- 23.2. The section allows the Appeals Committee to confirm, vary or set aside the reviewable decision, and to substitute a decision that the original decision-maker could have made. It also allows the Appeals Committee to accept an undertaking from the student and make recommendations.
- 23.3. The section outlines the relevant matters the Appeals Committee must consider in deciding a question related to the penalty imposed, or other action taken, in relation to the student under the Academic Integrity Rule or Discipline Rule.
- 23.4. Subsection (8) requires the Appeal Committee's decision, and the reasons for the decision, to be given in writing to the student and the Registrar within 10 working days after the day the decision is made.

24. Section 24 – Undertaking by student

- 24.1. This section deals with cases in which the Appeals Committee accepts an undertaking from the student.
- 24.2. This section specifies the action the Appeals Committee may take if the student breaches the undertaking.

25. Section 25 – Decision final

- 25.1. This section specifies that a decision of the Appeals Committee is final.

Part 6 – Miscellaneous

This Part contains miscellaneous provisions. There are no substantive changes to the provisions of the Part.

26. Section 26 – Joint, double or dual programs with other institutions etc.

- 26.1. This section makes provision about the effect of agreements between the University and other universities and institutions for or in relation to joint, double or dual programs or the joint, double or dual conferral of degrees and other awards.

27. Section 27 – Certain functions not to be exercised personally by original decision-maker

- 27.1. This section specifies the functions under the instrument that must not be exercised personally by the original decision-maker.

28. Section 28 – Extension of time

- 28.1. This section authorises the Registrar to extend time limits under the instrument.

Part 7 – Repeal, transitional provisions and expiry

Division 7.1 – Repeal

29. Section 29 – Repeal

- 29.1. This section repeals the *Appeals Rule 2021*.

Division 7.2 – Transitional provisions

30. Section 30 – General application and savings

- 30.1. This section continues the effect of the general application and savings provision in section 30 of the repealed *Appeals Rule 2021*. Under the provision conduct to which the section applies continues to be dealt with under the *Appeals Rule 2018* and not this instrument.

31. Section 31 – Transitional orders

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

32. Section 32 – Application of Legislation Statute, section 26

32.1. This section has been included to put the application of the Legislation Statute, section 26 to the repeal of the existing rule beyond doubt. Section 26 has provisions saving the effect of action taken under repealed University legislation.

33. Section 33 – Transitional provisions additional

33.1. This section makes it clear that the transitional provisions of Division 7.2 are additional to other legislation applying to transitional matters.

Division 7.3 – Expiry

34. Section 34 – Expiry of instrument

34.1. 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

APPEALS 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

This instrument provides for the review of certain decisions affecting students that are made under the Academic Integrity Rule or Discipline Rule.

Human rights implications

The instrument promotes human rights by providing for the review of certain decisions affecting students.

Conclusion

This instrument is compatible with human rights because it promotes the protection of human rights by providing review rights.