UMSU submission on Consultation on Proposed Sexual Misconduct Prevention and Response Policy

August 2021

Dear Policy Network,

The University of Melbourne Students Union (UMSU) welcomes the opportunity to put forward our views on the proposed *Sexual Misconduct Prevention and Response Policy*.

UMSU acknowledges that the draft policy represents a significant improvement, in both tone and content, from previous policies dealing with sexual misconduct. Specifically, we appreciate the improved language featuring terminology and concepts such as "victim-centred" and "trauma-informed", as well as how the policy acknowledges the need to address intersectionality and its focus on prioritising complainants' wellbeing.

Nevertheless, there remain areas which give cause for concern, both substantively, and in respect of the inevitable challenges of both implementation and communication to the university community. There is a disjunction between the draft policy's commendable aspirations, and the fact that much of the policy appears to maintain existing arrangements which are neither victim-centric nor trauma-informed.

UMSU notes that the draft policy remains **largely aspirational**. It lacks significant procedural detail and relies on many vague and ill-defined terms. Other concerns with the draft include poor accessibility, its problematic interaction and reliance on other unreformed policies, and a conspicuous lack of alternative options for victim/complainants including restorative justice approaches.

Finally, UMSU believes that the lack of options provided for support of and advice to victim/complainants fails to provide an approach which would empower victim/complainants and restore their agency and control as a way of reversing the experience of powerlessness inherent in sexual misconduct incidents.

A set of UMSU's priorities and recommendations is set out at the end of this document.

Provisions which UMSU broadly supports

UMSU endorses the objectives of the policy and its statement of intent. Similarly, UMSU endorses the guiding principles of the draft policy, while noting they remain largely aspirational.

UMSU supports the commitment in the draft policy to better support disclosing individuals. However, it is important to ensure that these commitments are integrated into the relevant processes and policies by which this support is to be offered. For example, commitment to providing additional or alternative academic support including special consideration will only be meaningful where the *Assessment and Results Policy* and its implementation recognises and gives effect to this commitment.

UMSU endorses the draft policy's language including centring terminology such as "victim-centred" and "trauma-informed", as well as acknowledging the need for addressing intersectionality and the focus on prioritising complainants' wellbeing. However, despite these aspirations, much of the policy appears to maintain existing arrangements which are neither victim-centric nor trauma-informed. For example, the policy interacts poorly with the *Student Conduct Policy* that excludes victim/complainants from the process entirely, and there is a lack of options provided for victim/complainant to maximise their agency and empowerment. These limitations are explored in more detail below.

UMSU supports the commitment to publishing annual reports as a fundamental accountability measure and as one of UMSU's top ten identified priorities in tackling relationship harms at the University.

UMSU endorses the draft policy's commitment to the use of independent investigation as a significant first step, however, very little detail of how this might operate is available in this draft. Similarly, the draft policy's requirement that decision making is exercised without bias or conflict of interest is commended, however these provisions appear based on a very narrow interpretation of a conflict of interest or bias. There is a presumption that only conflicts of interest which might represent fraud or corruption are germane to good decision making. However, arguably all employees of the university may be subject to a level of conflict or bias in matters to which the University is a respondent given their employment relationship.

Problems with proposed policy

Accessibility

The draft policy is long and complex. While a lengthy policy may be necessary to fully set out complex arrangements, it is not sufficient or appropriate as the sole source of information for those who have recently experienced sexual and/or relationship harms. Case work at the UMSU Advocacy and Legal Services indicates that many students struggle to understand complex policies. This may be for a range of reasons, including English language confidence, stress and trauma, and disability access challenges. For example, a long and complex document which is heavily reliant on hyperlinks may present barriers for those using screen readers.[1]

For the very large proportion of enrolled students who are not from English speaking backgrounds, the complexity and length of the draft policy is especially daunting. UMSU notes that the policy commits to providing "assistance to overcome any cultural or linguistic barriers that may exist", however it is

---

[1] Vision Australia, *How to make "Read more" links accessible* <https://www.visionaustralia.org/services/digital-access/blog/how-to-make-read-more-links-accessible>.

difficult to reconcile this commitment with the University's historical refusal to provide information in languages other than English that are relevant to the university community.

