



ESOS Regulations

Protection for Overseas Students

The Government and the University aim to provide overseas students in Australia with a safe, enjoyable and rewarding place to study. Australia's laws promote quality education and consumer protection for overseas students, and these laws include the Education Services for Overseas (ESOS) Act 2000 and the National Code.

ESOS legislation aims to regulate the Australian market and the conduct of education agents overseas and, as a consequence, to protect Australia's reputation for delivering quality education services for international students. This is done by setting and independently auditing minimum standards to be met for those services whether they are provided by the University directly or with or by any of its authorised overseas agents.

The ESOS Act mandates a nationally consistent approach to registering education providers so that the quality of the tuition, and care of students, remains high. The Act also sets out obligations and restrictions on students to comply with the conditions of their student visa. The University must carefully and regularly monitor these students and report on some of these conditions to the Department of Immigration and Citizenship (DIAC).



National Code of Practice

The National Code of Practice (2007) provides for consistent standards for the registration and conduct of providers, and the conduct of those who deliver educational services on behalf of registered providers.

The Australian Government recently announced that the review of the ESOS Act, will now take place one year earlier than previously planned. As a consequence of this review, it is anticipated that a number of changes will be made to the National Code of Practice and to the regulations administered by DIAC for the conversion of student visas to permanent residence visas.

We will almost certainly be a contributor to this review process and to other concurrent inquiries by the Senate and by the South Australian Government into the welfare of overseas students in this country. In short, we are very actively engaged with legal compliance in this particular area.

For more information on your ESOS obligations contact Kim Evans (Senior Legal Counsel, International) on 830 36103.

Compliance Education and Awareness

Please note that due to popular demand, the location for the seminar **The Rules of Doing Business** (see back page) has changed. The seminar will now be held in the Napier Lecture Theatre #208.

All University staff wishing to attend are strongly encouraged to register with Legal and Risk (34539).



STOP PRESS ESOS Amendments

Amendments to the *ESOS Act 2000* and the *ESOS (Registration of Charges) Act 1997* are the first in a series of measures the Federal Government is taking to ensure Australia continues to offer world class quality international education.

Key amendments to the Act are as follows;

- All education providers currently registered under CRICOS are required to re-register by 31 December 2010
- The registration of education providers *not* re-registered by the end of 2010 will be cancelled
- Education providers are required to maintain a list of the names of education agents who represent them and promote their education services
- Two new registration criteria have been created for education providers:

⇒ *the principal purpose of the provider is to provide education; and*

⇒ *the provider has demonstrated a capacity to provide education of a satisfactory standard*

- The criteria to assess whether a provider is fit and proper to be registered is to apply to both new registrations and re-registrations

How the University could be affected

The University will be required to re-register on CRICOS as a provider of courses to international students and will need to meet the criteria set down for registration.

The University's use of education agents will be subject to greater transparency, for example by the obligation on the University to publish the names of agents who represent it and promote its education services on the University website or by other means specified in the regulations.

Finally, it is likely that in the coming months, some University staff and students may be involved in targeted forums to discuss the future of Australia's international education sector with groups including state and territory government officials, regulatory bodies and other education providers.

UNILink articles will continue to provide further input to the University's involvement in the review process.

The ESOS Act issues review paper has been released and written submissions are now welcome—www.aei.gov.au.



*From the
General
Counsel*

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

Environmental Management is high on everyone's agenda—personally, at home, in business, in government—and of course, here at the University. With the increased focus on what is good and what is not, equally, there have been changes to laws and Codes that regulate what can be done and what should be avoided.

The *Environment Protection Act 1993* is the primary pollution control legislation in South Australia. Broadly speaking, the Act aims to ensure that measures are taken to protect, restore and enhance the quality of the environment based on principles of ecologically sustainable development (ESD principles). The Act also promotes these principles.

In this issue of UNILink, we give you some tips on compliance and how to contribute positively to the University's environmental management plan. We also give you a heads-up on amendments to one of the most important Acts affecting learning and teaching at the University—the *Education Services for Overseas Students (ESOS) Act*.

