



# Unilink

## Legal & Risk Newsletter



### Gifts from Students: Protection & Preservation of Academic Integrity

University Staff are expected to be committed to exemplary standards of professional conduct and academic integrity of students. Staff are advised of their obligations in various University publications, including the [Fraud Control Policy & Plan](#), [Responsible Conduct of Research Policy](#) and [Academic Honesty Policy & Procedures](#). Incidences of students offering inappropriate gifts or incentives (financial and otherwise) to staff in the hope of receiving favourable assessment outcomes are unacceptable. The University has **zero tolerance** of this type of activity. The provision of significant-value goods or services by a student to a staff member who is involved in their teaching or assessment falls under the definition of fraud adopted by the University in the Fraud Control Policy: "*Dishonestly obtaining or attempting to obtain a benefit or advantage for any person or dishonestly causing or attempting to cause a detriment to the University of Adelaide or its Controlled Entities*"

#### Which gifts are appropriate?

- [Gifts of gratitude](#) - offered in appreciation of performing specific tasks or for exemplary performance of duties, such as at the end of semester or on the submission of a thesis
- Chocolates
- Flowers
- a bottle of wine



#### Which gifts are **NOT** appropriate?

- [Gifts of influence](#) - intended to influence the conduct or judgement of a person in a position of trust
- Money accompanying an exam script
- Any gift accompanying any form of application – such as for admission to a program or for any kind of special consideration
- Expensive gifts

#### If you are offered a gift by a student, ask yourself. . .

- What is the value of the gift?
- What is the motivation of the student offering it?
- Does the student have anything tangible to gain from the gift?
- How would others perceive the gift?
- Would accepting the gift raise suspicions about an improper relationship between me and the student?
- Would accepting the gift raise suspicions about my decision-making process or professional judgement?
- Should I accept the gift but share it with colleagues?
- Should I return the gift?
- Should I donate the gift to a charity?
- Could the gift be construed as a bribe or compromising on academic integrity?



**There is no formula for deciding if a gift is appropriate. Use your professional judgement**

#### Consequences for the staff member

- Embarrassment
- Disciplinary action
- Internal or external inquiry
- Loss of employment
- In extreme cases - criminal prosecution for bribery under the *Criminal Law Consolidation Act 1935 (SA)* which provides a penalty of up to 7 years imprisonment



#### Cultural differences

Students of the University come from a wide range of linguistic, religious and cultural backgrounds. Some students will be un-familiar with acceptable Australian gift-giving etiquette in professional relationships, which will be very different from those in their own cultures. For example, in Asian countries, gift giving is common in a business setting. Don't jump to conclusions of bribery in gift-giving. You may infer a negative connotation that was not intended.

#### If you receive an inappropriate gift...

##### If you think it is a misunderstanding:

- Explain to the student about gift giving and bribery: - how their actions might be seen as an attempt to influence the judgement of the lecturer
- See if the student is experiencing anxiety, stress or academic difficulty and the gift was an act of desperation

##### If you think you have been offered a bribe:

- Think about whether it is simply a cultural misunderstanding about gift giving:- don't jump to conclusions of bribery.
- Refuse to accept the gift or arrange for it to be returned
- Talk to the student about the University's [Academic Honesty Policy & Procedures](#)
- Report the incident to your Head of School, who will advise the Executive Dean and the General Counsel (Refer to section 5 of the [Fraud Control Policy](#))

Reports may be referred to the University's student disciplinary procedures for action.

For more information, contact Celine McInerney (General Counsel & Fraud Control Officer) on [celine.mcinerney@adelaide.edu.au](mailto:celine.mcinerney@adelaide.edu.au) or 8313 5033 or Richard Duddy (Legal Counsel) on [richard.duddy@adelaide.edu.au](mailto:richard.duddy@adelaide.edu.au) or 8313 0085



A 2008 report into Global Corruption in the Ukraine found that 47% of university students had had a bribe demanded from them, and of those, 29% had paid the bribe freely. Students can buy an exam pass from as little as US\$10, or entry to a university for several thousand dollars. It has been suggested that low teacher and professor salaries (compared with other professions) may cause them to be tempted to demand bribes.

## Being TEQSA-ready

In the first of a series of articles about Australia's new regulatory and quality agency for higher education, we introduce you to TEQSA (the Tertiary Education Quality and Standards Agency). We explain the role TEQSA plays in the sector and what it means for the University.

