Procedure: University legislation

Purpose

The purpose of this procedure is to provide a framework for the use, content and management of University legislation.

Definitions

ANU Act means the Australian National University Act 1991.

Council means the Council of the University.

Corporate Governance and Risk Office means the Director of that office, or a staff member of that office nominated by the Director to manage matters concerning legislation.

General Counsel means the General Counsel to the University.

legislation means statutes, rules and orders made (or proposed to be made) under the ANU Act, and includes any other legislative instruments, and any notifiable instruments, made (or proposed to be made) under those statutes, rules or orders or by the University under other Commonwealth legislation.

Legislation Act means the Legislation Act 2003 (Cwlth).

making legislation means the signing or other endorsement of the legislation by the entity authorised to make it.

minor amendment, of legislation, is an amendment that:

- makes a textual or presentational change of a formal, drafting or minor technical nature; or
- corrects or updates a reference to a law or instrument, a provision of a law or instrument, a position, an entity or anything else; or
- omits a redundant or obsolete provision or a provision that is not needed for legal or policy reasons; or
- is consequential on any other amendment made (or proposed to be made) to the legislation or other legislation; or
- makes any other change that does not alter, or significantly alter, the policy intended to be given effect by the legislation.
PGPA Act means the Public Governance, Performance and Accountability Act 2013 (Cwlth).

Responsible Executive, for an item of legislation, means the member of the University Senior Executive whose portfolio responsibility covers the topic of the legislation. If there is uncertainty about who has portfolio responsibility, the relevant members of the University Executive resolve responsibility arrangements between themselves.

Statute book, of the University, means the University’s legislation taken as a whole.

Procedure

Power to make legislation

1. Only the Council is authorised to make statutes.
2. Statutes authorise the making of rules and rules authorise the making of orders.
3. Only the Vice-Chancellor is authorised to make rules and orders.
4. However, for particular legislation where the Vice-Chancellor agrees that it is appropriate, orders and, in exceptional cases, rules may be authorised to be made by other senior officers of the University (usually this authorisation is given through a delegation from the Vice-Chancellor).

Responsible Executive

5. Each item of existing and new legislation is assigned a Responsible Executive, based on their portfolio responsibility, who is responsible for the overall development, implementation, review and amendment of that item of legislation.
6. The Chancellor is the Responsible Executive for any statute that deals with functions, duties or powers that the Council cannot delegate or that relates to the Council, the Chancellor, Pro-Chancellor or Vice-Chancellor, the Nominations Committee or a Council Committee. The Corporate Governance and Risk Office supports the Chancellor in exercising this function.

Deciding whether legislation is needed?

7. Before legislation is proposed to deal with a matter, careful consideration is given as to whether:
   - legislation is actually needed (having regard to the requirements of the University Legislation policy); or
   - the matter should be dealt with administratively or in another way (e.g. by Council resolution, a policy or procedure, or a delegation or direction to a delegate).
8. If the proposal involves the replacement of existing legislation in an amended form, careful consideration is also given to whether:

- the inclusion of existing provisions in the replacement legislation is justified (having regard to University Legislation Policy); and
- the existing provisions need revision to reflect current University strategy, values or policies, ensure consistency with other University legislation or reflect contemporary good drafting practice.

9. Proposed legislation that does not comply with the University Legislation Policy is not developed, drafted or made without the Vice-Chancellor’s prior approval (see paragraphs 15 to 17 for the procedure for seeking an approval).

Prior approval for legislation

Preparation of a proposal for legislation

10. Before proposed legislation is drafted to deal with a matter, a short (two pages maximum) written legislative proposal is prepared and submitted to the Responsible Executive for approval. The legislative proposal includes the following:

- the background to the proposal;
- a description of the proposal, including the policy objective(s) and an outline of the legislative measures proposed (but not details of how the policy objective(s) is to be given legislative effect or a draft of the proposed legislation);
- justification for the proposal, consistent with the University Legislation Policy, and including an outline and analysis of any alternative ways of achieving the policy objective(s);
- an explanation of how the proposal accords (or is not inconsistent) with the University’s strategic plan and values;
- any relevant legislative or other mandatory requirements;
- any timing considerations, including deadlines for making;
- a brief outline of the nature of any consequential or other minor amendments that have been identified;
- the consultations undertaken, or planned to be undertaken, about the proposal, including the stakeholders that have been, and are planned to be, consulted;
- the outcome of any consultations that have already been undertaken;
- any comments of the Corporate Governance and Risk Office and the General Counsel on the proposal;
any other matters of relevance.

