Background
A cluster of related, significant issues with the special consideration process have been identified in the current review of assessment policies.

1. Currently, students can defer assessments repeatedly on the basis of impact assessment statements for brief ailments, completed by doctors. This is often not in the student’s interest, since they lose touch with the learning in the course by the time they undertake the assessment, and repeatedly deferred assessments can coincide with assessments in the subsequent semester. Students who defer repeatedly may not have passed the prerequisites for subsequent core courses by the time they need to enrol in them, and it is more difficult for schools to manage and monitor the academic progress of these students. Repeated deferrals of assessment are also a significant administrative burden for staff. Comparing the second half of 2009 and the second half of 2010, the number of applications for deferrals rose by 100%, although the total number of special consideration applications for the same comparison periods rose by only 21%. (See Special consideration applications for deferred and resit assessments 2009-2011, attached.)

2. A number of academic staff and several students have complained in 2011 of students who habitually apply for special consideration to obtain resits of exams, on the basis of documentation of temporary ailments such as ‘flu, upper respiratory tract infection, gastroenteritis or migraine. Numbers of applications for resits rose by 33% between 2010 and 2011, although the total number of special consideration applications rose by only 16.5%. (See Special consideration applications for deferred and resit assessments 2009-2011, attached.)

3. Some doctors issue very large numbers of impact assessment statements for RMIT students. One GP alone, who is not located near an RMIT campus, has issued impact assessment statements for more than 400 assessments in 2011. (See top 10 medical practitioners figures for 2011, attached.)

4. Points 1-3 above are related to the fact that the centralised special consideration process is based on assessment of documentation provided by the student, in particular the impact assessment statement. The student and doctor are not known to the administrative team or the Special Consideration Expert Panel. This anonymity is an advantage of the process, but it also makes it open to abuse by some students who frequently present themselves to doctors as having been ill, and by some doctors who issue supporting documentation very easily. These students and doctors damage the perceived integrity of the assessment process.

5. Members of the Heads of Student Administration network of Australian universities were asked in mid-2011 whether their universities permit further deferment of already deferred exams. Only six of the 27 universities that responded (including RMIT) indicated that they permit further deferment by the same process as the original application for deferment. Twelve of the 27 universities do not permit a further deferment other than in exceptional circumstances. Two of the ATN universities (QUT and UniSA) were in this group; Curtin indicated that they are preparing to limit the availability of further deferment. (See Practice on further deferment of deferred examinations at 27 Australian Universities, attached.)

6. RMIT University Legal Services has provided advice that the Disability Discrimination Act and Disability Standards for Education do not apply to students with temporary medical conditions such as ‘flu and gastro-enteritis. (See Special consideration and disability, attached.) These provisions apply to students who would consider themselves to have an ongoing disability or to those who perhaps should recognise that their condition meets the criteria to be considered a disability, such as students with emerging mental health issues. For these students, the equitable assessment arrangements process is the appropriate path to seek assessment adjustments, not the special consideration process.
Proposal

The advice from Legal Services (point 6. above) suggests that special consideration is not a right automatically enjoyed by RMIT students, as it has tended to be regarded in the past. Rather, it should be viewed as a way in which the University supports students to maintain their academic progress, without impairing the integrity of the assessment process or draining the learning and teaching resources available to other students.

To refocus the special consideration policy and process on student success, the following changes are proposed.

1. Treat all applications for resits or deferment as deferment applications and record a DEF (deferred assessment) result. In these cases, schools will not mark the first assessment if the student sits it, or enter a result for the first assessment. The student will have to sit the deferred assessment to pass the course, since otherwise the DEF interim result will eventually be converted to a fail. This will ensure that all students have only one opportunity to receive a result for an assessment. It should have the effect that only students who genuinely believe they were impaired in the first attempt at the assessment, apply for resits. This change was largely supported by staff attending the assessment policy review consultation workshops this year. It was unanimously supported by staff attending the University Appeals Committee Forums in 2010. (See the proposed flowchart for deferred assessment applications, attached.)

