3 May, 2013

Dr Maddy McMaster
Academic Registrar

Student Conduct Policy Review

Dear Maddy,

Following the meeting on May 20 regarding sections of the draft Student Conduct policy suite, I am writing to express to you the Student Union’s concerns about the intentions behind the ‘Threatening or Concerning Behaviour’ sections and particularly the ‘Fitness for Study Panel’ and issues with its processes.

We agree that the Student Conduct policies are in urgent need of review and commend your efforts on re-drafting the majority of this suite. However, sections D-F appear to be conceived out of beliefs about people with disabilities, particularly students with mental health issues, which are not in line with the University’s legal obligations as an education provider to these students as well as the broader student cohort.

We need to make it clear that the Student Union finds the Fitness for Study sections of this policy completely unacceptable and will strongly and publicly object to this policy if these sections remain as they are.

Our concerns are outlined below in more detail, including how we think these procedures should be amended in order to support students and we welcome the input of relevant stakeholders.

It is our strong belief that various parts of the policy suite will generate problems for students and RMIT alike. As you are aware, we feel that the Fitness for Study processes are unjustified and potentially discriminatory to the extent that we feel it would be a risk to the University if these policies were to be implemented.

In the same manner that a society cannot operate outside of the law; inflict a punishment, expel a person from a community or compel its members to undergo testing without meeting strict guidelines, a University is similarly not able to just get rid of a student because they are presenting some challenges for its staff and students.

We recognise the need for more comprehensive and overarching support for students with disability, in particular students with mental health issues. We believe that the University already has many existing processes that are able to respond and engage with these students and we are eager to meet with you to discuss how these could be improved and better integrated.
We have given serious consideration to the type of student behaviours that will prompt a referral to BRAMP and the Fitness for Study Panel. The Student Union believes that the Fitness for Study Panel is an inappropriate method for addressing these behaviours. The Disability Standards for Education make explicit RMIT’s obligations to support students with disabilities to study on an equal basis through the provision of reasonable adjustments. The belief that these rights do not apply to students who are ‘too sick’ is simply unsupported by this legislation and not a justifiable basis for potentially excluding the student. We are committed to any procedure implemented as part of the Student Conduct Policy being used as a support mechanism for students with emerging mental health issues.

We were alarmed that the University could present a policy suite, even at an early stage of the consultation process, that excluded the most basic and fundamental provisions for the application of procedural fairness. We want to stress that even if the concerns below were redressed, we remain strongly opposed to the Fitness for Study Panel:

- The undertakings of BRAMP and the Fitness for Study panel are not open to scrutiny
- Lack of appeal rights (National Code: Education providers must have arrangements in place for an independent external person or organisation to hear the complaints or appeals where the provider’s internal process has been completed and the student remains dissatisfied. Rights afforded to international student must be afforded to all students)
- Procedure does not indicate if the student has the right to representation - also in the National Code
- Procedure does not indicate if the student has the right to receive evidence/ case documents before the hearing, or even if there has to be evidence
- The procedure does not guarantee a student’s right to be heard
- The potential for this process to breach a student’s right to privacy is high
- The potential for bias in this process is high
- The Fitness for Study Panel does not have a mandatory requirement for a mental health expert on the panel
- The Fitness for Study panel procedure affords fewer rights to students than the directly comparable Student Conduct Board processes, meaning that a less equitable process has been designed for disabled students, resulting in discrimination

The lack of procedural safeguards and requirement for scrutiny indicates a high risk for this process to be biased, and lead to potentially damaging litigation and reputational risk against RMIT. From experience, it is our strong view that students will experience this process as being biased and therefore unfair. We believe that this will compel them to seek an external review.

The Fitness for Study panel’s powers to require psychological testing and health information from a student, in situations where the student’s behaviour does not present any risk, raises serious concerns about implications for RMIT Privacy Policy.

The assertion that this process has been designed to assist mentally ill students to receive treatment is not evidenced by the draft procedure, and we believe it will further ingrain stigma connecting mentally ill people with violence in the minds of RMIT students and staff.
It was expressed in the meeting that this policy is out of step with RMIT’s vision for the Centre for Innovative Justice; it will be difficult to defend a policy which contradicts the objectives of this centre and its vision for resolving conflict with a commitment to upholding human rights.

Coupled with the lack of clarity around the processes used by the Fitness for Study panel, lack of scrutiny of these processes and lack of procedural safeguards such as appeal rights, we believe that this policy section is entirely unjustifiable and RMIT is placing itself at risk of discrimination claims if it becomes practice.

