



Unilink

Legal & Risk Newsletter



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Help us help you

The legal team within Legal & Risk advise on a range of legal issues—from the very simple to the very complex. We aim to serve the best interests of the University but are also required to comply with the standards of conduct required by the legal profession. We focus on positive, pragmatic outcomes and will do our best to help you.

If you are unsure of a legal issue, it can be clarified by talking it through with one of us. Sometimes it can be comforting by simply having an opportunity to affirm your own view.

To help us help you, please consider the following:

- Tell us all the facts and circumstances so that we can more readily address your needs.
- Provide us with any relevant documents as soon as practicable.
- Tell us if you do not understand something and feel free to ask questions. It will help if you put things in writing – email is fine.
- Give us enough time to help you. Where something is truly urgent, we will do our best to cater to that urgency, but where you know something is needed within a few weeks rather than a few days, please tell us as soon as possible. Do not leave it till the last minute.
- Don't be afraid to contact us early on. You don't need to have identified "a problem" before you come to us or ask for help.
- Let us know if you are not satisfied with any part of our service or if you have any suggestions for improvement—call us on (08) 8303 4539 or email helpdesklegal@adelaide.edu.au.

For more information about the services offered by Legal & Risk, and the contact details of our legal team, please email helpdesklegal@adelaide.edu.au and request a Service Charter.

STOP PRESS TEQSA



On 23 March 2011, the Australian Government introduced legislation to establish the Tertiary Education Quality and Standards Agency (TEQSA), a new national regulatory and quality assurance agency for higher education. The Tertiary Education Quality and Standards Agency Bill 2011 (Cth) has been referred to a Senate Committee to take submissions and report later this month.

The establishment of TEQSA as an independent body with powers to regulate university and non-university higher education providers, was a key recommendation of the *Bradley Review of Higher Education*. TEQSA will assume the regulatory role of the States and Territories and the quality assurance activities of AUQA (Australian Universities Quality Agency).

TERTIARY EDUCATION QUALITY AND STANDARDS AGENCY

The new agency aims to protect the overall quality of the Australian higher education system. It will register providers, monitor the quality and performance of institutions and programs, set standards, encourage best practice and streamline current regulatory arrangements.

TEQSA will be one element of the new regulatory and quality arrangements, the others being:

- a new National Register of Higher Education Providers;
- a new Higher Education Standards Framework and;
- the My University website.

Revamped national regulatory arrangements in the Vocational Education and Training (VET) sector have also been legislated for. TEQSA and the new National VET Regulator are being established in the context of a potential merger in 2013, in order to achieve a more interconnected tertiary sector. This VET legislation sets out the regulatory framework within which the national vocational education and training regulator will operate.

You can access the TEQSA Bill via the Legal & Risk website: www.adelaide.edu.au/legalandrisk/compliance/legislation.

For more information, phone Richard Duddy (Legal Counsel) on 8313 0085 or email richard.duddy@adelaide.edu.au.



From the
General
Counsel

Welcome to the May edition of Unilink—the Legal & Risk newsletter.

In this edition, we discuss student work experience insurance, and in particular, Student Placement Agreements.

Work placements are a valuable part of the University experience of most students and in many cases, a course requirement. The University encourages students to participate in all kinds of work experience; from clinical placements in hospitals and dental clinics, to practicals in schools, research centres and legal firms. We recognise that along with the benefits of work experience, come numerous risks associated with it; from working in unfamiliar surroundings to increased interaction with members of the public, so we have insurance policies to help protect against such risks. The University expects that the people or organisations hosting our students will reciprocate such insurance arrangements. But what if they can't? Or won't?

Also in this edition, the issues and risks involved with using social networking sites in University teaching. And Confidentiality Agreements—what you should be aware of if someone asks you to sign one.

As always, I look forward to hearing your feedback and suggestions.

Celine McInerney
General Counsel



JUNE: Risk Management—3 June @ 11am (1.5hrs)

Connecting the Dots: compliance, contract management & risk—6 June @ 9am (3hrs)

Notifiable Event Reporting—15 June @ 10am (1hr)

Confidentiality Agreements—helping keep secrets in check

What is a confidentiality agreement?

Also referred to as a *confidential disclosure agreement* or *non-disclosure agreement*, this legally binding contract imposes obligations on parties to keep certain information confidential and to limit the use of the information to a specific purpose.

The agreement may be *one-way*; confidential information is only disclosed by one party, therefore the confidentiality obligations are only imposed on the receiving party, or *mutual*; confidential information is shared both ways and each party has confidentiality obligations.