2. Students will not be permitted to defer an already deferred assessment, unless they provide documentation to establish that they have been hospitalised within 48 hours of the deferred assessment date, or have had a death in the immediate family within a week of the date, or have experienced an event of a similar severity. In these circumstances, the student may be granted a further deferment of the assessment, but if successful will receive an ungraded pass. Part of the rationale for the ungraded pass at this point is that the sitting will be the third offering of the assessment, and so to ensure the integrity of the assessment the full range of grades is no longer available. The ungraded pass will not be included in the calculation of the student’s GPA for the program. This change will ensure that students limit their applications for deferment to cases of real need, and make every effort to attend the deferred assessment. In a few cases students who are incapacitated by illness for both the original assessment and the deferred assessment will fail, but this disadvantage will be outweighed by the number of students who will maintain their academic progress, who would not do so under the current process. (See the proposed flowchart for deferred/resit assessment applications, attached.)

3. Where a student provides an impact assessment statement stating that they have a health condition with a severe impact or total incapacitation for a significant portion of a semester, the SCEP will be authorised to require that the student obtain a clearance to undertake the course from the health practitioner, or withdraw from the course. This will avoid situations where students who are in no state to study, continue to do so when they should suspend their studies in order to recover. Any decision to continue studying will be based on well considered advice and possibly a negotiation of the student’s enrolment load.

4. Where students apply repeatedly for special consideration on the basis of brief ailments, the SCEP will be authorised to require the student, as a precondition for further consideration, to attend academic counselling and/or engage with support services and/or obtain a detailed health management plan. This change will support students to identify any underlying learning problems or health issues and deal with these.

5. Where students apply repeatedly for special consideration on the basis of an ongoing health condition that would make them eligible for an equitable assessment arrangement, the SCEP will be authorised to require them to apply for an equitable assessment arrangement, as the means by which further assessment adjustments may be available to them. This change will ensure that students with ongoing health conditions have a full assessment to determine how the University can best accommodate their needs.
Attachments:
- Special consideration applications for deferred and resit assessments 2009-2011
- Top 10 health practitioners certifying special consideration applications in 2011
- Practice on further deferment of deferred examinations at 27 Australian Universities
- Legal advice on special consideration and disability
- Deferred assessment – proposed future process

Dr Kai Jensen
Deputy Director, Academic Policy and Governance
5 December 2011
Special consideration applications for deferred and resit assessments 2009-2011

<table>
<thead>
<tr>
<th>Type</th>
<th>Cohorts in 2010-2011</th>
<th>Cohorts in 2009</th>
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</thead>
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<tr>
<td></td>
<td>UGRD</td>
<td>PGRD</td>
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<tr>
<td>DEF</td>
<td>1560</td>
<td>16.94%</td>
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<tr>
<td>RESIT</td>
<td>785</td>
<td>32.83%</td>
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<tr>
<td>TOTAL outcomes</td>
<td>5680</td>
<td>14.24%</td>
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Special consideration outcomes for second half of the year, across three years

<table>
<thead>
<tr>
<th>Type</th>
<th>2011</th>
<th>Increase</th>
<th>2010</th>
<th>Increase</th>
<th>2009</th>
</tr>
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<tbody>
<tr>
<td>DEF</td>
<td>1597</td>
<td>9.53%</td>
<td>1458</td>
<td>No separate data</td>
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<tr>
<td>RESIT</td>
<td>859</td>
<td>33.18%</td>
<td>645</td>
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<tr>
<td>TOTAL outcomes</td>
<td>5629</td>
<td>18.93%</td>
<td>4733</td>
<td>26.69%</td>
<td>3736</td>
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Special consideration outcomes for first half of the year, across three years

<table>
<thead>
<tr>
<th>Type</th>
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<th>Increase</th>
<th>2010</th>
<th>Increase</th>
<th>2009</th>
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<tr>
<td>DEF</td>
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<td>2792</td>
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<tr>
<td>RESIT</td>
<td>1644</td>
<td>33.01%</td>
<td>1236</td>
<td>Incomplete data</td>
<td></td>
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<tr>
<td>TOTAL outcomes</td>
<td>11309</td>
<td>16.53%</td>
<td>9705</td>
<td>26.04%</td>
<td>7700</td>
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</table>
## Top 10 health practitioners supporting RMIT special consideration applications in 2011