Defining with more clarity

At this stage, although the draft policy includes a section entitled *Procedural Principles*, actual processes are conspicuous by their absence. This means that a first reading of the current draft creates an impression of a policy that is still largely aspirational and lacking procedural detail. For students who lack trust in the university's approach, this can appear deliberately vague, or as though the lack of specificity is a deliberate attempt to provide "wiggle-room" that puts far more control in the University's hands and potentially removes agency from victim/complainants.

Vague and ill-defined terms both contribute to the poor accessibility of the draft and increase risks that the provisions will be disputed. The following are some ill-defined terms and phrases from the draft:

- "The University". UMSU acknowledges that the University itself uses this expression to express its responsibilities as a *body corporate*, however the experience of students is that the different parts of the university deal with responsibility in a narrower way. Accordingly, this needs to be more specific.
- "Where possible". This term is so vague as to be meaningless and invokes the possibility that this may be solely defined by expediency for the University. It should be made clear according to what standard this is determined.
- "Reasonably connected." Who determines this and on what basis and how does it interact with the University's duty of care at law?
- Commits to providing "assistance to overcome any cultural or linguistic barriers that may exist." But how? In particular, students have been vocal about the need for information to be translated into languages other than English, and accordingly, the third of UMSU's 10 Priorities is to "publish clear guidelines, in multiple languages, about reporting, complaint, investigation and adjudication processes."
- "Certain groups of people face a greater risk of being subjected to sexual misconduct." This policy should be explicit in identifying which groups of people face "greater risk" and are more vulnerable (such as women, trans and non-binary students, LGBTQIA+ students, students with disabilities, BIPOC students and students from interstate, overseas and rural areas), as well as how they will each be supported.

Convening a focus group of students who were already familiar with many matters pertaining to sexual misconduct, UMSU asked them to read the draft policy and use it to briefly explain what options they had to report or disclose an incident of sexual misconduct. Very few students could do this easily. The primary feedback from this group was that it was not immediately clear to them who or where the first points of contact might be, and that the processes described were difficult to understand. In particular, the section on "roles and responsibilities" was singled out as being difficult to follow, meaning that many students may be left unclear about who specifically to go to.

For a student seeking to understand their rights, options and the appropriate processes, a dense policy can increase the risk that students will miss details, especially if they are distressed or in crisis. Additionally, vague, and ill-defined terms can result in a proliferation of complaints and disputes about the application and operation of the policy itself which is not conducive to a low impact and accessible response for victim/complainants.

It is uncontroversial that the experience of a bureaucracy laden complaint system represents a significant barrier to reporting. A fundamental source of this are policies which leave people confused and frustrated.[2]

All of this suggests that there needs to be further work on simplifying the draft policy's language and structure, as well as a requirement for a range of more accessible sources of information to be provided to students, especially once the procedures to be used to progress the objects of the policy are finalised. These resources should include flow charts, information in languages other than English, and video or other non-text resources.

Integration and interaction with other policies – trauma-informed and victim-centric?

Elements of the draft policy's commitments are contingent on their integration into other existing policies and processes. Most obviously, the commitment to a trauma-informed and victim-centric approach will need to be seamlessly reflected through all processes which may interact with the victim/complainant. Otherwise, the policy's commitments are largely hollow.

Accordingly, a commitment to greater support via special consideration will only be possible where the policy and procedures for implementing special consideration adequately allow for this. Currently, the administratively rigid and document driven special consideration process would remain a significant barrier for a traumatised student to gain support. Students who have been victims of critical incidents such as sexual harm have reported to the Advocacy Service that the Special Consideration process has significantly retraumatised them.

