



**REFORMING STUDENT ACADEMIC  
MISCONDUCT PROCESSES AT THE  
UNIVERSITY OF MELBOURNE**

**UMSU POSITION PAPER**  
NOVEMBER 2023

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## INTRODUCTION

UMSU's Advocacy Service has almost 20 years of experience with academic misconduct and student discipline processes at this University. Throughout this time the Service has contributed to various consultations over several iterations of Student Academic Integrity (SAI) policies and their implementations.

UMSU's position papers are provided to offer meaningful input into important University discussions, proposed changes to policy and regulatory frameworks, and particularly to highlight the impact of proposals on students' rights and interests.

The University's SAI Processes Reform proposal (SAI Proposal) is based on a review of current student academic misconduct processes across this University, and benchmarking against three other comparable tertiary institutions. While the three comparators are institutions of an analogous size and standing, it was not clear whose perspectives informed the SAI Proposal, and particularly whether any feedback was sought from those universities' Advocacy Services or students themselves. We are of the view that more information about the relative success of or problems with the processes elsewhere would be useful to inform decision-making at this University on this important issue.

## THE SAI REFORM RECOMMENDATIONS

The proposal to create a new structure and process for suspected student academic integrity breaches in the SAI Processes Reform proposal is grounded on five processes which:

- clearly separate minor transgressions from major breaches and manages the first educatively and within faculties.
- makes use of specialist investigators and case managers to address more serious cases, providing a brief of evidence to decision-makers.
- ensure faculty and school-managed processes are standardised and supported by consistent advice on investigations, case management, principles of natural justice, administrative law and good decision-making.
- allow the finding of cases and the application of penalties to be determined by appropriate-level decision-makers, with full rights of response and appeal provided to students.
- use case data, appeal outcomes and other key information to inform decision-makers, investigators and case managers in order to continually improve processes and outcomes.

UMSU broadly endorses these features, except for the proposed discontinuation of panel decision-making at faculty level.

## EXECUTIVE SUMMARY

UMSU endorses the SAI Processes Reform proposal to increase the resourcing of academic integrity processes and enhance the skills and training for staff involved in the processes at all levels. UMSU specifically recommends training all staff and decision-makers in fundamental principles of good administrative decision making and procedural fairness, and rigorous enforcement of compliance with policy for staff and decision-makers.

UMSU does not endorse a move away from panel decision-making at any stage of the SAI process.

UMSU supports the proposal to undertake a high-level restructure centred on training, developing expertise and capacity in decision-makers, and increasing dedicated resources to a central process. However, we note that the 'devil will be in the detail' when it comes to on the ground implementation of any proposed reforms.



Fundamentally, UMSU contends that removing student voice at the earliest stages of substantive decision-making will have two adverse consequences. Firstly, it excludes the lived experience of student members. The student member on these panels offers a meaningful opportunity for decision-makers to engage with student experience in their deliberations. Secondly, we contend that replacing panels with a single decision-maker may increase Academic Board appeals where the process is less transparent, accountable, and lacks a visible student experience in the determinations.

## UMSU'S PREVIOUS SUBMISSIONS ON STUDENT DISCIPLINE PROCESSES

Before discussing the SAI Proposal in greater depth, it is worthwhile revisiting UMSU's 2015 submission which was provided to help inform the last major overhaul of student discipline processes which effected the revocation of Statute 13.1 replacing it with (earlier iterations) of the policy and Regulations currently in force.

As a discussion paper written eight years ago, there is still much currency in the paper – *Policy or Police: Student Discipline processes – what next?* (*Policy or Police*) – and while this position paper will highlight some of the matters most germane to the immediate SAI process proposals, we also encourage readers to revisit the *Policy or Police* paper in its entirety.

In *Policy or Police*, we identified a number of principles which remain salient to any further reform or changes to student discipline processes. These principles can be broadly summarised as follows.

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- 1. The University's approach to student discipline should be informed by a coherent and consistent philosophy which has regard to basic considerations of integrity and education.*
  - 2. Staff involved in the formal aspect of misconduct processes should be properly trained and familiar with the basic principles of procedural fairness.*
  - 3. There should be an acceptance that deterrence is insufficient to curb or prevent academic misconduct and the University's misconduct provisions generally fail to influence the degree to which students adhere to academic integrity principles and ethical conduct.*
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The final principle speaks to the range of pedagogical and academic support considerations relevant to reducing the incidence of academic integrity breaches, this is discussed further below. Additionally, *Policy or Police* made almost 30 recommendations, many of which remain particularly relevant in the context of the SAI Proposal.

1. That serious consideration is given to whether existing supports are sufficiently accessible to students. The current special consideration schemes are failing to provide an adequate safety net for struggling students. Academic Skills provides a range of resources. However, students frequently describe difficulty accessing help when they need it.
2. That staff involved in the formal aspect of misconduct processes should be properly trained and familiar with the basic principles of procedural fairness.
3. That, even if the hearing itself is heard *ex parte*, the student must still know the case to be met in order to have an opportunity to address the allegation in writing.
4. That allegation notices include not only the rules which are alleged to have been breached, but also all relevant allegations of fact, action or omission.