From discussion at the meeting of 20 May, we have concerns that the intent behind, and the conceivable outcome, the Fitness for Study procedures is to label, stigmatise and discriminate against students with disabilities, and students with grievances against RMIT. We have serious concerns that a primary motivation for creating this panel may be to provide the University with a mechanism and the broad powers to legitimise the expulsion of these students from the University

Whilst we agree that, in the past, some students have been inappropriately managed within the discipline processes when their matters have required a different response, we do not believe that the Fitness for Study Panel is the appropriate ‘alternative approach’ that RMIT is looking for.

It was expressed at the meeting on 20 May that:

- Fitness for Study is not about safety
- This process will be used to exclude or expel students who are unwilling to submit to invasive psychological examination
- Students who will be targeted by the Fitness for Study Panel do not necessarily pose a risk or threat to RMIT or themselves, but will be students whose behaviour is ‘disruptive’ or ‘unreasonable’
- RMIT has a right to overlook privacy and anti-discrimination requirements in order to deal with or exclude these students
- Certain students are ‘too ill’ to study and need to be removed from the University ‘for their own good’

Also from the discussion at the meeting, we have been led to believe that this procedure will be used to manage:

- Students whose behaviour in class is disruptive
- Students presenting as unreasonable complainants to various RMIT services
- Students whose mental illness leads them to behave in ways which some students or staff may find strange or concerning
- Students pursuing grievances against RMIT, for example in relation to disability support - examples of cases mentioned on Monday seemed to include students who have been supported by the Student Union’s advocacy service, such as the student ‘demanding an office’
We are acutely aware that there will be the occasional student for whom the only thing that the University can do is to suspend their enrolment, such as in cases of high risk behaviour, however we believe that it is appropriate for this to happen through the Executive Suspension or, where applicable, the Student Conduct procedures, which include safe guards.

Alternative Processes
We believe that members of this policy review team share our concern that alternative processes need to become available in instances where support for a student would be a more appropriate action than exclusion or disciplinary processes, due to that student’s mental illness. We would like this policy review to consider alternative approaches to the Fitness for Study Panel procedure and we would like to discuss these with yourself and other relevant stakeholders. We feel that there is the potential to include such an alternative process in this policy suite. Below we have outlined a possible alternative support process:

A student may be recommended for alternative support processes in cases where:

1. A member of the University reports concerns about a student’s wellbeing to the BRAMP
2. A Senior officer considers that an alternative support process would be a more appropriate action than charging the student with misconduct or referring them to the Student Conduct Board
3. The Director of Student Services or Academic Registrar can refer a student into an alternative process either upon receipt of a referral to the Student Conduct Board (pre-discipline meeting) or as an outcome a Student Conduct Hearing
4. A Program Assessment Board considers that an alternative support process would be a more appropriate action than excluding a student
5. The Assessment Support Unit or Special Consideration Panel considers that a student may benefit from additional support
6. A student presents to a support service of the University requesting additional or complex support

This alternative support process could be coordinated by the BRAMP, based on their capacity to:

- Make intervention strategies for students
- Undertake case management
- Make referrals to various support services
- Support students to access LOA
- Liaise with the student’s School and other areas of the University.

(This is according to the current Safety Team Risk Assessment document and assertions by members of the team at meeting on 20 May).
A well planned model needs to be designed whereby students are active and collaborative participants in the process which would be strength focused. Different stakeholders of the University would be involved and at all times, the University would abide by its legal obligations throughout this process. This model must include:

- Voluntary participation in the process - the student should be given the option to engage with this alternative process
- Appeal rights for outcomes determined as part of this process
- Establishing a sense of trust between the process coordinators and the student involved
- Recognition of barriers a student may face in accessing this support, such as fear of disappointing parents, financial burden, etc. and strategies for overcoming these barriers
- In cases where the student takes an LOA as an outcome of this process, the student must be supported effectively when suspending studies, when seeking support during their break from study and when returning to study
- Where a student has been suspended from their studies, the University remains in contact with the student during that suspension and there is a facilitation of the student’s re-integration into their program
- Action taken under alternative processes must be well documented
- The process must be open to scrutiny
- The panel be subject to specific oversight

We believe that to make this alternative process effective, Senior Officers, Student Conduct Boards, Program Assessment Board members and other relevant members of staff must be trained so that they are able to identify when it would be more appropriate to recommend alternative support processes.

Given the seriousness of these concerns, and the acknowledged need for alternatives to the Student Conduct procedures in situations where students are experiencing mental health issues, I request further consultation with yourself and members of the policy working group before the drafts are released for University-wide consultation. I ask that you seriously consider the concerns that have been raised as well as the alternative processes that have proposed and invite you to meet with us again to discuss these in more detail.

Sincerely,

[Signature]

James Michelmore

President

RMIT University Student Union