



UMSU submission on Consultation on Proposed Student Participation in Study Policy

October 2020

Dear Policy Network,

UMSU welcomes the opportunity to put forward our views on the proposed **Student Participation in Study Policy**.

While we welcome any policy that *supports* students living with disabilities and facing difficulties with their studies, this policy does not achieve that. To be both compassionate and effective, proactive interventions to support students need to be conducted in collaboration with the student and to act as a means of ensuring students are properly supported within the University. However, the focus of this policy has the effect of turning mental health issues into a *de facto* form of misconduct, employ lower thresholds of conduct, and overall shift the burden of responsibility for participation in studies entirely onto the student.

Overall, notwithstanding the worthiness of the purported objective of the proposed policy, UMSU believes it is poorly conceived and does not appropriately balance the interests of the University against the rights of a student. Scant attention is given to specifying the resources which should be deployed or methods of supporting students who might be caught by the policy. This has the effect of creating a clear focus on the adversarial and coercive aspects and only passing reference to pro-active support. That the only reference to support for affected students is in the form of the absolute minimally legally required reasonable adjustment under equal opportunity legislation is particularly telling.

While UMSU understands that the policy is intended to allow interventions to provide support to students whose capacity to participate in study is affected by their mental health, the proposed Policy actually operates to create a regime that could punish students in this situation. UMSU agrees that students living with mental health issues which impact on their studies should be supported, and not subject to misconduct processes. However, this policy has effectively created another misconduct process with a different name.

Alarming, the proposed policy is positioned as a student support measure but establishes a regime where decisions about the impact of mental health conditions are described as “academic decisions” and where there is no requirement for mental health or disability experts to have a role in this decision making.

While we acknowledge that the intent of the proposed policy is to increase the likelihood that students who require support will access that support in a way that is coordinated with their faculty, UMSU has significant concerns that the process outlined in the policy has not been sufficiently considered from the standpoint of students suffering the negative impacts of mental illness. That is, the very nature of the process described has the potential to exacerbate students’ mental health issues. The policy is also wholly inappropriate to meet the needs of students who are the survivors of sexual violence or sexual harassment.

Further to this, UMSU believes that aspects of the proposals are arguably incompatible with s. 8 of the *Charter of Human Rights and Responsibilities Act 2006* (Vic) and to the extent that policy has the effect of treating a person who may suffer an illness differently than those who do not, on the basis of that protected attribute and not their conduct, the proposed policy may also be inconsistent with relevant provisions of State and Federal anti-discrimination law. That is, the proposed policy creates a regime where a student, by virtue of their disability or health condition is potentially subject to coercive university intervention on the basis of a lower threshold than other students are held to.

We have addressed some feedback to specific provisions in the table below. Feedback on the overall operation and problems with the proposed policy follows. Finally, we make some recommendations for a comprehensive Mental Health Policy to address issues of student participation in a supportive and holistic framework.

On this basis UMSU recommends that the proposed policy is not adopted and submits that it is not suitable for amendment due the fundamentally flawed nature of the approach that underpins it.

UMSU further notes the newly drafted *Draft Disability, Accessibility and Inclusion Policy* presents a markedly divergent approach to the proposed *Student Participation in Study Policy*. The explanatory note to the *Draft Disability, Accessibility and Inclusion Policy* states that a critical aspect of its approach is:

Reversing the onus of accessibility:

This is premised on the idea that the University should be proactive in engaging with the community and with individuals and seek to act to prevent the need for individuals to have to escalate issues. Rather than the onus being on the individual to get the University (as a large, sometimes intimidating, institution) to make changes, the onus should be on the University to identify what it can do to improve accessibility.

It is clear that this proposed policy would conflict with the *Draft Disability, Accessibility and Inclusion Policy* in both its overall approach, as well as in specific provisions which would be completely incompatible – such as the principles of individual support and disclosure for people with disabilities. Additionally, the *Draft Disability, Accessibility and Inclusion Policy* vests final authority to determine academic adjustments with the Academic Registrar, whereas the proposed policy leaves the final determination of the same matters with the deans of the faculties.

Ultimately UMSU is disappointed that this proposed policy represents another lost opportunity to take a student-centred approach to policy formulation and create a robust mental health strategy for students.

A set of recommendations is set out at the end of this document.

Summary of feedback on specific provisions

Provision	Feedback/Commentary
<p>1. Objectives</p> <p>The objectives of this policy are to:</p> <p>identify and support students whose health, behaviour and/or actions in relation to their participation in study.</p>	<p>UMSU supports this objective; however, it is unclear at what point the policy could be said to “support” the student. Instead the focus is almost entirely on a process which could culminate in placing a student on “well-being leave”, rather than actively supporting their study.</p>
<p>2.3 This policy works in conjunction with the Academic Progress Review Policy (MPF1291), Student Fitness to Practice Policy (MPF1345) and Part 7 of the Academic Board Regulation, relevant course and subject rules.</p>	<p>It is unclear how the proposed policy interacts with these instruments?</p> <p>Part 7 of the Academic Board Regulations and the other policies referred to would seem to overlap with some of the functions envisaged under the proposed policy, noting the general misconduct provisions under Part 9 Div 3 of the current Academic Board Regulations and the attendant student conduct policy are conspicuous by their absence under this section. All of which suggests a poorly conceived level of redundancy.</p>
<p>5.1 A dean must appoint at least one senior member of the faculty’s academic staff as a student participation in study officer.</p>	<p>The role of the <i>student participation in study officer</i> requires a level of expertise in mental health matters. The policy is silent on what skills or expertise this person should have. Presumably, the role should, at a minimum, require a demonstrated level of expertise and knowledge sufficient to support the appropriate exercise of the significant powers bestowed under the policy.</p> <p>The policy also requires no coordination between faculties or a consistency of institutional approach which could create uneven outcomes and entrench unfairness.</p>
<p>5.2 Nothing in section 5.1 prevents the senior member of academic staff appointing a senior member of professional staff to undertake the day to day case management provided academic decisions are made by senior academic staff.</p>	<p>It appears that the proposed policy characterises the University’s response to students experiencing mental health issues as academic decisions. There is no explanation of the basis for this approach.</p> <p>Specifically, what is the basis for determining that health decisions are primarily related to a student’s faculty or that senior academics are in a position to make these decisions?</p> <p>There is no mechanism to ensure that professional staff to whom responsibilities for case management are delegated, have appropriate skills and experience to carry out that responsibility.</p> <p>Does the characterisation of these decisions as “academic” then remove them from the application of grievance procedures?</p>
<p>5.4. Concerns raised in section 5.3 involve conduct that may be a result of health issues impacting on a student’s ability to complete their studies whereas:</p> <p>(a) student academic misconduct issues must be managed under the Student Academic Integrity Policy and</p> <p>(b) student behavioural issues that fall within the definition of student general misconduct must be managed under the Student Conduct Policy.</p>	<p>This clause highlights the problematic nature of the proposed policy’s approach to differentiating between cause and effect.</p> <p>Is the determinant the nature or character of the behaviour, the actual behaviour itself or the presence of health issues which may be the cause?</p> <p>This would appear to run the risk of begging the question – where students who are identified as demonstrating behaviours that are covered by this policy are therefore deemed to be suffering from mental illness, and that they</p>