11. Before the legislative proposal is submitted to the Responsible Executive, the proponent consults the Corporate Governance and Risk Office on the proposal. If the proposal involves matters of expert legal knowledge or is likely to have significant legal implications for the University, the proponent also consults the General Counsel on the proposal.

12. Preliminary drafting instructions are prepared and circulated to relevant stakeholders when the legislative proposal is being prepared for submission to the Responsible Executive. This ensures that the precise nature of the legislative proposal is understood when it is put to the Responsible Executive for approval and that all major issues are raised with, and considered by, the Responsible Executive. The drafting instructions are not attached to the submission, nor is the Responsible Executive asked to approve them.

Approval of a proposal for legislation

13. The Responsible Executive decides whether the legislative proposal is approved and gives any necessary directions for the further development or progress of the proposal.

14. Minor amendments identified during the drafting process do not need the prior approval of the Responsible Executive for their drafting and are approved when the Responsible Executive approves the final draft of the proposed legislation.

Proposed legislation that does not comply with the Policy

15. If proposed legislation does not comply with the University Legislation Policy, the Vice-Chancellor’s approval is sought through a written request of the Responsible Executive. The request justifies why the proposed legislation is in the best interests of the University, even though it does not comply with the policy.

16. Before the request is submitted to the Vice-Chancellor, the proponent consults the Corporate Governance and Risk Office on the proposal. If the proposal requires input of expert legal knowledge or is likely to have significant legal implications for the University, the proponent consults the General Counsel on the proposal. If the Corporate Governance and Risk Office considers it appropriate, it may also refer the proposal to the General Counsel for advice, or opinion.

17. The written request to the Vice-Chancellor includes any comments of the Corporate Governance and Risk Office and the General Counsel on the proposed legislation.
Requests for legislation to be drafted

18. Requests for legislation to be drafted are submitted to the Corporate Governance and Risk Office. The Office allocates the work to a legislative drafter, subject to availability. A copy of the request is also sent to the General Counsel by the Corporate Governance and Risk Office.

Legislative drafters

19. All legislation is drafted by a person professionally qualified to undertake legislative drafting (this includes appropriate staff of the University Legal Office or other professional persons engaged for this purpose through the University Legal Office).

Drafting

Drafting instructions

20. Written drafting instructions provide the starting point for the drafting process. However, clarification of the instructions, further instructions, and comments on draft provisions are typically provided by email, by telephone or in meetings.

21. Drafting instructions for a legislative proposal include the following:
   - an explanation of the background to the proposal;
   - a description of the proposal, including an explanation of the policy objective(s), how the policy objective(s) is proposed to be achieved and why the policy objective(s) is proposed to be achieved in that way;
   - information about all relevant matters of detail intended to be covered by the legislation, including details of existing provisions affected by the proposal;
   - any consequential or other minor amendments that have been identified;
   - any timing considerations, including deadlines for making;
   - the name and contact details of the person who is to be the instructing officer for the proposal;
   - any other matters of relevance.

22. The drafting instructions are written in plain English and draw heavily from the proposal for legislation for their content. They may, but need not, include a first draft of the proposed legislation. The allocated legislative drafter can advise on matters such as the legislative consequences of particular policy approaches and the details needed for particular drafting instructions.

Subsequent processes

23. After discussions with the instructing officer (nominated in the drafting instructions),
the legislative drafter prepares a draft of the proposed legislation for the instructing officer’s consideration. The draft often includes queries and comments. The draft is successively revised in the light of the instructing officer’s further instructions until the instructing officer and legislative drafter are satisfied that the draft is ready for making.

**Naming of legislation**

24. The name given to legislation must:
   - provide a convenient way of referring to the legislation (i.e. not be too long, cumbersome or unwieldy); and
   - be unique (so that the legislation can be identified with complete certainty from its name alone).

25. Statutes are named using the following style: *Australian National University (<Subject Matter>) Statute <Year of Making and, if necessary, Number for year>*. For example, *Australian National University (Governance) Statute 2017*.

