

**The Potential Impacts of ‘Inherent Requirements’ and
‘Mandatory Professional Reporting’ on Students,
particularly those with Mental Health Concerns,
registering with University Disability
Support/Equity Services.**

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Abstract

University-entrance in Australia has become increasingly inclusive of a broader cross-section of the community, and in a number of cases, the participation of underrepresented groups (‘equity groups’) has been actively encouraged. Initiatives to encourage broader participation have often been highly effective, resulting in wider community benefits. Students with disabilities have formed a significant equity group, and students with a mental health issue are a subset of this group. Such students are frequently supported by disability support centres, or equity divisions, variously named across the sector, but now a standard feature of all Australian campuses. Disclosure of disability, particularly mental illness, is respected as an option for students, and non-disclosure recognised as a common phenomenon. Non-disclosing students have less access to services and mechanisms likely to support them; however, their right to privacy has been respected. A new focus on ‘inherent requirements’ and related ‘mandatory professional reporting’ within study courses has the potential to reduce disclosure further, to the disadvantage of students, staff and universities generally. Ironically, inherent requirement policies which require students to sign statements of capacity may well result in decreased disclosure. The intentions (to protect all concerned) underpinning inherent requirements are plausibly sound but necessitate that students are provided with clear information and the necessary reassurance to remain confident in disclosing their personal health information.

The changing university cohort and emergence of equity groups

In the 1960's in Australia, less than 5% of school leavers progressed to university education (McNaught & Beal, 2012), and mature age entry was a rare phenomenon. The sixties and seventies were periods of dramatic social, economic and political change within Australia (Weston, Soriano & Qu, 2001) not limited to: changing family structures, new understandings of gender, improved opportunities for women, the recognition of Indigenous people, and, changing attitudes towards people with disabilities. As an example of the changes occurring, by the mid 1980s in Australia, 'special education' schools were largely closed, and the majority of students were mainstreamed in to regular classrooms (Mazurek & Winzer, 1994).

By 1990, the Federal Government had identified five key equity groups (Department of Employment, Education and Training, 1990) encompassing people:

- from low socio-economic backgrounds;
- from rural or isolated areas;
- with a disability;
- from a non-English speaking background; and
- women, especially in non-traditional areas of study and higher degrees.

A sixth equity group, Aboriginal and Torres Strait Islanders, has been subsequently recognised. Various authors (e.g. Willems, 2010) have noted that many students from within the equity groups overlap (e.g. being Indigenous, from a remote community, having English as a Second Language, and coming from a community where otitis media results in hearing loss), which results in increased disadvantage in gaining qualifications and training.

Given the rise in reporting of the prevalence of mental health, many within the university sector would be likely to nominate this as a 'seventh' equity group. One in four young Australians suffers from a mental disorder in any year (Jureidini, 2012). Over recent years, much needed gains have

been made with increased awareness of mental health and subsequent improvements in treatment, albeit that much more needs to be achieved. Notably, stigma remains a major issue (Michaels, López, Rüsich, & Corrigan, 2012) with significant impacts. It is of relevance to concerns about openness to disclosure, and help-seeking behaviours, that rates of serious mental illness are significantly higher in university student cohorts than the general population (Stallman, 2010).

Registrations for university disability support services, linked to mental health, have increased dramatically (Storrie, Ahern & Tuckett, 2010) and, conversely, research indicates that the prevalence of mental health issues for university students has been significantly underestimated (Leahy, et al, 2010). In addition to those reluctant to disclose, some students will be unaware of their own mental illness. Signs may exist, or, may not yet be apparent, and develop during their university years; 75% of mental disorders start before the age of 25 (Kessler, Berglund, Demler, Jin, Merikangas & Walters, 2005). Mental health and mental illness are prime considerations within the higher education sector.

In 1992, the Disability Discrimination Act (DDA) was enacted as law, and simultaneously over the period from the 1990s to current times, Australia has become an increasingly litigious society, which indirectly served to ensure that Acts, like the DDA, and the Disability Standards for Education (DSE), enacted in 2005, were followed. In 2009, Australia adopted the Fair Work Act, administered by the Fair Work Ombudsman. The Fair Work Act redefined disability in broader terms and significantly increased opportunities for legal action in cases of non-compliance (Harpur, French & Bales, 2012). Employers, in particular, are aware of the damaging ramifications of potential legal proceedings related to disability and discrimination.

By 2008, the Bradley Review had led to national goals for specific targets related to equity groups, for example, by 2020, 20% of university entrants would be from low socio-economic backgrounds, and by 2025, 40% of people aged 25-34 years would have a Bachelor degree or above. Various government initiatives and funded projects have supported these plans, and publically available reporting mechanisms regularly provide updates on progress towards these goals. In some cases, lucrative funding has been connected to achieving progress towards the goals. The Higher Education Participation and Partnerships Program (HEPPP), a federal government initiative targeting entrants from low socio-economic backgrounds, will supply over \$185 million in funding in 2014 alone. This is motivation for embracing the national goals.

