

Trade Practices Act— The Rules of Doing Business

There are few Acts that have as much practical application to the University's core business operations as the Trade Practices Act (TPA). This year, through UNILink, staff learned that amendments to the Act have increased penalties for compliance breaches and added another layer of complexity to an already complex Act.

Recent changes to the Trade Practices Act proved difficult for us to summarise (let alone the Act in its entirety), so at the end of last month, Legal and Risk invited Aldo Nicotra, from Johnson Winter Slattery law firm, to present a seminar on the legislation in order to help staff understand why and how the Act provides us with the rules for doing business.

Approximately 50 staff attended the seminar and each attendee was provided with a Trade Practices Compliance Manual and session notes. The manual covers market sharing, cartel conduct, price fixing, anti-competitive behaviour, misleading conduct and more, using both real and hypothetical examples. Staff can access the manual and session notes through the Resources page on the Legal and Risk website; www.adelaide.edu.au/legalandrisk/resources.

TPA at the Movies

Interestingly, the biggest case of price-fixing the world had ever seen is now the subject of a major motion picture. *The Informant* stars Matt Damon as Mark Whitacre, a rising star at agricultural-industry giant Archer Daniels Midland (ADM), who turns FBI whistleblower. Even though he is exposing his company's multi-national price-fixing conspiracy to the FBI, Whitacre envisions himself being hailed as a hero of the common man and handed a promotion.

Legal and Risk has 10 double passes to give away to see *The Informant* at The Palace East End Cinema. So be one of the first people to answer the following three questions correctly and email your responses to joseph.dipinto@adelaide.edu.au.

Question 1.

A 'wink and a nod' understanding can constitute unlawful market sharing arrangements.

TRUE or FALSE?

Question 2.

"Refusing to supply on the basis that the buyer will not purchase goods or services from another party" is known as;

- (a) Bid Rigging
- (b) Cartel Conduct
- (c) Third-line Forcing

Question 3.

Give one example of a breach of the TPA which could result in you going to gaol.

Competition not open to the Legal and Risk branch or members of their immediate family.

2010 Insurance Guides

The University's Insurance Policy Guides for 2010 are now up on the Legal and Risk website, including Guides specific to (among others);

- Directors and Officers Insurance;
- Medical Student Indemnity;
- Contracts and Agreements;
- Adverse Event Reporting;
- Sports Association Personal Accident;
- Student Work Experience; and
- Travel Insurance.

Visit the insurance website to find private and corporate travel proposal forms, motor vehicle claim forms and practical guidance for common insurance related queries, including travel insurance.

For other claims information contact Bob Reilly (Manager Insurance) on 830 35804 or Tom Pontt (Finance and Insurance Officer) on 830 33878.

Fraud Control Induction

Course materials on Fraud Control have been developed by Legal & Risk and Continuing Learning and Professional Development (CLPD) through the second half of 2009. The materials are currently being incorporated into an online course in MyUni format.

The online course will comprise one aspect of the University's Induction Program for new staff from the start of 2010. The course will also be available to existing University staff.

Fraud control is a risk prevention strategy aimed at protecting businesses and organisations such as the University from susceptibility to fraudulent activity. While the theft of money or personal property is probably the most obvious type of fraud, there are other forms of activity that may constitute fraud.

The course is intended to raise awareness of the possibility of potential fraudulent behaviour in the workplace; outline the University's approach to the phenomenon; set out the rights and obligations of University staff regarding the reporting of potential fraud; and specify the reporting procedure where such behaviour is suspected.

The course materials draw on and complement the University's Fraud Control Policy and Fraud Control Plan. The course is part of the University's commitment to develop education and training awareness in various areas—Fraud Control is one of those areas.

For more information contact Richard Duddy (Legal Counsel & Senior Project Officer, Policy) on 8313 0085



From the General Counsel

Welcome again to UNILink newsletter; linking you with Legal and Risk issues.

