

TRAVEL INSURANCE—

Are you getting the benefits?

The University purchases a travel insurance policy to provide protection for students and staff undertaking University approved travel. Whilst the benefits provided by this insurance policy are as good as that available from travel agents and in most cases better, the same principles apply in that there are exclusions applied by the insurer that can impact the student or staff member who makes a claim.

Several recent claims have been submitted where the insurer has not been obliged to pay out on the loss that occurred:

1. *A lap top computer that was checked through with the traveller's luggage was considerably damaged;*

The policy excludes damage to lap top computers and valuables (such as filming or photography equipment) in transit unless the equipment is 'carry on' luggage.

Remember: Do not check lap tops through with general luggage.

2. *Personal belongings were stolen from an unlocked vehicle;*

The policy will not pay out where there has been a theft from an unlocked vehicle or dwelling. In any instance of theft, a police report must be made within the first 24 hours for the claim to be considered.

Remember: Place personal belongings in the locked boot of a vehicle or another secure place. Do not leave them in view

3. *On return to Australia, a staff member had dental treatment resulting from a problem which started overseas;*

The policy will only respond to payment for emergency dental or medical treatment *whilst* overseas. Staff cannot expect to claim for treatment they have in Adelaide that resulted from an overseas incident.

Remember: Your insurance policy will *only* pay for medical or dental treatment you have while away from home.

4. *An Adelaide Study Abroad student purchased their own travel insurance for the first semester in the foreign country. The student decided to stay for a second semester and attempted to arrange additional travel insurance from the University.*

The University insurance policy provides cover for the first 180 days a student is overseas, provided that four weeks or less of the total time away is personal time. The policy will only provide "top-up" insurance on an existing University policy. It will not extend the coverage of *another* insurance policy.

Remember: If you think you might need to top-up your existing insurance whilst away, make sure you have taken out *University* insurance cover *before* leaving Australia.

For more information please contact Bob Reilly (Manager Insurance and Risk) on 830 35804.

STOP PRESS

TRADE PRACTICES ACT AMENDMENTS—"Cartel Conduct"



Amendments to the Trade Practices Act (Cth) introduce criminal penalties for cartel conduct. Companies found to have engaged in cartel conduct may be subject to significant fines and individuals face up to 10 years in prison. University staff should be aware of amendments which came into effect on 24 July 2009.

Cartel Conduct refers to contracts, arrangements or understandings between competitors;

- to fix or control prices;
- share or restrict markets;
- control output; or
- rig bids.

Such conduct harms consumers, businesses and the economy by increasing prices and reducing choice, service, innovation and efficiencies.

Penalties

Maximum penalties for a criminal offence include;

- Individuals - up to 10 years in prison and fines of up to \$220,000
- University - a fine that is the greater of \$10m or three times the value of the benefit from the cartel, or 10% of the corporation's annual group turnover.

The ACCC has increased investigative powers under the amendments. The ACCC and the Commonwealth Director of Public Prosecutions will work closely together in the investigation and prosecution of offences.

How this could affect you

In order to prepare for the criminalisation of cartel conduct, the University should look to:

- Ensuring staff are aware of their obligations under the TPA;
- Reviewing all commercial interactions with competitors, including contracts and verbal arrangements;
- Ensuring that decisions on price or supply etc are made independent of competitors; and
- Implementing or updating systems, compliance programs and policies, including directors' policies.

For further information and assistance please contact Kim Evans, Senior Legal Counsel (International) on 830 36103.

From the
General
Counsel



Welcome again to UNILink, the Legal and Risk newsletter—linking you with Legal and Risk issues.

Most of you would be aware of the Trade Practices Act (TPA)—a large and sometimes complex piece of legislation that aims to promote competition, fair trading and consumer protection in Australia.

There are many facets of the Act; including price setting, the relationship between suppliers and wholesalers, the interaction with competitors and customers, and transactions with other businesses, that affect **all** staff in **all** areas of the University.

Contrary to the widely-held opinion, marketing and advertising are not the *only* areas of the Universities business that are influenced by the TPA. So in this issue of UNILink, we'll break down the legislation so it's easier to understand and let you know how the latest amendments to the Act could affect you.

We'll look at a recent legal case which could have Freedom of Information implications for the University in the future, and we'll provide some points to consider if undertaking work in your personal capacity, *outside* the University

Finally, I warmly welcome Anne Hill, to the Legal and Risk team. Anne takes on the position of Manager, Risk Services and will be working closely with Bob Reilly (Manager, Risk and Insurance) up until his retirement mid-next year. Anne has a wealth of experience in safety, quality and Risk Management from many years at the Royal Adelaide Hospital. I encourage you to make yourself known to Anne over the coming months (34603).