Such agreements are commonly used where parties need to exchange information for evaluation or negotiation purposes (e.g. to develop a collaborative research proposal, or for a consultant to prepare a proposal for the design of a new system for the University), or where a party is willing to provide the other party with access to its proprietary information as a gesture of goodwill (e.g. mining company providing researchers with geothermal data for academic purposes, or University X allowing access to its internal information to enable us to undertake benchmarking).

A confidentiality agreement must do three things:

1. define what information is “confidential information”
2. identify the specific purpose for which the information will be supplied; and
3. restrict its disclosure and identify any permissible disclosures

I have just received a confidentiality agreement. What should I be aware of?

1. Please forward any Confidentiality Agreements that you receive to Legal & Risk (helpdesklegal@adelaide.edu.au) for review - even if it seems harmless or straight-forward and has been provided to you on assurance that it is just a “standard document”.

Most confidentiality agreements do indeed follow a standard format and are acceptable, however there are some that contain unexpected clauses (e.g. requiring the University to assign all intellectual property developed in connection with the University’s use of the information).

2. Satisfy yourself that the agreement allows you to use the confidential information for the purposes that you require; that is, does it allow you to publish results of your analysis of the data; does it allow you to permit access to students?
3. Be aware of, and comply with, the confidentiality measures specified in the agreement. Typically, these would include:

- only making the confidential information accessible to those University personnel who have a need to know
- ensuring that those persons are informed of the confidential nature of the information and their confidentiality obligations
- restrictions on making copies of the confidential information
- data security specifications (if information is in electronic form)
- returning or destroying the confidential information upon completion

[Note: Confidentiality obligations often also form a part of larger transactional or relationship agreements.]

4. Understand that by revealing or using the confidential information inappropriately, even if done so unintentionally, you will breach the contract and consequences will follow.

What could happen if I breach confidentiality?

Whether intentional or not, breaches of confidentiality may have serious consequences. At the very least, the other party is likely to be extremely displeased and put a stop to your, or the University’s use of, or access to, the information. This may not only affect your area, but other areas of the University that have relationships with that party. The other party could also sue for damages.

In the case of information obtained from government agencies, unauthorised use or disclosure of such information could constitute a breach of legislation (e.g. use of information provided by the Australian Electoral Commission for a purpose not permitted by the AEC may be a breach of the Commonwealth Electoral Act and result in a fine of more than \$100k.)

Please contact Geraldine Yam on 8303 5244 or geraldine.yam@adelaide.edu.au for more information.

Mobile Phone risk—disposing of your old phone securely

It’s been estimated that there are more than 12 million mobile phones and PDAs (Personal Digital Assistant) sitting unused in cupboards or drawers in Australia (www.wwf.org.au). That’s not just a lot of hardware, but a lot of information.

Today’s mobile technology has a huge capacity to store data that would ordinarily have been stored on your computer, such as email, address books, calendars, photos and documents. Should this personal information get into the wrong hands, potential fraud or identity theft are very real possibilities. Most people recognise that it is important to securely dispose of mobile phones and PDAs when they reach the end of their useful life, but simply deleting messages and removing the SIM card is not enough.



To ensure that old mobile phones or PDAs are disposed of securely, the University has an arrangement with the Telstra T[life] store to do this for us.

If your phone has given up the ghost, please deliver it to the T[life] Store on the corner of Rundle Mall and Pulteney Street, in a University of Adelaide envelope marked “**Attention: Joanne, mobile for disposal**”. The store will guarantee that all data is wiped clean and the device is disposed of in an environmentally responsible manner.

For more information, contact the Technology Service Desk on 8303 3000 or email servicesdesk@adelaide.edu.au.





JUNE: University Risk Register—20 June @ 11am (1hr)

Contract Management—29 June @ 10am (3hrs)

JULY: Copyright Compliance—4 July @ 10am (2hrs)

To register, email:
helpdesklegal@adelaide.edu.au

Student Placement Agreements—ensuring our insurance

Would you travel overseas without travel insurance? Would you get behind the wheel of a vehicle without car insurance? Would you let an uninsured doctor operate on you? What if in these scenarios, it was not you, but your friend, your mother or your child. Would you recommend that the travel, driving or operation take place?