There is no denying that the increased use of "Web 2.0" technology has given rise to a myriad of complex and contentious issues, including those relating to defamation, intellectual property rights (particularly copyright) and privacy. In this and subsequent editions of UNILink, we will be exploring some of these issues and offering suggestions as to how to deal with problems as they arise.

Web 2.0 technology is just one of the challenges and opportunities faced by the University, due to the nature and diversity of its operations and the subsequent risk it generates and assumes. This month, our new Manager of Risk Services, Anne Hill outlines the general principles of Risk Management, and why, as a tool, Risk Management can be hugely beneficial to both individual staff and the University as a business.

In future editions there will be updates on the risk assessment process, monitoring, reviewing, recording and reporting risks, and articles explaining how the University's Enterprise Risk Management and Business Continuity Management programs can further assist in mitigating risk.

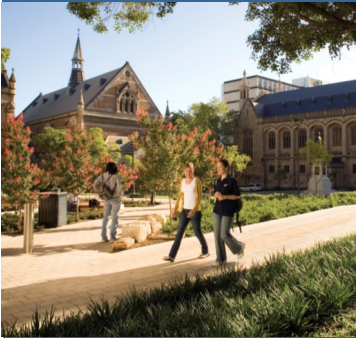
Also in UNILink this month, we discuss what to do if you have a student with a disability and let you know what's in store for Legal and Risk next year.

On behalf of everyone from Legal and Risk, have an enjoyable festive season and we'll see you next year.

Celine McInerney, General Counsel

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PRIVACY PERILS in the complicated world of Web 2.0 technology

"Web 2.0" is the latest buzz word that describes the second generation of community-based internet services. Web 2.0 refers to a user-friendly and accessible techno-world that allows people to create, communicate, collaborate and share information through applications like blogs, wikis (such as Wikipedia), social networking sites (such as MySpace, Twitter and Facebook) and podcasting or content hosting services (like YouTube or Flickr).

While Web 2.0 is overwhelmingly beneficial in terms of enriching the internet, improving the user experience and creating web-based communities, it also distorts the boundary of public and private spaces, challenges the notion of information ownership, and leads us to question how much of our information we can truly claim as our own, and what should be freely available to the billions of internet users around the world.

Security

Social networking is built on the idea of sharing information openly and fostering a sense of community, but it's important to be aware of the threats, and to maintain a healthy scepticism while going about your online interactions. According to recent research from *Secure Enterprise 2.0 Forum*, Web 2.0 services are the most popular social media targets for hacking, cyber bullying, identity theft and other forms of cybercrime. Why? Because it's easy and because most of us have become all too eager to upload information about ourselves that a decade ago, we would have probably kept private.

Passwords, firewalls and virus protection software can help with data protection to an extent, but so long as consumers are willing to give up a certain amount of their personal privacy in exchange for access to web sites, internet security issues will increasingly persist.

Marketing

So how, if they're free, or at least not selling anything, are Web 2.0 companies so profitable? Why is MySpace worth over half a billion US dollars? Why did the creator of Facebook reject a \$1 billion sales offer from Yahoo? The answer is **data**. Information. Marketing.

It's almost inevitable that those of us who use Web 2.0 technology will eventually have our data bought or sold. Most Web 2.0 sites are designed to extract the information you enter and break down the data into what you like and what you like that your friends like. What blogs you've submitted, what demographic you're in and how other people in your demographic react to what you post. Add to the mix your name, birth date, where you work, email accounts, phone numbers and your home address and Web 2.0 is a marketers dream.

Privacy

Despite evidence to the contrary, *most* people still value their privacy, their reputation and the way other people perceive them. So to protect against cybercrime and marketing-maniacs, consider the following when interacting online:

- Utilise Privacy controls

There is usually an option to make information either private or restricted, but default settings are generally configured to be "public", particularly on sites specifically designed for sharing material.