Celine McInerney, General Counsel

Legal and Risk

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Did you know....

15 minutes of
laughter equals
the benefit of
two hours sleep

WORKING FOR THE (OTHER) MAN

Points to consider if undertaking activities outside the University

The University acknowledges that staff members undertake a variety of activities in their personal capacity. Indeed, academic staff members are expected to maintain contact with the practice of their disciplines outside the University. Where these outside activities are related to your area of expertise within your University job or arise as a result of your status at the University, some issues need to be considered to ensure both your own and the University's protection.

What kind of activity is it?

Consultancy

The University's current **Outside Research Grants, Contracts and Consultancies Policy** defines "Consultancy" broadly to exist "whenever a staff member undertakes to provide professional skills or expertise in return for personal remuneration". The Policy requires staff members engaging in "consultancies with outside bodies" to negotiate them through ARI except where exemption is sought.

There are advantages for you to undertake the consultancy through ARI, such as being protected by University insurance, having administrative support for negotiating and managing the contract, and not having to delineate between the consultancy and your University employment. However, if you wish to undertake the consultancy in your own personal capacity, you will require approval from the VP(S&R) or DVC (R), following initial approval from your Head of School.

Practice of a discipline

If your outside work will fit within the 52 days a year (or day a week) allotted for practice of a discipline, then it can be approved by your Head of School, under the current **Rules Relating to Practice of a Discipline Outside the University by Members of the Academic Staff**.

Directorship, Board Position or Executive Manager of outside company

Approval must be sought from the VC, as required by the **Conflicts of Interest Policy**. A directorship is a position of great responsibility and directors have certain duties under law. Before you agree to take up a directorship, consider whether you understand what is required of you in this position.

Will it create a conflict of interest?

Conflicts of interest may arise where you are faced with situations where you are forced to "choose" between competing interests of the University and the company or

organisation with which you are undertaking your outside activity, or make a decision for the company/organisation that could affect the University (or vice versa) or that in some way benefits you (financially or otherwise).

You are obliged under the **Conflict of Interest Policy** to address conflicts whenever they become apparent, and to disclose them to your Area Manager who will then help you develop a strategy or approach for managing the conflict, and help ensure that the conflict and its management plan is appropriately recorded. This is important to avoid any disputes and thus protect yourself personally as well as the University and the outside company/organisation.



Will it create a conflict of commitment?

If the contract imposes any milestones or work targets on you, you should be satisfied that they are reasonable, and discuss them specifically with your Area Manager to make sure they are satisfied the issues will not affect your ability to meet your duties to the University.

Using University resources

You must ensure that any activities conducted in your personal capacity do not suggest any University affiliation. For instance, you should not use the University letterhead when communicating as a director of an external company; and you should not undertake personal consultancies out of your University office or use University resources, unless that has been specifically approved by your Head of School.

Will you be using or creating Intellectual Property?

The general position is that the University owns the IP that you create in the course of your employment. Therefore, if, in your work for an outside organisation, you wish to use any IP that you created in the course of your University employment, you will need to obtain the University's permission.

If you will be undertaking outside activities in the same field of expertise as your employment at the University, from which IP may be generated, you must discuss with your Area Manager and carefully delineate what work you do for the University and what work you do outside. This is to help minimize any potential confusion over IP ownership. It is quite possible that overlap may occur in some cases, which may necessitate a written agreement between all relevant parties.

Indemnity & insurance

If you undertake consultancies in your personal capacity, you will not be covered by the University's insurance. It is up to you to ensure that you have adequate public liability, professional indemnity, medical malpractice or any other relevant insurance. If you are assuming a directorship, check that the company has adequate directors and officers insurance and will provide Indemnification for you as a director, either through a Deed of Indemnity or within the constitution.

If in doubt about your coverage, you are encouraged to seek independent advice. After all, it will be your personal assets on the line.

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

Legal Compliance Project update

Over the last 8 months, the Legal Compliance project has developed its framework, processes and software system, and on Monday 6 July 2009, we commenced pilot activities in the *Schools of History and Politics* and *Medical Sciences*.

To further support the operations of the Framework, the website has been updated and now includes a Compliance section comprising;

- Legal Compliance Project;
- Roles and Responsibilities;
- Compliance FAQ's; and
- Legislation Database.

Further functionality will be added to the website as the project progresses, and we encourage all staff to familiarise themselves with the new sections, as it's likely to become more relevant to you in the future; www.adelaide.edu.au/legalandrisk/compliance.