5. All relevant evidence must be produced to the student with the allegation notice.
6. That discipline procedures should explicitly state that a decision-maker should not have been involved with the allegation prior to it being considered.
7. That all allegation notices include information about the student's right to seek independent advice and support from the Advocacy Service.
8. That there is an express requirement that the decision-maker bears the burden of proof rather than requiring the student to prove no wrongdoing.
9. Where the evidence of misconduct fails to meet the standard of the balance of probabilities, the decision-maker must dismiss the allegation for lack of evidence.
10. That there is a review of the training and resourcing of local discipline decision-makers and the staff who are charged with investigating such matters at first instance.
11. That the Advocacy Service is involved in any training initiated as a result of this reform.
12. That decision-makers charged with determining such matters should be directed that a finding will require stronger evidence than might be necessary for a matter with less onerous consequences (Briginshaw).
13. That in cases of untested invigilator evidence the student's written submission in response to the allegation is evaluated giving benefit of the doubt to the student's account to determine whether the matter should proceed or should be dismissed *prima facie*.
14. That any definition of misconduct includes an element of intent to ensure it catches only wilful conduct, not wholly accidental behaviour.
15. That careful consideration is given in framing plagiarism related policy to avoid using disciplinary controls to address essentially academic problems. For example, development of mechanisms to ensure that inadvertent plagiarism is properly distinguished from intentional passing off of other's words or ideas.
16. That plagiarism as a disciplinary concept should be limited to circumstances where student conduct amounts to intentional or negligent breaches of relevant academic conventions. Negligent breaches should be judged having regard to the level of educational development the student has – from first year undergraduate with international academic background at one end to domestically educated final year research higher degree candidate at the other.
17. That where technology is used to detect suspected academic integrity issues – the same technology is provided for students to check (and correct) their work prior to submission.
18. That academic staff are provided with clear guidelines about acceptable educative outcomes to avoid issuing *de facto* penalties.
19. That criteria are established to guide decision-makers in the matters to which they must have regard when applying a penalty.
20. That there is a range of graduated penalties, from educative including resubmission to the purely punitive.
21. That Outcome Notices include the decision; the findings on material facts; the evidence or other material on which those findings are based; and the reasons for the decision.
22. That feedback, review and reform mechanisms are established in order to identify systemic issues raised in disciplinary cases (and with a view, ultimately, to reducing rates of misconduct and/or disciplinary action).
23. That there is discretion for *de novo* appeals where the correctness of the finding itself is at issue.

## RATIONALE BEHIND THE SAI PROPOSAL

The SAI Proposal identifies several challenges to and weaknesses in current academic integrity processes. Some are procedural, but the majority could be categorised as implementation breakdowns. UMSU believes that most of these problems result from under-resourcing, and we agree there could be greater efficiencies, effectiveness and compliance with dedicated staff and properly trained decision-makers.



## PROBLEMS WITH THE STATUS QUO

The SAI Proposal review of current Academic Integrity processes concludes that a lack of consistency in both detection of and decision-making around suspected breaches, and frequently a lack of timeliness in processes necessitates reform of the current Regulations and policy.

A high level walk through of the process established under the [Student Academic Integrity Policy \(MPF1310\)](#) confirms that a “review undertaken of faculty current state processes confirmed that this process is **broadly** followed at the faculty-level across the University” (emphasis added), but goes on to detail a number of areas where there faculties fail to act in accordance with policy. The SAI Proposal further notes that the responsibilities of the Head of Department or School are frequently delegated to other decision-makers. There is no commentary on why faculties are not obliged to follow university policy and regulations, especially when the University shows a very low tolerance for students failing to comply with these obligations.

## POLICY NON-COMPLIANCE

We agree that lack of policy compliance, failures of implementation, and poor administrative decision making resulting from an absence of training support are obvious sources of the inconsistency described. The SAI Proposal also identifies concerns with practices at faculty level indicative of significant under-resourcing of local academic integrity processes. The Advocacy Service has documented these issues consistently over the years,<sup>1</sup> particularly where there is substantial non-conformity with the timelines specified in the policy, resulting in adverse outcomes for students facing allegations, even where they may be ultimately exonerated.

As we observed in *Policy or Police*, this double standard, whereby students are held rigidly to account for policy breaches while the University breaches its own policy with impunity, does nothing to promote an ethos of academic and ethical rigour among students. Neither does it evince the notion of ‘integrity’ expected in matters of academic integrity.