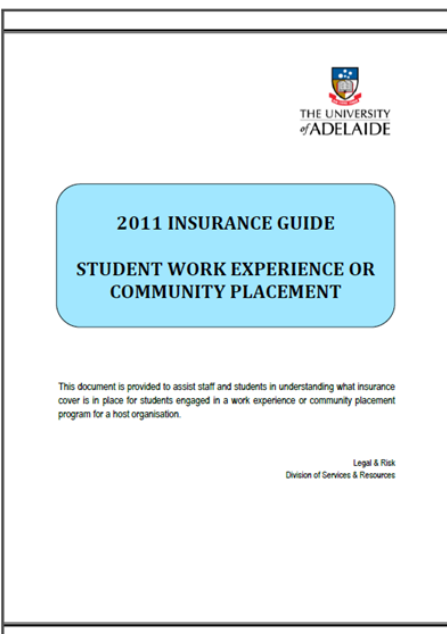
What if it were a University student heading off to undertake work experience or community placement in a clinic, on a building site or on a farm? Wouldn't you want to know that they are properly insured?

The University's Duty of Care

We have a duty of care to our students at all times, including when they are on work placement. We have a duty to ensure that they will be safe and properly supervised by qualified personnel, and that the work they agree to participate in will be relevant to their studies and appropriate for their skill-set. We have a duty to ensure that the organisations planning to host our students will provide us with this assurance prior to commencement of the placement.

Similarly, our students have a duty they must fulfil to the host organisation. Students must agree to turn up to placements on time, present themselves appropriately, work to their full capacity, and adhere to the University and the host organisation's policies and practices. We ask our students to assure us of this prior to commencement of their placement.

Student Placement Agreements allow us to formally obtain the appropriate level of assurance



Placement Agreement = Binding

A Student Placement Agreement is effectively a contract between the University and the host organisation, which is signed by the student, the host organisation and the Head of the School or Area. Within this agreement, certain things must be consented to - including the tasks to be performed, who will supervise the student and importantly, the level of insurance that each party is willing to provide the other.

Without a signed Placement Agreement or proof of appropriate insurance cover from the host organisation, a student will not be insured under the University's program and the decision to proceed will rest with the local area.

Insurance cover = a reciprocal arrangement

The University maintains a Public Liability policy that will indemnify the host organisation for any negligent act, error or omission by a student during the work placement.

This means, that if a student carelessly or negligently causes damage to property, or injury to someone during the course of their placement, the University will cover the cost of any future claims against the student.

The University asks that all host organisations reciprocate its insurance arrangement, and expects that the host organisation indemnify the University and the student for any negligent act or omission by its employees, agents or contractors that results in injury, loss or damage to the student or to University property being used by agreement with the host organisation.

This means, that if the negligent actions of an employee, agent or contractor of the host organisation, causes harm to a student or damage to their property, the host organisation—not the University—is liable for future damages.

Pre-conditions to insurance cover

Students are covered under the University's insurance program for work experience activities, provided certain conditions are met:

- ✓ Participation is endorsed by the Head of School/Area (or delegate);
- ✓ The work experience is relevant to, or part of the conditions of the student's study program;
- ✓ The student is supervised; and
- ✓ The student is not employed by the host organisation or remunerated for the work performed. limited exceptions apply

What if an organisation agrees to host a student but does not want to sign the Agreement?

If a host organisation is not willing to sign a Placement Agreement, the School or Area must carefully consider whether the organisation is exercising a level of care appropriate to our students, and whether they (the School or Area) are comfortable accepting the total risk of insurance on the host organisation's behalf.

Without a level of insurance cover expected by the University, there may be serious implications, which will affect the host organisation, the University, the specific school or area and the student—particularly if a claim against the University or the student is made in the future.

Take home message

We use Student Placement Agreements to provide a formal record of the insurance arrangements between the University and a host organisation. Placement Agreements are a necessary administrative tool that provide us, and the host organisation with a sense of comfort that responsibility for insurance is shared and that should something go wrong, adequate insurance cover is in place.

For more information, please call Joe Di Pinto (Manager Insurance) on 8303 4635 or email joseph.dipinto@adelaide.edu.au

Insurance Policy Guides

The following Insurance Policy Guides—many of which include a Student Placement Agreement—are available on the Legal & Risk website:

- Work Experience or Community Placement (General)
- Clinical Placement (undergraduate)
- Clinical Placement (postgraduate)
- Dental Student Work Experience
- Dental Student Work Experience (SADS)
- Masters of Psychology Placement
- Nursing Student Work Experience
- Student Personal Accident
- Sports Association Personal Accident
- Clubs Association Personal Accident
- Clinical Trials & Human Studies

www.adelaide.edu.au/legalandrisk/insurance/information



- There are more than 500 million active users on Facebook, 50% of which log on to Facebook in any given day
- Barack Obama, Julia Gillard, the Queen and Pope Benedict all have Facebook accounts
- The average user creates 90 pieces of content each month and is connected to 80 community pages, groups and events