<table>
<thead>
<tr>
<th>Health practitioner</th>
<th>No. ass’mts</th>
<th>Minor</th>
<th>Moderate</th>
<th>Severe Impact</th>
<th>% Severe</th>
<th>Total Incapacitation</th>
<th>% Total</th>
<th>Unable to assess</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>378</td>
<td>208</td>
<td>55.03%</td>
<td>170</td>
<td>44.97%</td>
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<td></td>
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</tr>
<tr>
<td>B</td>
<td>193</td>
<td>174</td>
<td>90.16%</td>
<td>16</td>
<td>8.29%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>C</td>
<td>146</td>
<td>144</td>
<td>98.63%</td>
<td>2</td>
<td>1.37%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>D</td>
<td>117</td>
<td>83</td>
<td>70.94%</td>
<td>5</td>
<td>4.27%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>E</td>
<td>58</td>
<td>57</td>
<td>98.28%</td>
<td>0.00%</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>F</td>
<td>57</td>
<td>54</td>
<td>94.74%</td>
<td>2</td>
<td>3.51%</td>
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<td></td>
<td></td>
</tr>
<tr>
<td>G</td>
<td>48</td>
<td>32</td>
<td>66.67%</td>
<td>16</td>
<td>33.33%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>H</td>
<td>45</td>
<td>20</td>
<td>44.44%</td>
<td>7</td>
<td>15.56%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>I</td>
<td>38</td>
<td>14</td>
<td>36.84%</td>
<td>16</td>
<td>42.11%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J</td>
<td>37</td>
<td>30</td>
<td>81.08%</td>
<td>0.00%</td>
<td>1</td>
<td></td>
<td></td>
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</table>

: staff of RMIT Counselling Service
Practice on further deferment of deferred examinations at 27 Australian universities

The information in this table summarises universities’ response to a question as to whether they permit students to defer an already deferred exam, sent to the Heads of Student Administration network in July 2011.

<table>
<thead>
<tr>
<th>Position taken</th>
<th>Universities (and details of their approach)</th>
</tr>
</thead>
</table>
| Institutions at which further deferment is at the discretion of the academic units (8) | ▪ ACU  
▪ Charles Darwin  
▪ Charles Sturt  
▪ James Cook (normally in the next standard exam for the subject)  
▪ ANU  
▪ Sydney (further exam must take place within six weeks or a fail is awarded)  
▪ UTS (no second special exam; students are referred to the subject coordinator to make local arrangements for another exam or alternative assessment)  
▪ UWS |
| Institutions that do not permit students to defer again (12) | ▪ Bond (unless there are exceptional circumstances)  
▪ Deakin (a second deferment can now only result in a special assessment task, and no further applications will be considered)  
▪ Monash (in exceptional circumstances faculties may offer an alternative assessment or withdrawn incomplete grade)  
▪ Murdoch (only where it is a further extension for the same circumstances; different circumstances will not be entertained)  
▪ QUT (only withdrawal without academic penalty is available, and students can then apply for remission of fees if they have a case for this; are also moving to forbid ‘alternative supplementary exams’)  
▪ Adelaide (academic units have discretion to offer individual assessments for further deferment of supplementary exams –only a supplementary pass is available for either the first sitting or a further deferred sitting)  
▪ Canberra (only in ‘exceptional circumstances’ but appeals tend to succeed; Examinations unit can identify repeat deferrers to their program coordinators for discussion/support/advice)  
▪ UNE (other than in exceptional circumstances)  
▪ Notre Dame (other than in exceptional circumstances) |
<table>
<thead>
<tr>
<th><strong>Position taken</strong></th>
<th><strong>Universities (and details of their approach)</strong></th>
</tr>
</thead>
</table>
| Institutions that do not permit students to defer again (12) – contd              | ▪ Queensland (no provision to defer a special exam; but are reasonably generous with permitting late withdrawal without academic penalty)  
▪ UniSA (only in the event of unexpected hospitalisation or physical injury at the time of the deferred exam)  
▪ USQ (students can only apply for a waiver of academic and financial penalty) |
| Institutions that permit repeat deferments (5)                                    | ▪ Curtin – but are considering tightening up  
▪ RMIT  
▪ SCU  
▪ Swinburne (allow students to sit a second special exam in the next exam period when the unit is offered)  
▪ UWA  
▪ Newcastle (schools have to hold and pay for the further exam) |
| Institutions where this area is in process of change (1)                          | ▪ La Trobe                                      |
Dear Kai, Jenny, Loredana, Rick, Rosemary and Rowan

1. Instructions

You have asked to what extent RMIT is obliged to ‘consult’ with students (as per section 3.4 Disability Standards for Education) (the Standards) who apply for special consideration.