## UNDER RESOURCING

The SAI Proposal observes that the current under resourced process is unsuitable for large caseloads, an issue previously identified in our Service Reports and in *Policy or Police*. The problem of ‘large caseloads’ in our view discloses a much deeper issue with the nature of assessment and pedagogy that has insufficiently innovated and has failed to keep pace with best practice in assessment design and academic support for struggling students.<sup>2</sup>

The problem of academic staff and decision-makers feeling under-resourced and under-educated to deal confidently with academic integrity issues again points to a need for dedicated resources in this area. The need to train staff who administer the processes as well as the decision-makers was a key point eight years ago in *Policy or Police*.<sup>3</sup>

## INCONSISTENCY

In respect of the other process deficiencies set out in the SAI Proposal, UMSU has several questions and concerns. The SAI Proposal notes that school and department processes often diverge from faculty processes “resulting in inconsistencies across cases, difficulties identifying recidivism and other issues”. It seems odd that faculties lack the

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<sup>1</sup> See e.g. [Advocacy Publications and Reports](#).

<sup>2</sup> See University of Melbourne Student Union, [Discussion Paper - Policy or Police: Student Discipline processes – what next? April 2015](#), pp2-3 and 21.

<sup>3</sup> Ibid, see especially pages 9 and 10.



capacity to coordinate their internal processes in this area, as presumably there are a range of other academic processes which would be important to conduct rigorously, such as course design, the creation of assessment rubrics, and grading protocols.

The SAI Proposal notes that within faculties there is a problem identifying recidivism. Given there is a case management system in place it remains unclear why this should be the case. If this is a result of errors in the system, these must be rectified prior to implementing new and different strategies. The *Student Academic Integrity Policy* requires findings to be placed on a student's record and to be accessed when a subsequent allegation is substantiated. If the problem identifying recidivism is a result of poor record keeping practices, or failure to access the records, then these matters should be addressed.

The SAI Proposal observes that the delegation of decision-making combined with a lack of clarity around types of misconduct and their appropriate penalties is responsible for the diversity of responses to similar allegations within and between schools and departments, and at faculty level. However, UMSU has observed poor administrative decision making at all levels of these processes. It seems the issue is less about delegation, and more about ignorance of the principles underpinning good administrative decision-making, including fundamental misconceptions around proportionality, fairness, and discretion. For example, the SAI Proposal cites the problem of staff failing to use 'precedent' as a guide in deciding penalties. However, rigid application of 'precedents' is no replacement for a thorough understanding of the principles informing [good administrative decision making](#),<sup>4</sup> not least the importance of proportionality in the students' specific circumstances in these determinations.

Similarly, when attending panel meetings with students at faculty level, Advocacy Service staff regularly observe faculty staff expressing a misconceived idea of the notion of fairness, where panel members believe that the fair approach is to rigidly impose the same penalty for similar transgressions without considering mitigation, aggravation, or the impact of a particular penalty on individual circumstances. This approach fails to consider a range of important guiding principles, not least that penalties should be both 'fair in form **and** fair in effect'.

## NO DEDICATED OR STANDING PANEL MEMBERS

The SAI Proposal notes that some faculties experienced difficulties finding student representatives for panels. In many cases this was due to very late notice for the requirement, or due to the timing of high volumes of requests during assessment periods. However, we note that as of November 2023, UMSU has filled 95 of 97 places for student panel members. UMSU is of the view that there are alternative ways to resolve issues where a student member is unavailable, and this particular issue does not justify the removal of the role of the student member from decision-making processes altogether. UMSU recommends, if efficacy of finding student members for panels is an issue, then the regulations should be amended to enable UMSU to provide student panel members for all panels, given UMSU represents both graduate and undergraduate students. UMSU already provides training for both GSA and UMSU student panel members, and it would make sense for UMSU to centrally coordinate student panel membership.

The SAI Proposal additionally posits that difficulties filling staff positions on these faculty panels, and the high volume of cases and attendant workload, are the primary reasons for the proposed reforms. While UMSU does not dispute the increasing workload brought about by current processes, we believe that dispensing with a panel in favour of a single decision-maker for expedience is a reductionist approach that ignores a range of approaches

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<sup>4</sup> See e.g. [The Handy Guide to Good Decision making on Discipline Committees](#).



previously suggested to address this issue.<sup>5</sup> This solution appears to exacerbate, rather than alleviate, any resourcing issues cited, as discussed further below.

There were several other issues identified in the SAI Proposal which similarly suggested that the University requires greater resources to be dedicated to detection and processing of academic integrity concerns. Notably however, none of these issues would appear to specifically justify the SAI Proposal to discontinue panel decision-making. Rather, the review of current state in the academic integrity space indicates these matters should be dealt with by properly enforcing policy compliance by faculties, deploying trained people, with subject matter expertise, who are given sufficient resources to undertake the work properly, and accountability for the proper performance of these processes is dealt with in the same manner as any other compliance issue at the University.

