

UMSU Feedback to Policy Consultation on Creation of a Fitness to Practise Policy

UMSU broadly supports the creation of a policy to address fitness to practise (FTP) in professionally accredited courses and subjects. We are aware from Advocacy casework that this issue is already addressed by faculties in a largely unregulated and uncoordinated way. Accordingly, we believe that codifying the procedure and centralising the process may increase transparency consistency, and fairness.

In particular we welcome the requirement for notification of and consent to the application of FTP guidelines prior to students’ enrolment in relevant subjects or courses, as well as the promulgation of clear and accessible guidelines throughout the course of study in relevant areas.

However, we have concerns with a number of aspects of the proposed policy as it is currently drafted, with respect to its reactive and punitive approach and the opportunities it misses to improve the current custom and practice of FTP assessment.

Summary of feedback on specific provisions

Provision	Feedback/Commentary	Status
<p>Background:</p> <p>It should be noted, that the proposed policy mandates that less formal and educative measures are to be offered to students prior to any use of legislative power.</p>	<p>This is an important principle and should underpin the entire approach of this policy.</p>	<p>Supported.</p>
<p>4.8. Upon receipt of a written fitness to practise concern, where appropriate and possible, the faculty fitness to practise officer must:</p> <ul style="list-style-type: none"> (a) informally discuss and address fitness to practise issues directly with the relevant student; and (b) provide advice to the student on how best to improve conduct and competence so that fitness to practise issues do not arise again. 	<p>As above.</p>	<p>Supported.</p>
<p>4.9. Upon receipt of a written fitness to practise concern, the faculty fitness to practise officer may investigate the matter further and may:</p> <p>(a) refer the matter in writing to a faulty Fitness to Practise Committee where...</p> <p>4.10. Nothing in section 4.9 requires the faculty fitness to practise officer to take any action under section 4.8 or investigate a matter further before undertaking an action under section 4.9(a)-(d).</p>	<p>Taken together, these two provisions operate in direct contradiction to the background to the policy stating: "the proposed policy mandates that less formal and educative measures are to be offered to students prior to any use of legislative power, which may differ from current custom and practice".</p>	<p>Opposed.</p>

<p>5.1. Deans must establish a faculty Fitness to Practise Committee to hear and decide by a simple majority whether a student will, or has breached, one or more fitness to practise rules for a course or subject.</p>	<p>Creating consequences for potential or future breaches of policy is too speculative.</p>	<p>Opposed.</p>
<p>5.4. For a matter to be heard by the faculty Fitness to Practise Committee, the faculty fitness to practise officer must notify a student in writing:</p> <p>(a)that the faculty fitness to practise officer has a reasonable belief that that a student will potentially breach, or has breached, one or more of the fitness to practise rules for the course or subject;</p> <p>(b)what allegedly constitutes the potential or actual breach of the fitness to practise rules in the specific course or subject;</p> <p>...</p>	<p>As above.</p> <p>How is it possible to have an objectively reasonable belief based on speculative “evidence”.</p>	<p>Opposed.</p>
<p>5.9. Where a student’s enrolment is suspended, deans must consider whether a student should be compensated for course or subject fees.</p>	<p>On what basis is this determined?</p> <p>UMSU is of the view that any action taken by the university which directly affects the student’s interests when the student has acted in good faith and has not committed any kind of misconduct should <i>always</i> be compensated by the university.</p>	<p>Remove discretion for compensation and create obligation to compensate.</p>
<p>5.6. Following a hearing, and before making a recommendation under section 5.7 of this policy, a faculty Fitness to Practise Committee:</p> <p>(a)may require the student to undergo specified medical assessment or testing with:</p> <p>...</p> <p>(b)in requiring the student to undertake an assessment or test in accordance with 5.13(a) [sic – numbering incorrect], the Fitness to Practice Committee must be satisfied that there is no less restrictive means reasonably available to enable the person to be assessed or tested; and</p> <p>(c)must make the results of the assessment or testing:</p> <p>(i)made available to the student before a decision is made by the Fitness to Practice Committee; and</p> <p>(ii)must be handled by the University in accordance with its privacy policy.</p>	<p>These coercive powers are too broadly framed.</p> <p>Additionally, any possible consequences for failing to comply with the requirement for medical assessment should be made explicit.</p>	<p>Opposed.</p>

Enabling Fitness rather than a Deficit Model

Fundamentally, we consider the formulation of FTP *rules* which may be *breached* to be a misconceived approach. UMSU believes an FTP policy should be expressed in terms of building students' capacity and by early intervention and proactive support.

