



# Unilink

## Legal & Risk Newsletter



### In this issue. . .

- *Saving & storing Legal Documents*
- *The new University Risk Matrix*
- *Insurance Declarations*
- *Police access to student records*
- *Searching the University website*

## Setting the record straight

Census records, tax records, birth, death and marriage records, banking and property records, military records and international treaties. . . Keeping good records has always been an important part of historical preservation, a key to business operations, and a legal, financial and personal necessity.

At the University, records management is an integral part our activities, and particularly for contracts. Evidence of the University's intentions and any discussions that constitute representations or undertakings could become crucial if any aspect of a contract is challenged. Such records are also vital for internal reference and accountability.

## What is a legal document?

Legal documents come in all shapes and sizes, ranging from 2-page Consultancy Services Agreements, to thousand-page contracts for building works. For example:

- *Grants or sponsorships*
- *Branding agreements*
- *Secondments to external organisations*
- *Engagement of contractors and consultants*
- *Articulation agreements*
- *Memoranda of Understanding (MOU)*
- *International agreements*
- *Leases or licences to premises, facilities or software*
- *Contracts for procuring goods or services*
- *Funding or collaboration agreements*



Any agreement entered into on behalf of the University – no matter how small or simple it may seem – must be documented appropriately. That means, not merely saving the document to the University S-drive or the C-drive on your personal computer, but lodging it with the Records Management Office (RMO).

## How do I lodge a legal document?

There is a process for it on the [Records Management](#) website.

A [Legal Document Lodgement Form](#) must be completed for each and every contract or agreement that is signed. You must submit the contract or agreement, and the form to RMO who will register the document as a "legal document" on TRIM.

All Legal Documents will be allocated a legal document number (e.g. LD2426) and will be related to an existing RMO file (e.g. 2011/586). If there is no existing file, a new RMO file will be opened.

Once a contract has been finalised and signed, you should retain and file key documents, drafts and other evidence from the negotiation process on the same RMO file, as well as in soft copy.

For more information on records management in contracting, see [Module 4](#) of the Contract Management Handbook, available on the Legal & Risk website [www.adelaide.edu.au/legalandrisk/contracts/](http://www.adelaide.edu.au/legalandrisk/contracts/).

## Your Record Keeping Responsibilities

A new Records Management Manual is now available online. The manual offers advice on record keeping at the University for all staff and includes:

- An introduction to record keeping
- Life cycle of records
- Your record keeping responsibilities
- Training material on record keeping
- Advice about record keeping
- Legislation and University policies relating to records

The manual is available at: [www.adelaide.edu.au/records/manual/](http://www.adelaide.edu.au/records/manual/).

For more information, please email Kerry George (Records Disposal Officer) at [kerry.george@adelaide.edu.au](mailto:kerry.george@adelaide.edu.au) or phone 8303 5249. Any further enquiries, contact the TRIM helpdesk on 35334.

### From the General Counsel



Welcome to the August edition of Unilink, the Legal & Risk newsletter.

In this edition we focus on **records**: record keeping, record storage and good records management.

The Insurance Declaration process (pg. 2) requires us to provide our insurance brokers with a complete record of what we do, who we do it with, when, where and how we do it, in order for us to be adequately covered. Many of you can help in this process, and in this Unilink we ask, "do you have anything to declare?"

The correct storage of the University's contracts and agreements is a vital business activity and greatly assists with our broader record keeping responsibilities. We tell you why saving documents as *legal documents* on TRIM is so important.

We also delve into what to do if the Police or another external government organisation want access to our student records (pg. 4). Under the University's Privacy Policy, information may be disclosed if the use or disclosure is required or is specifically authorised by law. In most circumstances, we can comply with the request, but certain procedures should be followed by staff to ensure the traceability of documents handed over and the continued provision of privacy to the individual about which the documents relate.

Celine McInerney  
General Counsel

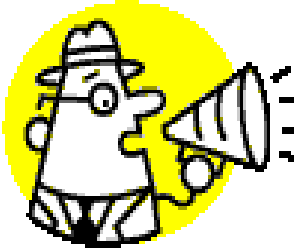


- [University Insurance & Your Role](#); presented by Tom Pontt (Insurance Officer)
- Monday 7 November @ 10am

To register, email: [helpdesklegal@adelaide.edu.au](mailto:helpdesklegal@adelaide.edu.au)

## What do you have to declare?

The University's Insurance Program includes numerous policies that insure against risks associated with (among others):



- staff and student travel
- research activities
- accident and injury
- professional negligence
- clinical trials
- business interruption; and
- damage to buildings and contents.