The issues identified with current processes can be broadly characterised into problems caused by:

- insufficient human resources/time or workload allocation;
- ignorance of principles of good administrative decision making and procedural fairness; or
- wilful or negligent non-compliance with policy.

UMSU proposes that these three categories can be resolved by:

- dedicating adequate resources to the crucial issue of academic integrity;
- training all staff and decision-makers in fundamental principles of good administrative decision making and procedural fairness; or
- rigorous enforcement of compliance with policy for staff and decision-makers.

## DEVIL IN THE DETAIL

Finally, the high-level nature of the proposal means that there will be many questions raised by the SAI Proposal, and few that can be definitively answered in respect of the nuts and bolts of its implementation. For example, how would adding a separate investigation component affect timelines in these usually time sensitive processes? How will the university discern 'more serious cases', what steps will this 'investigation' include, from first suspicion of a possible breach to the formalising of an allegation?

## THE PROPOSAL TO DIS-ESTABLISH STUDENT DISCIPLINE COMMITTEES

While UMSU supports proposals to dedicate greater resources, including training and workload allocation to the work involved in academic integrity, we do not endorse a move away from panel decision making for the reasons set out below.

## THROWING THE BABY OUT WITH THE BATHWATER

As discussed, the SAI Proposal documents a range of problems with the implementation of the current Regulations and *Student Academic Integrity Policy*. UMSU agrees that the concerns of poor process and inconsistent outcomes identified in the proposal are of concern. However, we view these problems as predominantly arising from untrained and under resourced staff who are not adequately held accountable for their non-compliance with policy.

Accordingly, UMSU recommends a different approach to addressing these problems, and one that does not sacrifice the benefits of a panel which includes a student member.

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<sup>5</sup> See above n 2.



Specifically, while it is arguable that a single decision-maker may make more consistent decisions, there is no evidence to suggest that a single decision-maker will ensure better quality, fairer decisions. On the contrary, the reduction of accountability and checks and balances offered by panel decision-making suggests that decisions made by a single decision-maker are more capable of being biased, pre-judged, and unfair.

## AMPLIFYING THE STUDENT VOICE?

The proposal to take students out of key decision-making functions stands in stark contrast to the recent commitments made by the University to amplifying the student voice.<sup>6</sup> The involvement of students as members on panels has many benefits, both to the integrity of the process itself, as discussed elsewhere in this paper, but also as an opportunity for the students themselves to develop and hone good administrative decision-making skills.

Every year UMSU trains between 40 and 60 students for this important role. New volunteers are provided with substantial training, didactically via a significant Canvas module and a quiz which must be passed, and then in a 90-minute workshop where the new panel members are run through a series of case studies and asked to integrate the theory covered in the Canvas module into real life scenarios at a panel hearing.

We tell our new panel members that part of their education at the University involves developing their ‘moral compass’, and learning to understand and abide by the rules and regulations that govern the University, as well as the world at large.

Our training introduces the context of academic integrity at the University thus:

*There are a range of reasons why academic integrity, and ethical conduct are important to the University, and why they should be important to you as a student. While it may be superficially attractive to think of uni days as carefree, and without consequences – in reality it is incumbent on the University to provide graduates who are properly equipped for the world beyond its doors. Failure to follow rules and act with integrity has serious consequences in all walks of life, and your studies are an important preparation for this reality.*

*Ultimately, students who cheat, are actually cheating themselves, because they will not have learned the material they will later rely on in their future studies or work. In many cases unethical behaviour leads to unfairness to honest students, and ultimately damages the reputation of the institution, and with it the value of your qualification. Moreover, ill-qualified professionals pose real risks to the public, which should be concerning to everyone. For all of these reasons, the University’s strict approach makes sense.*

*With a strict approach however, comes a significant responsibility to undertake all processes involving allegations of misconduct with great rigour and fairness. Sometimes the pressure to focus on issues of academic honesty obscures the importance of sound decision-making. That’s where the misconduct committee comes in. Without a fair, consistent and transparent process, there can be no integrity to the University’s position on academic honesty.*

Students who volunteer to become discipline panel members cannot be in their first semester of study at the University and are first screened for appropriateness to the task. Training these volunteers makes for a diverse pool of student members, who are representative of the broader student population: the essential idea behind ‘a jury of one’s peers’.

Volunteer student panel members are trained to understand that they will be an equal member on a student discipline panel alongside two senior academics. They will read students’ written submissions in response to allegations of academic or general misconduct, in most cases meet with the students facing allegations in order to

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<sup>6</sup> See e.g. ‘[Amplifying the student voice](#)’.



hear their account, ask relevant questions leading to a decision about whether the allegation is substantiated, and if so determine the proportionate penalty. This requires confidence, sound familiarity with the relevant rules and regulations, a capacity to apply principles of good administrative decision-making to an allegation, and the ability to put forward reasoned and logical positions to other panel members in support of their position.