	<p>could be asked to participate in this process in the absence of any objective evidence – other than behaviour – of mental health issues.</p> <p>In order to determine the appropriate policy to be used someone needs to make a determination about this distinction. Who is that person and on what basis is that determination made?</p> <p>The clause does not address the possibility of multiple simultaneous processes or how matters will be addressed where more than one process might be relevant.</p>
<p>5.5. Where the student participation in study officer is satisfied the concern raised may be a concern regarding a student’s participation in study, the officer must:</p> <p>(a) discuss, or attempt to discuss, the concern with the student subject to the concern;</p>	<p>To ensure procedural fairness the policy would need to formalise notice of the concerns, give the student an opportunity to respond, set out possible consequences/future steps and the desired resolution which if not met will trigger s. 5.6.</p> <p>This issue is only partially addressed later in the proposed policy.</p>
<p>5.6. If the concern is not resolved or persists, the student participation in study officer must refer the matter, along with supporting documents, to the relevant dean.</p>	<p>How it is determined that a concern is not resolved or that it persists?</p>
<p>5.8 A dean must not establish a Student Participation in Study Committee unless dean is satisfied that:</p> <p>(a) the student has been given an opportunity to address concerns regarding the student’s participation in study;</p> <p>(b) where necessary, adjustments have been identified in accordance with section 40(3) of the Equal Opportunity Act 2010; and</p> <p>(c) the concerns regarding the student’s participation in study are not resolved or persist.</p>	<p>How will this process operate and how will procedural fairness be ensured for students? It would appear that a dean is being asked to determine that a student has demonstrated behaviour that may have an impact on their participation in study AND that that behaviour is caused by mental health issues experienced by the students. What process will be put in place to ensure that the dean is appropriately qualified to make this determination and that they are provided with appropriate evidence on which such a determination can be based?</p> <p>How will principles of procedural fairness apply to the making of this determination?</p>
<p>5.9 A faculty Student Participation in Study Committee must, whenever practicable, include -</p> <p>(a) two senior members of the academic staff;</p> <p>(b) a professional staff member nominated by the Academic Registrar and</p> <p>(c) if required, up to two other members, including non-University staff members, with skills or knowledge deemed appropriate by the dean.</p>	<p>The process for determining membership of the Committee is such that is members are nominated by someone who is not required to have relevant skills or experience, and makes it possible for committees to be convened where none of the members have any relevant skills or experience.</p>
<p>5.10 A faculty Student Participation in Study Committee must not include -</p> <p>(a) a health professional who has treated or advised the student;</p>	<p>What is the rationale for this exclusion? Models of student-centred support typically involve health practitioners who are able to work with the affected student, or have an established relationship with the student.</p>

	<p>This stands in contrast to provisions that allow for the Committee to be advised by the person who referred the student to the Committee in the first instance.</p> <p>Any provision to allow a Committee of this type to access advice should be based on knowledge or experience that is relevant to the role of the Committee.</p> <p>It is unclear, then, why a health practitioner who has treated the student could not be included in the Committee but the Committee can be advised by someone with no formal expertise on the basis that they were responsible for triggering the operation of the Policy.</p>
<p>5.11 A faculty Student Participation in Study Committee -</p> <p>(a) must give the student concerned or his or her representative an opportunity to make submissions orally or in writing or both;</p> <p>(b) must consider any medical certificate or other evidence submitted by the student concerned; and</p> <p>(c) must, where appropriate, take into account the matters specified in Section 32 (2) of the Vice-Chancellor Regulation;</p> <p>(d) may require the person concerned to undergo a medical or other health professional examination, at the expense of the University, by a person or persons nominated by the faculty Student Participation in Study Committee.</p>	<p>The word “or” should be replaced with “and” as this ambiguity has been used to refuse students an opportunity to do both.</p> <p>As these Committees do not require any of their members to possess the requisite knowledge to consider the validity or content of a medical certificate this creates the possibility that a Committee can effectively override medical advice. The term “consider” is insufficient. A Committee should be required to accept medical advice and other evidence provided by parties with subject matter expertise, otherwise there will be potential for untrained staff to override professional medical or other evidence.</p> <p>Under what authority can the University establish this requirement?</p> <p>Where a Committee seeks to impose this requirement and where a student has already provided evidence from a medical professional or health practitioner on what basis does the Committee have the authority to determine that further medical assessment is required?</p> <p>This is not a trauma-informed approach and risks serious consequences for student well-being.</p>
<p>5.13 The Student Participation in Study Committee may invite up to two other non-voting attendees to advise the committee including but not limited to:</p> <p>(d) the relevant student participation in study officer.</p>	<p>It is unclear on what basis the original referrer would have to provide <i>advice</i> to the Committee given they are not required to have any expertise or experience and they have already made determinations in relation to the student that should exclude them from further participation.</p>
<p>5.15 Nothing in this policy prevents a dean from:</p> <p>(e) seeking advice from any person to assist in decision making.</p>	<p>There are no guidelines provided for a dean to make this determination and any decision-making of this type should be subject to regulation.</p> <p>How is the student’s right to confidentiality and privacy maintained?</p>
<p>5.16 For a matter to be referred to a Student Participation in Study Committee, the relevant dean must notify a student in writing:</p> <p>i. ...</p>	

<p>ii. the student’s right to notify the student participation in study officer that the student will be supported at the meeting by an officer of Student Union Advocacy Service; or a named support person who is not legally trained; and</p> <p>iii. of this policy and the relevant sections of the Vice-Chancellor’s Regulation.</p> <p>(b) that the dean believes it more likely than not that a concern raised about the student is a concern about a student’s participation in study under this policy;</p>	<p>We understand exclusion of practising solicitor appearing in this capacity, but what is the rationale for excluding a support person who is legally trained?</p> <p>This clause speaks to the unstated intention of this policy - referring certain behaviour to a secondary general misconduct process.</p> <p>Where a policy is framed as being a mechanism to determine what support the University can provide to students to ensure their continued participation in study then the basis of action should be a determination that a student may require that support, rather than identifying the student’s behaviour as a concern.</p>
<p>5.17 Students may:</p> <p>(f) bring a named support person who is not legally trained or an officer of Student Union Advocacy Service to support the student at the meeting.</p>	<p>The wording of this clause is ambiguous and is open to an interpretation that would support the exclusion of the Student Union Advocacy Service from providing support to a student.</p>
<p>5.18 Following a meeting, a Student Participation in Study Committee may, if satisfied that it is necessary to properly evaluate the student’s participation in study:</p> <p>(g) subject to section 5.17, request the student to undergo specified medical or health assessment or testing with:</p> <p>(i) that assessment or testing to take place within a specified time and with a health professional chosen by the University; and</p> <p>(ii) the University to bear the expense of the assessment or testing; and</p> <p>(h) allow the student to continue to study, subject to review under certain specified conditions, such as careful mentoring by a senior member of academic staff of the faculty;</p> <p>(i) request the student to complete specific actions in a specified and reasonable time frame to demonstrate their participation in study (e.g. undertake an action plan to resolve a specific concern);</p> <p>(j) recommend to the student that the student takes a leave of absence from studies for an agreed period to concentrate on their wellbeing and/or to resolve any specific concern, subject to review at the end of that period and demonstration, to the satisfaction of the dean, that they are able to participate in study;</p> <p>(k) recommend to the student that the student takes an exit award, if one is available, in consultation</p>	<p>This clause sets out a range of recommendations that the Committee may make to a student; however, it does not specify what, if any, consequences there would be for a failure to act on these recommendations.</p> <p>This approach describes a model of support where a Committee makes recommendations independently of collaboration with students and their health practitioner(s), and which is inconsistent with established best practice in relation to providing support to students in a higher education setting.</p>

