

Unilink

Legal & Risk Newsletter

Privacy Matters

The University's [Privacy Policy and Privacy Management Plan](#) were recently revised.

The Policy outlines principles on which the University collects, uses, discloses, manages and provides access to personal information. The Privacy Management Plan gives detailed guidance on how to apply the Policy principles.

Although the University is not directly subject to privacy laws, Commonwealth funding contracts usually require compliance with the Commonwealth Privacy Act. As a result, the University has chosen to adopt the best practices when dealing with personal information as set out in the Act. The new Australian Privacy Principles (APPs) came into effect on 1 March 2014. The Policy and Management Plan align with the new APPs.

At a glance:

The fundamental privacy principles in the *University's Privacy Policy and Management Plan* have not changed. University personnel should:

- only collect personal information that is reasonably necessary or directly related to the University's functions or activities
- only use or disclose personal information for the purposes for which it was collected, or else obtain the person's consent
- take reasonable steps to protect personal information from misuse, loss or unauthorised access
- destroy or de-identify personal information if it no longer needs to be retained.

What's new:

- A Privacy Statement must be provided to an individual at or before the time (or, if that is not practicable, as soon as practicable after) personal information is collected
- The University must have a written agreement with any service provider or collaborator to whom personal information will be disclosed
- Any loss or unauthorised disclosure of personal information must be actioned immediately and notified to Sandra Lilburn, Manager Compliance: sandra.lilburn@adelaide.edu.au or 8313 0482).

Almost all University personnel will deal with personal information at some stage, whether it relates to students, colleagues, research participants or even members of the public who attend University events. It is important that you familiarise yourself with the [Privacy Policy and Privacy Management Plan](#).

We would be happy to deliver training sessions to staff in your area.

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Mind your Fees & Qs

Deregulation of domestic student fees is a centrepiece of the Higher Education and Research Reform Amendment Bill recently introduced to Parliament. Speculation about what fees universities will be is common. You may find colleagues from other universities wanting to talk about what pricing models our University is contemplating.

Be **very careful** with what you say!

Collaborating with other universities in setting course fees constitutes price fixing and is **illegal** under the Competition and Consumer Act.

Price fixing agreements do not have to be formal; they can be "understandings" secured over a coffee at a local café or at a conference or event. The determining factor is whether competitors are working out fees collectively rather than individually.

Penalties for price fixing may include large fines for the University. Individuals who participate in such activity could face up to 10 years imprisonment.

- Do not discuss course fees, pricing models or profit margins with colleagues from other universities.
- If a colleague initiates such discussion, suggest changing the subject – merely staying silent may not be enough.
- Make it clear that you do not intend to engage in such discussions.
- Leave if the conversation continues.

For more information, refer to the [Competition and Consumer Law Compliance Manual](#) available on the Resources page of the [Legal and Risk website](#), or contact:

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08 8313 5033



'Notifiable event' reporting – on time, every time

A notifiable event is **any incident that may result in an insurance claim made against the University.**

A notifiable event may be an activity, consequence, omission, occurrence or failure to do something: words in an email, misrepresentation in a brochure, suspected fraud, threat of legal action or vandalism of University property.

All staff need a basic understanding of notifiable event reporting and to appreciate the importance of timely reporting.

Why?

Because a known fact, circumstance or event that is not reported in a timely fashion can mean the University cannot benefit from insurance.

The consequences of not being insured can be very serious – and not just in a financial sense.

Our obligation to report

When negotiating the University's insurance program, we provide our insurer with all relevant information needed to assess (and accept) our insurance risk. We also agree, that during the period of insurance, we will provide relevant additional information that may change our insurer's assessment of our overall risk.

*In other words, we **notify** our insurer of any potentially relevant events.*

In this way we comply with our 'duty of disclosure'.

Our duty of disclosure is particularly relevant for claims-made policies. These include *Medical Malpractice* and *Professional Indemnity (PI)*. Claims-made policies provide cover for the period for which the premium is paid. Each year the policy is renewed and the "cover period" is extended for the next year. Once the period covered stops, the cover stops.