This builds on students' existing skills, enhancing their personal confidence and communication; logical reasoning skills; a sound understanding of personal responsibility, and the importance of ethical behaviour and academic integrity. The role also requires that they are and remain of generally good character themselves.

The training takes them through the fundamental aspects of considering a case fairly and making a good defensible decision. We ask the volunteers to take their time with this training. Many advise they review it frequently for its principles and practical advice. We believe the training equips students well for their time on student discipline panels, and most likely provides them with a foundation in good decision-making which will serve them long into their future lives and careers.

## ADDRESSING THE CONTEXT AND REASONS FOR ACADEMIC INTEGRITY ISSUES

In *Policy or Police*, we noted there is an element of moral panic inherent in considerations around curbing or eliminating academic integrity issues. That is, the University frequently operates as though the main reason students cheat is that they have a broken moral compass which needs to be corrected by punishment and deterrence. There is a large body of literature examining the causes of academic integrity breaches,<sup>7</sup> which suggests there may be a range of responses which are more effective than simply applying harsh punishment. For example, where students have not wilfully cheated, harsh penalties are often viewed as unfair, rather than being a deterrent. Similarly, where academic integrity breaches have come about in the context of challenging personal circumstances, application of penalties will often fail to address the cause in the way that alternative outcomes such as a warning letter and increased academic support.

There is also a significant body of research suggesting a range of proactive pedagogical measures that universities can take to reduce the availability of and temptation to commit academic integrity breaches, including improved assessment design and the provision adequate academic supports.<sup>8</sup>

Similarly, educating students about academic rigour and its benefits plays a critical role in deterrence, particularly a focus on the pay offs of good scholarship and academic integrity in respect of students' GPA/WAM. Improvements to academic results brought about by good academic practice should be leveraged as a currency that students can use for their future career prospects as well as further education. However, the SAI Proposal skirts around recommendations by which the University can implement an environment that fosters academic integrity and understanding of good scholarship.<sup>9</sup> TEQSA also provides numerous resources to assist with designing assessments to prevent or reduce academic integrity breaches,<sup>10</sup> including advice on considerations when moving from closed-book to open-book exams, and various assessment and rubric design frameworks to reduce the opportunity for breaches of academic integrity.

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<sup>7</sup> See eg. Eric M. Beasley, 'Students Reported for Cheating Explain What They Think Would Have Stopped Them' (2014) 24 *Ethics & Behavior*; 229-252 Dijana Vučković, Sanja Peković, Marijana Blečić and Rajka Đoković, 'Attitudes towards cheating behavior during assessing students' performance: student and teacher perspectives' (2020) 16 *International Journal for Educational Integrity* 13.

<sup>8</sup> See e.g. the section on 'Underlying Assumptions' in University of Melbourne Student Union, above n 2 at p. 4.

<sup>9</sup> See Jennifer Martin & Karen van Haeringen, 'Policy is not enough: a Holistic Approach to Promoting Academic Integrity among Students' (Proceedings of the Australian Quality Forum 2010), 74; Academic Integrity Project; The Exemplary Academic Integrity Project at UniSA and Academic Integrity Standards Project: Aligning Policy and Practice in Australian Universities.

<sup>10</sup> TEQSA, What is contract cheating and methods to reduce it.



## COMPARISONS WITH OTHER INSTITUTIONS

The University of New South Wales (UNSW) and the University of Sydney (USyd) have both disestablished panel decision making. It would be useful to understand if this has resolved any, or all, of the problems identified with current processes at this University. It would also be useful to understand why Monash University has decided to maintain panels as decision-makers for cases where the most severe penalty (suspension or expulsion) may be applied.

We found the example of Monash University's Student Conduct and Complaints office rather chilling. Minor breaches of academic integrity – or 'inappropriate academic practice' – is left to subject coordinator, presumably frequently the same staff member who also detected the breach,<sup>11</sup> allowed to summarily impose penalties that could have a profound impact on a student's WAM. UMSU regards a penalty capping a grade to 50% of the available mark as too onerous to apply without due process.

Notably, the comparator institutions who have discontinued panel decision making have replaced the panels with a specialised central team. Accordingly, these institutions appear to have dedicated significant human and training resources to their process, using teams of trained staff and decision-makers. This again raises the question of why not dedicated and trained panel decision-makers within faculties?

## THE IMPORTANCE OF INVESTIGATING AND ADDUCING EVIDENCE

The SAI Proposal notes that the investigation of matters is predominantly undertaken by panels, usually by allowing the student to present their case and questioning them during the meeting. This has obvious drawbacks, especially when an allegation is heard *ex parte* and the decision-maker must rely 'on the papers' alone which may not have substantial probative evidence backing the allegation. The process of 'investigation by interview' also has drawbacks when panels are not trained in principles such as the presumption of innocence and who bears the burden of proof. The decision-makers often require the student to explain or prove their innocence, rather than establishing there is sufficient probative evidence to substantiate a finding.