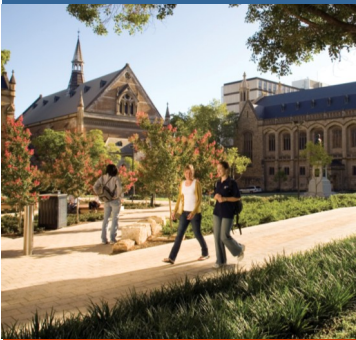
Keeping abreast of changes to Acts can be challenging, so in this issue, we explain exactly how best to go about tracking legislative amendments. We also introduce you to some of the legal compliance resources now at your disposal.

Thank you to Sue Coppin from University Archives, Records and Collections and Kelly & Co Lawyers who contributed to this issue and I encourage all staff to contribute story ideas or articles to future newsletters.

Celine McInerney, General Counsel

Legal and Risk

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The University of Adelaide
North Terrace
SA 5005 Australia



Ponder this....

The probability of meeting someone you know, increases when you are with someone you don't want to be seen with

ENVIRONMENT PROTECTION ACT 101

Australian citizens—along with business groups, industries and Unions—want action on climate change. As one of the state's largest employers and significant consumers, the University and its employees have an "environmental duty" to prevent pollution of the environment, which means that individually and collectively we must care for the environment and do what is reasonable and practicable to prevent harm to it.

The University's Infrastructure, Property and Technology Services aims to follow a sustainable approach to campus operations and development through adhering to (and promoting the adherence to) a comprehensive collection of building standards and policies which set out the minimum requirements for the design, construction and maintenance of all University facilities. Underpinning these policies and standards is the primary pollution control legislation, *The Environment Protection Act 1993 (SA)*.

Notwithstanding our ethical obligation to be compliant, non-compliance with the Act has both institutional and personal liability attached and can lead to fines, imprisonment and unfavorable press.

The Environmental Protection Authority (EPA)

The EPA is South Australia's primary environmental regulator, and the University deals with the EPA on a regular basis. The EPA can impose warning notices and administrative orders on the University, and place conditions on building work and activities that have the potential to harm the environment. The EPA can also make recommendations to the University relating to the our Environmental policies and procedures, or offer advice on the best way to employ a footprint reduction or recycling program.

The University Licence

Our EPA licence governs most of the University's *environmentally significant* activities. The licence regulates storage, treatment, transportation and disposal of wastes, and authorises the University to undertake certain activities producing certain wastes, subject to conditions of the licence, such as;

- *experiments & clinical operations;*
- *agriculture & horticulture;*
- *building work - including painting, carpentry, plumbing or gas fitting; and*
- *chemical production, storage and disposal.*



The licence specifies that the University must have written approval to undertake activities, such as most construction work, if it has the potential to;

- *increase the risk of environmental harm; or*
- *increase pollutants or emissions.*

Similarly, *Licence Exemptions* may be granted for one-off, short-term activities which have the potential to impact the environment, such as;

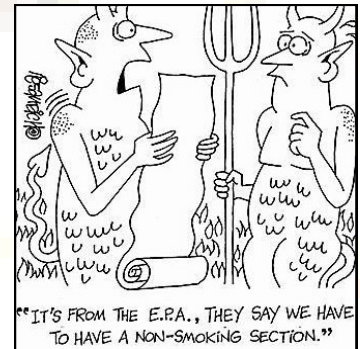
- *a festival held on University grounds—which has a high likelihood of producing noise pollution; or*
- *the disposal of unidentified chemicals post-research activities—the practice of which would fall outside ordinary disposal schedules.*

In these cases, the activity is permitted to go ahead, but under certain conditions.

Breaches and Offences under the Act

Environmental breaches carry far harsher penalties now than they did a decade ago, and employees cannot rely on the defence that they were simply acting "under orders". Serious offences range from intentional pollution of a water-way, to violating a condition of licence and penalties are awarded according to;

- Actual or potential harm to health and safety of people;
- Scale of environmental impact; and
- Level of *Environmental Nuisance* – of which unsightly or offensive conditions caused by waste, or an adverse effect on features or advantages of a local area or the value of an area may result.



