

The Melbourne University Kendo Club  
Melbourne University Sports  
Tin Alley  
The University of Melbourne  
Victoria 3010

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Rod Warnecke  
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Via email [rod.warnecke@unimelb.edu.au](mailto:rod.warnecke@unimelb.edu.au)  
Cc: Paul Rogers, MUSA [musapres@gmail.com](mailto:musapres@gmail.com)

### **Submission on the Draft Sport and Clubs Select Committee Report 2012**

Dear Rod,

Thank you for the opportunity to provide comment on the draft Sport and Clubs Select Committee Report 2012 prepared by Sport and Leisure Solutions.

The Kendo Club welcomes the draft report and welcomes Melbourne University Sport's (MUS) efforts in seeking to clarify its role and that of the Melbourne University Sports Association (MUSA) vis-a-vis sports clubs. The conflict between the precise roles of each organisation has been a source of confusion since the establishment of MUS alongside MUSA.

While we welcome progress in this area, we note that clubs were only provided one week to consider and make comment on this report during the final week of the examinations period. It is disappointing that consultation on proposals that appear aimed at enhancing transparency and cooperation was conducted at a time when most student members of sports clubs would rightly be busy studying. Accordingly, we are concerned that clubs have not been given a reasonable opportunity to meaningfully comment on the draft report recommendations and find it disingenuous that students be asked to interrupt their studies in order to be able to make comment on developments affecting their non-academic pursuits.

The Kendo Club understands that very few sports clubs have been able to make a submission and submits that this is the result of MUS' decision to proceed with consultation during exams. We sincerely hope that future developments and consultation with sports clubs will be genuine and give due consideration to these sorts of issues affecting students.

In the short time provided for comments, this submission addresses issues raised in Scope A and Scope C of the draft report – namely affiliation of sports clubs and dispute resolution and disciplinary procedures. In relation to issues addressed in

Scope B – the award of Sporting Blues – the Kendo Club has no comment other than to offer general support to governance enhancements that improve independence, fairness and transparency.

### **[About us]**

The Kendo Club is proud to be a part of the *Melbourne Experience* and able to offer students, staff and the broader university community the chance to not only learn an art that combines traditional martial arts values and modern sporting elements, but also provides members with the opportunity to compete at state, national and international stages.

Melbourne University graduate and past Kendo Club committee member, Chiaki Kobayashi, in addition to representing the University at Australian University Games, Victorian and Australian Championships, has represented Australia at the past three World Kendo Championships<sup>1</sup>. Most recently, Chiaki was a member of the Australian Womens Team which reached the final 8 at the 15<sup>th</sup> World Kendo Championships held in Italy in May this year.

Melbourne University Kendo Club was also represented strongly at the 2012 Australian Kendo Championships, held in April, with Kendo Club members selected to play in the Championship winning Victorian Mens Kyu Team and Mens Open Team.

At its foundation, kendo is focussed on improving oneself to contribute meaningfully to society. As such, we are delighted that in addition to consistently achieving strong results in competition, Kendo Club members have also contributed to the development of kendo at the University, in the state and nationally. Melbourne University graduate and current club member, Kenji Sugimoto was elected this year to be the Vice-President of the Victorian Kendo Renmei – the governing body for kendo in Victoria. We have also been fortunate to be able to retain Yakov Macak as our head instructor. Yakov is a former Australian Mens Team member who represented Australia at World Championships in the 1980s, and has, until recent years, variously been the Chairman of the (Australian) Kendo Board and past President of the Victorian Kendo Renmei and Australian Kendo Renmei.

We are also fortunate to have among our club members University alumni who have experience working in Government departments in establishing governance frameworks for regulated utility companies, licensing and accreditation schemes and the development of complex policy documents affecting a wide range of stakeholders. Accordingly, we believe that the Kendo Club is suitably qualified to comment on the proposed changes to the governance framework applying to affiliated sports clubs.