26. Rules and orders are generally using the following style: *<Subject Matter> Rule <Year of Making and, if necessary, Number for year>* or *<Subject Matter> Order <Year of Making and, if necessary, Number For Year>*, as appropriate. For example, *Coursework Awards Rule 2016 (No. 2)*.

27. The Corporate Governance and Risk Office approves any departure from this approach to naming.

**Amending legislation**

28. Legislation that is to be amended is re-made as a new item of legislation, rather than by being amended through the use of amending legislation.

29. The Corporate Governance and Risk Office approves any departure from this approach to amending legislation.

**PGPA Act requirement**

30. The PGPA Act, section 18 applies to the development of legislation imposing requirements in relation to the use or management of University resources. This section requires the Council, as the University’s accountable authority, to take the following into account, when imposing requirements on others in relation to the use or management of public resources for which the Council is responsible:
   - the risks associated with that use or management;
   - the effects of imposing those requirements.
Legislation Act

31. The Legislation Act contains provisions about providing public access to Acts and instruments, and the making, parliamentary scrutiny and sunsetting of legislative instruments. Statutes and rules are legislative instruments and orders are legislative instruments unless exempt by regulation made under the Legislation Act.

32. Statutes, rules, and orders that are legislative instruments, must be registered under the Legislation Act and are accessible on the Federal Register of Legislation (www.legislation.gov.au). They are, however, exempt from disallowance by the Parliament and are not subject to sunsetting under the Legislation Act.

Consultation

33. All relevant stakeholders are consulted during the development of proposed legislation. For further guidance on appropriate consultation practices, please see the Policy Document Consultation Guidelines.

34. The proposed legislation is thoroughly tested in the development stage through consultation to ensure that it can be easily implemented, and likely operational problems are identified and resolved before the drafting is finalised.

35. All proposed legislation that deals with academic or student matters is to be submitted to the Academic Board, through the Academic Quality Assurance Committee or University Research Committee, as appropriate, for comment and endorsement. It is submitted once it reaches a state of drafting that the instructing officer is satisfied with. If the making of legislation is urgent, the legislation is made and the Academic Board is informed of its making (and a copy of the legislation tabled) at the next practical meeting of the Academic Board. The Responsible Executive is responsible for ensuring the Academic Board and relevant Committees are informed of legislation, before or after its making, as appropriate.

Approval of final draft

36. A final draft is sent to the General Counsel for endorsement prior to it being submitted to the Responsible Executive.

37. The Responsible Executive approves the final draft of proposed legislation before it is submitted to the Corporate Governance and Risk Office for making.

Making and registration

38. The Corporate Governance and Risk Office:

   • arranges for the making of all legislation, including by the Council and the Vice-Chancellor;
• registers all legislation on the Federal Register of Legislation through the Office of Parliamentary Counsel.

39. The Corporate Governance and Risk Office advises the Responsible Executive, the instructing officer and other relevant University staff of the making and registration of legislation.

40. The Corporate Governance and Risk Office updates the University’s legislation webpage to reflect new legislation.

41. The Corporate Governance and Risk Office ensures the Council is informed of the making of legislation by another University authority (and a copy of the legislation tabled) at the next meeting of the Council after the making of the instrument or, if it is not practicable to table the instrument at that meeting, at the next following meeting of the Council at which it is practicable to table the instrument.

**Stakeholders to be informed**

42. The relevant Responsible Executive is responsible for ensuring that stakeholders are informed of the making of legislation.

**Record keeping**

43. Record keeping for legislation is the responsibility of the Corporate Governance and Risk Office.

44. Official records of legislation are kept in the Electronic Records Management System (ERMS), with the original signed copy held in a storage envelope with University Records.

45. All official files for legislation are named using the following naming convention: Governance - Legislation - <Name of legislation> (e.g. Governance - Legislation – Appeals Rule 2015).

**Reviews**

46. Legislation is reviewed regularly to ensure that it remains up-to-date and of a high quality. Each item of legislation is reviewed at least every three years and the statute book, as a whole, is reviewed every five years.

47. A Responsible Executive is responsible for reviews of each item of legislation falling within the Responsible Executive’s portfolio.

48. The Corporate Governance and Risk Office and the General Counsel are jointly responsible for reviews of the statute book.
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