Students entering universities in Australia have become diversified. The elite academically-able students of the 1960s (and earlier) have been joined by a far broader cross-section of the community. Until relatively recent times, schooling systems which matriculated able students to university study, effectively denied people with disabilities the opportunity of university access (Gidley, Hampson, Wheeler & Bereded-Samuel, 2010). Whilst still under-represented, people with disabilities are commonly entering university, and countless have demonstrated they are capable of not only course completion, but outstanding results (Kuh, Kinzie, Schuh & Whitt, 2010). In many cases, their progress has been enabled by the use of modifications and adjustments, as set out in the various Acts. Disability support officers/divisions and equity officers/divisions (variously titled across the sector) provide accommodations and adjustments to enable participation (e.g. providing a note-taker to accompany a student unable to write). Students with disabilities must register with the appropriate university-based service, and services are explicit about the confidentiality afforded to registering students. Whilst the accommodation and adjustments are necessarily shared with staff on a need-to-know basis, the disability is not; however, by receiving an accommodation and/or adjustment, it is known the student has a disability.

Registration and disclosure issues

For a wide variety of reasons, students with disabilities are often reluctant to disclose their disability, and to register with services (Gerber & Price, 2012). Where the disability is visible (e.g. being in a wheelchair), or easily detected (e.g. wearing hearing aids and having impaired speech),

registration appears more likely to occur. That most disabilities are invisible or hidden (e.g. mental health, learning disabilities) presents a range of conundrums for both the individual and institution. If a student believes there may be long-term disadvantages in registration with a service, they will be reluctant to do so. If they do not register, this may place them at heightened risk as the pressures of university mount (e.g. a student with an anxiety disorder will be balancing work-life-study pressures; completing exams; presenting in front of peers and academic staff; all potentially anxiety inducing events) with resultant negative impacts (e.g. exacerbated ill health or attrition from study). Key reasons for reluctance to disclose include fear of discrimination, stigmatisation, and previously negative experiences from disclosure (Barney, Griffiths & Banfield, 2011) as well as the fear that disclosing will have a detrimental impact on future career options.

The development of inherent requirement policies

Most Australian universities have commenced the implementation of 'inherent requirement policies' (Bialocerkowski, Johnson, Allan & Phillips, 2013), which parallel the principles of inherent requirements within employment, which are exempt from being considered as discrimination within the DDA and other relevant legislations (e.g. the Equal Opportunity Acts in various states; WA in 1984; the Fair Work Act, 2009). Inherent requirements are logical in a range of settings and occupations (e.g. it would be impossible to be a fire-fighter in a wheelchair). Inherent requirements, in the context of study, are the essential elements of a course, or unit of study, that all students must meet. Whilst accommodations and adjustments can be made under the DDA, these cannot compromise the inherent requirements. Practical examples include: a pre-service teacher with a criminal record would need to ensure that their particular record would not preclude the necessary permissions, such as a 'Working with Children' clearance; a nursing student would need to ensure they had the necessary numeracy skills to perform accurate drug calculations for professional registration as a nurse.

Inherent requirements, made explicit, have the potential to ensure that a student does not unknowingly enter and complete a course of study where professional registration would be unlikely or impossible to obtain. However, completion of a particular course does not necessarily guarantee registration, and universities are not gate-keepers for the professions. Likewise, some students will complete a course and never opt for professional registration.

Many university qualifications are directly linked to professional registration bodies, and these bodies dictate inherent requirements for accreditation to work within the profession. The Australian Health Practitioner Regulation Agency (AHPRA) is the organisation responsible for the implementation of the 'National Registration and Accreditation Scheme' across Australia, and represents ten national boards. Likewise, the Medical Board of Australia has "Guidelines for mandatory notifications" which endeavour to ensure public safety by excluding from professional practice a practitioner who would be likely to place patients in danger. These Guidelines also cover students whilst undertaking training. Thus, higher education institutions are legally bound to report substantive concerns such as:

"...if the provider reasonably believes: a). a student enrolled with the provider has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm if the provider reasonably believes: a). a student enrolled with the provider has an impairment that, in the course of the student undertaking clinical training, may place the public at substantial risk of harm" (Medical Board of Australia, 2011, p. 5).