Many thanks to the staff in the pilot schools and those in other support roles for their commitment and involvement with the project.

For more information contact Joe Di Pinto (Manager Compliance) on 830 34635.

HELP US, HELP YOU

Legal and Risk gets dozens of requests for information and assistance from staff and students every week, ranging from copyright, insurance and travel inquiries, to appeals for advice relating to disputes, claims management and University policy. In order to help you better, there are a few things you should keep in mind before giving us a call.

- *Be prepared;* Determine exactly what you need to know before calling. State your question clearly and put it in context.
- *Have a look at the Legal and Risk website first;* There is a multitude of information on numerous issues to be found, including the contact details of all of the Legal and Risk team.

- *Consider whether emailing one of us directly is a better option than calling;* If you require an email response or a document to be sent to you, send your request for information in writing.
- *Provide as much information as you can;* The more information you give us, the better answer you'll get. If the matter relates to another document, attach the document to the email. If you have had correspondence with someone else about the matter already, include the email trail.
- *Remember, we can only be of assistance where the matter relates to your work at the university;* We are not allowed to help you with your personal legal issues but we *can* direct you to external legal help.

Please direct all Legal and Risk phone queries to 830 34539

TRADE PRACTICES ACT 101

How not to get spun by your spin

The Trade Practices Act (TPA) governs just about every aspect of the University's business; price setting, advertising, the relationship between suppliers and wholesalers, interaction with competitors and customers, and transactions with other businesses.

The Act is intended to:

- Promote competition and fair trading; and
- Protect consumers from being deceived, misled or bullied by careless, unethical or unscrupulous business.

The TPA is enforced by a well funded, active and aggressive government regulator, The Australian Competition and Consumer Commission (ACCC).

If found to be in breach of the Act, the University or its staff may be prosecuted and face among other things, hefty fines, corrective advertising or the cancellation of a contract or agreement.

Anti-competitive conduct

Broadly speaking, the Act prohibits *anti-competitive* trade practices. This kind of conduct is discouraged as commercial competition generally leads to efficiency in business and a healthy economy.

Some agreements will always be seen as anti-competitive;

- "Price fixing"
Eg: An agreement between two business competitors to sell the same product or service at the same price;
- Resale price maintenance
Eg: Inducing a reseller not to sell below a specified price;
- Exclusionary provisions
Eg: Restricting the supply of goods/services to a third-party.

Misleading/Deceptive Conduct

The Act affirms that it is illegal for business to engage in conduct that is false, misleading or deceptive, or is likely to mislead or deceive. This applies to written documents or advertisements, oral statements or representations, impressions given by previous conduct, a pattern of behaviour and sometimes, silence.

Eg: During a phone conversation, a member of student services mistakenly informs a prospective student from Japan that a course fee is \$7,000, despite the course costing \$19,000 for an International Student.

Exclusive Dealing

The Act prohibits "exclusive dealing"; the attempt to control another party's commercial relationships.

Eg: The University enters into an agreement with a software supplier agreeing to acquire a particular software application for use at the University on the condition that the supplier will not supply the software to other universities in the area.

Third-Line Forcing

The Act asserts that we must not be involved in "third line forcing"; where goods or services are purchased on the condition that the purchaser buy other goods or services from a specific third party.

Eg: The University of Adelaide leases its lecture theatres to members of the public for functions on weekends and imposes a condition that the lessee must use a specified cleaning service after use.

Unconscionable Conduct

The Act prohibits conduct which exploits a weaker party in a manner which is clearly unreasonable or unfair.

Eg: A painter is contracted by the University to do some work. Despite his poor English language skills and lack of understanding, he is forced to sign a contract with particularly harsh terms.



How do I ensure compliance?

As a general rule, when undertaking University activities;

- Be careful not to mislead or overstate;
- Explain the nature of the transactions carefully;
- Act independently of competitors;

Take care when;

- Fixing and communicating course fees;
- Selling training materials or consultancy services; or
- Entering into an agreement with another institution—ensure agreements are not seen as 'anti-competitive'.

Remember;

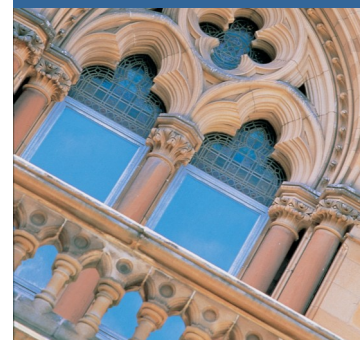
- Anything that we do in our University capacity that has a trade or commerce element is potentially subject to the TPA; and
- Under the TPA you are responsible for your own actions.