SOURCE: Facebook Press Room: <http://www.facebook.com/press/info.php?statistics>

Facing up to Facebook

With many Gen Ys using Facebook as a primary medium of communication, it seems logical to establish Facebook pages for University courses to disseminate course information and enable student interaction. But before you do, there are a number of legal and risk implications that must be considered:

Copyright Compliance

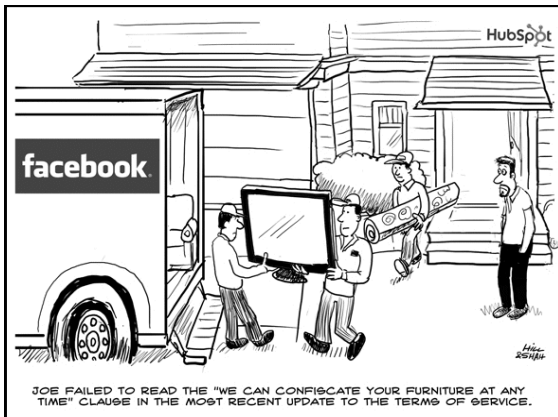
The University has a statutory licence that enables it to make copies of, and distribute third party materials (e.g. pages from books or journals, radio or TV broadcasts, music tracks) to students for educational purposes. It is a condition of the licence that when such third party materials are made available online, they must only be made available to students within the particular course. Hence the University's use of MyUni, which has password-protected restricted user access. The University's statutory licences cannot be relied upon to upload third party materials to Facebook.

Copyright Protection

Electronic dissemination of University, or other Intellectual Property (IP) to a global audience of millions will require formal approval from within the University – it is not simply up to individual academics to decide.

Loss of Control

Using public cyberspaces to run University activity instead of prescribed University systems is likely to result in a loss of control over that activity. The University is unable to back up the material uploaded to the website and is at the whim of the website provider, including unannounced changes to the vendor's policies or Terms of Use.



Student Accessibility

Many students make a conscious decision **not** to use Facebook (for privacy concerns or philosophical objections for example) and we cannot mandate that they do. If you post vital course material on Facebook instead of MyUni, those students may have a valid complaint that they are being denied access or have been disadvantaged.

Security

Privacy issues, stemming primarily from the disclosure of personal information by students, and those surrounding IP and a general loss of control, culminate in a genuine security concern for education providers. Some Universities have banned social networking sites altogether, citing cyber bullying, identity theft, copyright and IP infringement unease. Others have actively embraced it.

Inappropriate content

Even though Facebook is a public space, pages set up by the University for teaching or classroom interaction will be considered University space. The University has a responsibility to ensure the safety of the learning environments provided to students. University pages will need to be monitored and moderated for any harassing or other inappropriate posts.



IMAGE SOURCE: <http://cogsnews.ucsd.edu/>

Further guidance on acceptable use of social media by University staff and students is currently being developed. In the meantime, please exercise caution when seeking to establish online learning environments outside those within the University's direct control.

Please contact Geraldine Yam on 8303 5244 or geraldine.yam@adelaide.edu.au if you have any questions on these issues. For ideas on incorporating Social Media into your teaching, please refer to CLPD (<http://www.adelaide.edu.au/clpd/online/>).

Neo-what-ism?

Last September, the Washington Post newspaper published the winning submissions to its yearly neologism* contest, in which readers were asked to supply alternative meanings for common words. The winners include:

- **Coffee** (n.), the person upon whom one coughs.
- **Negligent** (adj.), describes a condition in which you absentmindedly answer the door in your nightgown.
- **Flabbergasted** (adj.), being appalled over how much weight you have gained.
- **Balderdash** (n.), a rapidly receding hairline.
- **Gargoyle** (n), olive-flavoured mouthwash.

The newspaper also asked readers to take any word from the dictionary, alter it by adding, subtracting, or changing one letter, and supply a new definition.

Here are some of the 2010 winners:

- **Giraffiti** (n): Vandalism spray-painted very, very high.
- **Sarchasm** (n): The gulf between the author of sarcastic wit and the person who doesn't get it.
- **Karmageddon** (n): its like, when everybody is sending off all these really bad vibes, right? And then, like, the Earth explodes and it's like, a serious bummer.
- **Hipatitis** (n): Terminal coolness.



* Neologism—a newly coined word or phrase that is in the process of entering common use, but has not yet been accepted into mainstream language.