The program is reviewed annually to ensure it meets the changing needs, activities and infrastructure of the University. The renewal process requires a formal "declaration" to our insurers of all University property, people and activities, after which policy terms are negotiated with insurance brokers and policies are put in place.

## What do we tell our insurers about?

The information collected for declaration relates to all aspects of University business, including:

- *the number of staff and students*
- *art and heritage collections*
- *high-value equipment*
- *staff travel and the average number of days away*
- *buildings (owned, leased and tenanted)*
- *value of research animals*
- *plant and equipment*
- *number of vehicles*
- *food and beverage turnover*
- *make and model of boats and vehicles*
- *employed medical practitioners*
- *current clinical trials and human studies*
- *value of fixtures and fittings*
- *current and forecasted advertising expenditure*

## How does the process work?

Over 90 areas across the University and its Controlled Entities received a **declaration pack** this year. Packs consist of information, split into class of insurance, and forms relating to these classes, that must be completed and returned to Legal & Risk. Once data has been collected, it is collated, summarised and sent to our insurers in London and Australia who work out what level of risk is attached to the activities and assets we've declared, and the subsequent cost of our premium.

## Who is involved?

Data is sourced from all over the University. Some will come from the Office of Strategy and Planning, some from the Human Resources Branch and much of it from the individual Schools, Institutes and Controlled Entities. Certain staff (such as school managers and finance officers) are best equipped to assist in the declaration process due to the scope of their work activities and their general understanding of the local area, but any member of staff may be asked to provide input.

## Your responsibilities

If you are involved in providing information for declaration, please be mindful of the following:

- **The time-frame** – We asked that all responses be returned to the Legal & Risk Office by the end of July. However, if you still have a declaration outstanding, please complete it and return it to the Legal & Risk Office immediately. If this time-frame is likely to be further compromised, please call us so that together we can work out how to gather and present the information as soon as possible.
- **The need for accurate and complete information** – Include everything and attach any supporting documentation if need be. Use the checklists provided and carefully read and complete each, and every section. If you realise that information is missing from a declaration that you have already returned, call Legal & Risk on 8303 4539 and we can help you update it.

*If you need assistance with completing the forms or have any questions about the declaration process, call Joe Di Pinto (Manager Insurance) on 8303 4635 or Tom Pontt (Insurance Officer) on 8303 3878.*

## Searching the University website - What you won't find

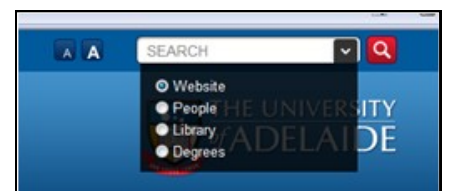
Many of the Legal & Risk web pages – and indeed, many web pages administered by other areas of the University - are password protected, with access limited to a certain group of people (i.e. staff, students, contractors or visitors). This means that quite frequently, if you are trying to locate information on a particular subject through the standard "University Search" function, you won't find it.

Two important sections of our site are password protected: the [Legal & Risk Legislation Directory](#) and our [Resources](#) page.

The Legislation Directory contains all of the State and Federal Acts that apply to the University (including links out to the Acts themselves) and the contact details of various compliance staff. It also links to the individual school/area pages, which list the Acts and people specifically relevant to the areas that have already adopted the legal compliance framework.

The Resources page contains numerous handbooks and training manuals (Contract Management, Competition and Consumer Law, Legal Compliance, Risk Management), and resource material on particular Acts. There is (among others) information on defamation, privacy, spam, fraud control and whistleblowers protection. There's information on the Copyright Act, Coroners Act and Cremation Act, but it's hidden behind a password. You just need to know where to look.

For more information contact Phillipa Schliebs on 8303 4539 or email [phillipa.schliebs@adelaide.edu.au](mailto:phillipa.schliebs@adelaide.edu.au).