- Give out as little as possible about yourself online

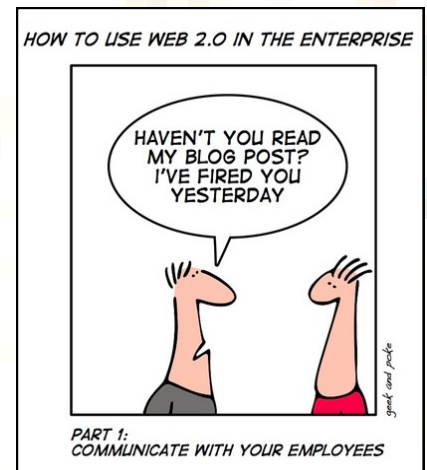
Many people sign up to sites and disclose their personal details simply because there's a field there for it. Avoid posting personal information where possible, unless you're happy with anyone and everyone seeing it.

- Never reply to "spam" e-mail

Do this and your spam uptake is likely to increase. Replying to spam only alerts spammers that they have reached an active e-mail address.

- Don't accept "friend" requests from people you don't know or trust

This may sound obvious, but you'd be surprised at how many Facebook users have *never* rejected an offer of friendship. Consider the value of accepting requests from someone you went to school with 20 years ago unless you genuinely want to get in contact with them. Think carefully about how many "fan lists" you join up to because they're likely to all be connected to the same information repository.



- Increase the barriers to your information

Use unusual, hard-to-guess passwords and install well-known, reputable software which is more difficult to hack

- Never give information to a social network or any other Web site without first reading both the Terms of Service and the Privacy Policy

Terms of Service tell you what rights a site has to your information, while the Privacy Policy tells you how your information may be used.

If you have privacy questions or concerns, contact Geraldine Haese (Legal Counsel) on 830 35244.

Random Fact

Most of us have probably got a can of it in our shed, but it's doubtful that many people have given the humble **WD-40** very much thought. Do you know the origins behind the name?

WD-40 was invented by an industrial chemist named Norman B. Larsen, a man with an insatiable desire to create things that would help make life easier for people. Larsen invented the product while attempting to concoct a formula to displace water, which was causing major problems in Atlas Rockets in the U.S. Norm's persistence paid off when he perfected the formula for the water displacer **on his 40th try**, hence the product name: WD-40.

As they say in the classics, if at first you don't succeed... try, try, try again.

RISKY BUSINESS – Risk Management at the University

Almost all activities within the University involve **risk** in some way or to some degree. This is because risk relates to the effect that uncertainty has on objectives. Uncertainty is derived from unpredictable internal and external factors.

Risk Management refers to the coordinated activities that an organisation takes to direct and control risk. By taking account of uncertainty and its effect on achieving objectives, risk management helps determine the need for action and exactly how much action.

Universities today face many challenges and opportunities due to the nature and diversity of their work and consequently they generate and assume considerable risk. Those challenges (as adapted from Arthur J Gallagher & Co, "Road to Implementation Report") may arise from:

- **Globalisation:**

Increasing numbers of students from other countries, more international experimental learning, more distance learning and variable modes of study;

- **The economy:**

The need to actively manage financial challenges, increase efficiencies and capitalise on innovative research;

- **Competition and student demands:**

Increasingly fierce competition for research funding and in attracting the most qualified staff and students; increased student expectation in course content, delivery and environment;

- **Threats of campus exposure to violence and pandemics:**

Violence is becoming more of a reality with negative impacts for student and staff enrolment and retention. Exposure to pandemic infections is much more likely given globalisation and the increasing frequency and ease of travel;

- **Environmental impact:**

Increasing pressures on the natural environment and a more urgent need to manage the environment to ensure long term sustainability and survival;

- **Laws, regulations and auditory requirements impacting higher education:**

Regular audits from external agencies (eg. Auditor General, Commonwealth and State Department of Education, Employment and Workplace Relations, Workcover SA) and a wide range of significant legislative or regulatory compliance requirements and contractual obligations which scrutinise all aspects of the University's operations and demand compliance with best practice;

- **Meeting high expectations:**

Including those of diligence, transparency and accountability demanded by University Council and external collaborators, funding bodies and community.