Can it be inferred that all students who apply for special consideration are suffering a disability and therefore have to be consulted; or do students need to identify a disability and request an appropriate adjustment?

2. Facts

2.1 You have advised that there are approximately 7000 applications for special consideration and 800 Equitable Assessment arrangements per year.

2.2 Approximately 10-15% of special consideration applications are denied because either they have not met policy criterion or because they have not provided adequate supporting documentation.

2.3 The University’s special consideration policy requires students to apply via paper or online and attach supporting documentation. The process does not involve consulting the student or associate either to supplement the documentation they provide or to discuss the nature of the adjustment.

3. Legal obligations

Disability Discrimination Act 1992

3.1 Under section 22 of the Disability Discrimination Act 1992 (Cth) (DDA) it is unlawful for an educational authority to discriminate against a person on the grounds of a person’s disability including ‘by denying the student access, to any benefit provide by the educational authority’ (s.22(2)(a)) or ‘by subjecting the student to any other detriment’ (s.22(2)(c)) which is similar to the University’s obligations under section 38 of the Equal Opportunity Act 2010.

3.2 The definition of ‘disability in the DDA is wide and includes mental and physical impairment whether present, past, future or imputed.
3.3 Direct disability discrimination is where the University discriminates a student, if *because of* the disability, the University treats or proposes to treat the student less favourably than it would treat a person without the disability in circumstances that are not materially different. There is no direct discrimination in requiring a student with a disability to apply for special consideration in the same manner as all other students.

3.4 Indirect discrimination is where the University requires the student to:

3.4.1 comply with a requirement or condition (such as applying for special consideration); and

3.4.2 because of the disability the student does not or would not comply or is not able or would not be able to comply with the requirement or condition; and

3.4.3 the requirement or condition has, or is likely to have, the effect of disadvantaging the student with the disability.

3.5 It is also indirect discrimination if but for a reasonable adjustment the student would be able to comply and failure to make the adjustment has the effect of disadvantaging the student with the disability.

3.6 It is not indirect discrimination if the requirement or condition (for example, providing supporting documentation) is reasonable having regard to the circumstances of the case.

3.7 There is also a defence of ‘unjustifiable hardship’ under section 11 of the DDA.

**The Disability Standards for Education 2005 (the Standards)**

3.8 The Standards are made pursuant to the DDA and contravention of the Standards amount to a contravention of the DDA. The Standards cover enrolment, *participation*, curriculum development and delivery, and *student support services*.

3.9 Essentially, the Standards provide that a student with a disability should be able to participate in a provider’s course or program and use the facilities and services on the same basis as a student without a disability. In order to do so, an educational authority may need to make “reasonable adjustments”. An adjustment is reasonable in relation to a student if it balances the interests of all parties affected (Standard 3.4.1).

3.10 In assessing what is reasonable, standard 3.5.2 provides that the educational authority must have regard to:

- The student’s disability
- The views of the student (or their associate)
- The effect of the adjustment on the student as to achieving learning outcomes, participation in the course and independence
- The effect of the adjustment on anyone else affected including the education provider, staff and other students
• The costs and benefits of making the adjustment.

3.11 The Standards require that the education provider to consult with the student before making an adjustment (3.5). The adjustment must be provided within a reasonable time (s 3.7).

4. Advice

4.1 There is no direct discrimination to students with a disability in the application for special consideration. It is a process that is applied universally across the student population.

4.2 There is a question, however, if the special consideration process is indirectly discriminatory in the requirement to provide supporting medical evidence. You have advised that the Student Union have advocated that students suffering a mental illness are not necessarily able to properly apply for special consideration and that the requirement to provide supporting documentation is too onerous.

