



STOP PRESS

Privacy Act



The federal *Privacy Act* is only 20 years old, but it was introduced before the advent of mobile phones, CCTV surveillance equipment and online social networking—all of which challenge our capacity to safeguard our sensitive personal information.

We all want the considerable benefits of the Information Age, such as online banking, instantaneous communication with people around the world and the ability to tele-market. We appreciate that other interests often come into play, such as law enforcement and national security, but where do you draw the line with information privacy?

The purpose of privacy laws is best described by the following principles underpinning privacy and data protection:

- Openness and transparency: Individuals should be made aware of the information held about them and why it is held.
- Balance: Organisations should only collect personal information as is necessary.
- Purpose limitation: Generally, personal information should be used for the purpose for which it was collected.

The Australian Law Reform Commission (ALRC) conducted an extensive review of Australian privacy legislation at the end of 2008 and has recommended that all states adopt a set of Uniform Privacy Principles that will replace existing National and Information Privacy Principles.

The South Australian Government has indicated in-principle support to adopting the uniform principles. An indicative timeline of late-2009 has been mooted. This will bring the University directly under the application of privacy legislation; at present there is no State privacy legislation and the *Privacy Act* (Cth) does not apply to the University—although the University adopts its principles and is contractually required to comply with it under agreements with the Commonwealth and other commercial entities.

For more information and Frequently Asked Questions about Australian Privacy Laws, see the Office of the Privacy Commissioner: www.privacy.gov.au.

FRAUD

In July 2008 the University implemented its Fraud framework comprising policy, procedures and review plan. The Fraud Control Plan (formerly called the Fraud Prevention Plan) is a comprehensive prevention, detection and response plan to reflect the University's "zero tolerance" for fraud.

Apart from the change of name all other aspects of the fraud control framework remain the same. Legal and Risk is happy to provide education and awareness training sessions on fraud control.

For further information, please contact General Counsel, Celine McInerney, at celine.mcinerney@adelaide.edu.au

Representing the University

Q: What authority do you have on behalf of the University while participating in professional bodies, advisory groups or other external organisations?

Academic staff members are often asked to participate on external committees or advisory groups because of their expertise. This is recognised in the Academic Staff Involved With Outside Organisations policy (www.adelaide.edu.au/policies/120) which states that:

"The University encourages its academic staff to make their expertise available to the community, but is careful to require that individuals neither commit the University nor give the impression that the University is committed. In general, it is only the Vice-Chancellor and President who is authorised to give the University's views to individuals or organisations outside the University."

Example 1: The University is invited to nominate a representative on the Advisory group for SACE Science studies. You are willing to participate and the VC responds to the group formally nominating you.

When you participate on these sorts of external committees or bodies with the approval of the VC, you are there to represent the University's interest in the external body's discussions. However, you are still required to act in accordance with relevant delegations of authority (www.adelaide.edu.au/governance/delegations) when it comes to making any decisions on behalf of the University. Therefore you should not do anything that exceeds your delegations.

Example 2: You are an eminent architect and have been invited by the Architects Society to participate on a steering committee to develop recommendations for new professional standards.

You have been invited on the basis of your own professional standing, not necessarily as a member of the University. If you participate on external bodies of your own accord without formal endorsement from the University you should be careful not to hold out your involvement as being on behalf of the University.

Example 3: The Dental Practice Board, of which you are a member, has developed a set of minimum skill levels for graduates. These will require the University to modify some of its Dentistry curriculum. The board asks you to confirm that the University will adopt these changes.

Any positions put forward by the external body are that body's own positions and should not be taken as being binding on, or subscribed to, by the University unless properly agreed to on behalf of the University. Just because you are on the Dental Practice Board and have had some input into the Board's recommendations does not mean that the University will or has to adopt these changes without going through its usual channels for modifying curriculum.

For further assistance contact Geraldine Haese, Legal Counsel on 8303 5244.

From the General Counsel



Welcome again to UNILink, the Legal and Risk newsletter. Thank you to all staff who provided feedback and suggestions following the launch of the first edition, it has been most useful.

In this issue, we'll be talking about insurance, providing you with a refresher on Copyright and explaining how three recently approved policies (*Contracts and Agreements, Legal Compliance and Risk Management*) work together.

In the wake of Privacy Awareness Week (May 3–9), we'll be giving you a heads-up on proposed amendments to the *Privacy Act* as well as offering you tips on how to prevent an information security breach.

On the project front, the Legal Compliance framework is progressing well with legal content and system testing activities almost finished. The *Legislation Database* (sitting within the Legal and Risk website) is set to go live on June 1st and will provide a useful resource to those with compliance responsibilities.

Briefings on the project are being conducted and training is scheduled to occur in June. The project pilot will commence on July 6th and will implement the Legal Compliance framework in the School of Medical Sciences and the School of History and Politics. Stay tuned for further updates and progress.