<p>with the relevant course coordinator and subject to compliance with the Academic Board Regulations and policy;</p> <p>(l) recommend to the student that the student voluntarily withdraw; and/or</p> <p>(m) make a recommendation to the relevant dean.</p>	
<p>5.20 Failure by a student to undertake the medical, or other health professional, assessment under Section 5.16(a) of this policy is not to be actioned as student general misconduct under Part 6 of the Vice-Chancellor Regulation, but the relevant Student Participation in Study may take the failure into account in making a recommendation under Section 5.19.</p>	<p>This clause raises the following issues or questions:</p> <ol style="list-style-type: none"> 1. Is failure to follow the recommendations other than that provided for in 5.16(a) then subject to the operation of student general misconduct? 2. Principles of statutory interpretation would suggest the reference to 5.16 (a) in 5.20 supports the view that the University could action a failure to comply with a recommendation made subject to 5.18 (i-l) could be grounds for the application of misconduct procedures. <p>It seems counterintuitive that a failure to comply with recommendations arising from a policy designed to address behaviour that does not meet a threshold sufficient to trigger a misconduct process could then be, itself, sufficient to activate that process.</p>
<p>5.23 Where a student's enrolment is changed under this policy or section 32 of the Vice-Chancellor regulation, the dean must consider whether a student should be compensated for course or subject fees.</p>	<p>On what basis is this authority delegated to a dean? In what way is this a matter of academic judgement?</p>
<p>5.25 A dean may permit a student, whose enrolment is changed or prohibited under section 32(1) of the Vice-Chancellor Regulation, to return to, or participate in, study where a return to study is appropriate and the dean is satisfied that:</p> <p>(n) the student is able to participate and/or return to study; and</p> <p>(o) the student has complied with any conditions attached to the return.</p>	<p>It is unclear on what basis the dean makes this determination, and this provides too much latitude for subjective decision making.</p> <p>The criteria by which this might be satisfied should be specified in an exhaustive list in order to control arbitrary or capricious action.</p>
<p>2. Definitions</p> <p>“able to participate and return to study” means a student:</p> <p>(a) can participate in study to the standard required by University with or without reasonable adjustments; and</p> <p>(b) based on the health, behaviour or actions of the student there would not be an unreasonable risk to their own health, safety and / or wellbeing and / or that of others.</p> <p>...</p>	<p>In respect of (a) how would it be lawful to make a judgement that someone cannot participate in study to the requisite standards without making reasonable adjustments in conformity with equal opportunity legislation?</p> <p>In respect of (b) it is unclear on whose assessment the determination would be made. It is open for this decision to be made by someone with no expertise in this area.</p>

<p>“participation in study concern” includes a concern that:</p> <p>(a) the student could not or cannot participate in or continue to participate in or derive or continue to derive any substantial benefit from the course or subject which they are, or seek to be, enrolled or re-enrolled; or</p> <p>(b) the student’s health, behaviour or actions pose a risk to their own health, safety and/or wellbeing and/or that of others.</p>	<p>The framing of this definition would seem to be a cynical use of the exemption provisions under s. 40 of the <i>Equal Opportunity Act 2010</i> (Vic). The definition does not assist the reader to understand how this would be determined. This definition uses a description of the impact of a student’s circumstances rather than the objective indications that this is the effect of the student’s condition. See the section on substituted authority below.</p> <p>This again raised the uncertain interaction of these provisions with other policy and regulations. As this directly corresponds to the emergency power to exclude due to high-risk conduct. This leaves it open for a student to face processes under more than more regime.</p>
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Additional comments on proposed s. 32 Student participation in study in the VC’s Regulations

We understand these provisions are not currently subject to consultation, however to the extent they interact with and must be read in conjunction with the proposed policy, we provide the following comments.

Provision	Commentary
<p>32. Student participation in study</p> <p>(1) Subject to (2), a relevant dean may put a student on leave from enrolment or prohibit a student from enrolment or re-enrolment in a relevant course or subject, after considering the recommendation of the relevant faculty Student Participation in Study Committee.</p>	<p>This is a coercive action which is potentially adverse to a student’s interests which parallels misconduct processes.</p>
<p>(2) A dean may make a decision under (1) only if the dean is satisfied that:</p> <p>(a) based on the student’s disability:</p> <p>(i) the student requires adjustments in order to participate in or continue to participate in or derive any substantial benefit from the subject or course; and</p> <p>(ii) the University has complied with section 40 of the <i>Equal Opportunity Act 2010</i>; ...</p>	<p>This is the provision effectively cites a student’s disability as the basis for adverse action.</p>
<p>32(2)(b) based on the health, behaviour or actions of a student there would, if the student participated in the course or subject, be an unreasonable risk to their own health, safety and / or wellbeing and / or that of others.</p>	<p>This is not distinguished from the current high-risk conduct provisions.</p> <p>If it falls short of that definition, how is it then justified?</p>

Disjunction between stated objective and the operation and focus of proposed policy

The explanatory note for the policy states that the “main aim is to assist the student to successfully complete study”. If this is indeed the aim of the policy, then it is disappointing that the policy does not clearly articulate how the University will provide assistance to achieve this outcome.

Minimally we would expect a policy with a stated objective of assisting successful completion of studies needs to detail the resources and methods by which this assistance is offered.

The other objective of the policy put forward in the briefings prior to the release of the draft for consultation was to ensure that students with complex needs did not get referred to misconduct processes.

UMSU agrees that conduct relating to mental health conditions should not be characterised as misconduct and should not be dealt with through misconduct processes. However, the proposed policy is difficult to distinguish from a misconduct process, regardless of its title. The similarities between this policy and existing misconduct provisions are discussed in detail below.

UMSU supports the objective of providing a pro-active and supportive intervention. However, UMSU believes that, in line with best-practice and expert evidence-based approaches, mental health interventions should be part of an holistic framework which weaves together, and enhances, both existing support regimes, such as special consideration and ongoing adjustments, and provides a clear expression of the University’s approach to resourcing a comprehensive support system for students experiencing mental health related disruptions to their studies.

The fundamental concern driving the proposed policy could be addressed by creating an exit point in the current misconduct processes that would allow a diversion from the punitive outcomes of discipline processes. Students who may benefit from support rather than punishment require a supportive process overseen by a student mental health oversight committee of appropriately trained staff and student representatives with requisite expertise with appropriate extra resources. This, and other recommended initiatives are discussed further below.