Risk Management can be applied at any time across the entire University or at Faculty, School, Branch, Division or local level, as well as to specific projects, functions and activities. As a process it offers a logical and systematic methodology to ensure that communication and consultation occurs, the context is established, risks are assessed, monitored and reviewed and appropriate recording and reporting of the actions and results occurs.

Through the critical analysis and consideration of unplanned or unintended possibilities or consequences, risk management helps make better and more informed decisions about whether to proceed with an activity or project, how to avoid potential problems by pre-empting them and helps deal better with problems if they do eventuate.

Risk management is considered to be part of good business practice and can help you to:

- ✓ Sustain a competitive advantage
- ✓ Respond effectively when a significant event occurs
- ✓ Avoid financial surprises
- ✓ Effectively manage scarce resources
- ✓ Define risk appetite and tolerance levels
- ✓ Determine the effectiveness of existing risk management controls
- ✓ Improve risk assessments
- ✓ Increase management and business-unit accountability
- ✓ Allocate resources more effectively to address risk



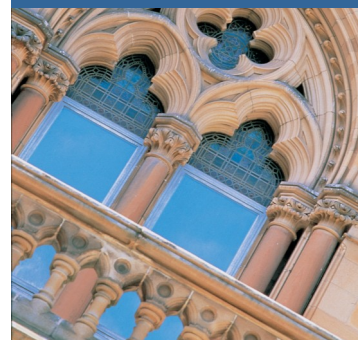
"When anyone asks me how I can best describe my experience in nearly forty years at sea, I merely say, uneventful. Of course there have been winter gales, and storms and fog and the like. But in all my experience, I have never been in any accident... or any sort worth speaking about. I have seen but one vessel in distress in all my years at sea. I never saw a wreck and never have been wrecked nor was I ever in any predicament that threatened to end in disaster of any sort".

Quote attributed to Captain E. J. Smith, RMS Titanic – five years later the Titanic sank while on her maiden voyage.

While you may not be in Captain Smith's position, are you as confident as he was; are you satisfied that you know what obstacles lie ahead? And, if you are aware of the obstacles ahead, do you know which ones you need to invest more energy into to avoid a collision? If you did hit an obstacle have you thought through how you will recover from the damage?

If you are confident that you have all this in place then your risk management strategy would appear to be sound and you should be sleeping easily at night! If not, some confidence can be restored by adopting a risk management approach, particularly if it is embedded into your culture and every day practices.

If you would like any assistance to develop or refine your operational risk management, please contact Anne Hill, Manager Risk Services, via email anne.hill@adelaide.edu.au or by phone 830 34603.



Real = OUT
Fake = IN

Worldwide, artificial Christmas trees have outsold real ones since 1991

ORCHESTRATING GREAT MEETINGS

Most University staff, particularly those in upper management, would probably say they attend far too many meetings and unfortunately, the time spent in meetings seems to grow exponentially with your career progress.

Many meetings are ineffective, unproductive, dominated by the few and tend to go over the same things time and time again. Bad meetings suck the life force out of people, leaving them tired and unhappy at work. Bad meetings can also lead to bad decisions, reduced motivation and conflicts. On the other hand, well-run meetings can be an effective tool for management and are vital for team-building and providing the interpersonal interactions needed to stimulate creativity and facilitate problem solving.

So what distinguishes an effective meeting, from a waste of time? **Planning and careful thought.** Some of the following hints are obvious, but are nonetheless overlooked. While not suited to all types of meetings, most however, have their place at the University in one area or another.

1. Have a good reason to meet in the first place;

Ask yourself;

- Is the meeting really necessary? Would an over-the-phone conversation or teleconference suffice?
- Are the "right people" available to attend?
- Is the timing appropriate?