On the staffing front, I welcome Richard Duddy, who has joined the Legal and Risk team in the role of Legal Counsel—Policy Advisor. Richard recently finished up with the Office of the Director of Public Prosecutions and is sure to be a valuable asset to the Legal and Risk team.

I hope you find this edition of UNILink informative and I continue to look forward to receiving your feedback and suggestions.

Celine McInerney (General Counsel)



Legal and Risk

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Did you know....

Apples are more effective at keeping people awake in the morning than caffeine.

LEGAL COMPLIANCE & CONTRACT MANAGEMENT Part of an interconnected puzzle...

Three new policies have recently been enacted to help improve the University's management of its legal obligations. The *Legal Compliance Policy* deals with obligations imposed by legislation, regulation and mandated codes; and the *Contracts and Agreements Policy* addresses obligations that the University chooses to enter into voluntarily, via contracts. Legal compliance and contract management both form part of a broader, interconnected "*Legal and Risk Jigsaw*" within the University. A third piece of the Legal and Risk Jigsaw, risk management, is guided by a *Risk Management Policy*.

The University operates in a complex and competitive environment, in which we are expected to meet the highest standards in all that we do. To meet the scrutiny we face from the University Council, government agencies and external funders and collaborators, we need to be able to show others that our decision-making, resource allocation, and "damage control" is all being handled in an accountable and intelligent manner. Just "knowing" and "trusting" that things get done properly is not enough anymore: we need something organized and tangible to show for our efforts.

That is where these policies come in: they set out the principles and practical responsibilities involved in meeting these expectations and achieving the level of accountability and evidence required.

Since these areas and the different obligations they involve are inter-related, it means that any legal or risk issue left unattended can start a domino effect – one small and seemingly insignificant problem can lead to another small problem... and another... and another, ultimately resulting in serious consequences. Learning to recognise when a legal or risk issue arises in your area is a critical step towards minimising the amount of time you spend in "damage control", and allowing you to go about your work!

To show how these pieces are all interconnected, imagine you are a Professor who is negotiating a contract to perform a research consultancy for an outside industry group. When reflecting on the details of the contract, it is clear that all aspects of the Legal and Risk Jigsaw are present and that the policy principles can be applied to the whole situation:



ENSURING OUR INSURANCE

The University is no less exposed to legal liability than any other corporation. With assets and controlled entities exceeding \$1 billion dollars, the University must carefully manage its insurance policies to protect its people, assets and activities against loss and potential damages. The level and type of cover is reviewed annually following consideration of the operating risks and the best strategy to manage these. Part of the University's approach to risk management includes "transferring" and "sharing" risk by purchasing from underwriters or insurers a range of Insurance policies designed to meet nominated events or circumstances.

Duty of Disclosure

Before entry into a contract of general insurance with an insurer the University has a duty, under the Insurance Contracts Act 1984, to disclose to the insurer every matter that is relevant to the insurer's decision whether or not to accept the risk of insurance and, if so, on what terms.

Adverse Event Reporting

An Adverse Event is an unfavourable situation or event that has the potential to become a matter that will attract a legal response which may result in a court action. All staff have a responsibility to ensure that any adverse event that has occurred or is likely to occur is reported to Legal and Risk as soon as it becomes known.

You are also required to advise on any change in circumstance on a previously reported event.

The timing of the notice to the insurers is critical and can mean the difference between being indemnified (covered under our insurance policy) or not. Failure to report an adverse event may result in the denial of a claim by the insurer which can result in the financial liability being borne by the University.

Examples of Adverse Events

- A student has filed a claim against the University alleging discrimination.
- A member of the public has fallen and hurt themselves at the entrance to a University building.

Legal Compliance There are specific terms in the contract that require compliance with tax laws (e.g. GST), IP laws and research ethics guidelines. Although these are contract terms, they are also legal compliance obligations. This means if you breach them, you will be breaking your contract and breaking the law.

Risk Management There is a term in the contract relating to indemnity and insurance: who is taking responsibility for risk in the project, and who that risk is being "transferred" to. If things go wrong down the track, this will become very important.

Contract Management There are "performance indicators" defined in the contract, including research milestones and outcomes that you must reach within a fixed time. Think through the ramifications before agreeing to anything, to make sure you can actually achieve these outcomes. Remember, these are obligations you are agreeing to, not being forced on you, BUT once you agree to them, they are mandatory!

University Policies You will either conduct the research through ARI in your University capacity, or get permission to do the research in your personal capacity. Whichever you choose (or are required to) will depend on a number of University policies.

For more information contact Geraldine Haese, Legal Counsel on 8303 5244.



- A dispute has arisen between staff members over the publication of research results with one staff member advising that they will be taking legal action against the other staff member.