Best Practice?

The briefing notes provided prior to the draft policy being circulated for consultation note that most UK Universities follow the proposed approach. UMSU notes that a year ago *The Guardian* published an article discussing the crisis in student mental health at UK Universities.

The article details, among other things, the story of Ruth Day who was one of the organisers of a protest in Bristol about the lack of a comprehensive mental health strategy and properly resourced support for students with mental health issues at Bristol University. The students told *The Guardian* “that despite promises of more investment in student wellbeing, services were still badly overstretched”.¹ The article describes Ms Day’s experience with the proposed policy’s equivalent at Bristol University:

[Ms Day] had been suspended for eight weeks under a rule which says students can be sent home if they are considered unfit to study, or their presence poses a risk to themselves or

¹ Samira Shackle, “‘The way universities are run is making us ill’: inside the student mental health crisis”, *The Guardian* (27 September 2019) <<https://www.theguardian.com/society/2019/sep/27/anxiety-mental-breakdowns-depression-uk-students>>.

others. Day said being suspended made her feel “terrified” and “hopeless”. Just a few months earlier, in April 2018, Natasha Abrahart, a 20-year-old physics student at Bristol who suffered from severe anxiety, killed herself on the day she was due to have an oral assessment. Her parents said they would take legal action against the university for failing to offer Natasha an alternative to the oral test, which she saw as an unbearable ordeal.

As discussed further below, the development of standards-of-care and fitness-to-study guidelines should be only one small part of a much larger, integrated approach to student mental health support and wellbeing. UMSU recommends a comprehensive focus on population health and prevention instead of standalone policies such as the one proposed.

Misconduct process by any other name would still be a misconduct process

To illustrate UMSU’s concerns that - other than the name of this policy - there is little to distinguish it from a misconduct process, we provide the following table of comparable provisions.

Proposed policy provisions	Current misconduct provisions
Subject to Sections 5.6 and 5.14, a dean may establish a faculty Student Participation in Study Committee to hold a meeting on the matter and by a simple majority make a recommendation to the relevant dean on the student’s participation in study.	If the student gives notice, the chair of the committee must convene a meeting of the committee to determine the allegation of misconduct within 20 working days after receipt or deemed receipt of the allegation notice by the student.
<p>A faculty Student Participation in Study Committee -</p> <p>(a) must give the student concerned or his or her representative an opportunity to make submissions orally or in writing or both;</p> <p>(b) must consider any medical certificate or other evidence submitted by the student concerned; and</p> <p>(c) must, where appropriate, take into account the matters specified in Section 32 (2) of the Vice-Chancellor Regulation;</p> <p>(d) may make any enquiries and consult any person it considers necessary; and</p> <p>(e) may require the person concerned to undergo a medical or other health professional examination, at the expense of the University, by a person or persons nominated by the faculty Student Participation in Study Committee.</p> <p>5.16. For a matter to be referred to a Student Participation in Study Committee, the relevant dean must notify a student in writing:</p> <p>(a) that the dean believes it more likely than not that a concern raised about the student is a concern about a student’s participation in study under this policy;</p> <p>(b) the particulars of the student’s health, behaviour or actions leading to the concern;</p> <p>(c) that the matter has been referred to a faculty Student Participation in Study Committee for meeting;</p>	<p>Where an allegation of general misconduct against a student is to be investigated, the Academic Registrar must provide the student with a written allegation notice:</p> <p>(a) setting out the alleged misconduct;</p> <p>(b) attaching copies of any primary supporting documents of which the Academic Registrar is aware relating to the alleged misconduct;</p> <p>(c) offering the student an opportunity to:</p> <ul style="list-style-type: none"> i. provide in writing an explanation or submission or evidence in response to the allegation; and/or ii. be heard in relation to it, <p>(d) naming the chair of the committee which will investigate the allegation of misconduct;</p> <p>(e) referring the student to the provisions of the relevant regulation and policy; and</p> <p>(f) advising the student of the provisions of section 4.11 and that they may seek independent advice from the Student Union Advocacy Service.</p> <p>5.3. If a student wishes to take up any of the opportunities set out in the allegation notice the student must notify the chair of the committee in writing accordingly within 10 days after receipt or deemed receipt of the allegation notice.</p> <p>5.4. If no notice requiring a hearing is given by the student, the committee will proceed to deal with the</p>

<p>(d) the place or online method used, the time and date of the faculty Student Participation in Study Committee meeting, which must be no earlier than 10 business days from the notice date;</p> <p>(e) the student’s right to respond to the concern in advance of the meeting in writing, at the meeting, or both;</p> <p>(f) the student’s right to notify the student participation in study officer that the student will be supported at the meeting by an officer of Student Union Advocacy Service; or a named support person who is not legally trained; and</p> <p>(g) of this policy and the relevant sections of the Vice-Chancellor’s Regulation.</p>	<p>allegation, including the conduct of a hearing if deemed necessary or appropriate by the committee, in the absence of the student.</p> <p>The student may, no later than 24 hours before the commencement of a meeting of the committee, notify the chair of the committee, that he or she wishes to have a specified support person present at the hearing to assist the student in presentation of his or her case. The support person may not be:</p> <p>(a) a person who was involved in, associated with, or alleged to have been involved in or associated with the misconduct alleged in the allegation notice; or</p> <p>(b) a qualified legal practitioner unless permitted by the chair of the committee.</p> <p>5.13. The support person has no right to be heard, except with the permission of the chair of the committee, and may be excluded from the hearing by the chair of the committee, at the chair’s discretion, if he or she disrupts or unreasonably impairs the conduct of the hearing.</p>
<p>5.18. Following a meeting, a Student Participation in Study Committee may, if satisfied that it is necessary to properly evaluate the student’s participation in study:</p> <p>(a) subject to section 5.17, request the student to undergo specified medical or health assessment or testing with:</p> <p>(i) that assessment or testing to take place within a specified time and with a health professional chosen by the University; and</p> <p>(ii) the University to bear the expense of the assessment or testing; and</p> <p>(b) allow the student to continue to study, subject to review under certain specified conditions, such as careful mentoring by a senior member of academic staff of the faculty;</p> <p>(c) request the student to complete specific actions in a specified and reasonable time frame to demonstrate their participation in study (e.g. undertake an action plan to resolve a specific concern);</p> <p>(d) recommend to the student that the student takes a leave of absence from studies for an agreed period to concentrate on their wellbeing and/or to resolve any specific concern, subject to review at the end of that period and demonstration, to the satisfaction of the dean, that they are able to participate in study;</p> <p>(e) recommend to the student that the student takes an exit award, if one is available, in consultation with the relevant course coordinator and subject to compliance with the Academic Board Regulations and policy;</p> <p>(f) recommend to the student that the student voluntarily withdraw; and/or</p> <p>(g) make a recommendation to the relevant dean.</p>	<p>5.18. The committee must make a decision on whether it is more likely than not, on the balance of probability, that the allegation is either proved or not proved.</p> <p>5.19. The committee must either dismiss or uphold each allegation of misconduct.</p> <p>5.20. The committee must dismiss an allegation of misconduct unless a majority of the members of the committee is satisfied that the allegation has been upheld.</p> <p>5.21. Where the committee upholds an allegation of misconduct, it may impose a penalty on the student in accordance with Part 8, Division 3 - General Misconduct and High Risk Conduct of the Academic Board Regulation.</p> <p>5.22. Within three working days of any decision being made under clause 5.18:</p> <p>(a) the student must be provided with:</p> <p>i. written notice of the terms of the decision;</p> <p>ii. any penalty imposed or recommended; and</p> <p>iii. the right to appeal under section 5.49; and</p> <p>(b) the Academic Registrar must be provided with a copy of the notice</p>

