

### Contract Management Website

Developing and managing contracts is a skill required by an increasing number of staff across the University. The contracting decisions of any staff member in any School can commit the whole University to obligations. It is therefore important to understand exactly what the University is getting itself into, both from a legal and practical perspective, before commitments are made.

We have recently added a substantial "contract" section to the Legal & Risk website. It incorporates practical information and tools for effective ongoing management of contracts and compliance with the University's Contracts and Agreements Policy.

[www.adelaide.edu.au/legalandrisk/contracts](http://www.adelaide.edu.au/legalandrisk/contracts)

The section covers the different types of contracts, the contract lifecycle and contract lodgement. A Contract Handbook can be downloaded from the website and various templates, checklists and additional resources will be added in the near future.

Information on the website is comprehensive, but it is not intended to replace formal or informal communication with a legal advisor, either internally or externally.

If you are not sure whether something you have said or done may be considered to create a legally binding agreement for the University, check with your supervisor, Head of School or Branch, or someone in Legal & Risk. Asking questions about possible contracts or concerns need not "stop" the deal or activity you are interested in. On the contrary, being open and dealing with things early allows issues to be handled more easily, and ultimately enables you to spend more time on value-adding activities rather than "damage control".



For further information or assistance, contact Kim Evans (Senior Legal Counsel—International) on 830 36103 or Geraldine Haese (Legal Counsel) on 830 35244.

### Legal word of the day

"QUID PRO QUO" - "something in exchange for something" has been used in the English language since the late 1500s. The expression pertains to that which a party receives (or is promised) in return for something he/she does, or gives or promises.

A contract is said to be binding if it is quid pro quo, ie. if it involves an exchange of goods or services for something of comparable value, usually money.

Quid Pro Quo is akin to the idiom, "one good deed deserves another" or (sometimes less favorably) "you scratch my back and I'll scratch yours".

It could be said that a weekly wage is "quid pro quo" for a week's work.



### STOP PRESS Risk Assessments

Do you think about Risk Assessments?

- Do you know how to do one?
- Do you have one for each of your projects or major relationships?
- When projects become operational, do you communicate risk assessments to the team?
- Do you consider other areas while undertaking a risk assessment?
- Do you look at risks from a financial, strategic, process, operational and enterprise-wide perspective?

Throughout this year in Unilink, we will be focusing on various types of risk management; where they fit into the University spectrum; and how you can use risk management to not only avoid potential mistakes or errors, but uncover opportunities. Starting this issue, our article on page 4 attempts to dispel the myth that risk management is merely just a buzz-word.

For more information on risk management or assistance with conducting a risk assessment contact Anne Hill (Manager Risk Services) on 34603 or by email ([anne.hill@adelaide.edu.au](mailto:anne.hill@adelaide.edu.au)).



### Fraud Control

Legal & Risk has developed an online course on Fraud Control accessible through MyUni.

The Fraud Control course can be accessed by all staff.

Raising awareness of the potential for workplace fraud is part of effective risk management and everyone is encouraged to do the course. In particular, school and finance managers should find it useful.

The content is directly based on the University's Fraud Control Policy and Fraud Control Plan and the estimated duration of the course is 30 minutes.

Thank you to those who trialled the course and provided valuable feedback to us during its development.

Staff are also encouraged to enrol in a 2.5 hour Fraud Control Course (as part of the Staff Learning and Development Program) to be held on Tuesday 21<sup>st</sup> September. For more information please contact the HR Service Centre on 8313 1111.

For more information or assistance, contact Richard Duddy, Legal Counsel, on 30085 or [richard.duddy@adelaide.edu.au](mailto:richard.duddy@adelaide.edu.au).



From the  
General  
Counsel

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

Some people say that Email is the greatest thing since sliced bread. But Spam spoils the bread. Recently there have been heavy penalties handed down to a number of Australian companies for spamming incidents, so in this issue of Unilink, we inform you about what to do if you are on the receiving end of a spammer and give you some tips that will help you avoid accidentally spamming.

Also in this edition, we discuss the intricacies of Whistleblower Protection. "Whistleblowers" and play a vital role in exposing misconduct and illegal activity within the workplace and assisting with the detection of fraud and corruption. Reporting an incident under whistleblower protection provisions can be challenging, but we let you know the most effective way to go about making a report.

I encourage all of you to utilise the new resources on our website; [www.adelaide.edu.au/legalandrisk](http://www.adelaide.edu.au/legalandrisk).

Our resources are updated regularly as legislation changes and more useful examples come to light. If you believe information on any of our web pages or attached documents need amending, if you know of contact details that have changed, or if you can provide additional examples or links that could add relevance to the material, please let us know by emailing; [phillipa.schliebs@adelaide.edu.au](mailto:phillipa.schliebs@adelaide.edu.au). Any suggestions for articles to be included in future editions of Unilink can also be forwarded to this address.