Environmental Compliance

Ensuring compliance with the Act must be an on-going, strategic and personal undertaking. Staff are encouraged to familiarise themselves with the *University's Sustainable Adelaide* project and participate in the various events aimed to reduce our carbon footprint and aim for compliance with environmental legislation.

At a very general level all staff must aim to;

- Minimise pollution where possible;
- Behave in a manner consistent with the *University Sustainability Policy*;
- Ensure that any storage and disposal of materials is carried out in an environmentally responsible manner;
- Obtain authorisation for activities of environmental significance and comply with conditions imposed;
- Adhere to the University's Building Standards
- Ensure that contractors on University campuses and property are aware of University "best practice" guidelines;
- Learn to recognise environmental risk and undertake risk assessments for activities that may impact the environment; and
- Notify Mathew Jeffrey, Environmental Projects Officer (see contact details below) if you are contacted by the EPA or if any environmental incident occurs.

For further assistance with your Environmental obligations, contact Mathew Jeffrey, Environmental Projects Officer on 830 33763 or by email Mathew.jeffrey@adelaide.edu.au.

For more information about the Sustainable Adelaide project visit the website www.adelaide.edu.au/sustainableadelaide/

FREEDOM OF INFORMATION: it's all about transparency

What is Freedom of Information?

The South Australian *Freedom of Information Act (1991)* gives people the right, subject to specified exemptions, to access information held by government departments and agencies, including correspondence, research records, maps, plans, minutes from meetings, tape recordings, de-identified data and statistics. The University of Adelaide is an agency under the FOI Act.

Any documentation or recorded information held by University staff in their official capacity is subject to FOI—including informal email communication. Freedom of Information is vital for openness and accountability within the University.

What should you do if asking for information under FOI?

A FOI request *must* be made formally in writing, and specify that it is being made under the Act. Applicants do not have to justify their request for information but the application must contain the applicant's postal address and enough detail to enable the requested information to be identified. An application fee applies although this may be waived under certain circumstances. Application forms are available online at www.archives.sa.gov.au/foi/forms. Applicants may also make a written request for the correction or amendment of personal details contained in University records if it is inaccurate, incomplete, out of date, or where it would give a misleading impression.

When is FOI not necessary?

Students, staff and graduates have the right to supervised viewing of their own personal information, including personnel files and grades *without* resorting to FOI. All published material can also be made freely available. Students may contact the Manager, Administrative Services Branch to view their student file in the presence of the Manager or contact Human Resources to arrange access to their staff file in the presence of an HR staff member. It is strongly recommended that students or staff make use of these access provisions in the first instance. Those dissatisfied with the results may then proceed to make a request under the FOI Act.

What should you do if you receive an FOI application?

All FOI applications *must* be processed by the University's accredited Freedom of Information Officer within a specified time frame. Applications received on behalf of the University must be forwarded as soon as possible to *FOI Officer, Room 637 Wills Building*. If staff get contacted by the FOI Officer about a request, they should assist in putting together copies of all documents relevant to the request and release all of the information they have.

For more information about your FOI obligations go to www.adelaide.edu.au/legalandrisk/resources or contact the Freedom of Information Officer, Sue Coppin on ext 35184.

KEEPING UP WITH THE CHANGES

Legislation changes all the time. There are amendments to titles, definitions and legislative function; changes to penalties, offences and exemptions; repeals to Acts and unintentional amendments to seemingly un-related legislation.

In some areas of the University, such as Research, Finance or OHS, staff or groups that are greatly affected by legislative change may be on top of amendments more so than others, purely from their dealings with regulators, partners and funding bodies. These areas may well be ahead of Legal and Risk too, having been given a "heads-up" to a change by an external body prior to a Bill being passed. But for other areas of the University, tracking legislative amendments has the potential to give you a real head-ache, so we've devised a system to take the hard work out of deciphering how an Act has changed and determining if the amendments could affect you.

Lawlex

Lawlex is an internet database which tracks State and Federal legislation, and publishes plain English summaries of proposed and new developments within 24 hours of being notified of the change. Lawlex distinguishes between:

- New legislation—new Bills or Regulations; and
- Amendments—which are made to Acts that already exist.