We note the background to the policy evinces an intention that proactive intervention should first be taken to support a student who may need assistance to show capacity to practice under the accreditation guidelines for a particular area of practise. These supportive interventions are set out at 4.8 of the policy, requiring the faculty to informally discuss and address fitness to practise issues directly with the relevant student; and provide advice to the student on how best to improve conduct and competence so that fitness to practise issues do not arise again. However, this appears to be discretionary, with the caveat that it is only provided if 'appropriate and possible'.

Following this, 4.9 sets out a range of formal actions, including the referral of a matter directly to faulty fitness to practise committee, and 4.10 which provides that nothing "in section 4.9 requires the faculty fitness to practise officer to take any action under section 4.8 or investigate a matter further before undertaking an action under section 4.9(a)-(d)".

Consequently, it appears that the assurance in the background to the policy that the options in 4.8 are mandated, is contradicted by 4.10 which provides that matters may be referred directly to a faulty Fitness to Practise Committee.

According to the background section of the proposal, the policy is based on issues explored in a discussion paper from a Teaching and Learning Quality Assurance Committee (TALQAC) working party formed to consider FTP issues in 2015. Subsequent to this report, at least two fora were held to discuss FTP issues, one later in 2015 and one late last year.

The 2015 FTP Forum's aims are positively framed, to "reflect upon UoM students' 'fitness to practise' [embracing 'professionalism'] and to consider ways to provide support to develop, monitor and remediate these attributes". We endorse these as constructive and worthy aims. Specifically, both the fora noted that "enabling FTP" should be embedded in curriculum. Unfortunately, this important objective is not specifically addressed or enshrined in the proposed policy - and its absence appears to indicate that FTP is regarded as entirely the responsibility of the student, to be approached as a deficit, rather than the University's responsibility to build these capacities in its students.

Speculative Elements

In the policy definitions, "fitness to practise concern" is defined as "a concern that a student may, or has, breached one or more of the fitness to practise rules".

The policy refers to "potential or actual" breaches of the fitness to practise rules. Potential breaches are described as where "the faculty fitness to practise officer has a reasonable belief that that a student will potentially breach..." the FTP rules.

A 'reasonable belief' is an objective view – not mere suspicion – based on reasonable grounds. Accordingly, if a breach of any FTP rules has not yet happened, it is unclear what evidence can

meaningfully be used to identify “that a student may ... [breach] one or more of the fitness to practise rules”.

Consequently, from a procedural fairness perspective, where the basis for a potential breach of rules falls short of a breach in itself, it is unsafe to intervene to sanction a student. This is because a student cannot meaningfully respond to a speculative breach. A student’s right to address any adverse evidence is compromised where it is a speculative scenario – i.e circumstances which have not actually happened.

UMSU suggests that it is necessary for any FTP policy to properly distinguish between *inherent requirements* of a profession and speculation about a student’s potential fitness where there is no objective evidence of an actual problem. For example, if a student with an essential tremor in their hand wishes to complete studies in dentistry or optometry, they would likely fall short of capacity to meet inherent requirements of that course. Conversely framing this issue in terms of *potential breaches of rules* opens up a real risk of adverse impacts on students’ legitimate interests without objectively reasonable grounds.

UMSU is also concerned that the University approaches its relationship with student on an assumption of good faith, rather than on a basis that suggests that the University views students as untrustworthy.

Compulsory medical assessment or testing

Another troubling aspect of the proposed policy is 5.6(a) which provides that a fitness to practise committee may require a student to undergo “specified medical assessment or testing” within a specified time and “with a health professional chosen by the University” with the University covering the expense of the assessment or testing. Although this provision is only intended to be invoked if there is no other way to satisfy the committee of the students’ fitness, it is far too broadly framed in the proposed policy. The only appropriate circumstances for this would be where there is objective evidence to put into question the student’s capacity to meet the *inherent requirements* of the subject or course. Accordingly, any such authority to require a student to undertake medical assessment or testing should be expressly confined to satisfying this question alone.

Additionally, any possible consequences for failing to comply with the requirement for medical assessment should be made explicit.