So what might happen? Take this example:

A veterinarian at Roseworthy is insured under her own insurance and the Professional Indemnity policy of the University covering the period 1 January to 31 December. The Vet treats a champion horse on 21 December but following treatment the horse suddenly dies. The Vet Practice does not report the event to the University's insurance team until 4 January the following year. That February, the owner of the horse sues the Vet for professional negligence and for the cost of the surgery. As the notifiable event was not reported within the policy year, neither the Vet nor the University practice is insured.

Reporting a "notifiable event" will preserve our insurance cover and your peace of mind



Or this example:

A threat of legal action is made by a student who is unhappy about their thesis being deemed not satisfactory by an examiner. The student claims that the thesis supervision provided was inadequate and the University and the supervisor are to blame. The threat of legal action was made by the student in early November 2013 but this event was not reported to the University insurance team until 2 February the following year. As the notifiable event was not reported within the policy year, neither the supervisor nor the University is insured.

It is important to observe our 'duty of disclosure' to preserve our entitlement to claim, as well as to provide individual peace of mind.

- Any circumstance that arose in previous years will be covered **if** it was reported as a notifiable event during the 12-month premium period.
- The sum insured in the *current year* of claim will apply. So, something that occurs this year and is reported within the current premium period will be covered should a claim arise.

Reports can be made in person, by phone or by email.

Tom Pontt, Insurance Officer
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Education & Awareness Sessions

If you would like to learn more about legal, risk, compliance, insurance, copyright or fraud control issues, we can tailor an education and training program to meet the specific needs of your team.

Sessions can range from 1 hour to a half-day workshop.

To find out more about these sessions please visit www.adelaide.edu.au/legalandrisk/education/

If you would like to register or inquire about a training session please email: helpdesklegal@adelaide.edu.au





Clinical Trials and Human Studies Insurance

Staff and students who undertake or participate in **University-approved** clinical trials or human studies are covered by the University's insurance program.

Approval for Insurance

To ensure insurance cover, all clinical trials and studies must be registered with, and approved by, either the [University's Human Ethics Committee](#) or an approved ethics committee.

Failure to register:

- Will result in a denial of compensation to a participant who alleges a bodily injury as a result of participating in the trial or study.
- May also impact the protection provided to the staff or student under the Medical Malpractice or Professional Indemnity insurance program.

A *Memorandum of Insurance for Clinical Trials and Human Studies* is available on request and should be enclosed with your submission to the Ethics Committee as proof of insurance.

Queries about research ethics approval should be directed to the University's [Research Branch](#).



Scope of Cover

Staff and students undertaking approved clinical trials or human studies conducted by the University of Adelaide are provided with:

- **Public and Products Liability Insurance**

Covers the University against costs associated with bodily injury or property damage claims resulting from University-approved activities, and third party property claims arising from the manufacture and/or sale of goods or products.

- **Clinical Trials and Human Studies Insurance**

"No fault" compensation insurance for any participant who suffers a bodily injury during the course of a trial or study sponsored and approved by the University.

- **Medical Malpractice Insurance**

Provides indemnity if a claim arises from medical treatment or advice provided by a registered medical practitioner during a trial or study.

Registered medical practitioners must also be independently insured for their own malpractice, professional errors, negligent acts or omissions

- **Professional Indemnity Insurance**

Provides cover for claims of professional negligence due to an actual or alleged negligent act, error or omission by university staff or students who provide professional advice while engaged in University approved activities.

Third party trials or studies

Liability for a clinical trial or human study rests with another organisation when the trial is being led and conducted by another institution.

Scope of Cover

Staff and students undertaking or participating in approved clinical trials or human studies conducted with organisations external to the University are only covered by our:

- **Public and Products Liability Insurance**

Covers University staff and students against costs associated with bodily injury or property damage claims resulting from their actions.

- **Professional Indemnity Insurance**

Cover for claims of professional negligence due to an actual or alleged negligent act, error or omission by university staff or students who provide professional advice while engaged in University approved activities.