### What is TEQSA?

TEQSA is the independent body established under the *Tertiary Education Quality and Standards Agency Act 2011 Act (Cth)* in response to the 2008 Bradley Review of Australian Higher Education.

### What does TEQSA do?

TEQSA is responsible for registering and evaluating all higher education providers in Australia, in order to help ensure that students receive a high quality education. TEQSA evaluates the performance of higher education providers against a new Standards Framework, comprising:

- Provider Standards
- Qualification Standards
- Teaching and Learning Standards
- Information Standards
- Research Standards

The Provider Standards and Qualifications Standards are collectively the **Threshold Standards** that all providers must meet in order to enter or remain within Australia's higher education system.



## Legal & Risk Survey Results

Earlier this year, we surveyed 300 University staff, including Executives, Heads of School, Branch Directors and School Managers. We wanted to find out exactly what you thought of the service we provide, so that we could better allocate our resources and identify priority areas.

### What we do well

- 82% of you said you feel well informed about the range of services we provide.
- 89% of you have used the services of the Legal team and find the team provides a timely, helpful and responsive service, with advice that is clear, simple, sensible and pragmatic.
- The most utilised resources on the Legal & Risk website are the Insurance Policy Guides (most useful resource overall), RMSS (Legal Compliance) and the Risk Management Handbook.
- The majority of those who attended Education & Awareness sessions found them worthwhile.
- 68% of you have used the services of the Insurance team, and almost all are extremely comfortable contacting the team, and are happy with the advice provided.



### From AUQA to TEQSA

Historically, the regulation of higher education in Australia was shared between the State and Territory Governments, and AUQA (the Australian Universities Quality Agency), the national body responsible for maintaining quality across the higher education sector.

### How is TEQSA different to AUQA?

The significant difference between the TEQSA and AUQA, is that rather than universities being subject to periodic (five-yearly) audits and public reporting, there is now anticipated to be a process of continual engagement between TEQSA and universities with a focus on quality assurance and best practice. Unlike AUQA, TEQSA's quality assurance processes are **risk-based**, not time-based. TEQSA will assess institutions against the Threshold Standards and a new Risk Framework to determine compliance. TEQSA also has the power to impose a range of conditions or sanctions on a provider for not meeting the standards.

TEQSA is establishing a higher education register and a My University website which will allow direct comparisons to be made between Australian higher education providers on a number of measures. Future Unilink articles will explore this in more detail.

### What does it mean for the University?

Universities are required to comply with the Threshold Standards now. It's the law.

The University has been exploring how best to deal with the legislation and the Pro Vice-Chancellor (Student Experience) is coordinating the University's response to TEQSA. Internal meetings with University stakeholders have commenced, to identify areas that already have responsibility for ensuring compliance with aspects of the Threshold Standards - most of which is currently standard University business.

For more information contact Jess Raeburn on [jessica.raeburn@adelaide.edu.au](mailto:jessica.raeburn@adelaide.edu.au) or phone (08) 8313 7062.

### What we need to improve on

Moving forward, we will offer more proactive advice about service expectations and expected turn-around times. We aim to be clearer in our delivery of advice on complex legal and compliance issues, and we will offer more targeted Education & Awareness sessions for staff on legal, compliance and risk issues.

### Help us help you

**Help** Involve us as early as possible as things may take longer than you anticipate.

Recognise that we can't always turn things around in 24 or 48 hours, especially if documents to be reviewed are lengthy.

**Help** Understand that you may not always get the answer that you expect to hear.

We provide professional and objective advice. We may identify requirements, restrictions or risks that you hadn't taken into account, or that need to be addressed. We try to be pragmatic and practical and to ensure that proposals and contracts are properly thought through and are within authorised delegations.

We are here to help and guide you, but management decisions are for you to make. We'll tell you not to do something that is unlawful, but we cannot make the decision for you.

**Thank you to all those who responded to the survey**



### Would you like to contribute to Unilink?

If you have a topic that you would like covered in a future edition of Unilink send your ideas to [phillipa.schliebs@adelaide.edu.au](mailto:phillipa.schliebs@adelaide.edu.au).

Alternatively, if you would like to submit an article on behalf of your area, send the completed content through to the same address.

## Employees v. Independent Contractors (an important distinction)

### Understanding the employee / employer relationship

There are different types of working relationships. Most people who work for the University are **employees**.