Lawlex Alerts inform us about the existence of new legislation, based

on the jurisdictions and subject areas that we have selected. Alerts are also sent to us about amending legislation, based upon the current Acts or Regulations we have in our "Alert Profile".

Our "Profile"

Legal and Risk have a Lawlex "profile" which lists all of the Acts identified by our legal team as being relevant to the University, from the most obvious (such as the *Fair Work Act*) to the more obscure (such as *Psychotropic Substances Act*). When an Amendment Bill that has the potential of affecting the University is introduced into Parliament, Lawlex sends an email alert and Legal and Risk, in consultation with area specialists, determine how, who and when the University could be affected. New legislation is added to the profile as it is enacted and occasionally, Acts are removed.

Assessing the change

Legal and Risk meet regularly (monthly) to discuss the amendments we have been alerted to in the previous four weeks and determine which of the changes could affect the University and its operations, projects or risk profile. A number of factors are considered when determining the relevance of the amendment to the University including;

- Could there be research or teaching implications?
- Could there be opportunities for the University?

- What are the strategic and operational implications of the change?
- What specific Schools, Faculties or Branches could be affected? and
- Are there any underpinning educational issues, such as a changing curriculum, that might need additional thought?

If we need clarification about a particular Act, we might seek advice from one of the Designated Specialists nominated as being an "expert" on the legislation. We may consider information extracted from newsletters and notifications we have received from another area of the University or from one of the law firms we liaise with regularly.

Informing You

Once we have determined which of the schools or branches the amendments are likely to affect, we post information to the relevant staff directly—some of you will already have seen these. If you are a University Compliance Owner or Designated Specialist Officer with specific responsibilities under the Legal Compliance Framework, you can expect to receive at least one alert letter in the coming months.

Look for a yellow envelope with *Legislation Alert* on the front and contact Legal and Risk if you have any questions about the information provided.

For more information contact [Phillipa Schliebs](mailto:Phillipa.Schliebs@adelaide.edu.au) on 830 34539 or email phillipa.schliebs@adelaide.edu.au.



Ponder this...

The attention span of a computer is only as long as its power-cord



Ponder this....

If a book about failure doesn't sell, is it considered a success?

MARKETING SLOGANS... Don't just rely on Copyright

The recent Federal Court decision in the case of *State of Victoria v Pacific Technologies (Australia) Pty Ltd* [2009] highlights the dangers in seeking to rely on copyright protection to protect marketing slogans, and other short phrases such as titles.

Facts

The case considered whether the phrase "Help-Help-Driver-In-Danger-Call-Police-Ph.000" (the *Help Phrase*) was a work protected by copyright. The *Copyright Act 1968* (Cth) provides automatic copyright protection to a range of works (such as literary, artistic and musical works) which meet certain eligibility criteria. These criteria include a minimum level of originality.

Pacific Technologies (Australia) Pty Ltd claimed that the *Help Phrase* was an original literary work, of which it was the author, and therefore protected by the Act. It sought compensation from the State of Victoria for its use of the *Help Phrase*. Pacific Australia had previously lodged a patent application for a driver duress alarm with a dot matrix display which was programmable and capable of displaying an array of messages.

The specification of the application specifically listed the *Help Phrase* as a typical message which could be displayed on the device. It was on the basis of this patent application that Pacific Australia made its claim under the Act regarding the *Help Phrase*. The issue for decision by the Federal Court was whether the *Help Phrase* was protected under the Act as an original literary work.

Decision

Justice Emmett in the Federal Court applied the well-accepted principles of copyright law to hold that the *Help Phrase* was *not* protected under the Act, because it did not constitute an original literary work. He confirmed that literary works are intended to provide teaching and information or pleasure to readers. Though it may be the creation of skill and labour, writing will not be protected under the Act if it is not a form of literary expression in this sense.

The general position, well established by case law, is that titles, slogans, and other short phrases or sentences are not sufficiently "literary" and are therefore to be denied copyright protection.