2. Be prepared and encourage attendees to come prepared to participate;

Be absolutely clear about the purpose of the meeting. Formulate the agenda carefully and identify the needs and interests of the majority of the participants. Determine the desired outcomes for your meeting and have at least some idea of how to go about addressing them.

3. Start the meeting positively and on time;

Begin with good news that will make the attendees feel good and encourage them to contribute. If you start with complaints, problems and blame, it will set a negative tone for the rest of the meeting.

4. Be a good meeting facilitator;

Evoke active, appropriate participation in order to accomplish your objectives. Encourage questions and honest ongoing feedback and stick to the agenda. Concentrate on one conversation at a time and never initiate or allow personal attacks.

5. Diversify your presentation methods;

Start your meetings or training session with a funny story to break the ice or warm-up activity to get people thinking. Use audio-visual materials or props such as overheads, PowerPoint presentations and pictures. Invite guest speakers for audience participation, variety and excitement.

6. Keep the meeting positive;

Use potential negatives to drive toward the positive. Negative events can get our adrenal glands going and our bodies and brains ready for "fight or flight" mode. Change all 'cant's' into 'how's'... How will we move forward... how we will secure this funding.

Build a list of the solutions to remove any obstacle, then a list of all of the things that you'll be able to work towards once the obstacle has been removed.

7. Change your scenery

If possible, switch rooms. Hold a meeting in a coffee shop, or better still, outside. New surroundings can stimulate the mind and give a new perspective to stale ideas.

8. Never underestimate the power of food, coffee and chocolate;

Coffee wakes you up and chocolate makes you feel good. Food can relax the atmosphere, help people sustain positive energy levels and build the camaraderie of the team.

9. Finish on time and on a positive note;

Make people feel that their contributions have been worthwhile. Review the actions of the meeting and ensure that everyone who is assigned a task is clear on their responsibilities and timelines. Confirm the date, time and location of the next meeting.

In summary...

To guarantee a good meeting, you need to make it interesting, keep it on track, and make sure things gets done.

Did you know...

The term "Xmas" originated from the use of the Greek letter chi, X, as an abbreviation of Christ (Χριστός)



STOP PRESS

The *Building and Construction Industry Security of Payment Bill 2009* has been passed by State Parliament and was assented on 10 December.

The Bill is aimed at the construction industry and is intended to protect building and construction contractors. The Bill is intended to ensure that a contractor undertaking construction work or supplying related goods and services under a construction contract, is entitled to receive, or recover, progress payments in carrying out the work or supplying goods and services. The Bill provides a statutory entitlement to progress payments and sets time limits for the making of these payments, regardless of whether the contract does or not.

How the Bill might affect the University

The University enters into numerous construction agreements and contracts for the related supply of goods and services and may therefore be subject to the provisions of the Bill. Persons entering into contracts *on behalf* of the University will need to be mindful of the statutory entitlement to progress payments granted to contractors. Contractors may seek to enforce their entitlement to ensure payment under a progress payment schedule or seek arbitration of any dispute over payment.

DISABILITY DISCRIMINATION in Education

Australia is a party to several international treaties on the protection of human rights. To give effect to these treaties, the Commonwealth has implemented legislation making it unlawful to discriminate on the grounds of sex, race, age and disability in areas of public life. The *Disability Discrimination Act 1994* (Cth) and the *Equal Opportunity Act 1984* (SA) both specifically make it unlawful for an educational authority to discriminate on the grounds of disability in the provision of education. Disability discrimination is therefore an area of law that is of considerable significance to the University and all University staff.

What is a 'disability'?

Under Commonwealth and State legislation 'disability' is defined broadly and includes any; physical disfigurements; loss of physical or mental capacity; learning difficulties; or disease or illness (including mental illness) that a person may currently have, has had in the past, or may develop in the future.

How does discrimination occur?

Direct discrimination occurs when a person treats another person with a disability *less favourably* than they would treat a person without the disability in circumstances that are not materially difficult.

eg: refusing to accept an application for enrolment from a person because of his/her disability even if the person has met all the entry criteria.