However, while it may be custom and practice that investigation is limited to the interview of students by decision-makers, the *Student Academic Integrity Policy* minimally requires a preliminary investigation is undertaken to support any allegation.<sup>12</sup> Additionally, it represents a serious breach of procedural fairness to make an allegation against a student that does not provide them with logically probative evidence that *prima facie* supports the allegation. Critically, this must be adduced and provided to the student facing any allegation, **prior** to the student being offered the opportunity to be heard. The Advocacy Service has frequently observed instances where an incident or allegation is only critically examined in this light when the panel convenes to consider the matter, often moments before a hearing begins. Clearly this examination should be completed when deciding *prima facie* whether an incident should proceed as a formal allegation in the first place.

Nevertheless, UMSU agrees that proper investigation of matters requires sufficient time resources and expertise. The Advocacy Service has frequently reported cases where ss 5.15-5.16 (Detecting breaches of academic integrity), ss 5.17-s 5.22 (After detecting breaches of academic integrity), and s 5.23-5.29 (Educative responses to academic misconduct) of the *Academic Integrity Policy* have been poorly implemented, significantly compromising any meaningful investigation that may lead to penalties being imposed. Addressing the training and resource issues required to maintain rigour and integrity in the processes would seem to be more important than concentrating the power held by a committee into one (or even two) staff. Importantly, training on policy and procedural fairness

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<sup>11</sup> Which would breach the student's right to procedural fairness.

<sup>12</sup> In so much as the Head of Department must determine whether the case represents an unintended, minor or major breach of this policy.



principles should not be limited to those in investigative or decision-making roles, as significant issues that have the capacity to compromise procedural fairness occur at much earlier points of contact with students. UMSU is of the view that procedural fairness should be afforded to students at every stage of the academic integrity process.

*... universities should make provision in their academic misconduct statutes for procedural fairness to be afforded to students at this stage. At the very least, university statutes should not mandate automatic referral into a formal process without a preliminary discussion.<sup>13</sup>*

## THE ARRIVAL OF SKYNET – CHALLENGES OF GENERATIVE AI

It is uncontroversial that Generative AI continues to cause significant disruption to the academic teaching and learning environment. The SAI Proposal observes that the University currently relies on a decentralised pool of academic and professional staff who usually are required to find time around existing workloads to deal with the complexities of this emerging area.

UMSU agrees that investigations of Generative AI related allegations require expertise, the correct tools, and sufficient workload allocation, and although we reject the proposal to discontinue panel decision making, we wholly endorse the establishment of a centralised dedicated approach to detection and investigation of these matters.

## WHITHER (OR WITHER) PROCEDURAL FAIRNESS?

The SAI Proposal asserts that the proposed processes would all conform with the principles of natural justice. This remains as important as ever. However, the proposal does not indicate at what point students facing allegations would be heard. Would they be interviewed by the investigating team? If so, how does this differ from or improve on meeting with a well-trained panel? If the student is not to meet with the decision-maker, and the decision is made 'on the papers', how would the decision-maker satisfy themselves of any questions or lack of clarity in the evidence? If the student will not meet with the investigating team, then how is their input properly incorporated into the brief of evidence provided to the decision-maker?

*It is no longer simple in administrative decision-making to decide what is required to comply with natural justice. The guidelines provided by courts are often presented in soothing tones - 'the principles of natural justice do not comprise rigid rules', 'natural justice ... requires fairness in all the circumstances', and '[p]rocedural fairness, properly understood, is a question of nothing more than fairness' - but the apparent simplicity and flexibility of that approach can mask the complexity of the administrative setting in which practical answers have to be found.<sup>14</sup>*

Again, we believe this must come down to adequate resourcing, not attempting to do more with less. TEQSA notes that providers:

*should ensure that they have sufficient systems, structures, and processes to manage cases which are brought to them in a timely manner, and one in which procedural fairness and consistency is applied at all times.<sup>15</sup>*

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<sup>13</sup> Michelle Evans and Prina Levine, 'We Need to Talk about Your Assignment': The Requirements of Procedural Fairness when Academic Misconduct Is First Suspected (2016) 42 *Monash University Law Review* 340, p 357.

<sup>14</sup> Prof. John McMillan, 'Natural justice: too much, too little or just right?' Paper delivered to the Australian Institute of Administrative Law, National Administrative Law Forum, Canberra, August 2007; published in (2008) 58 *AIAL Forum*.

<sup>15</sup> TEQSA, [How to respond to contract cheating: Detection and management](#).



## SINGLE WHITE DECISION-MAKER

One of UMSU's most significant concerns is the proposed removal of panels from decision making at faculty level. There is no doubt that group decision making has both positive and negative features, however we believe there is a reason that it is ubiquitous in legal systems.