### **[Affiliation and Governance]**

While the Kendo Club supports the establishment of a governance framework for the affiliation of sports clubs that provides transparency, fairness, and accountability, we believe that adopting service level agreements similar to the sample UNSW service

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<sup>1</sup> World championships are held once every 3 years under the auspices of the International Kendo Federation and is the highest level of international competition in kendo. There are currently no moves to include kendo as an Olympic sport <http://www.nytimes.com/2012/05/24/sports/24iht-kendo24.html?pagewanted=all>.

level agreement (SLA) included in the draft report does not represent a best practice governance model and risks failing to capture the key benefits from the proposed reforms.

Provisions in the sample UNSW SLA on minimum club governance arrangements, conduct obligations, dispute resolution and disciplinary procedures applying to sports clubs and members should be properly characterised as rules or regulations that are set out in a rule, regulation, statute, charter, code or document of similar status. Only items that are truly up for negotiation or agreement between MUS and affiliated clubs should be contained in an SLA. Such an approach will maximise transparency and consistency, and set clear expectations for the conduct of clubs (and prospective clubs), MUS and MUSA in relation to those matters.

In addition, separating items that are properly characterised as rules or regulations that should apply consistently to all clubs will:

- promote transparency in MUS' dealings with clubs and help avoid complaints of bias or unfair treatment between clubs;
- avoid the emergence of club specific rule variations over time leading to inconsistencies between agreements;
- provide assurances of a consistent, impartial and fair framework for the affiliation of sports clubs.

Transparency and consistency in the provision of services by MUS to affiliated sports clubs is particularly important in light of the return of a compulsory Student Services and Amenities Fee (SSAF). Significantly, given MU Sport funding allocations for 2012 provided from student SSAF contributions will increase by 82%<sup>2</sup>, services provided by MUS to sports clubs should be used to equally benefit all clubs fairly and equitably.

As a consequence, the Kendo Club submits that club specific agreements relating to the provision of differentiated services by MUS should be consistent with and adhere to clearly articulated, publicly available policies and do not have the effect of providing benefits to some clubs at the expense of others. As such, we suggest that MUS provided services should, to the extent possible, be equitable across clubs with a proportionately similar level of financial and in-kind support. The case study in the draft report in relation to venue hire fees that was applied to sports clubs except in relation to 'competition sports' serves as a prime example.

The Kendo Club does not object in principle to the levying of a venue hire charge for the use of university sporting facilities. However, changes to charges should be consistently applied to all facility use by clubs. Charges should be designed to avoid unfair situations where, for example, venue hire charges paid by clubs that offer 'participation' or 'instructional' sports do not effectively operate to cross-subsidise facility use by clubs that play 'competition sports'.

Accordingly, the Kendo Club submits that recommendation 1 of Scope A concerning the establishment of affiliation agreements between MUS and sporting clubs be revised as follows:

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<sup>2</sup> <http://studentcentre.unimelb.edu.au/ssaf>

*That sporting clubs are formally affiliated with the University in accordance with rules, regulations, statute, charter, code or document of similar status setting out all matters relating to the affiliation of sporting clubs with MU Sport. and, in accordance with MU Sport policies and procedures to be decided and published from time to time, MU Sport may enter into agreements with sporting clubs relating to services provided by MU Sport to the sporting club, office bearers and members.*

Consequentially, the Kendo Club submits that recommendation 2 of Scope C should be revised to clarify that club-specific service agreements should not include matters related to affiliation obligations, eg that:

*MU Sport develop club-specific service agreements, in respect of matters other than in relation to member (club and individual) obligations as part of the University community, to outline annual financial and in-kind support.*

### **[Policies and Procedures]**

Consistent with the Kendo Club's support for transparency, fairness and accountability in all matters affecting sports clubs, we support in principle the development, adoption *and publication* of policies and procedures including in relation to dispute resolution and disciplinary proceedings.

However, to be truly effective and to provide clubs and members confidence in the robustness and fairness of dispute resolution and disciplinary matters, those policies and procedures should be supported by the inclusion of a sufficiently independent review panel and appeals process.