I hope you find this edition of the Unilink useful and I look forward to hearing your suggestions.

Celine McInerney, General Counsel

## Legal and Risk

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### Did you know...

Most of us spend six years or more of our lifetime dreaming

That's more than 2,100 days spent in a different world

## WHISTLEBLOWER PROTECTION

### What is a whistleblower?

A whistleblower is a person who exposes wrongdoing within an organisation, in the hope of stopping it and preventing it from reoccurring.

The term whistleblower originates from the 19<sup>th</sup> century practice of English bobbies (policemen), who would, on witnessing a crime, blow their whistles to alert other police officers and the general public of danger. "To blow the whistle" now means to reveal information about a person or organisation that has allegedly:

- risked public health, safety or the environment;
- acted illegally;
- wasted public money;
- misused public resources; or
- falsified records.

Most whistleblowers are internal whistleblowers who report misconduct to a fellow employee or Manager within their company.

### How does whistleblower protection work?

The Whistleblowers Protection Act 1993 (SA) makes it unlawful to treat people unfairly because they are whistleblowers. The Act provides protection for whistleblowers against victimisation, exclusion and harassment, and provides immunity from civil liability or criminal prosecution where information is disclosed that tends to show involvement in illegal activity.



The University has appointed General Counsel, Celine McInerney, as the Whistleblower Officer for the University and to manage the reporting and investigations in accordance with that Act and the University's Fraud Control Plan.

The Office of General Counsel provides legal advice and remains objective and independent in conducting, facilitating or managing investigations into allegations of misconduct and fraud. A person who raises their suspicions of fraudulent or illegal activity within the workplace should feel comfortable to approach the Office of General Counsel to report their suspicions confidentially.

### A Brief History of Whistleblower Protection in Australia

Whistleblower protection became an issue in Australia about 20 years ago, when inquiries into corruption scandals exposed the difficulties that whistleblowers faced as a result of their actions. The Courts had always imposed "a duty of trust" on employees; employees disclosing workplace-related information faced the risk that their disclosure might be construed as a breach of this duty, allowing their employer to sue them.

The highly publicised corruption inquiries of the late 1980s and the early 1990s (including the 1989 Fitzgerald Inquiry into Possible Illegal Activities and Associated Police Misconduct) meant that corruption and whistleblowing were squarely on the political agenda. These inquiries considered that whistleblowing could be effective to expose administrative or corporate wrongdoing, especially at an early stage. The inquiry emphasised the need for whistleblowers to be protected from reprisals. As a result of these inquiries, all Australian States and the ACT adopted some form of whistleblowing or public interest disclosure protection legislation.

SOURCE: Department of Parliamentary Services, Parliamentary Library Research Note: February 2005

In addition to the Whistleblowers Protection Act, the Corporations Act 2001 (Cth) provides protection for Officers, employees and contractors of a company. This Act applies to the University's Controlled Entities in limited circumstances.

To be accorded the protection of the Corporations Act, the disclosure must be to ASIC, the company's auditor, a director, the secretary or senior manager of the company or a person authorised by the company to receive whistleblower reports.

Employees of a University of Adelaide Controlled Entity are encouraged to report suspected incidents to the current company chairperson or to the University's Whistleblower Officer by phone or email.

### Tips on reporting

- Disclose information directly to the Whistleblower Officer. Meetings will be held in person and in private.
- Reporting via email can be useful too. It may seem a little less daunting and is a useful way of organising the facts of the matter before disclosing them in person.
- Reporting over the phone is okay but not ideal, unless you can be certain that the conversation will be confidential (that is, only you and the person you are disclosing to are in earshot) and that you have sufficient time to fully discuss the situation.
- Anonymous letters or reports will be considered, but can be difficult to act on because they often don't usually provide enough information to commence an effective investigation. It is always best to deal with a complaint directly rather than anonymously.

If you want to make a report under whistleblower protection provisions, you must act in good faith and reasonably in making reports, and to ensure the information you disclose is legitimate and without malice.

In return, the University will respect the confidentiality of your identity and will provide support and protection to you against recrimination or reprisal..

For more information on whistleblower protection see [Whistleblowers Protection Act 101](#) and the [Fraud Control online course](#) available to University staff through MyUni.



## SPAM - it's not just ham

### What is spam?

There are laws in place to control the sending of "Spam". For these purposes, spam is any unsolicited commercial electronic message sent by email, SMS, MMS or instant messaging.