*Juries decide guilt or innocence. Appellate, apex, and international courts are composed of panels of judges of varying sizes to hear cases. Tribunals often sit in panels of three to resolve disputes in specific areas of law. All share a common feature: groups of people working together to decide legal issues.*<sup>16</sup>

Panels offer checks on a range of poor decision-making practices. US Supreme Court Associate Justice Benjamin Cardozo has observed that:

*judges working as a group 'balance one another' affording 'a constancy and uniformity and average value greater than its component elements.' The processes that judges and adjudicators use to deliberate and collaborate ought to achieve that balance, rather than hinder it.*<sup>17</sup>

Similarly, we are concerned that single decision-makers will be more susceptible to bias, prejudice, or logical fallacies than they would be if they had other decision-makers to test their ideas and put them to the proof on their reasoning. For example, research in the US indicates that judges are more prone to the biasing effects of inadmissible evidence as individuals than on a panel.<sup>18</sup>

Group decision making has the advantages of drawing from the experiences and perspectives of a larger number of individuals. While a jury of one's peers relies on sound judicial direction to function properly, the same can be said for ensuring there is a standing pool of trained and experienced chairs on these panels, or even standing panels who have these duties incorporated into their workload in the case of staff, and recognition for their contribution,<sup>19</sup> in the case of student members.

The second limb of procedural fairness involves 'a prohibition at law on a decision-maker acting partially, or by conduct, association or consideration of extraneous information, failing to approach a matter with a mind open to persuasion'.<sup>20</sup> This is seen at times in current academic misconduct procedures where the staff member who raised the allegation remains with the committee while they deliberate, or even participates in those deliberations. A single decision-maker, with no one else to question their reasoning or test their logic, may be at even greater risk of bringing a range of biases or prejudgements into their decision making.

While it is proposed that appeals would remain unchanged and would ultimately offer a final prospect of procedural fairness to decision making, UMSU believes the result of these changes will be to shift the burden of procedurally fair and transparent decision making to the Student Appeals Committees, increasing their volume significantly. As we have seen previously,<sup>21</sup> once appeal processes become overwhelmed, students increasingly

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<sup>16</sup> Brian M. Barry, 'Judging Better Together: Understanding the Psychology of Group Decision-Making on Panel Courts and Tribunals', (2023) *International Journal for Court Administration* 6, p.2.

<sup>17</sup> *Ibid*, p. 17.

<sup>18</sup> See eg, R. McEwen, J. Eldridge and D. Caruso, 'Differential or Deferential to Media? The Effect of Prejudicial Publicity on Judge or Jury' (2018) 22 *The International Journal of Evidence & Proof*, pp. 124–143; A.J. Wistrich, C. Guthrie and J.J. Rachlinski, 'Can Judges Ignore Inadmissible Information? The Difficulty of Deliberately Disregarding' (2005) 153 *University of Pennsylvania Law Review* pp. 1251–1345.

<sup>19</sup> Such as [Melbourne Plus](#) which recognises student contribution in other university governance roles.

<sup>20</sup> Bruce Lindsay, 'University discipline and the "higher education crisis": student advocates' experiences and perceptions of quasi-judicial decision making in the university sector' (2009) 31 *Journal of Higher Education Policy and Management* 327, citing *Webb v R* (1994) 181 CLR 41 at 74.

<sup>21</sup> University of Melbourne Student Union Advocacy Service, [The Stream Cannot Rise Higher Than its Source: the case for review of student appeal processes at the University of Melbourne - October 2021](#)



have their request for appeals denied. This seems neither to improve processes from a student perspective, nor promote greater integrity and fairness.

Importantly, we believe that students are entitled to a process which maximises their chance of getting a fair and reasonable outcome at the *first stage* and minimises the chance they will be forced to go through a stressful and lengthy appeal process, and where there is no guarantee they will be provided a hearing.<sup>22</sup>

The proposed replacement of a panel with a single decision-maker does not itself guarantee that decisions will be of a higher quality, fairer or more consistent. In fact, the lack of accountability provided by other panel members in open deliberation, where various views can be put to the proof and logic or fairness tested, suggests the concentration of power in a single decision-maker may lead to less favourable decision-making. While a single decision-maker may make 'consistent' decisions, there is nothing to suggest that these decisions will be fairer or more proportionate. They could be consistently harsh or consistently too lenient.

Similarly, the SAI Proposal identified problems with staff panel members being unaware of evidentiary standards. This too points to a central source of training for panel members. Accordingly, UMSU is of the view that all staff and decision-makers involved in academic integrity matters must be trained to understand the principles of good decision-making, just as we already train student panel members.

Further, while the proposal to have a standing decision-maker rather than rotating the task across multiple staff would certainly maximise the chance that the decision-maker would develop experience and expertise over time, enhancing their practice – this would still apply if the proposed reform involved the creation of a standing panel in each faculty. UMSU is equally concerned at the concentration of power in a single decision-maker and the proposal to exclude student representation – and its attendant currency of lived experience – from this critical function.