"There are risks and costs to a program of action. But they are far less than the long-range risks and costs of comfortable inaction." (John F. Kennedy)

"If you treat risk management as a part-time job, you might soon find yourself looking for one." (Deloitte white paper - Putting Risk in the Comfort Zone)

"The first step of the risk management process is to acknowledge the reality of risk." (Charles Tremper)

## The University Risk Matrix

Among the myriad risks and opportunities that arise throughout the University, a small but significant number will cause headaches for those involved. They may require assistance from other people or departments and may be costly or resource intensive to resolve. Creating a process to help prioritise such issues and institute appropriate actions is central to any risk management strategy.

Using a risk assessment tool, like a [Risk Matrix](#), helps provide a structured and standardised approach to evaluate each risk and assigns clear management responsibility for actions and learning.

### What is a Risk Matrix?

A **Risk Matrix** is a tool for ranking and displaying risks by defining ranges for consequence (impact) and likelihood (of occurrence). A matrix allows the severity of the risk of an event occurring to be determined, and consequently allows risks to be prioritised. Prioritising risks can save you time, money and stress – in both the long and short term - by helping you focus on what issues or events could cause you bigger problems in the future.

The University has been using a matrix to rate the enterprise level (i.e. big picture) risks for a number of years, but the acquisition of the University Risk Register, to accommodate both operational and enterprise level risks, prompted a re-development of the matrix specifically to suit our business and risk management requirements.

The University Risk Matrix was approved by Council on 9 May 2011. It has been incorporated into the [Risk Management Handbook](#), embedded into the [University Risk Register](#) and uploaded onto the [Legal & Risk website](#).

### Key Features

The key features of the University Risk Matrix are:

- A 5 x 5 (likelihood v consequence) matrix to account for the broad strategic nature of enterprise level risks while also accommodating operational and project or event-specific risks;
- Colour coding of each level of risk, to provide clear, unambiguous guidance on the severity and escalation requirements for each incident.
- A generic impact description to help simplify the levels of impact, for example: *Major: Critical event or circumstance that can be endured with proper management*
- Description of the area of impact in categories that are specific to the University, for example: *Education and Research;*
- Description of the impact or consequence in qualitative terms rather than quantitative measures or frequencies, for example: *Significant loss in student enrolment, Loss of a key School or Major impact on research activity over a sustained period;* and
- A risk rating and corresponding management action required - to align with the University's governance and reporting structure, for example: *High Risk—Risk to be given appropriate attention and demonstrably managed; reported to Vice-Chancellor or other senior Executives or Management Committees as necessary.*

### Can I log a risk?

Any member of staff can log a risk on the University Risk Register, which is accessible via the Legal & Risk website. In logging a risk, you will be asked to describe the risk or concern you have and identify where the risk exists.

### What happens after I log a risk?

Clarification of ratings will be made by the Manager Risk Services in consultation with the area concerned; i.e. those staff with the primary responsibility for managing the risk. It is important to recognise that risks are subjective and **always** context driven. There is always the possibility that the person or group rating a risk interprets the likelihood, consequence and risk rating differently to another person or group.

### Validation of risk ratings

The University Risk Management Committee (comprising senior executives and business owners across the University) has a role in validating the rating of any risks rated high or extreme.

So too, the Audit, Compliance and Risk Committee, has responsibility for monitoring the exposure of the University to risk, and must ensure any extreme risks are validated and given proper and urgent attention.

### Risk Management Policy

The revised Risk Management Policy was approved by Council on 9 May 2011.

The Policy applies to all academic and professional staff, titleholders, contractors, and staff and employees of Controlled Entities.

The Policy affirms the University's commitment to building a risk management culture in which threats and opportunities are identified and managed effectively across the organisation.

The Policy must be read in conjunction with the University's Management Handbook.

RISK MATRIX					
CONSEQUENCE	1 Insignificant	2 Minor	3 Moderate	4 Major	5 Extreme
A - Almost certain (frequent)	M	M	H	E	E
B - Likely (probable)	L	M	H	H	E
C - Possible (occasional)	L	M	M	H	H
D - Unlikely (uncommon)	L	L	M	M	H
E - Rare (remote)	L	L	L	L	M

### OHS and Risk Assessments

Health, Safety & Welfare risks (such as hazards and chemicals) are managed in accordance with the [HSW Policy and Handbook](#). These risks are recorded on the OHS Risk Management Safety System (RMSS) and as such, are unaffected by the introduction of the new Risk Matrix.