UMSU has previously suggested that the University *automatically extend Special Consideration* to students in cases where students identify as the victims of sexual harm and misconduct. This recommendation, which the University has so far refused to adopt, is an example of a trauma-informed and victim-centric approach to integrating policies related to sexual harm and special consideration.

Another obvious policy interaction for students is the draft policy's reliance on the *Student Complaints and Grievances* process and the *Student Conduct Policy*. UMSU is of the view that the current system of making a complaint under one policy (*Student Complaints and Grievance Policy*), which may then progress under a different policy (*Student Conduct Policy*), is wholly inadequate for this purpose, as it completely separates the complainant from the process of resolving the complaint. Again, this is the opposite of a trauma-informed and victim-centric approach.

Specifically, when a complaint is lodged under the student grievance procedures, the complainant is required to specify a desired resolution, or resolutions. However, where the complaint is then progressed via the separate *Student Conduct Policy* there is no accountability back to the complainant, no meaningful communication about the process, and no feedback to or involvement of the victim/complainant in any resolutions or outcomes. The two processes remain separate and unintegrated. This is not a victim-centric process.

As identified above under *Accessibility*, the University will also need to reconcile its policies in respect of providing information in languages other than English represented among its students.

---

[2] Ssali, S., Namaganda, A., & Bisaso, R. 'Examining The Barriers to Reporting Sexual Harassment In Universities', (2021). *International Journal of Sociology*, 2(1), 64 – 84.

Finally, the policy is not consonant with the draft *Gender Affirmation Policy in* its use of the dual terms 'gender' and 'gender identity'. The term 'gender' incorporates a person's gender identity, and separately mentioning 'gender' and 'gender identity' is transphobic, as it seeks to distinguish a person's own identity from an arbitrary, 'real', gender. Other ways to write this would be, 'sex, gender and its expression', or just 'gender'.

University's Duty of Care

The draft remains vague around the University's duty of care and how it is reflected in the scope of the policy. The term "reasonably connected" should be defined so students can have greater clarity, and exercise better judgements about how to progress their concerns at the earliest possible point (see *Maximising Choice, Options, and control* below).

Other provisions are vague and lack meaning – for example, "Where a complaint is made about a person who is not a student or staff member of the University, the University will seek to pursue the matter via mechanisms available to it, for example via participation or affiliation agreements."

Implementation issues – more questions than answers

As noted, the draft policy is largely aspirational and accordingly there remain many potential issues to which the University must have regard in the implementation of the policy. There are several fundamental details yet to be made public, all of which will have a significant bearing on the success and effectiveness of the draft policy.

Cultural and structural change – the devil is in the detail

Conspicuous among these gaps is any concrete approach to tackling institutional, structural, and cultural issues. Consequently, there is a lack of specificity with respect to how the University will commit to prevention via cultural change.

Mechanics – how is it operationalised?

On a practical level, the draft policy does not clearly establish how complaints can be made, what will happen when they are made, who will "manage" complaints, how investigations work, how matters are adjudicated, and the breadth of justice processes. In short, most processes and practices are absent, including:

- Details about the investigation and adjudication process.
- Qualifications, training and accountability of investigators and adjudicators.
- The meaning of the provision: "Where possible, the University will identify the single most appropriate avenue for investigating a complaint".
- Which "independent service provider" will run the 'Inappropriate Workplace Behaviour Line', and to whom are they accountable?
- It is unclear who "All individuals who have decision making responsibilities or responsibilities to support decision makers" are (15.1). Specifically, there is no clarity in respect of who will investigate, under what process, and with what training, nor who will adjudicate, under what process, and with what training.
- The role of the Safer Community Program, in connection to complaints, is not sufficiently clear or articulated.