An assessment of these policies makes clear that they have the following shared characteristics:

- University staff can identify and report student behaviour and refer this to other University staff for assessment and escalation.
- A panel of University staff is convened to consider the student's behaviour and make decisions about measures that should be applied to the student.
- Procedures governing communications with students about formal components.
- Students can make submissions and representations to this panel, but they are not a party to the panel's decision-making.
- The outcomes allow for a student's enrolment to be suspended or terminated.
- An appeal process.

If the intention of this proposed policy is to divert students from misconduct processes and into another process that it designed to support students, then it is unclear why the proposed policy itself so closely resembles a misconduct policy – and where the outcomes for students who are identified as *requiring support* overlap so significantly with students who have *committed misconduct*.

The policy describes a regime where the University establishes a committee to examine a student's behaviour and makes determinations about the student's enrolment on the basis of that examination. These determinations can be imposed on students without their agreement and/or without reference to expert medical opinion.

For students in this situation "wellbeing leave" has the same effect as any suspension of enrolment, meaning that the range of measures the University may take are largely unilateral sanctions. The process does not provide for student agency or for collaboration between a student and their health practitioners about agreed actions that are in the student's interest as the student identifies them. As we will detail, the proposal that students and mental health professionals are removed from decision-making of this type is inconsistent with a growing body of research detailing recommended approaches to providing mental health support to students.

Student conduct matters, academic judgement, or disability support?

UMSU is concerned that the proposed policy represents a misplaced focus on the effects of mental health on students. This is reflected in the proposed policy's characterisation of students' mental health issues as matters of academic judgement. UMSU believes this conception is flawed, and especially problematic the context of the way in which academic decisions are authorised within the University. The University's operating model clearly and properly empowers faculties to have absolute autonomy in relation to their respective disciplines. Consequently the authority to make decisions which are informed by that subject matter expertise is critical, however it is unclear how or why student mental health is a faculty-specific issue, or why different disciplines should have the capacity to make autonomous determinations about students' enrolment status.

It appears that the formulation of the policy is unduly predicated on the role of faculties in providing assessment adjustments to students who require them. The framing of the policy in respect of these minimal adjustments and the available exemptions under equal opportunity legislation ultimately focuses on providing a mechanism to permit faculties to *avoid* extending adjustments to students, rather than mandating proactive and holistic support to those struggling with the impacts of mental health issues.

UMSU's concerns also involve the lack of clarity about what would trigger the various steps and processes set out in the policy. For example, while formal misconduct processes specify standards of behaviour that, where unsatisfied, may result in a disciplinary action, the proposed policy does not clearly identify what might trigger an intervention other than the faculty's determination that all reasonable adjustments had been made, or that there was no point to making an adjustment as the student would not benefit from it.

The capacity to make these coercive and unilateral determinations is an extraordinary authority to vest solely in a decision-maker who is anything but a disinterested party. Given it is not unusual for the UMSU Advocacy Service to see cases of flawed faculty decisions about academic adjustments overturned at appeal, UMSU can be forgiven for seeing this faith in faculty decision making in matters of disability support to be misplaced.

Moreover, the operation of proposed s. 5.4. makes express that the policy pertains to concerns involving "**conduct** that may be a result of health issues impacting on a student's ability to complete their studies".² The clause makes it clear that this health-related conduct is to be distinguished from conduct which is defined as student academic or general misconduct. The use of the term *conduct* would also seem to distinguish the substantive matters covered by the policy from purely academic matters.

This creates several troubling issues. Firstly, it is difficult to see how such a definition would not contravene disability discrimination legislation. By virtue of treating students with a health condition differently from a student without that condition, on the *basis of that condition* this would meet the definition of direct discrimination. For example, student A is neurodiverse and sometimes disrupts classes and is abrupt with staff, but not to a degree that would contravene student conduct regulations. Student B is a bit boisterous and also can be disruptive but there is no health issue impacting on student B. Under the proposed policy, student A may be caught by the provisions of the proposed policy and reported to the student participation in study officer, whereas student B whose behaviour fall short of the definition of misconduct will have no such intervention.

The policy does not identify any mechanism by which that a determination is made that a student's conduct is related to the impacts of a mental health condition.

Finally, while the policy is proposed as an institutional policy, it is effectively the creation of localised faculty policies without any requirement for consistency of approach or sufficient protections for students who are, by definition, vulnerable. There is a clear parallel with the devolved management of academic misconduct processes which are characterised by inconsistency between faculties and a failure to consistently and properly understand the principles of good administrative decision making in these processes.

Overlaps with other existing regulations and policies

Notwithstanding the lack of clear distinction between the proposed policy and a misconduct policy, there are also significant overlaps and a lack of demarcation with other existing policies. This creates fundamental problems arising from intersecting subject matter and conflicting authority under existing regulatory frameworks.

The *cause* and the *effect* of the relevant behaviour on a student's capacity to participate in their study are confused in the proposed policy. In the absence of formal and defined demarcation of and interaction between the two processes, and the absence of established thresholds of triggering

² Emphasis added.

behaviour in the proposed policy, students may be caught by dual processes. That is, students may be referred to the existing misconduct process for conduct triggered by those regulations and to their faculty's Student Participation in Study Committee for conduct below that threshold. This in turn, raises the prospect that a student may be subjected to inconsistent and divergent finding in relation to behaviour which has a shared *cause*.

It is of fundamental importance, and hardly controversial that the capacity to coercively restrict a student's enrolment should be subject to a very high threshold. This is currently afforded by the provisions of the regulations pertaining to high risk conduct allowing the emergency suspension of a student who poses a risk to themselves or others. It is unclear why secondary processes with lower thresholds are necessary or desirable. Given that the proposed policy is limited in scope to conduct which would not be caught by the Student Conduct Policy, logically the behaviour subject to the proposed policy must be subject to a lower threshold than any behaviour which could give rise to emergency suspension.

The actions that can be taken by the University in response to student behaviour need to be proportionate. High risk behaviour requires the University to impose an emergency suspension on a student to both meet its health and safety obligations and its duty of care to the relevant student. Behaviour that triggers the Student Conduct Policy allows the University to impose penalties including up to and including the suspension and termination of a student's enrolment. Given the proposed policy is designed to address behaviour that would not trigger the Student Conduct Policy the University should not be able to impose outcomes on a student that are already identified as appropriate measures in response to behaviour that reaches a higher threshold of severity.