Important Lesson

This case confirms the unwillingness of courts to afford protection under the Act to short phrases, titles and slogans as literary works. This highlights the importance of seeking trade mark protection for marketing slogans and other similar advertising tools.

This update is © Kelly & Co. Lawyers and is for general guidance only. Legal advice should be sought before taking action in relation to any specific issues. For further information email IP@kellyco.com.au or phone Rob Kennett on 8205 0833 or Luke Dale on 8205 0580.



E-Learning 101

One of the most confusing aspects of compliance can be figuring out what an Act is asking you to do—or not to do. Staff may be familiar with Acts that apply specifically and often only to their area; such as the *Cremation Act* or *Transplantation and Anatomy Act* which applies to the School of Medical Sciences) but less familiar with Acts that have application across the whole University in all areas and schools (such as the *Privacy Act*, *ESOS Act* or *Freedom of Information Act*).

To help you identify the requirements of the Acts which apply generally to all staff, Legal and Risk have prepared online presentations which we call *E-learning 101*. "101's" have been developed to provide succinct summaries of the compliance obligations imposed by a number of Acts relevant to all of us, using simple language and relevant examples.

The material cannot contain every requirement an Act sets out, as some of the Acts are over 1000 pages long. But 101's provide an overview of an Act as it applies *specifically* to the University and are a good starting point for staff to improve their general compliance knowledge.

E-Learning 101's:

- explain how the Act applies to the University;

- detail the personal and institutional consequences of non-compliance with the Act;
- specify the minimum requirements for staff to help ensure they are compliant with the Act; and
- provide the details of internal staff and websites that can assist in your understanding of the Act.

Completed 101s

- Copyright Act
- Environment Protection Act
- Freedom of Information Act
- Ombudsman Act
- Privacy Act
- Trade Practices Act
- State Records Act

Under development

- Liquor Licensing Act
- Controlled Substances Act
- ESOS Act
- Heritage Places Act
- Development Act

- Transplantation and Anatomy Act
- Coroners Act
- Cremation Act

Eventually there may be a 101 for every Act relevant to the University, but for now they are being compiled on request of the two Schools involved in the pilot of the Legal Compliance Project.

Bear in mind that *you* may be contacted over the coming months by Legal and Risk to provide input into the education material under development. Your assistance would be greatly appreciated. Please contact Legal and Risk if you feel a 101 would benefit from further information, including additional resources or examples.

Access E-Learning 101s through the resources page of the Legal & Risk website www.adelaide.edu.au/legalandrisk/

Word of the day

FORCE MAJEURE ("superior force")

A defence against breach of contract protecting a party or individual in the event that a legal obligation cannot be fulfilled, as a result of conditions beyond their control, such as (among other things) earthquakes, floods, or war - causes which are outside the control of the parties and could not be avoided by exercise of due care.

STUDENT WORK EXPERIENCE INSURANCE

Work experience is hugely beneficial for all students studying and requiring practical, hands-on experience and the University encourages it. However, staff should be aware of some of the conditions of work experience insurance before advising students to organise placements of their own accord.

And most importantly

- The workplace experience undertaken must be *directly relevant to, or part of the conditions of* the program of the student's course of study.

Generally, the University will only insure a student if their work experience or research work is a genuine course component, such as a clinical or field placement. Students undertaking work experience that is not a requirement of their course program, including that performed during semester break, are not **automatically** covered by the University policy, despite the fact that the work experience itself might be *relevant* to the student's course of study. In these cases, students must ensure that the work experience is formally approved by the Head of School.

What is the scope of cover?

The University maintains a personal accident policy for all undergraduate and postgraduate students. The policy provides cover whilst the student is engaged in campus, course or University-related activities and practical placement activities. Under the policy, the student is provided with:

- Public Liability insurance to a limit of \$20,000,000 per any one event for act or omission on the part of the student that results in injury loss or damage to the host organisation;
- Travel insurance—providing that the distance travelled is in excess of 50 kilometres from the student's home or the University campus, and includes an overnight stay; and
- Personal accident insurance—which provides for medical expenses not covered by Medicare.

What are the insurance conditions?