Promulgation

The *notes for consultation* accompanying the draft policy indicate that after finalisation of the policy it "will be supplemented with a comprehensive communication and education program to help individuals use the policy and to understand their own role in preventing and responding to sexual misconduct". UMSU believes that clarifying, simplifying, and communicating the final policy, in order to increase reporting and promote student confidence in the process, will be a significant challenge, and it will be critical that UMSU remains a partner in the development and implementation of communication strategies to students, and the development of improved processes and practices.

Confidentiality provisions

The confidentiality issues raised in this draft require further consultation (8.7 – 8.9, & 12.9) and clarification. UMSU acknowledges that there are limits to confidentiality, however, this draft lacks the required specificity to guide how confidentiality is balanced against risk and welfare of others, especially when risks to the university community become apparent.

Communicating complex issues around confidentiality is a complicated task. Accordingly, the process of discussing reporting and confidentiality needs to be more explicit. For example, it is not clear who will communicate these issues, and when in the process the issues will be discussed.

Bystander intervention

UMSU has concerns about what constitutes "reasonable, safe, and active bystander intervention" (13.1). While we support the place of bystander intervention in a community-wide response, particularly in environments such as residential colleges, it is not without risks in all contexts.

The policy needs to clearly set out where students will receive information on these issues, who will teach it, and with what processes/advice.

Meaningful engagement with intersectionality

The draft policy cites "respecting intersectionality" in its guiding principles, but the draft is light on identifying actual measures for cultural change, or meaningful engagement with the intersectional aspects of a victim/complainant's experience.

Alternative processes

The draft policy provides for an alternative to making a named formal complaint via an anonymous reporting system. UMSU notes that many students have indicated that the current anonymous register is inadequate. Any future register needs to have encrypted E2E communication and therapeutic support (preferably 24/7) before students will feel comfortable to use it. Reports made anonymously should also form part of the annual reporting.

There is only one mention of "alternative conflict or dispute resolution process" (16 – p.13) in the draft policy. UMSU is of the view that the University needs to urgently develop alternatives to the current binary of formal reporting or taking no action at all. The policy then needs to set out what processes are available, who will undertake these processes, and under whose auspice and authority.

Importantly, "mediation" is not an appropriate process, in relation to complaints of sexual misconduct.

Restorative Justice Approach

UMSU would like to see the University formally develop a restorative justice (RJ) option for sexual misconduct matters.[3] This approach seeks to address the gulf between formal reporting of sexual misconduct and doing nothing.

As long ago as 2017 RMIT's Centre for Innovative Justice was working on the development and implementation of an RJ approach as part of a suite of responses in relation to sexual harassment and assault.[4]

RJ options are particularly effective in providing a pathway for victims/complainants whose priority is being heard and having harms acknowledged. In these situations, victims/complainants are less motivated by securing particular outcomes, making the stress and potential retraumatising brought by formal complaint processes unattractive. Given the prevalence of sexual misconduct in settings where the offender/respondent is well known to the victim/complainant, and where the maintenance of some form of relationship may still be valued, RJ provides a mechanism to address sexual misconduct without necessarily destroying all relationships in the process.[5]

The absence of RJ in the policy represents another way in which the policy fails in its aspiration to be trauma-informed and victim centric.

Maximising choice, options, and control

Sexual misconduct represents a fundamental denial of a person's agency and control. Accordingly, those who have experienced sexual misconduct have also experienced a profound negation of choice. To counter the trauma of this experience, the agency of the victim/complainant must be maximised. Loss of options and control risk amplifying the distress and simply retraumatising the person.[6] In a trauma-informed model, the rights of victims to be treated with dignity and respect must be given a central place. This empowerment is promoted through providing *choices, options and control* over decision making and the complaint process.

For the policy to be appropriately trauma-informed and victim-centric, there need to be far greater options offered to victims and complainants in terms of both support (and advice) and reporting.

It is fundamentally important for victims and potential complainants to get thorough, independent, and expert advice at the earliest opportunity. This will maximise the options available.