## TRANSPARENCY, ACCOUNTABILITY AND OVERSIGHT

Currently the inclusion of a student member of student discipline committees, apart from the benefits of a 'jury of one's peers' discussed above, also allows UMSU to collect de-identified reports on cases from panel members. This data informs our training and support of student members on panels, providing an important quality assurance mechanism. The data also provides an opportunity to share feedback with faculties.

Additionally, student panel members' de-identified reports provide an import level of transparency to the process, which contributes to the overall integrity of and confidence in these processes. Maximising the transparency and accountability of processes offers enhanced buy-in from the student body. We have observed that, where students respect university processes, they are more likely to comply with those processes.

## NOT JAPAN RAIL - DELAYS UPON DELAYS

The significant delays described in the SAI Proposal which were observed by the Office of the Vice Chancellor are of serious concern to UMSU, as were the lost opportunities for early intervention and education in cases which were not handled by faculties in accordance with policy and good process.

While UMSU welcomes the potential to improve rigour and integrity of investigations by introducing specialist investigators and case managers to address more serious cases and providing a brief of evidence to decision-makers, we remain concerned at the impact this will have on the timeliness of processes for students. In recent

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<sup>22</sup> Due to the powers of the Academic Secretary to disallow appeals without a hearing, 'on the papers' alone.



months the introduction of an investigator in general misconduct matters correlates with extended delays to matters being considered under the *Student Conduct Policy*.

Extended delays in any student discipline process can create a situation from which the student facing the allegation cannot recover, even where the final outcome is complete or partial exoneration. Students may not receive final grades for pre-requisite subjects until after the last date to enrol, significantly impacting course progression, some students have missed one-off opportunities to go on exchange overseas, or to participate in internships. These lost opportunities can become *de facto* penalties (in addition to a penalty arrived at under the SAI process) or effective 'penalties' issued out of authority where the allegation is ultimately not substantiated.

Once again, these problems suggest the solution to delays in processing these matters lies in significantly greater resourcing of the area, but it does not logically follow that a single decision-maker handling academic integrity matters would improve timeliness of processes.

## TEQSA ADVICE

UMSU supports the recommendations of the Higher Education Integrity Unit of the Tertiary Education Quality and Standards Authority (TEQSA) set out in the SAI Proposal, although we would like to see a wider evidence base for the proposal, which includes advice from regulatory agencies such as the Ombudsman Victoria and the Law Institute Victoria on the administrative law principles of good decision making.

Further, we note that a model framed on the TEQSA recommendations does not preclude the decision-maker(s) to still be in a panel format, or include students, to ensure good administrative decision-making.

## UMSU'S POSITION

While UMSU generally supports reform of the current student academic integrity processes, we would prefer to move from a base of compliance with the current framework. This position paper contributes several questions, concerns and provocations, and UMSU's position remains framed by the same principles highlighted eight years ago during previous changes to student discipline processes.<sup>23</sup>

UMSU believes that robust and holistic student discipline processes require significant resources. If the University is serious about its mission to uphold integrity and ethics in its undertakings, then this will require that commitment to resourcing, training, and allocating sufficient staff workloads.

The SAI Process reform proposal attempts to tackle this, but we remain concerned this is simply 'kicking the can down the road'. The fundamental issues in respect of the University's approach to academic integrity, its causes, and improvements to administrative decision-making are not really addressed in the proposal.

UMSU previously noted in *Policy or Police* that sidelining academic integrity work to time-poor, frequently untrained or inexperienced academic and professional staff is not the way to achieve best practice. We have previously argued that the system needs a pool of trained staff dedicated to these processes.

UMSU is particularly concerned at the concentration of power in a single decision-maker and the proposal to exclude student representation from this critical function.

Further, we believe that the University's approach to student discipline should be underpinned by restorative rather than retributive justice. As an educational institution, the University's focus should be remediation and - unsurprisingly - **education**. We readily acknowledge that the pedagogy in some parts of the University incorporates

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<sup>23</sup> University of Melbourne Student Union, above n.2.



a sophisticated understanding of the causes of and best approaches to educatively tackling academic integrity. These parts of the University should be models for the remaining areas that seem to increasingly rely on punitive responses to academic integrity issues, rather than reviewing the adequacy of assessment design and academic supports.

Ultimately, if academic integrity standards slip when students cut corners, surely it is counter-productive, even hypocritical for the University to do its own corner cutting in this area. However, by short changing the educational supports required to educate students about academic integrity and ethical behaviour, the University is effectively guilty of its own shiftlessness. It may seem more cost efficient to attempt to use disciplinary controls to combat this issue, however, we are of the view it is neither efficient nor effective. This approach simply shifts the burden elsewhere.

UMSU welcomes the opportunity to have further input into any reforms of existing student discipline processes.



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