The relationship between the University and employee is a contractual one, and is often referred to as a **contract of service**, whereby the employee contracts to provide his or her labour, to enable the University to achieve a result. The employee Terms of Employment are set out in an Enterprise Agreement, and the University is responsible for certain costs, such as the employees' superannuation, insurance, taxation and leave entitlements.

People also work for the University as **independent contractors**.

This relationship is referred to as a **contract for services**, as the contractor will typically contract to achieve a result. Independent contractors are not covered by the University's Enterprise Agreement, and are responsible for paying their own superannuation, taxes and providing their own insurances.

### What makes someone an employee?

The main factors to consider when determining whether a person is an **employee** include:

- the person is paid for time worked
- the person receives paid leave (eg. annual leave, personal/carer's leave, long service leave)
- the person is not responsible for providing materials or equipment required to do their job
- the person must perform the duties of their position
- the person works set hours under an industrial instrument or contract of employment
- the person is recognised as part of the employer's business
- the person takes no commercial risks and cannot make a profit or loss from the work performed



### What makes someone an independent contractor?

In order to help clarify whether a person is an **independent contractor**, considering the following:-

Does the person who will be engaged:

- Control how and when the work needs to be performed?
- Have other clients they provide services to?
- Advertise their services and attempt to attract other clients?
- Provide their own tools and equipment?
- Have the ability to assign the work to others to perform?
- Bear risks associated with fixing faulty work?

If you find yourself answering 'no' to a number of these questions, then you may be dealing with a person who should be engaged and paid as an employee.

The Human Resources branch has developed a more detailed [checklist](#) to help determine whether a person should be treated as an employee or an independent contractor.

### Why it's important to know the difference between an employee and an independent contractor

Where either the employee or employer falsely treat an employment relationship as that of an independent contractor, this type of arrangement is known as **sham contracting** under the [Fair Work Act 2009 \(Cth\)](#). While such arrangements may not be deliberate, they usually mean that a worker foregoes a range of entitlements that would be available to them under an Enterprise Agreement, such as the right to parental leave or a flexible work arrangement. It may also mean that other legal obligations are being avoided, such as proper payment of taxation or superannuation.

If an employer is found to have contravened the sham arrangement provisions of the Fair Work Act or to have deliberately misrepresented to a person an independent contractor arrangement, a court may impose significant civil penalties, including a fine to the organisation of up to \$33,000 per instance, or a fine to an individual of up to \$6,000 per instance.

For more information, refer to the HR website [www.adelaide.edu.au/hr/managers/contractors/](http://www.adelaide.edu.au/hr/managers/contractors/). For further assistance, contact your Faculty HR Consultant, or Adrian Katic (Manager Workplace Relations) at [adrian.katic@adelaide.edu.au](mailto:adrian.katic@adelaide.edu.au) or on 8313 4845.

### Insurance for contractors

The University's insurance program does not cover Independent Contractors, so it is important that all contractors can prove that they have their own insurances in place. The type of insurance (Public and Product Liability or Professional Indemnity) and the minimum amount required by the University will vary depending on the contractor, the work to be undertaken and the risks associated with the work.

For enquiries regarding insurance requirements for independent contractors, contact Joe Di Pinto (Manager Insurance) at [joseph.dipinto@adelaide.edu.au](mailto:joseph.dipinto@adelaide.edu.au) or on 8313 4635.

### Documenting the contractor relationship

Where there is a genuine independent contractor arrangement, it is important that it be evidenced in an appropriate consultancy services contract.

For enquiries regarding contract management, including when an independent contractor is required to have a contract, contact Richard Duddy (Legal Counsel & Senior Project Officer Policy) at [richard.duddy@adelaide.edu.au](mailto:richard.duddy@adelaide.edu.au) or on 8313 0085.

## Gym fined for making misleading carbon tax claims

A Melbourne gym has become the first business in Australia to be penalised for wrongly blaming the carbon tax for price rises. GFC Berwick trading as Genesis Fitness Club, was recently made to pay an infringement notice of \$6,600 for claiming that "by taking up a RATE FREEZE offer, members (could) avoid a fee increase of 9 to 15 per cent due to the carbon price".

The Australian Competition and Consumer Commission (ACCC) ruled that the gym did not have a reasonable basis for the claims and that the statements were misleading.

The ACCC has also taken action against two solar panel suppliers, a bakery group and a refrigeration contractor over misleading carbon price claims, but the gym is the first business to be fined.