Under State legislation **indirect discrimination** occurs when there is an imposition of a requirement that a person with a disability is not able to comply with and that a *substantially higher proportion of persons who do not have the disability are able to comply with*. The complainant has an onus to show that such a requirement is *not reasonable* in the circumstances.

eg: a requirement for students to attend all lectures in person in order to pass the course — an unreasonable requirement for persons with an illness

Under Commonwealth legislation, the disabled person does not have to show that a substantially higher proportion of persons without the disability are able to comply with the requirement, but merely that the requirement *has or is likely to have the effect of disadvantaging persons with the disability*.

Discrimination within education

All discrimination legislation makes it unlawful for an educational authority to discriminate against a person on the grounds of the person's disability:

- by refusing or failing to accept the person's enrolment application;
- in the terms and conditions on which it is prepared to admit the person as a student;
- by denying or limiting the student's access to any benefit provided by the educational authority;
- by expelling the student; or
- by subjecting the student to any other detriment.

Under the Commonwealth legislation, the obligations and responsibilities of education providers are further clarified in the *Disability Standards for Education 2005*, most notably to take reasonable steps to:

- ensure a student is able to participate in courses and use the facilities and services;
- design a course in a way that students with disabilities are able to participate in the learning experiences (including assessment); and

- ensure the student is able to use support services on the same basis as students without a disability.

The education provider also has a positive obligation to make reasonable adjustments to accommodate the needs of students with disabilities and to consult with the student about proposed adjustments.

Exemptions

The University is only required to make **reasonable adjustments** that balance the interests of all parties affected, taking into account:

- the student's disability;
- the effect of the proposed adjustment on anyone else affected, including staff and other students;
- the effect of the adjustment on the student's independence, ability to achieve learning outcomes and ability to participate; and
- the costs and benefits of making the adjustment.

Importantly, the University can assert that an adjustment to a course is unreasonable if such adjustment would compromise the academic requirements of the course or other components that are inherent in or essential to the nature of the course.

eg: In programs which are highly applied and require students to demonstrate their knowledge and capability within a real environment, such as Nursing or Teaching, a request by a student to undertake the practicum component on a part-time basis instead of full-time may be argued as unreasonable on the basis that it would compromise the academic integrity of the course.

In the event that the adjustments requested are found to be reasonable, there is an 'unjustifiable hardship' exception. However, this would generally require the University to demonstrate extreme financial limitation or that the detriment to others would significantly outweigh the benefit to the student.

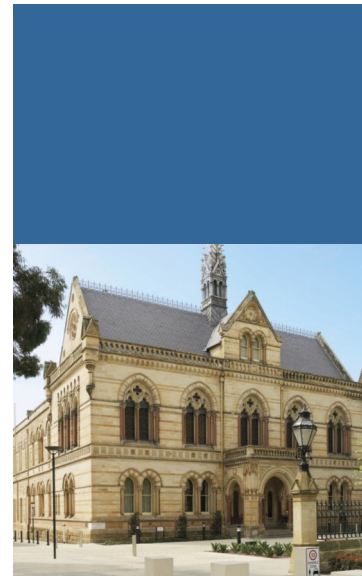
What to do if you have a student with a disability

The University's *Disability Action Plan* and its policy on *Reasonable Adjustments to Teaching and Assessment of Students with a Disability* reflects its commitment to accommodating students with disabilities. The University's Disability Service provides support services to students with disabilities and facilitates negotiations between such students and staff for adjustments to be made to accommodate the students' needs.

If you have a student who requests adjustments on account of their disability:

- check that the student has registered their disability with the Disability Service;
- obtain guidance from the Disability Service if you are unsure on how to accommodate the student;
- consult Legal and Risk if you have reservations about the reasonableness of adjustments requested; and
- keep a written record of all adjustments discussed with and agreed or disagreed with the student. If the student lodges a discrimination complaint in the future, the University will need show what efforts were made to accommodate the student's disability.