If you are unsure whether specific conduct is prohibited, or whether the conduct is likely to substantially lessen competition, consult Legal and Risk first. Compliance with the TPA can minimise the risk of breaking the law and may actually improve performance by giving the University a competitive edge.

For further information and assistance please contact Kim Evans, Senior Legal Counsel (International) on 830 36103.

Legal and Risk

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Did you know...

Stanford University studies show a good belly laugh can give you health boosting benefits equal to 10 minutes on a rowing machine

WHY DID I GET THIS EXAM RESULT?

Student access to exam results & Marking Guides

University of Adelaide students may be able to obtain access to university exam papers and exam marking guides under Freedom of Information (FOI) legislation, following the Victorian Supreme Court's decision in *University of Melbourne v McKean* in August 2008.

In this case, the student (McKean) sought access from the University to exam papers and marking guides for two of his subjects under the Victorian FOI Act. The University attempted to rely upon an exemption in FOI legislation to argue that the marking guides were "internal working papers" and, therefore, did not have to be disclosed. But the Court ordered the University to comply with the student's request.

How relevant is this case?

It is not clear how relevant this decision will be to the University of Adelaide because some of the provisions of the South Australian FOI Act are different to those in Victoria. However University of Adelaide staff should keep this case in mind, as it is the first and only decision to deal so directly with the issue.

What documents are exempt from disclosure?

Under both the South Australian and Victorian FOI Acts, some internal working documents and specified exam-related documents

are exempt from disclosure, if the use for which each document had been prepared was "completed" or whether the release of the marking guides would be contrary to the public interest.

In *McKean*, the Court decided the University of Melbourne had *not* proved disclosure would be contrary to the public interest therefore the exemption did not apply. As the South Australian and Victorian internal working document exemptions are alike, it is likely a South Australian Court would reach a similar decision.

On the other hand, the exemptions for specified exam-related documents in both states are different and the exemption under the South Australian Act is much broader. Under the Victorian Act, an exam-related document is exempt if the "use or uses for which the document was prepared have not been completed."

The University of Melbourne attempted to argue that each marking guide could be broken down into discrete documents representing each question, and that some questions might be intended to be re-used in subsequent examinations.

The Court ruled that the papers in question, taken as a whole, stood as documents on their own and the particular use for which the documents had been prepared was indeed completed. Therefore the exemption did not apply.

The South Australian Act does not have this requirement and instead focuses on whether disclosure would "prejudice" the effectiveness

of any method or procedure for conducting the exam, or would "prejudice" attaining the objects of the exam. This means it is more likely that exam-related documents will be exempt from disclosure under the South Australian Act.

In *McKean*, even the Victorian Civil and Administrative Tribunal (which heard the case at first instance) itself stated had it been deciding Mr McKean's application under legislation with a broader exemption (such as South Australia's) the result may have been different and the University may have been able to establish the documents were exempt from disclosure.

What can I take out of this?

University staff should keep the case in mind when drafting exam papers and marking guides as it might have impact on subjects whose marking guides do not change substantially from exam to exam, or whose exams contain questions and answers that are "recycled" from year to year.

Staff should seek legal advice regarding requests for access to exam related documents on a case-by-case basis to ensure compliance with the FOI Act.

The Australian government has since announced a wide-ranging review into the operation of FOI in Australia to determine how best to reform this area.

This article was supplied by Amber Stanley. Amber is an Associate with Johnson Winter Slattery lawyers.

JOHNSON WINTER & SLATTERY
LAWYERS

Who's the Boss?

A Quebec Dad, unhappy with the amount of time his daughter was spending surfing the Internet, chatting on Web sites and posting "inappropriate pictures" of herself online, grounded his daughter from attending a school trip that his ex-wife had already approved.

Not taking "no" for an answer, the daughter sued – and won. The father, who had custody of the child, appealed the lower court's decision, and lost again. His lawyer told news reporters that the father is "flabbergasted" by the appellate court's ruling to uphold the lower court's decision on grounds that the punishment was too severe for the wrongs he said his daughter committed.

In its recent ruling, the appeals court warned the case should not be seen as an open invitation for children to take legal action every time they're grounded.

The daughter has moved in with her mother.

In the next issue of UNILink...

- Environment Protection Act 101
- Insurance for Student Work Experience
- Tracking Legislative Change
- Download this and other issues of UNILink from: www.adelaide.edu.au/legalandrisk/newsletter

BRAINTEASERS—FROM ISSUE 2

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

cbcnews.ca

Did you know....

13 muscles are used to smile, but 47 are required for frowning

You have to smile nearly a quarter of a million times to make 1 wrinkle