For more information, contact Gerald Butfield (Manager, Safety & Systems) by phone (8303 4353) or email ([gerald.butfield@adelaide.edu.au](mailto:gerald.butfield@adelaide.edu.au)).

For further assistance contact Anne Hill (Manager Risk Services) via email ([anne.hill@adelaide.edu.au](mailto:anne.hill@adelaide.edu.au)) or by phone 830 34603.





Total number of insurance inquiries taken and responded to in January to July, including emails, phone calls and counter visits. . .

**5045**

## He said, she said. . . The rule of “hearsay”

The term “hearsay” is commonly used in everyday speech. The recent claims by soccer journalist Les Murray that Australian players were about to mutiny before the 2010 World Cup match against Germany were headlined as “hearsay” by one player who was present (*Advertiser 20 June 2011*). According to the newspaper report, the journalist responded that his story was derived from “good sources”. Such reasoning though, does not necessarily make the claims true.

**Hearsay is defined as “What one hears but does not know to be true” (*Concise Oxford Dictionary*). In the context of a court hearing, “hearsay evidence” refers to the recall by a witness of what *someone else* has been heard to say.**

Just as there are rules and laws that govern our everyday conduct, so there are “rules” that govern the conduct of judges, barristers and witnesses in a court or tribunal. These include rules about the evidence given and how a court will treat it; i.e. will the court accept or reject what a witness says, in total or in part, for any one of a number of reasons?

The “rule of law” is one of the basic principles by which democratic societies seek to be measured. One of the fundamentals of civilized and democratic society is that court and tribunal hearings which may affect the rights of individuals, and particularly a person’s liberty, are fair and above reproach.



We know the term “kangaroo” court to mean a hearing where the proceedings are not conducted fairly or impartially. The hearsay rule is one of the “rules of evidence” intended to ensure that the evidence given meets certain standards in the pursuit of fairness and the truth. The rule is concerned with the means of proving a fact.

The rule against hearsay evidence is intended to ensure that evidence of a fact is given by the proper witness, first hand. This ensures that witnesses give direct evidence in court rather than recounting what was said to them by another person.

**For example;** a witness can say “I saw Tom crash into Julie’s car” but if he says “I wasn’t there at the time, but Joe Bloggs told me that he saw Tom crash into Julie’s car”, that would be hearsay evidence and not admissible in court.

You only have to think of the number of times that what you have been told by someone which you repeat, or what you have said to another that is repeated back to you by someone else, is not actually what you said, to appreciate that recollection of what someone else said is easily open to distortion.

Whether a particular piece of evidence is considered hearsay or not is often a difficult question to answer, as this is a complex area of law and there are some exceptions to the general rule. But generally speaking, the less formal the forum – a tribunal hearing as opposed to a court – the more relaxed are the “rules of evidence”.

For more information, phone 8303 0085 Richard Duddy (Legal Counsel) or email [richard.duddy@adelaide.edu.au](mailto:richard.duddy@adelaide.edu.au).

## A policeman walks into an office. . .



Occasionally, the Police or an external government or regulatory body may want access to student records and information.

Documents may be released, but the following procedures must be adhered to:

### If the police want access to student records

1. Ask to see a warrant or subpoena
2. Verify the police officer’s identity
3. Confer with your Director or Head of School/area
4. Maintain a log of all documents released and the date of release
5. If originals are released, retain photocopies of the relevant documents

### If a third party (e.g. Centrelink, Department of Immigration, Australian Taxation Office, Medical Board of SA) request access to student information

1. Ask for the request in writing
2. Forward the request to Legal & Risk for advice ([helpdesklegal@adelaide.edu.au](mailto:helpdesklegal@adelaide.edu.au))

### Remember. . .

Student information may be disclosed to the police if the use or disclosure is required by law or is specifically authorised by law. But improper release is a breach of an individuals’ privacy and the University’s Privacy Policy.

Please help us help each other to comply with privacy laws and to cooperate with law enforcement agencies.

**If in doubt, contact Legal & Risk on 8303 4539**

## Got something to say?

Would you like to contribute to the next edition of the Legal & Risk newsletter?

Do you have a legal, risk, insurance, policy, compliance or governance issue that you would like covered in future issues?

Please email any ideas, questions or comments to [phillipa.schliebs@adelaide.edu.au](mailto:phillipa.schliebs@adelaide.edu.au).



The next edition of Unilink is due out in early-November.