Both the policy itself and the attendant FAQs fail to provide external referral options (beyond the police). In effect, this omission is more significant than a simple focus on the University's role. The lack of other options implies that other possibilities are not worthy of consideration.

---

[3] Centre for Innovative Justice, *Innovative justice responses to sexual offending* (2014) <https://cij.org.au/cms/wp-content/uploads/2018/08/innovative-justice-responses-to-sexual-offending.pdf>.
[4] RMIT commits to restorative justice for survivors of sexual assault <https://www.rmit.edu.au/news/all-news/2017/jul/restorative-justice-for-survivors-of-sexual-assault>.
[5] Bebe Loff, Bronwyn Naylor, and Liz Bishop, A Community-Based Survivor-Victim Focussed Restorative Justice – A Pilot (2019) <https://www.aic.gov.au/sites/default/files/2020-05/CRG-33-14-15-Final-Report.pdf>.
[6] See e.g. WHO (2009) 'Components of the empowerment process'. In WHO, *WHO Guidelines on Hand Hygiene in Health Care* pp. 191-192

Currently under the respective headings for where to seek support and how to advise of an incident, only the University's Safer Community Program is mentioned. The policy and its attendant documents need to provide independent sources of support and advice – particularly legal advice.

It is uncontroversial that there are a range of critical considerations for victims and potential complainants which require expert and independent legal advice. This advice should be provided at the earliest possible point in order to preserve all options. Matters such as choice of jurisdiction are usually one-off choices that are easily extinguished if not exercised at the beginning of a process.

This is particularly important in respect of victims'/complainants' options to make complaints via the Victorian or Australian Human Rights commissions where the choice of a given jurisdiction will have an impact on a number of important considerations for outcomes and prospects of success.

UMSU recommends that rather than simply adding referrals to a list or table, the policy and attendant documents need to include a clear explanation that the University's internal process is not the only option to report and incident and resolve a complaint - even where it is within the scope of this policy. To be appropriately victim-centric, the policy must encourage complainants to get advice from external sources - even if the preference of the victim/complainant is to ultimately make a report to the university subject to this policy.

The information provided for independent advice should minimally include the UMSU Legal service (which can provide warm referrals to other free legal advice where necessary) and the UMSU Sexual Harm Response Coordinator for students.

The general support options should be expanded to include the Victims of Crime Assistance Tribunal (VOCAT),[7] which provides for both financial support for victim/complainants and whose hearings allow victims to talk about their experience, and to receive acknowledgement and validation that they have been the victim of a crime.

---

[7] https://www.vocat.vic.gov.au/

UMSU's 10 Respect Priorities:

The following are UMSU's top ten identified priorities for addressing sexual and relationship harms at the University. They are representative of what the whole of UMSU see as necessary for achieving Safety on Campus and were authored by the UMSU Sexual Assault and Harassment Working Group (2020) and adopted by UMSU Students' Council (2020).

Vision
Develop a university-wide action plan that is victim centred and trauma informed. This must include improved policies, processes, and practices for reporting (including anonymous reporting), investigation and adjudication, therapeutic services, alternative justice and resolution pathways, and prevention.

Priorities
1. Create a stand-alone sexual assault and harassment policy (including stalking and relationship violence), that is mandated across all UoM departments and affiliates, including residential colleges. This policy should be developed in conjunction with those with lived experience and subject matter experts. It should focus on reporting as a process, rather than a singular decision.
2. Move all reporting and therapeutic services, including anonymous reporting, away from university administrative premises into a stand-alone 'Health and Wellbeing Centre'. All reporting and therapeutic services should reflect the diversity of the university community.
3. Publish clear guidelines, in multiple languages, about reporting, complaint, investigation, and adjudication processes.
4. Publish clear information about the breadth and diversity of sexual and relationship harms, in order to promote reporting from as many groups and communities within UoM as possible.
5. Publish annual figures (appropriately anonymised) for reporting, complaint, and adjudication, to promote transparency in decision-making and development of a genuine 'zero tolerance' approach.
6. Develop an independent investigative process, including appropriately trained staff, available to all departments and affiliates of UoM.
7. Maintain one investigative process for all complaints, whether student or staff. This should include all graduate students and those on placement with external agencies.
8. Develop alternative justice and resolution processes, with appropriately trained and supported staff, made available across UoM and affiliates.
9. Develop appropriate educational resources, alongside students, to define UoM culture and expectations, and assist students in developing positive relationships.
10. Develop a liaison committee, including representatives from key community agencies and services.