Financial impacts

If a student ends up being suspended from their course as a result of all this, the relevant dean has a discretion as to whether any course or subject fees should be refunded. UMSU is of the view that any action taken by the University which directly affects a student’s interests when a student has acted in good faith and has not committed any kind of misconduct should *always* be compensated by the university.

Opportunity to improve the status quo

UMSU believes that this policy represents an opportunity to codify best practice in this area and rectify some problematic and inconsistent approaches by some faculties. We note widely variant practices between and within faculties, with some processes lacking procedural fairness, and others (such as the conduct points system used in some schools) open to abuse through bullying and discrimination.

The UMSU Advocacy Service sees a number of students each semester who have had their placements cancelled in contested circumstances. In such cases it is disputed as to who is responsible for the placement breakdown. For example, students who have reported bullying or discrimination in the placement, or where the organisational culture of the placement is toxic and dysfunctional. The proposed FTP policy could address this problem by setting out a clear process for evaluation of these situations and determination of whether a student has legitimately failed a placement, or the placement was cancelled through no fault of the student and they should therefore be offered a further placement with no fail recorded.

Enabling FTP rather than looking for deficits

The Teaching and Learning Quality Assurance Committee (TALQAC): Fitness to Practice Discussion Paper notes on p. 2:

The Working Group believes that the approach to FTP within the University of Melbourne should not reflect a deficiency model, which is based on an assumption that there is a lack of professionalism among a certain cohort of students which must be identified and remediated. On the contrary, the working group prefers the adoption of an enabling model which recognises the extraordinary talent and ability among both students and staff, and the need to develop systems, policies and processes that allow these students to develop their professional attributes to the greatest extent possible.

The proceedings from the 2018 forum on the same issue highlights to use of embedded assessment of FTP in the curriculum. These important principles appear to be missing from the proposed policy in its current form.

UMSU believes this is an opportunity to improve the University’s support for students undertaking professionally accredited courses, by actively enabling these competencies. To this end, we cannot do much better than to endorse the approach highlighted in the 2015 TALQAC Working Party Discussion Paper, which features the following case example:

Integration of professional accreditation requirements into the Master of Social Work

The Master of Social Work provides an example of a collaborative and student centred model; it is designed to satisfy the requirement of the Australian Association of Social Workers that each student complete 1000 hours of professional experience. Learning standards are developed to satisfy the standards of the professional accrediting body; all relevant actors – students, specialised placement officers and host agencies are given these standards; and there is a supportive and rigorous process to ensure that students are able to satisfy these standards. Critically the review of placements is focused on collaboration and dialogue between all relevant parties and has proved to be very effective in monitoring the extent to which a student is acquiring the skills necessary for practice during their placement. It also enables early intervention and support when things are not progressing as well as they should be.

The Unaddressed Problem of Professional Placements

Students in professional placements are vulnerable at the best of times, but never more so when they may be struggling with health issues. Their rights are not well protected, as they are neither employees of the organisation where the placement covered by rights available under employment law, nor does the University policy framework apply to the organisation where the placement is offered. The UMSU Advocacy Service is regularly contacted by students who have had negative experiences on placement and where the University's policies do not provide any way for these matters to be adequately or fairly addressed.

UMSU recommends taking the opportunity afforded by a new policy to address this issue.

The Australian Human Rights Commission (AHRC) has just released its latest discussion paper entitled *Free and Equal an Australian Conversation on Human Rights* (October 2019) which explores a number of priorities for federal discrimination law reform. The AHRC addresses the vulnerability of interns/volunteers which are directly relevant to students in vocational placements. The discussion paper notes that:

*internships are commonly part of higher education courses and can be critically important for young people seeking to enter the workforce. Leaving such a vulnerable cohort of people excluded from protections against discrimination and sexual harassment is unacceptable.*¹

UMSU believes that any policy dealing with Fitness to Practice in professional placements must address these concerns and provide a fair process to deal with circumstances where the student may not have been entirely at fault for what occurred.

Given it is clear that the AHRC has identified the problematic status of vocational placements a major law reform priority for Federal anti-discrimination law, it would be an appropriate opportunity for the University to show leadership by addressing these issues in policy.

UMSU acknowledges that this is a complex policy issue; however we believe that any policy covering fitness to practise should address all of these elements.

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¹ AHRC, *Free and Equal an Australian Conversation on Human Rights*, p.10.