As soon as you become aware of any adverse event (including something that has happened or something that *should* have happened that has *not* happened) please let us know. Even if you are not sure whether it is an adverse event, it is better to report it than not.

For advice or notification of a claim or adverse event or for more information about the obligation to report adverse events, see the Adverse Event Reporting Guide on the Legal and Risk website. (www.adelaide.edu.au/legalandrisk/insurance), or contact Bob Reilly on 830 35804 or Tom Pontt on 830 33878.

COPYRIGHT CORNER — Copying from the Internet

Copyright 101

Copyright is a set of exclusive rights given to authors or creators of works, or copyright owners to protect their works against unauthorised use. Copyright protects the expression of ideas in a material form (it does not protect ideas, concepts, information, techniques or styles) and is governed in Australia by the Copyright Act 1968.

Owners of copyright in Works have exclusive rights to:

- reproduce the work (Eg: scan, photocopy, film)
- make the work public for the first time (Eg: Publish)
- Communicate the work to the public (via email, broadcasting or the internet)
- perform the work in public [excluding artistic works] and
- make an adaptation (Eg: a translation or arrangement) [excluding artistic works]

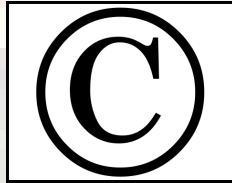
The Copyright Act grants a licence to the University to copy literary works, images or broadcasts:

- For teaching purposes only
- To enrolled students & staff
- Within prescribed "fair" limits (rule of thumb: 10% or 1 chapter)
- With prescribed warning notices attached.

What can I use from the Internet?

1. Public domain material

These are works which the copyright owner has agreed to permit public use, such as internet material available as "shareware" or under "creative commons" (Eg: websites permitting use for non-commercial purposes).



2. Electronic Journal Resources

Copying from electronic journals accessible through library catalogues is generally permitted for educational purposes, and the University has contractual licences with publishers which generally allow more flexibility than the University's licence. But different publishers have different restrictions so check with Steve Cramond in the Library if you are unsure of what you are allowed to copy.

3. Websites Generally

Just because something is made available on the internet does not necessarily mean that it is in the public domain and there are therefore no restrictions on your ability to copy, download or print it. The first thing you must do is check the Terms of Use or the Copyright Notice on the website (often a link found at the bottom of the webpage).

Many websites do permit copying but to varying extents, most commonly restricted to:

- "Personal use" - for your own use or reference; it does not allow you to make multiple copies for distribution.
- "Educational purposes" - entitles you to use it for teaching purposes at the University
- "Non-commercial purposes" - entitles you to use the material so long as you do not make money from it

If the website does not contain any copyright permissions, you may be able to rely on *Fair Dealing Exceptions* if you wish to copy the material for research or study (staff and students can make copies for research purposes, but copying must be "fair"; usually 10% or 1 chapter), or The University's licence under the Copyright Act, if you wish to copy the material for University teaching purposes.

In all cases, you must reference copyrighted material appropriately.

Please note that website permissions only apply to the material that the website owner owns copyright in. If there is material from other sources on the website, you must apply the exceptions or statutory licences to that original source or be able to obtain permission from the owner of the original source.

For more information or further assistance see the copyright website www.adelaide.edu.au/legalandrisk/copyright or contact Geraldine Haese, University Copyright Officer on 8303 5244.

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Did you know....

If you yelled for 8 years, 7 months & 6 days, you would have produced enough sound energy to heat one cup of coffee.

RESEARCH GRANTS — How much more could we be receiving?

Higher Education Research Data Collection (HERDC) is the research income data collected by the Commonwealth Department of Education, Employment and Workplace Relations (DEEWR).

In short, HERDC is used to determine how much money by way of grants the University is entitled to under various Commonwealth schemes, including the RTS, IGS, RIBG, APA, CTS and EIPRS. The amount of research income obtained by the University is one of the most important parameters in that determination.

The majority of the research income that comes to the University will have some form of legal agreement associated with it, and will cross the desks of our lawyers in either Legal and Risk or Adelaide Research and Innovation Pty Ltd (ARI) for review. This process is the initial trigger to ensure that any research income is included in the University's HERDC Return. The terms and conditions of these agreements are often what determines whether the income can be reported to HERDC as 'research income'.

Some arrangements which are not obviously 'research' grants or agreements will nevertheless have a research component which could allow a proportion of the funds to be reported in the HERDC return.

For Example: funding to establish a new school may have the salaries of research staff imbedded.

These research components are often not immediately obvious; it is important that they be brought to the attention of Legal and Risk or the Research Branch. If we are aware of a research component to a broader funding agreement we can seek to ensure the contract terms allow us to claim the research component of the income in our HERDC Return.