In addition to misconduct processes, it is unclear how or to what extent the *Academic Progress Review*, *Graduate Research Training* and *Student Fitness to Practice* policies are insufficient to account for students who cannot effectively participate in their studies within the meaning of s. 40 of the *Equal Opportunity Act 2010*. It appears uncontroversial to suggest that these policies could be better vehicles to provide clear and relevant benchmarks of progress and engagement, and set out and codify the level of resources and nature of support a student facing difficulties participating in their studies might experience, without singling students out on the basis of disabilities or other health conditions alone.

Given the stated impetus of the proposed policy is to provide support, and where necessary create a different intervention for students who fall short of the definition of general misconduct, any such policy should be focused on that positive intervention and support, rather than creating an additional avenue for the University to exclude a student. This is discussed further below.

Evidence base and expert input

It would be useful to understand the evidence base establishing a need for this policy and what specialist advice or input was sought in its formulation. Given its stated intention of providing best practice support for students with mental health issues, it would also be instructive to understand what, if any, alternative formulations to the proposed policy were considered.

UMSU is concerned that, however well-meaning the intention of the policy may be, it does not appear to be a coherent approach underpinned by best practice principles. For example, on the University's own website – the *Students' with Mental Health Issues Guide for Academics Tips and advice for dealing with students with mental health issues*, a number of important principles are identified which do not sit comfortably with the proposed policy.

*"It is important to have a "student centred approach", i.e. work with the student to identify what best suits their individual needs. Check to see if they are okay, i.e. how best you can support them academically without singling them out."*³

The Jed Foundation in the US recommends a case management team, which takes a case managed approach as the name would suggest, and is a multidisciplinary team, drawn from roles with the requisite fields.⁴ More importantly, the intervention strategies promoted by the Jed Foundation's *Comprehensive Approach to Mental Health Promotion* are also nested within a broad, well-resourced case management approach, focused on:

*"strengthening protective factors for student mental health such as developing student life skills and resilience, fostering connectedness and belonging, and promoting help-seeking behaviors."*⁵

Under a comprehensive approach, risk identification and intervention takes place in a context which is predicated on support and an holistic response to the student. While high-risk conduct is addressed through similar mechanisms to those authorised under the existing high-risk conduct provisions, the identification of and processes to assess this conduct are the extreme end point of this wide-ranging systems approach.

Below UMSU sets out our recommendations for the best approach to meeting the stated objectives of this policy.

A solution which creates a problem

The proposed policy and regulations authorise potentially coercive and adverse outcomes for a student and leaves critical determinations in the hands of staff who are not required to have expertise in mental health or disability support. In this context, UMSU is of the view there is a significant risk that this will amplify an issue that currently only applies to a small number of students by allowing the powers it authorises to be used for a widening circle of "troublesome" or "high needs" students who require support, not exclusion from their studies.

There is a wealth of research that consistently evidences that students who are facing difficulties with mental health do better by remaining engaged in their studies with the appropriate supports.⁶ Any policy purporting to support students in this respect should not include a method by which these students can simply be excluded from their studies. UMSU is of the view that the only threshold for exclusion of this type would be on the basis of high-risk conduct, a matter which is already provided for in the University's regulations. If the only concern is to remove these provisions from the category "misconduct" then that should be done by amendment to those existing provisions.

³ Students with Mental Health Issues Guide for Academics - Tips and advice for dealing with students with mental health issues <<https://www.unimelb.edu.au/accessibility/guides/mental-health>>

⁴ See Balancing Safety and Support on Campus: A GUIDE FOR CAMPUS TEAMS <<https://www.jedfoundation.org/wp-content/uploads/2016/07/campus-teams-balancing-safety-support-campus-jed-guide.pdf>> and <<https://www.jedfoundation.org/wp-content/uploads/2016/07/student-mental-health-and-the-law-jed-NEW.pdf>>

⁵ Advice on promoting student mental health during the pandemic <https://www.insidehighered.com/views/2020/05/29/advice-promoting-student-mental-health-during-pandemic-opinion>.

⁶ See e.g. Helen Stallman and Sharron King, 'The Learning Thermometer: Closing the loop between teaching, learning, wellbeing and support in universities', 2016 13 *Journal of University Teaching & Learning Practice*, and Storrie K, Ahern K, Tuckett A. 'A systematic review: Students with mental health problems—A growing problem' 2010, 16 *International Journal of Nursing Practice* 2010, pp. 1–6.

Unintended consequences

There are a range of potential consequences of the proposed policy which largely stem from an apparent lack of understanding of the experience and circumstances of the students to which it is intended to apply.

For example, UMSU is concerned that such a policy might deter students from applying for special consideration as it is unclear whether this could be the basis of a report to the student participation officer. There are no controls which would prevent the reporting of a student on the basis of the student seeking help.

Survivors of Sexual Assault

The proposed policy has the potential to be retraumatising and invasive for survivors of trauma, and particularly sexual trauma.

Survivors of sexual trauma are highly represented among those with mental health issues.⁷ The processes envisaged in the proposed policy are not consistent with a survivor-centric, therapeutic and trauma-informed approach, and may actually harm survivors of sexual assault and other trauma.

Those experiencing sexual harassment or assault typically suffer a fundamental loss of choice, power and control. Best Practice dictates that survivors should choose when and to whom they disclose. The absence of full autonomy over their story can be profoundly retraumatising.⁸ Under the proposed policy, a student who is a survivor referred to evaluation by a Student Participation in Study Committee could be subject to an invasive procedure which may require them to recount their traumatic experiences or disclose personal information which they may prefer to keep private. The student could be required to disclose to a faculty committee, a health practitioner not of their choosing, or to anyone they do not want to share that experience with. This policy does not provide survivors autonomy and choice over disclosure and therefore risks adverse and harmful impacts on affected students.

The Victorian Health Department's advice on best practice trauma informed processes in respect of disclosure states:

Questioning people about the abuse and trauma they may have suffered is a difficult and extremely sensitive aspect of mental health care. Any enquiries about specific episodes of abuse should take place within the context of a general psychosocial history and should never be asked 'out of the blue'.⁹

Relevantly, the Victorian Health Department's advice is that wherever possible "a clinician should establish a relationship with a person before broaching issues about their trauma history. They should

⁷ See e.g. Sophie Khadr, Venetia Clarke, Kaye Wellings, Laia Villalta, Andrea Goddard, Jan Welch, Susan Bewley, Tami Kramer, Russell Viner, 'Mental and sexual health outcomes following sexual assault in adolescents: a prospective cohort study' (2018) 2 *Lancet Child Adolescent Health*, pp. 654-665 and Laura P. Chen, M. Hassan Murad, Molly L. Paras, Kristina M. Colbenson, Amelia L. Sattler, Erin N. Goranson, BS, Mohamed B. Elamin,, Richard J. Seime, Gen Shinozaki, Larry J. Prokop, and Ali Zirakzadeh, 'Sexual Abuse and Lifetime Diagnosis of Psychiatric Disorders: Systematic Review and Meta-analysis' (2010) 85 *Mayo Clinic Proceedings*, pp. 618-629.