It is unlikely that students who register with a mental health condition would be discriminated against with regard to professional registration or practicum placements; this would be illegal. The professional guidelines for medical professions and university inherent requirement policies, such as those of the University of Western Sydney, do not indicate that the presence of a mental illness is reportable or notifiable; only that behaviour which potentially endangers patients is reportable. However, unless this is carefully addressed with incoming students, the very nature of the descriptions and commentary could make students fearful. Given that fear of discrimination is often

a prime consideration in the reluctance to register, incoming students will require reassurance that inherent requirements and professional registration are not targeting mental illness per se. Students often fear stigma (Thornicroft, Rose & Mehta, 2010) and embarrassment in disclosing mental health issues (McAuliffe, Boddy, McLennan & Stewart, 2012), and their avoidance of support mechanisms can be counter-productive to their study success. Universities must engage with strategies which reduce stigmatisation as it is widely understood to be a key factor in creating a reluctance to register for support, and to access the benefits (Eisenberg, Downs, Golberstein & Zivin, 2009) of engagement with institutional services. The development of university-wide mental health approaches, which include elements such as policy, procedures, plans, staff training, targeted campaigns and partnerships, may be a strategic way to progress this area.

The University of Western Sydney (UWS) has been recognised nationally for its leadership in the area of inherent requirements, which commenced in 2010, with Nursing Education, the Inherent Requirements of Nursing Education (IRONE) project, and has rapidly expanded to include all courses by 2013. Several institutions have used and refer to UWS policies as exemplars. Commonly, inherent requirement policies have categories such as: ethical behaviour, behavioural stability, legal, communication, cognition, sensory ability, and, sustainable performance. They are variously categorised in different universities with policies in place, but these factors are largely consistent. Inherent requirements and professional standards refer to behaviours and actions, not medical conditions. Behavioural stability is often the most nebulous of inherent requirement descriptors, which is problematic for students with a history of mental illness. Understandably, many will be reluctant to disclose; they may be managing very well, perhaps on a medication program which has controlled the condition in a highly effective manner or they may have experienced only a single episode of mental illness several years prior. They may also be apprehensive that an episodic period of illness, known to others, could mean that they are unable to meet the requirement of 'behavioural stability' at that time. Wright's (1975) seminal work around the concept of 'spread' challenges the common assumption that a student with a mental illness will never be able to meet the domain of behavioural stability. It is increasingly common for universities to make explicit the inherent requirements to students prior to entry, and in many cases, for students to sign disclosure statements and attest to the ability to meet inherent requirements. In doing so, institutions have an obligation to provide the necessary information to a student, so that a lack of information does not lead to either the provision of incorrect information, or unnecessary disclosure. Without other information being provided, a student with a mental illness who reads the 'behavioural stability' section of a university's inherent requirement policy might fairly assume that disclosure may lead to preclusion from all, or parts of, their intended study course.

Challenges and implications of inherent requirement policies

Programs which increase access to support for students carry a range of potential benefits (Eisenberg, Gollust, Golberstein & Hefner, 2007). Without treatment and support, the mental health issues experienced by university students are likely to escalate and carry significant negative impacts on individuals and the community (Stallman, 2010). There is an irony that the professions which have been the key drivers in the demand for inherent requirements - medicine, nursing, health care - may well be inadvertently discouraging treatment and support from the potentially vulnerable, who would benefit greatly from intervention. There is a particular challenge apparent for universities - to ensure that inherent requirements are used with particular care, noting their potential for harm or misuse. Venville (2012,p. 8) notes, in her detailed examination of TAFE students:

Students usually do not disclose their illness at the outset for the following reasons: they want to be self-reliant and to protect their sense of self as a coping person; they fear stigma, prejudice and rejection; and they don't consider an episode of psychosis or depression as a 'disability'. But the risk is then that the students are often too ill and too vulnerable to seek help when they need it the most.

The privacy of personal health information is a significant issue for many, and can be particularly pronounced for a person whose privacy has been previously violated. The level of trust required for a student to provide private health information to a disability support/equity officer in a university setting cannot be underestimated; the officer is, after all, an employee of the organisation. Policies, protocols or legislation that override confidentiality and privacy may result in reduced disclosure. For university staff working in disability support and counselling services the dilemma of disclosure is an ever-present issue, when information shared may warrant disclosure for the good of the person, for the good of others, or to reduce reputational risk to the organisation. If inherent requirements impose a legal obligation to disclose known information, the capacity to provide assurances of confidentiality to students may become a contentious issue, with serious ramifications for both the student and university-employee. For example, there is no specific mention in the APRHA Act of who within an education provider has an obligation under mandatory reporting, however, it has the potential to impact on a range of individuals, not limited to disability support officers and counselling staff.

As an increasingly litigious society, it is only a matter of time until university policies on inherent requirements are tested in the courts. The fear of litigation is highly motivating for the university sector; there is an avoidance of having an issue escalate both for the time and cost involved, but more so, for the risk of negative publicity for the institution. Disability support/equity officers, admission offices, and faculties, will need to be alert to ensure that incoming students have clear guidance on their rights and responsibilities related to disclosure. There is necessarily an extra step in the enrolment process if students are to ‘sign off’ on inherent requirements, and the staff administering this step need to be fully trained and understand the ramifications and implications of both non-disclosure and disclosure.

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