"No Fault" compensation provides cover for costs and damages for claims made by research subjects involved in approved trials, irrespective of who is negligent

Prior to the commencement of an external trial or study, staff and students involved should request a copy of the third party's *Memorandum of Insurance for Clinical Trials and Human Studies* to confirm for themselves that "no fault" compensation insurance cover for the trial is in place.

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Workplace Bullying Laws – new *Fair Work* orders

Under the [Work Health and Safety Act 2011 \(Cth\)](#), employers are obliged to provide a safe workplace and take steps to recognise, assess and control hazards, including bullying behaviour. Where bullying in the workplace involves unlawful discrimination or harassment, a complaint may be made under anti-discrimination laws. And on **1 January 2014**, workplace bullying laws came into operation under the [Fair Work Act 2009 \(Cth\)](#).

“*Bullied at work*” is defined in the [Fair Work Act 2009 \(Cth\)](#) (FW Act) to mean **repeated unreasonable behaviour**:

- by an individual or group of individuals towards the worker or a group of workers of which the worker is a member;
- which creates a risk to health and safety.

What does it mean for the University?

In order to be prepared for the implementation of these new provisions HR undertook a review in 2013 of the University's existing procedures for preventing and responding to workplace bullying. The revised procedures can be found on the [WHS Handbook](#) website.

A key feature of the revised procedures is that they apply to any person who is defined as a “worker” in accordance with the Work Health and Safety Act 2012 (SA). This covers categories of persons such as;

- Full time or Casual staff
- Contractors
- Volunteers or Titleholders
- HDR Students

A number of aspects remain the same;

- Bullying is considered a risk to the health and safety of workers at the University
- Bullying is viewed as misconduct or serious misconduct, depending on the circumstances and may lead to formal disciplinary action
- The University has a procedure where allegations of bullying can be investigated and resolved.



A **new feature** of the revised procedures is the creation of a new role, a [Bullying Contact Officer \(BCO\)](#), whose function is to provide independent information and advice to workers who believe they are being bullied or have been accused of workplace bullying.

Schools and Branches have a requirement to provide **new** staff with information as part of their local induction on what to do if they believe they are being bullied. An [information sheet](#) has been developed that can be used for this purpose during local induction.

For existing staff an information session has been developed and is offered monthly. If any School or Branch would like this information delivered in their local Area at a time that suits they can contact the HSW Team to arrange.

Consequences of Workplace Bullying

The University's [Fair Treatment Policy](#) and associated [Guidelines for Staff](#) prohibit staff from engaging in discrimination, sexual harassment, harassment, **bullying**, racism, and vilification on University grounds or while engaged in University activities. Not only may a workplace bully face disciplinary action under this Policy, but they could be met with complaints under relevant State and Federal laws.

What can the FWC do?

A worker who reasonably believes he or she has been bullied at work can now apply to the FWC for an order to prevent the bullying. Before issuing any orders the FWC must take into account:

- Any procedures available to the worker to resolve the grievance or dispute and any outcomes arising from those procedures.

Workers who go directly to the FWC and who do not take advantage of the procedures that are available in the University run the risk of being referred back to the procedures.

The FWC must start to deal with an application submitted to the FWC within 14 days after the application is made. If the FWC is satisfied the worker has been bullied at work and there is a risk the bullying will continue, the FWC can make an order (other than for a financial payment) to prevent the worker from being bullied at work.

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Need advice?

Any staff member seeking further information on unfair treatment provisions should contact the Human Resources Service Centre on 8313 31111 or check the HR website for further details.

Personal Legal Advice

The lawyers within the Legal and Risk Branch are not able to provide personal advice to staff or students of the University.

Staff seeking personal legal advice should contact the Law Society of South Australia (www.lawsocietysa.asn.au) and its legal advisory service.

A free legal advice service is available to students via Student Care (AUU) via email studentcare@adelaide.edu.au or phone 8313 5430.