⁸ Elizabeth Reeves, 'A Synthesis of the Literature on Trauma-Informed Care' (2015) 36 *Issues in Mental Health Nursing*, pp. 698-709.

⁹ Health.vic, *Trauma and Abuse – asking questions* <<https://www2.health.vic.gov.au/mental-health/practice-and-service-quality/safety/trauma-informed-care/abuse-and-trauma-how-to-ask-questions>>.

also ensure that they have sufficient time to provide appropriate support immediately after disclosure if it is required”.¹⁰

This policy poses additional risks to survivors because there is no requirement for intervening staff to have relevant qualifications in responding to sexual assault and violence. It is uncontroversial to observe that responding poorly to a disclosure can result in re-traumatisation. Evidence suggests that the responses of the person to whom a survivor first discloses will have significant impacts of whether disclosure leads to positive or negative outcomes.¹¹

The faculty Student Participation in Study Committee processes and powers have real potential to result in punitive outcomes for survivors. The fact that the procedures so closely resemble Misconduct provisions and are essentially themselves a disciplinary process is the antitheses of a trauma informed process, and may result in putting survivors through a process that may culminate in serious punitive outcomes such as removing the student from the subject or their studies. Consequently, the proposed policy could result in survivors being effectively punished for the effects that their trauma has had on their participation in study.

“Difficult” students

In the current context particularly, where some staff are stressed, time-poor, and openly stating that they are under-resourced to deal with difficult students – we are troubled by the prospect that students will be reported and potentially locked into this process by virtue of simply exercising or asserting their rights in a way that is challenging or difficult to manage.

UMSU is also concerned that the proposed policy provides a pathway to adverse consequences in the event that students report other students on the basis of behaviour that does not meet a threshold for general misconduct processes. This, in turn, creates a localised model of responding to reports of this nature increasing the likelihood of divergent and inconsistent practices being implemented within the University.

Where a student does raise a legitimate concern in relation to the behaviour of another student, the proposed policy provides no mechanism for a resolution of the matter between the students themselves. Instead student parties to behaviour that is reported will effectively be removed from a process, and the matter will be resolved by committees without reference to the protagonists.

Finally, the proposed policy does not address what will happen if a complaint is raised and then determined not to be appropriate, but the complainant – be they staff or student - remains aggrieved.

Substitute decision-making

The proposed policy culminates with some very coercive options. The policy seeks to constrain the option to request a student to undertake specified medical or health assessment or testing by limiting the option to situations where a less restrictive action is unavailable (language common to the *Mental Health Act* in its provisions regarding involuntary admissions). However, while there is clear case law in respect of the meaning of “less restrictive” under the *Mental Health Act*, it is unclear what guidance would be provided to the decision maker under this policy.

¹⁰ Ibid.

¹¹ Emily R. Dworkin, Julie A. Schumacher, ‘Preventing Posttraumatic Stress Related to Sexual Assault Through Early Intervention: A Systematic Review’ (2018) 19 *Trauma, Violence, & Abuse*, pp. 459-472.

George Szukler observes that the only basis for coercive action in this context should be where there is an objective lack of legal capacity to make an autonomous decision.¹² In fact, substitute decision-making is inconsistent with legal capacity and does not “respect the rights, will and preferences” of persons with disabilities (as we presumably do for everyone else).

The United Nations Convention on the Rights of Persons with Disabilities Committee maintains that the existence of a disability (based on a physical, mental, sensory or psychosocial impairment) must never be grounds for denying legal capacity and the imposition of “substitute decision-making” – that is, decision made by another person in the place of the person with a disability (not appointed by the person, done against his or her will, and not based on his or her own “will and preferences”).¹³

Accordingly, UMSU believes that the kind of substitute decision-making authorised under s. 5.18(a) of the proposed policy should be subject to a threshold of no less than the objective absence of legal capacity of the student.

¹² George Szukler, “Capacity”, “best interests”, “will and preferences” and the UN Convention on the Rights of Persons with Disabilities’ (2019) 18 *World Psychiatry* p. 34–41.

¹³ *Ibid*, p. 38.

UMSU's recommendations for a Comprehensive Mental Health Policy - Collaboration rather than coercion

*There is no good reason why every Australian university should not have a mental health policy and strategy and yet few do.*¹⁴

UMSU understands that student wellbeing is earmarked for the University's attention in 2020-21.¹⁵ This would seem timely given the impacts of the pandemic, and following from the results of the July *End of Semester Well-Being Survey* which indicate that for students, mental health problems are among the most critical issues impacting on their student experience currently.

In this context and given such large numbers of students are identifying mental health concerns as a major influence on their wellbeing,¹⁶ the proposed policy's narrow and adversarial focus appears fundamentally misconceived. Rather than approaching the issue of student mental health by focusing on the coercive control of students at the more extreme end of the mental health spectrum, UMSU recommends a university-wide comprehensive, proactive, and supportive mental health strategy.

Significantly, the way in which the proposed policy would be experienced by a student experiencing the impacts of a mental health condition does not appear to have been considered in the drafting of the proposed policy.

Benjamin Veness who was awarded the 2013 Monash University Churchill Fellowship to explore innovative prevention and early intervention strategies to improve the mental health of university students made the following key findings:

1. *There must be a 'tone at the top' that genuinely commits a university to improving its students' mental health and wellbeing;*
2. *Mental health task forces with student representation should be used to develop mental health policies and strategies relevant to each institution;*
3. *Australia needs a sectoral leader like The Jed Foundation, in particular one with a strong research capability;*
4. *On-campus treatment services should be supplemented by preventative health strategies and supported by active partnership with local government and private health services;*
5. *Screening programmes are worthwhile when matched with service, and outreach services should be used to target those students who do not or cannot engage via traditional means;*
6. *Regard should be paid to the specific needs of minority groups such as LGBTI and international students; and*
7. *Universities should offer and evaluate mindfulness meditation, which can be taught in groups and with easily-scalable apps.*¹⁷

Veness makes 39 specific recommendations in his report in line with these findings, including the establishment of a "campus-wide mental health oversight committee".¹⁸

UMSU broadly endorses the following recommendations from Veness' report:

¹⁴ Benjamin Veness, *The wicked problem of university student mental health* (2016), p.20.

¹⁵ Chancellery (Academic), *Student Life at the University of Melbourne – Update* (August 2020), p. 14.

¹⁶ See e.g. low participation rates of undergraduate students in the University's peer mentoring program where many "students cite their mental health as one of the biggest reasons for non-participation, with feelings of social anxiety, stress and lack of motivation being cited in their responses". *Insights from the End of Semester Well-Being Survey*, p. 11.

¹⁷ *Ibid*, p. 8.

¹⁸ Cf: the proposed *Student Participation Committees* which are localised and constituted with limited and untrained faculty staff.