For further information, contact Geraldine Haese, University Legal Counsel or Colleen Lewig, Manager: Counselling, Disability and Elite Athlete Services



Not a good affliction for a shopping-centre Santa....

Pogonophobia:

the fear of beards.



NEXT YEAR.....

2010 looks to be another busy year for all of us. University-wide projects are currently being flagged and specific Legal and Risk initiatives are well into the planning stages.

Next year, UNILink newsletter will be providing you with more of the same—project updates, legislation changes, legal tips, risk management resources and insurance information.

Through UNILink, Legal and Risk aims to better support your daily planning and decision making, keep you more informed on legal, risk, compliance and insurance issues, and direct you more easily to the *right* person to help, whatever your query might be.

Some of the topics we will be covering in the first half of 2010 include;

- *Defamation and social networking sites*
- *ORM, ERM and BCM—getting serious about Risk Management*
- *Rollout of the Legal Compliance Framework*
- *Online distribution of classroom content—issues and opportunities for universities*
- *Contract Management Toolkit*

As always we welcome any comments, queries or suggestions for improvement, as well as articles you would like to personally contribute to UNILink. If there is a specific legal, risk, insurance or compliance matter you would like discussed next year email philipa.schliebs@adelaide.edu.au

Amazing court result for pop star Lloyd

Australian songwriter Alex Lloyd has won his case to prove he wrote his 2001 hit single *Amazing*, with the Federal Court dismissing a claim from a truck driver who said he had written the song on the back of a beer coaster.

Ahead of the fifth day of a court hearing to determine the authorship of the award-winning song, lawyers representing Lloyd and truck driver Mark O'Keefe reached an agreement that brought the case to an end.

Mr O'Keefe claimed he had written most of the song in a Sydney pub and had given it to Lloyd to finish off.

Judge Nye Perram dismissed the case, ordering Mr O'Keefe to pay costs.

In a brief statement outside court, Lloyd claimed victory, saying he was about to "cry with tears of joy" at the result.

"It's a very good result. Mr O'Keefe has lost his case and has been ordered to pay costs," Lloyd said. "It's been a long and extremely frustrating affair. I feel an incredible sense of relief and release from the weight of these false accusations."

Amazing, which has been used in three TV ad campaigns, was voted No1 in radio station Triple J's 2001 Hottest 100 poll, and was the most played song on Australian radio in 2002.

SOURCE: *The Australian*, Angus Thompson 10/10/09

Word of the day

"**HOLD HARMLESS**" - A clause or promise in a contract by one party not to hold the other party liable in a way that causes damage to the first party, regardless of the degree of actual responsibility or negligence involved.

Legal Compliance Project Update

The three month Legal Compliance pilot in the Schools of History and Politics and Medical Sciences concluded on the 30th September this year. Preliminary feedback shows that the pilot was a success.

A total of 8 non-compliances were recorded on RMSS (Legal Compliance) during the period, with 6 being resolved.

System and school-specific compliance processes and resources were developed in consultation with University staff, and introduced to assist with the implementation of the Compliance Framework across the University.

These processes and resources include;

- Legal Compliance Handbook;
- Compliance Website—which sits within the Legal and Risk site;
- Legislation Database—in which you can find all of the Acts relevant to the University;
- E-Learning 101s—some of which are available on the Resources pages of the Legal and Risk site;
- Legal Alert system—for heralding the introduction of new Acts and amendments to existing University-specific legislation; and
- Compliance Certification process.

We are now in the process of finalising the pilot evaluation, incorporating the suggestions and feedback received, as well as turning our attention to planning for further rollout of the Legal Compliance program across the University in 2010.

We look forward to working with a number of you next year as further Schools, branches and Controlled Entities integrate the Framework into their day-to-day operations, and we will keep you posted with updates on our activities.

For more information about next years rollout or your compliance obligations, contact Joe Di Pinto, Manager Compliance on 830 34635.