Over the last twelve months we have been made aware of research scholarships being embedded in a broader agreement, research staff in another agreement and research equipment and support staff salaries in another. In each case we set processes in place which enabled the University to claim an extra \$1 million more in research income.

The lesson is simply that Legal and Risk and Research Branch must be made aware of proposed arrangements before they are finalised in order to ensure that the research component of any income will be able to be included in the HERDC Return, leading in turn to further grant monies being available to the University.



For more information about research grants, including research funding opportunities, research ethics and compliance, visit www.adelaide.edu.au/rb/

Download UNILink: www.adelaide.edu.au/legalandrisk/newsletter

PRIVACY PROTECTION - Are you doing the right thing?

Privacy has been the topic of much discussion recently, particularly after the release by the Australian Law Reform Commission (ALRC) of its final report into its two year privacy law review.

Privacy law is relevant to all of us as it is not just our own personal information that we have to protect but also that of others.

What is "Personal Information"?

"Personal Information" is any information or opinion from which the identity of an individual is apparent or can reasonably be ascertained. It is not limited simply to names and addresses but can include email addresses, domain names and even photographs.

Could YOU be involved in a security breach?

Information security breaches can occur more easily than most of us would expect. They are not just committed through illegal or malicious acts such as "hacking" or theft. They can also occur unwittingly through lost laptops, inadequate disposal or recycling of paper records, disposal of computer hard drives without erasing the contents, sending personal information to an incorrect address or improperly releasing information to the wrong person due to the deceit of another.

Consequences

Mishandling of personal information can have serious consequences. It can result in financial loss or identity theft, as well as stress, humiliation, embarrassment or even violence.

A recent case involving a former and a current employee of a government agency left the former employee afraid for her safety after the current employee mishandled personal information. The current employee accessed records to locate where the former employee was living. The current employee used the records for reasons unrelated to the employee's employment and not for the purpose for which the information was collected. As a result, the former employee claimed financial compensation and the current employee's employment was terminated. This shows how important it is to protect personal information and for everyone to be aware of their privacy obligations.

Data Breach Notification

The ALRC has proposed the introduction of mandatory data breach notification to individuals where there is a real risk of serious harm. In anticipation of this the Office of the Privacy Commissioner has released a voluntary information security breach guide. This guide discusses when notification of information security breaches may be appropriate.

Whether or not it is appropriate to notify an affected individual about a breach needs to be carefully assessed in light of the circumstances.

Prevention is the best cure

Below are 5 tips developed by the Office of the Privacy Commissioner for preventing an information security breach.

1. Only collect information that is necessary, not information that you think *may* come in handy later.
2. Tell people what you are going to do with the personal information you collect from them.
3. Consider whether you should be using personal information for a particular purpose.
4. Consider when you need to disclose personal information.
5. Keep personal information secure.

[NB: Please contact Legal & Risk if you are concerned about an information security breach and prior to notifying any affected individuals.]

This article was supplied by Tania Juric. Tania is a Special Counsel at Johnson Winter Slattery who specialises in technology, privacy and general corporate commercial law.

JOHNSON WINTER & SLATTERY
LAWYERS

Coffee taster insures tongue for \$14m

A master of coffee in the UK has had his tongue insured for \$14 million.

Gennaro Pelliccia is the chief taster for a worldwide chain of coffee shops and tastes every batch of raw coffee beans the company uses.

He says his 18 years of experience in the industry has made his tongue a valuable asset.

"My experience enables me to distinguish between thousands of flavours. My tastebuds also allow me to distinguish any defects."

The company says the Italian Master of Coffee is key to the quality of their espressos and cappuccino and wanted to protect themselves.

A spokesman for insurance broker Glencairn added: "The tastebuds of a Master of Coffee are as important as the vocal chords of a singer or the legs of a top model, and this is one of the biggest single insurance policies taken out for one person."

Other famous body-part insurance policies;

- * \$80m—David Beckham's legs
- * \$7m—Bruce Springsteen's voice
- * \$2.5m—Heidi Klum's legs
- * \$500,000—Egon Ronay's (food critic) taste buds
- * \$400,000—Merv Hughes's handlebar moustache

In the next issue of UNILink...

- Exam Results and Freedom Of Information
- Trade Practices Act 101 — "How not to get spun by your Spin"
- Contracts and Consultancies

YOUR SAY

If there is a specific legal, insurance, compliance or risk matter you would like discussed in the next issue, email us at phillipa.schliebs@adelaide.edu.au.

BRAINTEASERS

1. What word, when written in capital letters, is the same forwards, backwards and upside down?
2. What is the beginning of eternity, the end of time and space; the beginning of every end and the end of every place?
3. What is so fragile that when you say its name you break it?
4. I have no feet but I can run. I give you health and give you fun! What am I?

Answers in the next edition of UNILink

Did you know...

Coffee has no calories!

It is naturally a no calorie drink.