A message is deemed to be "commercial" if it has a commercial purpose, eg:

- advertises the supply of goods, services or business opportunities
- promotes a supplier of goods, services, or business opportunities (even if it is just via a hyperlink in the message)
- assists someone to dishonestly obtain a commercial advantage or other gain from another person

### The Spam Act

The Spam Act 2003 requires commercial electronic messages to meet the following conditions:

- **Consent of the recipient:**

This could be express, or inferred from an existing business relationship, conspicuous publication, a work-related email address or similar situation.

- **Identify the sender:**

The message must include accurate information about the person or organisation responsible for sending the message.

- **Unsubscribe facility:**

The message must contain a process by which the sender can opt out of receiving future messages.

Commercial electronic messages that *do not* meet the conditions will be considered spam regardless of whether it is sent to one person or many.

Messages containing only *factual* information can be sent without meeting the conditions. Additionally, the University has an exemption under the Spam Act to send electronic messages to current and past students and members of their households about goods or services offered by the University, such as courses, concerts or Alumni events.

The Spam Act is administered by the Australian Communications and Media Authority (ACMA). In recent times, the ACMA has clamped down on spam and has issued some significant penalties:

- Total of \$2.2 million in fines to 3 companies and their directors for sending SMSs to users who had been deceived as to the purpose for which the telephone numbers they provided would be used;
- \$110k fine to Optus for sending SMSs which did not identify the sender;
- A formal warning to a company for sending commercial emails to addresses which they had obtained under a 'friends & family' referral campaign; and
- Enforceable undertakings to MYOB to undertake audits of commercial email campaigns and to implement staff training programs, as MYOB had failed to action unsubscribe requests.

### Don't be a spammer in the works

If sending commercial electronic messages on behalf of the University to persons other than current or past students:



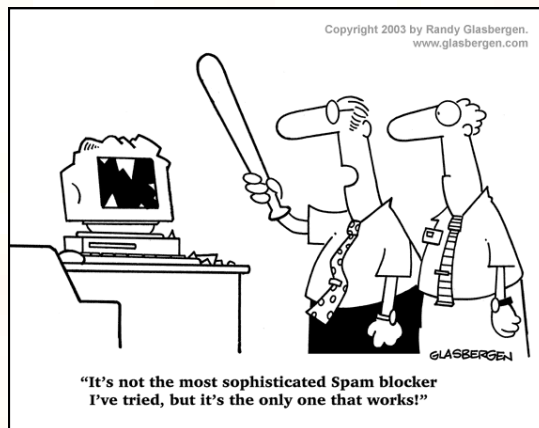
- Check that you have express or implied consent
- Do not add email addresses to mailing lists unless the person was informed of this purpose at the time they provided you with their email address
- Do not send the message to persons whose addresses you have obtained from a third party
- Ensure you include your full e-mail signature to enable the University to be identified
- If the recipient elects to unsubscribe, promptly remove the recipient from the mailing list

### What to do if you receive spam?

Almost everyone with an email address will receive spam at some stage. The University has spam filters which should filter out the majority of spam. If you continue to receive spam or junk emails from nuisance senders, please refer to [www.adelaide.edu.au/its/security/spam/](http://www.adelaide.edu.au/its/security/spam/) for assistance.

If you receive commercial electronic messages from legitimate organisations (eg. conference organisers) but do not wish to continue to receive such messages, use their unsubscribe facility to be removed from their mailing list. If the messages persist, or if there is no unsubscribe facility, you can report this to ACMA ([www.acma.gov.au](http://www.acma.gov.au)).

For more information on your obligations under the Spam Act contact Geraldine Haese (Legal Counsel) on 35244 or refer to the Spam Act 101 available on the resources page of the Legal & Risk website—[www.adelaide.edu.au/legalandrisk/resources](http://www.adelaide.edu.au/legalandrisk/resources)



### In the July edition of unilink...

- "Hold Harmless" clauses—All for you, None for me
- Goodbye Trade Practices Act... Hello Competition and Consumer Act
- "Misrepresentation"—It's still actionable, even if it's not intentional



Did you know...

Men tend to dream more about other men, while women dream equally about men and women

## *Risk Management – more than just a buzzword*

Dynamic... Organic... Empowering... Proactive... *Buzz Buzz Buzz*

Buzzwords are often used in order to inflate the trivial to importance and stature, or to camouflage chit-chat by saying little or nothing. Unfortunately and rather unfairly, many risk management terms – like ORM (Operational Risk Management), ERM (Enterprise Risk Management) and BCM (Business Continuity Management) – can get thrown into the buzzword mix as well. So what's it all about in layman's terms?