4.3 Requiring appropriate medical documentation is reasonable (s.6(3) of the DDA) in the circumstances and to require it would not constitute indirect discrimination. The University can only make reasonable adjustment to the extent the issues are disclosed by the student (see Sluggett v Flinders University of South Australia [2003] FCAFC 27). The requirement for medical documentation is necessary both to assess the nature of the adjustments which might be appropriate and also to establish whether there is a proper basis for the adjustment (see W v Flinders University of South Australia [1998] HREOCA 40).

4.4 Under the Standards, the University has a positive obligation to make reasonable adjustments to accommodate the needs of a student with a disability.

4.5 Standards 3.4 (reasonable adjustments) and 3.5 (consultation) are in regard to adjustments to course content or the way the course is taught or presented, such as the kind or arrangements sought under the Equitable Assessment Arrangements Policy. The Standards would also apply when implementing a new course or program in order to make the course more accessible to people with a disability.

4.6 In my opinion, the adjustments sought under the Standards are about longer term adjustments to the course and assessments and not in regard to granting special consideration which is designed to assist a student with more ‘one-off’ events rather than chronic or on-going issues. Therefore the obligations to consult under 3.5 of the Standards do not apply to each and every application of special consideration where the student has listed a ‘medical condition’ as reason for their special consideration application.

4.7 While the Standards 3.4 and 3.5 may not apply, the University must be careful that it does not discriminate a student on the basis of their disability in the manner that it considers or grants special consideration. For example, to
avoid a claim of indirect discrimination, the University should still consider a student’s application for special consideration, even if it is outside the timeframe stipulated in the policy if the student was unable to apply because of a legitimate medical condition.

5. Recommendations

5.1 I recommend that the Special Consideration and Equitable Assessment Arrangement forms, policies and procedures be better integrated. An example of a policy that is well laid out is the University of Melbourne-Students Experiencing Academic Advantage. The ANU also has a helpful and more student accessible question and answer format- Disability FAQs for Students.

5.2 Advice about counselling and DLU services should be included on the University website and on all the documentation relating to these two policies. Although the onus of seeking help is on the student, the University should make all its facilities and resources well known to students who may be at risk and may not know the options open to them.

5.3 You may also want to include a procedure to identify students that routinely apply for special consideration, but are not aware of the counselling, DLU services or equitable arrangements that may be available.

If you have any comments or queries please contact me on ext 55037 or at tammy.kingsley@rmit.edu.au (currently working Wednesdays and Thursdays).

Regards

Tammy Kingsley
Deferred Assessment – proposed future process

Original Final Assessment

- Student lodges application for ‘Deferred Exam’ – prior to, or after original exam, & may, or may not have sat the exam.

  Scenarios:
  1) Sat exam while sick or impacted
  2) Applied for ‘re-sit’ in advance
  3) Sick prior to exam & it affected exam preparation
  4) Late application –after results released

  Standard application criteria apply

Special consideration approved - DEF.
- DEF grade entered by ASU prior to SPC meetings (at latest = prior to date of official publication of results)
- If student attempted original exam the original attempt is considered null & void. Student is not entitled to receive feedback on their performance in the assessment or the grade they achieved (a clause to this effect should be added to the special consideration procedures & advice to be included on the application form).

Special consideration not approved.
- If student sat original exam = original result stands or school now marks original assessment.
- If student did not sit original exam no further opportunity for assessment provided.

Deferred Final Assessment

Special consideration approved on a ‘safety net’ basis.
- Student provided with further opportunity for assessment – however, as there have already been two assessment periods for this course, students can no longer compete for full range of grades – if pass exam = PX (Higher Ed) or CA (VET).

Special consideration not approved.
- If student sat original exam = original result stands.
- If student did not sit original exam no further opportunity for assessment provided.

No further opportunities to delay/defer assessment will be provided.

It is anticipated that this will continue to provide a safety-net for genuine cases, but will deter those simply wishing to utilise this as a means to maximise their grades or endlessly defer assessment. Integrity of assessment process is protected via non-graded outcome, as per current graded competency procedures.