This would be particularly important, for example, in respect of

- issues where MUS may itself have a vested interest in the outcomes of a dispute – such as in relation to the dispute concerning the introduction of venue hire charges that disproportionately affect some clubs more than others
- in respect of disciplinary matters that could result in disaffiliating a sports club from the University; and
- complaints of unfair or inequitable treatment in the negotiation of club-specific agreements.

Disaffiliation is perhaps the highest disciplinary sanction that could be taken against a club for a serious breach or non-compliance with affiliation obligations and needs to be conducted in a transparent, well-founded and procedurally fair basis. Specifically, in reference to the sample UNSW SLA provisions concerning disciplinary action, clarity needs to be provided in relation to what amounts to conduct that would bring the University into 'disrepute'.

As a case in point, it is entirely unclear in case study 3 referred to in the draft report what alleged conduct engaged in by the club concerned amounted to conduct that could bring the University into disrepute. Escalating a dispute to internal and external forums that would hear the matter would, at face value, appear to be entirely within a club's rights if it feels aggrieved by a decision affecting its operations. It is hard to see

how, even if it may be embarrassing for the University, that a club pursuing all legitimate avenues to appeal a decision could be considered an activity that could expose a club to disciplinary sanction.

**[Student participation in decisions affecting sports clubs]**

As the relationship between sporting clubs and MUS become increasingly formalised through club-specific service level agreements, it is unclear from the report what the ongoing role for MUSA will be and what the purpose and benefit is of ongoing MUSA affiliation. The Kendo Club submits that there is a need to retain a mechanism or body, such as MUSA, that can represent the collective concerns of student-run sports clubs and provide advocacy across the diverse and differing of interests on behalf of clubs and student members.

Without such a body or mechanism, we are concerned that the move towards club-specific agreements may have the effect of isolating clubs from each other and from their ability to participate in decisions affecting them, and diminishing the ability for students and student-run sporting clubs to have their views fairly sought and heard by the University. University sport ultimately exists for students as part of their *Melbourne Experience* and students who are contributing to funding of sport through the payment of SSAFs have a legitimate expectation that money will be spent in a fair, transparent and equitable manner.

Therefore, as MUS is proposing to have club-specific service agreements between MUS and clubs, we would urge that MUSA's role also be clarified and that a system is established to enable club's views to be fairly represented in all its diversity to the University.

**[Conclusion]**

The Kendo Club is concerned that pursuing a governance model applying to student-run sports clubs that revolves around the establishment of service level agreements will disproportionately favour larger, well-resourced competitive clubs to the detriment of smaller, recreational and instructional clubs. To support a wide variety of clubs and activities as a means of enriching the *Melbourne Experience*, the governance model should be designed in recognition of the inherent negotiating power imbalance between student-run sports clubs and MU Sport, the contribution made by all students through their SSAF towards funding for University sport, and the objective of providing to the fullest extent possible, transparent, fair and consistent treatment for all sports clubs.

To that end, we support the MUSA President's comments in MUSA's letter to MUS attached in the appendices to the draft report:

"... we feel that it is important that competitive clubs are not unduly favoured at the expense of our recreational and instructional clubs. The activities of our recreational and instructional clubs are at least as valuable as elite activities when considering their influence on students' university experience. In fact, such activities tend to attract a greater number of students than elite activities and provide fitness and social opportunities for these students."

The Kendo Club has been pleased to provide our comments on the SACS Committee draft report. We understand that this consultation represents the first stage in the establishment of revised governance and management framework for University affiliated sports clubs and would like the opportunity to be consulted and participate in future consultation processes. We would also urge MUS to frame future consultations in a manner that provides adequate time to consider the key issues and is designed to genuinely seek feedback from student-run sporting clubs who are most affected by the changes.

We would also be pleased to discuss any of these matters further in person and would welcome the opportunity to make further contributions. I can be contacted via email at [cyalam@gmail.com](mailto:cyalam@gmail.com) at your convenience.

On behalf of the Kendo Club,

Regards,

Andrew Lam  
Vice-President