At one level or another it's all about managing risk. **Risk management** refers to the coordinated activities that direct and control an organisation with regard to risk. And **risk** is simply the effect of uncertainty on objectives. In this context, an effect is a deviation from the expected and may be positive and/or negative; and objectives can have different aspects (such as financial, health and safety, and environmental) and can apply at different levels (such as strategic, organisation-wide, project, product and process). Many risk assessments focus on the negative consequences of risks and often reflect losses or undesired outcomes. But the flip side to risk is **opportunity**. Risk management processes can also be used to identify and prioritise opportunities, or the positive risks, with little change to the process.

Risk management activity can apply to organisation-wide risks and relate to achieving the strategic objectives of the University (eg. Enterprise Risk Management) or be more specific and relate to the day-to-day activities or operation of a local area (eg. Operational Risk Management). Risk management can also be applied to specialised activities and relate to major projects or initiatives (eg. Project risk) or relate to such specialist areas as the occupational health and safety of workers and hazards of the environment. The main difference lies in the scope and responsibility.

In layman's terms **Enterprise risks** are top-down risks. They include major risks that have the potential to affect the University's ability to achieve its strategic outcomes and major risks with negative consequences and significant impact. **ERM** represents the organisation-wide approach to managing these high level University risks and seizing any opportunities that may arise from the process. The scope applies to the organisation as a whole and responsibility for treating and monitoring risks lies with the University Council and sub-committees such as the Audit Compliance & Risk Committee.

**Operational risks** are bottom-up risks. These risks focus on individual business areas, schools or functions. They reflect risks to achieving objectives or risks with negative consequences in the day-to-day activities, systems or processes of the University. **ORM** represents the local approach to managing risks and seizing any opportunities that may arise from the process. The scope applies to individual areas or activities of the University and responsibility for treating these risks lies with those local areas while responsibility for monitoring these risks lies with the University Risk Management Committee.

Contingency Planning or **Business Continuity Management (BCM)** is activity undertaken to ensure that proper and immediate follow-up steps are taken by management and employees in an emergency that will guarantee continuity of the key operations of the University in the future. In short, BCM involves working out how to stay in business in the event of disaster – such as a flood, pandemic illness or complete and extended power outage. While risk management aims to be pre-emptive, BCM works on the assumption that a disaster *will* happen at some point and such a disaster must be planned for.

Sometimes the distinction between all these terms is unclear and some level of cross-over is inevitable. This can be seen when major projects or initiatives require structured consideration of the risks to ensure the success of any major activity within the University: these risks can have characteristics of both top down and bottom-up risks. Cross over can also be seen between business continuity and risk management: the first step in effective business continuity planning is generally a risk assessment.

Risk management in any guise, under any name or term is an important part of all activities and planning across the University and can be beneficial to local or specific areas as well as the University as a whole. When managing risk becomes embedded into everyday practices it helps improve decision-making, planning, prioritisation, resource allocation and can help anticipate problems and prevent disasters from occurring.

*If you have a specific risk that you would like help with or you would like to formalise your risk profile contact Anne Hill (Manager Risk Services) on 830 34603 or by email ([anne.hill@adelaide.edu.au](mailto:anne.hill@adelaide.edu.au)).*

## *No Copyright in Yellow and White Pages*

Telstra has failed to establish that it has any copyright in the contents of the Yellow Pages and White Pages telephone directories, after alleging that the publishers of "Local Directories" had infringed copyright by reproducing entries from the Yellow Pages and White Pages. The Federal Court's Justice Gordon held that Telstra was unable to identify who the authors of the content were and that no "independent intellectual effort" or "sufficient effort of a literary nature" was identified.

SOURCE: *Lawyers Weekly*, 5th Feb 2010

For more information on Copyright refer to the University's copyright website [www.adelaide.edu.au/copyright/](http://www.adelaide.edu.au/copyright/)

## *Absurd Laws*

We might whinge about being fined for driving 5km over the speed-limit or playing our music too loud after 10pm, but spare a thought for people living in countries where the law is considerably more absurd...

- In California it is illegal to set a mouse trap without a hunting license.
- In France, it is against the law to sell an "E.T" doll. They have a law forbidding the sale of dolls that do not have human faces.
- In Pennsylvania, it's against the law to tie a dollar bill on a string on the ground and pull it away when someone tries to pick it up.
- In Memphis, Tennessee, it's illegal for a woman to drive by herself. A man must walk or run in front of the vehicle, waving a red flag in order to warn approaching pedestrians and motorists if the vehicle is going over 5 mph.
- In Athens, Greece, a driver's license can be taken away if the driver is thought to be either "poorly dressed" or "unbathed".
- In Florida, men seen wearing any kind of strapless gown in public can be fined.
- In Wilbur, Washington, it is illegal to ride an 'ugly horse'.
- In Samoa, it's a crime to forget your wife's birthday.

Did you know...

People who have smoked cigarettes for a long time who stop, have reported much more vivid dreams than they would normally experience