There are various conditions of the insurance policy that must be adhered to by both the student and the Head of School for the duration of the placement;

- The student must not be employed by the organisation where the workplace experience is being undertaken;
- The student must not receive any form of reward or payment for work performed during placement;
- Participation must be endorsed by the Head of School; including by providing the host organisation with a copy of;

⇒ the Student Placement Agreement Form (see [Student Work Experience Guide](#));

⇒ proof of insurance for Public Liability (sometimes called the *Certificate of Currency*);



Remember...

The University maintains a Public Liability insurance policy that indemnifies its students (during the period of the work placement) for any action or omission which results in injury or loss of income to the host organisation.

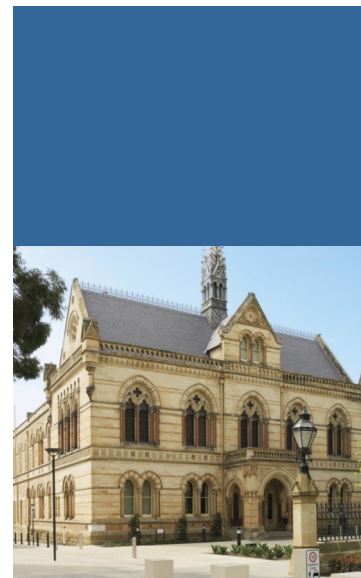
In the same way, the host organisation has indemnity cover which insures the University and the student for any loss which results from a negligent act or lack of action by the host organisation's employees, contractors or agents.

For more information see [The Student Work Experience guide](#) available on the [Insurance Policy Guides](#) page or contact Bob Reilly on 8303 5804.

In the next issue of UNilink...

- *Risky Business*—Where the University's headed operationally, enterprise-wide and generally with Risk Management
- *Legal Compliance Project*—Pilot evaluation; what we've learned and which Schools could be involved next
- *ESOS Act Review*—How the University of Adelaide is involved
- *2010 and Beyond*—What's in store for Legal and Risk

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.



Ponder this...

The probability of being watched is directly proportional to the stupidity of your act

WOMAN SUES ZOO OVER SPLASHING DOLPHINS

A woman is suing a zoo after she fell near a dolphin exhibit, accusing staff of encouraging the mammals to splash water and then failing to protect spectators from wet surfaces.

In her lawsuit filed in August, Allecyn Edwards said she was injured while walking near an exhibit at Brookfield Zoo in Chicago, where a group of Atlantic bottlenose dolphins were performing.

Edwards claimed zoo officials "recklessly and wilfully trained and encouraged the dolphins to throw water at the spectators in the stands, making the floor wet and slippery". They failed however, Edwards added, to post warning signs or lay down protective mats or strips.

Ms Edwards is demanding more than A\$60,000 for lost wages, medical expenses and emotional trauma from the Chicago Zoological Society and the Forest Preserve District of Cook County, which operates the zoo.

The Rules of Doing Business

The Trade Practices Act (TPA) sets out the rules for doing business. These rules determine what you can and cannot do in dealing with your competitors, your suppliers and your customers.

The purpose of the rules is to ensure that businesses act in a fair and competitive manner.

But how does *cartel conduct* fit into this?
Bid-rigging? Price fixing? Market sharing?

Learn how to use the TPA to your advantage

This session will help you to understand:

- ♦ How *you* are affected by the TPA
- ♦ What you can and cannot say when dealing with customers and competitors
- ♦ The consequences of *Cartel Conduct*
- ♦ How you could be inadvertently involved in “exclusive dealing”
- ♦ What sort of conduct can be deemed “misleading” or “anti-competitive”

- ✓ *Gain the competitive edge*
- ✓ *Improve performance*
- ✓ *Minimise risk*
- ✓ *Comply with the law*

Register today

Legal & Risk

Phone: 83034635

Email: joseph.dipinto@adelaide.edu.au

Monday 30th November 2009

10.00am—12.00pm

Napier Lecture Theatre # 208

Morning Tea Provided

It costs you nothing to
attend and may cost
you plenty otherwise

About the Presenter

Aldo Nicotra



Aldo is one of Australia's leading competition lawyers with 20 years experience in competition and consumer protection.