Recommendations

Recommendation One
Increase the accessibility of the policy by

➢ *Adhering to best practice access and inclusion practices to enhance comprehension of content.*

➢ *Creating alternative information pathways to ensure that anyone can easily understand what to do, their options and what the process will be.*

➢ *Producing this information in a range of languages commonly spoken in the university community.*

➢ *Using flow charts and non-text-based formats to set out steps and options to disclose or report.*

➢ *Creating videos and other visual methods that detail complex processes and options.[8]*

Recommendation Two
Define with more clarity by

➢ *Setting out in more detail a range of processes and procedures to achieve the policy's objectives.*

➢ *Ensuring terms are clearly and meaningfully defined, assumptions are made explicit and areas which may be subject to dispute are properly clarified.*

Recommendation Three
Address the integration and interaction with other policies by

➢ *Undertaking a comprehensive review of existing University policies which impact victim/complainants to ensure they align with the policy's commitments to supporting victim/complainants in a trauma informed and victim-centric way.*

Recommendation Four
Clarify the University's Duty of Care by

➢ *Properly defining the scope of the policy to ensure victim/complainants have clarity about their options and exercise better judgements about how to progress their concerns at the earliest possible point.*

Recommendation Five
Address implementation issues by

➢ *Fully elucidating the details of the high-level processes referred to in the policy.*

➢ *Connecting the aspirational statements regarding cultural, systemic and institutional change to detailed implementation steps and concrete actions.*

➢ *Specifying how the policy will work operationally and in detail, including details of the investigation and adjudication process, and who is specifically responsible for discrete aspects of its implementation.*

➢ *Providing greater clarity on the role of the Safer Community Program in connection to complaints, and how conflicts of interest will be avoided.*

➢ *Maximising success of the final policy and the attendant framework by ensuring UMSU remains a partner in the development and implementation of communication strategies to students, and the development of improved processes and practices.*

---

[8] See e.g. RMIT's video - https://www.rmit.edu.au/students/support-and-facilities/student-support/safer-community/sexual-assault

- *Increasing clarity and specificity around the balance between confidentiality and risks to the university community.*
- *Elucidate the expectations around bystander intervention by clearly setting out where students will receive information on these issues, who will teach it, and with what processes/advice.*

Recommendation Six
Increase options for and detail around alternative processes by
- *Developing alternatives to the current binary of formal reporting or taking no action at all.*
- *Removing "mediation" as a process for matters involving sexual harm.*
- *Including a restorative justice option for progressing complaints.*

Recommendation Seven
Maximise choice, options, and control for victims/complainants by
- *Including a far broader range of options for seeking advice and support in reporting sexual misconduct, including the UMSU Legal Service, Centres Against Sexual Assault and the Victims of Crime Assistance Tribunal.*

UMSU Signatories :

Srishti Chatterjee and Mickhaella Ermita,
Women's Officers – UMSU
Directed by UMSU Sexual Assault and Harassment Working Group,
In collaboration with the UMSU Feminist Action Collective.

Jack Buksh
President, UMSU

Dr. Patrick Tidmarsh,
Sexual Harm and Response Coordinator - UMSU

Phoebe Churches
Manager, Advocacy and Legal - UMSU