- A campus-wide oversight committee should be chaired by the Head of the Student Wellbeing area and should include student members, meeting at least twice each semester.
- The campus-wide mental health oversight committee should be responsible for overseeing the development, implementation and evaluation of a student mental health policy that incorporates a public health approach.
- The campus-wide mental health oversight committee should be responsible for overseeing the development, implementation and evaluation of a student mental health strategy that puts into effect the student mental health policy.
- The campus-wide mental health oversight committee should be responsible for systematically reviewing all university policies with regard to their impact on students' mental health, and ways in which they could be altered to improve their effects on mental health itself and students living with mental health issues.¹⁹
- Adequate project resources including technical expertise should be provisioned in order for these recommendations to be performed efficiently and to a high standard.
- Students must be included in discussions and planning that concerns their mental health and wellbeing. Universities should both proactively include them and support them to assist their peers.

Relevantly, Veness' report notes that while mental health screening should be encouraged to identify students at risk, it should be **married to appropriate and sufficient services to treat the problems identified** ('No survey without service').²⁰

UMSU also endorses the approach of Orygen Youth Mental Health Service's report *Under the Radar – the Mental Health of Australian University Students* which makes a number of recommendations to support students affected by mental health issues, including:

- Increasing the capacity for university Disability Support Programmes to provide assistance to students with mental ill-health. This may require additional and targeted funding to this group and the identification (in partnership with a mental health organisation, such as Orygen) of evidence-based supports and training to deliver these.
- Universities to ensure that student counselling services are funded at a level required to respond to demand and augment these services where appropriate with online and community-based mental health services.
- Universities are settings for early intervention and prevention.
- Government funded school-based mental health programs to extend beyond secondary school into tertiary education settings. Training delivered to frequent contact university staff (such as tutors and administration staff) as well as students.
- Universities to ensure all staff (academic and non-academic) are trained to an appropriate level in mental health literacy and awareness.

These recommendations are echoed in a number of other reports and guidelines. For example, Reavley, Ross, Killackey, and Jorm, advise that universities should have a policy around supporting students with a mental health problem and which minimally covers mental health promotion, mental illness prevention and services for students with a mental illness. The mental health policy and its implementation should be driven by senior management in partnership with students with mental illnesses, staff from different areas of the institution, student associations and representatives of outside services. Additionally, their guidelines recommend:

¹⁹ See e.g. work undertaken by Dr Helen Stallman at the University of South Australia and as director of the International Association for University Health and Wellbeing <<https://www.healthyuniversities.org/>>.

²⁰ Veness, above n. 14, p. 29. Emphasis added.

- The institution should have a strategy for communicating its mental health policy to staff and students.
- Support services should develop a mental health promotion strategy which covers prevention, early identification, stigma reduction, availability and access to services.
- Support services should provide all staff and students with education on mental illness.
- The institution's support services should adopt an easy access and "no wrong door" policy to entry for assessment and treatment of mental health problems.
- Staff should be provided with information about making reasonable adjustments for assessments.
- The process for getting reasonable adjustments should be as simple as possible and advice should be available to students if needed.
- Training for staff on the importance of prevention and early intervention and how to support students with a mental illness in ways that promote recovery.
- Staff should receive appropriate and ongoing professional development and training in relation to mental illnesses, including:
 - The use of non-judgemental listening skills when talking with students about their personal problems.
 - How to respond when a student discloses a mental illness to them, including which things are supportive and which are unhelpful.
 - Techniques for promoting motivation and self-esteem in students with mental illnesses.
 - Curriculum design, development and delivery strategies that facilitate inclusive and effective learning for students with mental illnesses.
 - Classroom, examination and assignment adjustments that can be made for a student with a mental illness.
- Staff should be informed about how to handle mental health crisis situations and have the capacity to interact with students with a mental illness in a manner that maintains respect, dignity, confidentiality and equity.
- When a student discloses that they have personal issues such as a mental illness, confidentiality should be respected unless there is an immediate danger to the person or to others in withholding that information.
- If the student has a mental illness, staff should not make assumptions, but rather ask the student what support, if any, they might need.
- Staff should pro-actively explore any challenges or barriers to successful learning with students with a mental illness.
- Adequate funds should be allocated to provide support services to students with a mental illness.
- Institutions should seek funding opportunities that can be used to help develop and enhance support services for students with a mental illness.
- The institution's mental health services should be subject to ongoing research and evaluation of their service provision.²¹

Conclusion

UMSU does not share the University's view that the best way to support students is to create another route to potentially coercive and punitive outcomes. At the heart of the proposed policy is an adversarial and potentially punitive process designed to give authority to academic staff to potentially exclude a student from their studies as a method to purportedly support them to participate in their studies.

UMSU supports the development of a comprehensive university-wide mental health policy based on models of best practice that have been established and detailed by experts, and which we have detailed in this submission.

²¹ Reavley, N. J., Ross, A. M., Killackey, E. & Jorm, A. F. 2013. Development of guidelines for tertiary education institutions to assist them in supporting students with a mental illness: a Delphi consensus study with Australian professionals and consumers. *PeerJ*, 1, e43. P.8. See also: Reavley, N. & Jorm, A. F. 2010. Prevention and early intervention to improve mental health in higher education students: a review. *Early Interv Psychiatry*, 4, 132-42.

Recommendations

Recommendation One

The proposed policy is not implemented.

- *The policy does not achieve its objective.*
- *There are a range of problems with the proposed policy set out in this submission which create potentially adverse outcomes for vulnerable students.*
- *Vesting authority for these sorts of determinations in committees based in faculties and comprised of academic staff who may have no relevant training or experience is open to poor decision making at best and abuse of process at worst.*

Recommendation Two

Review current policies to ensure they conform to best practice with respect to student mental wellbeing.

- *Undertake a trauma informed and student centric analysis of the University's current student facing policies with a view to ensuring positive mental health outcomes for students, including current misconduct processes, special consideration and Course Academic and Research Higher Degree Progress processes.*
- *In order to provide authority for the emergency exclusion of students with high-risk conduct without classifying that behaviour as "misconduct" the current emergency provisions should be reviewed and amended.*
- *The high threshold to trigger these emergency powers should be maintained as is.*

Recommendation Three

The University develops a Mental Health Framework to deliver pro-active and comprehensive support to improve students' mental health wellbeing.

- *Develop and implement a Mental Health Framework informed by the recommendations of the Veness and Orygen Reports detailed in this submission.*

Recommendation Four

The University should take a properly student-centred approach to supporting students with complex needs and disabilities which impact on their participation in study.

- *The University should commit to enhanced consultation with students about academic and other study related adjustments to reach a mutually beneficial outcome where the adjustments are reasonable and meet the particular needs of the student.*

Recommendation Five

Improved education for academic staff regarding how to balance the competing priorities of equitable adjustments and inherent academic requirements.

- *In some academic divisions there remain fundamental misapprehensions regarding the meaning of equity, the University's obligations under the Disability Standards for Education, and its duty of care to its students. This results in, among other outcomes which do not positively support student mental health, push back on special consideration decisions, poor or no implementation of reasonable adjustments, foot dragging on providing adjustments, and an impoverished educational experience and higher risk of disengagement for the student.*
- *Greater awareness and familiarity with equity principles and disability discrimination legislative obligations among academic staff will go some way to improving student participation in their studies.*