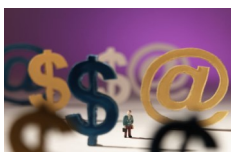


Unilink

Legal & Risk Newsletter

Scamming is on the rise—don't get caught!

Unsolicited offers— opportunity or scam?



In the course of the frenetic working day, it is easy to overlook things or give cursory attention when an issue calls for a more considered view.

With all commercial transactions - big and small - it is important to

- read the offer carefully
- understand what is being asked of you or what is on offer
- be certain about what you are signing up for on behalf of the University, or personally.

It is better to be cautious from the outset than inadvertently agree to something you do not want just to get it off your desk, and then rue the consequences.

Consumers and business are increasingly the target of unethical, sharp or unscrupulous practices that are intended to dupe the unwary or the distracted. The University is no different.

There have been a number of instances where companies have made unsolicited approaches to the University intending to have individuals sign up for, or pay for, advertising or business directory listings that are unwanted, have not been endorsed or even not known about. Payment is often relentlessly pursued.

It is better, and often less time-consuming, to take the time at the outset to be absolutely clear on what you are committing to so as to avoid being the victim of questionable business practices or an outright scam.

Just too good to refuse

If something looks too good to be true, it is probably a scam. If you have an inkling that something is a scam, have a look on [SCAMwatch](#). Chances are it has happened to others and it has been reported.

According to SCAMwatch, the number of scam-related reports is doubling every year. This is affecting individuals as well as organisations.

Scams are of such national concern that the Australian Competitions and Consumer Affairs Commission (ACCC) has launched a national scam disruption project and released "[The Little Black Book of Scams](#)": a helpful guide on popular scams that regularly target Australian consumers and small business. This publication also contains tips on what individuals can do to protect themselves from scams.

Common types of scams include:

Consumer-targeted:

- Phishing (banking, online)
- Advance fee fraud (Nigerian)
- Fake lottery (sweepstakes) winnings
- Dating & romance sites
- Investment scams
- Mobile phone scams
- Online fake auctions and prizes
- Fake charities/disaster aid

Business-targeted:

- Office supply invoices
- Fake subscriptions for business directory entries
- False magazine advertisement invoices
- False domain name and business registration renewal invoices
- False self-employment opportunities
- Business valuations and sales

Our [April 2012 edition](#) has more information about scams targeting Universities. Information about scams and how the University secures our IT system can be found on the Technology Services' [SecureIT](#) site.

If you believe that the University has been the target of a scam you can contact Legal and Risk Branch (helpdesklegal@adelaide.edu.au) or telephone 8313 4539.



Don't Forget!



DO YOU HAVE ANY NOTIFIABLE
EVENTS?

The insurance reporting deadline is approaching!

Before 31 December 2014 remember to report to Legal and Risk Branch any new activity, unexpected events or changed circumstances so that we can advise our insurers and preserve any future entitlement to claim.

Uncertain? We are always happy to discuss:

helpdesklegal@adelaide.edu.au or telephone 8313 4539



Keep your eye to the horizon

Drones are in the news as well as in the sky.

Surveillance drones, or camera-enabled remotely piloted aircraft (RPAs) have sparked a lot of interest as an affordable means to monitor activity and capture photographic images from a vertical distance and inaccessible places. The use of surveillance drones has increased quickly as the technology has become cheaper and more available.

The possible application of RPAs includes many research purposes.

Pursuit of research applications for any technology must always be tempered by any public safety concerns. The regulation of aircraft or devices used in air space is set at a very high threshold for these same reasons.

For insurance for any events related to the use of drones we must meet all regulatory requirements.

Regulation of drones

Currently, the regulation of RPAs rests with the air safety regulator, the Civil Aviation Safety Authority (CASA).

CASA is responsible for ensuring that operators of aircraft and any activities conducted in air space are within specified limits and licence requirements.

However, CASA's current rules pre-date the steep rise in nature and number of drones and were originally drafted to control the use of balloons and model aircraft.

Regulation "lag"

This "regulation lag" may present some difficulties for researchers thinking of using RPAs in their research as the regulations only contemplate recreational and commercial use of "aircraft".

Research is not considered a recreational activity and so the more stringent licencing and approval process for commercial purposes strictly applies. CASA has acknowledged that the regulations will need updating to accommodate rapid technological developments and the various uses of drones.

Indications are that CASA may assess research use of RPAs on a case by case basis while work on the new regulation is underway. You should expect delays in any dealings with the Authority, however, as general licence applications have doubled over the last year.

In the meantime, CASA's obligation to regulate all RPA activity remains and their principal concern continues to be public safety.

In the hands of private users, drones have been reported as injuring a triathlete, crashing into the Sydney Harbour Bridge, and compromising the flight path of a rescue helicopter.

There have also been calls for national legislation to prevent the use of RPAs in ways that infringe people's privacy.



Insurance for research drones

In meeting all regulatory obligations the University demonstrates our priority commitment to public safety. This commitment is also a recognised condition for our public liability insurance coverage.

Researchers and operators that are not meeting statutory obligations **will not be covered** by the University's insurance should an accident happen. They may also be in breach of the *Civil Aviation Act 1988*.

For more information refer to the [CASA website](#) or contact

Sandra Lilburn, Manager Compliance
sandra.lilburn@adelaide.edu.au
08 8313 0482

I'll just email that to you

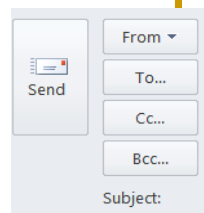
University email accounts are provided to staff, student and affiliates to further the objectives of the University. Generally, emails offer a secure medium where issues can be communicated quickly and confidentially. Users should bear in mind, however, that emails can easily be forwarded on by recipients or may be monitored by authorised University personnel if considered necessary.

University email accounts are not "private" and users should be careful to follow email etiquette as set out in the [Acceptable Use and Security Policy](#). Emails should never be used to send offensive, harassing or other material that could be considered annoying or distressing. If you want to send emails for purposes other than those allowed under the policy, use a personal account from your own devices using private technology.

Remember also that emails that document the formal business and decision-making processes of the University are subject to the *State Records Act*. You should manage such activities and records within the University's business systems and in accordance with the University's [Records Policy](#).

More information is available from [Information Technology Services](#) and [Records Services](#).

Contact Legal and Risk Branch (helpdesklegal@adelaide.edu.au) or telephone 8313 4539 if you need further assistance.





Do I need a Disclaimer or a Waiver?

A disclaimer is a statement that seeks to deny responsibility for something, or to limit the scope of rights and obligations that may be exercised by someone against you or the University.

If you were to ask us for wording for a disclaimer, we will in turn ask what you want the disclaimer for, and what scenarios you intend the disclaimer to cover. This is because there is no such thing as a 'standard' disclaimer, and the legal effectiveness of disclaimers is quite limited. In some circumstances, and if properly used, disclaimers can be appropriate and a useful risk mitigation tool.

There is no such thing as a 'standard legal disclaimer'

Disclaimers of accuracy

When providing information that may be subject to change – for example, course availability or fees - it is acceptable to include a statement to that effect. For example:

Information in this document was accurate at the time of publication but is subject to change. Please refer to the University's website for current details.

To be effective, this disclaimer should be clearly visible, not an after-thought in fine print on the back page.

However, the inclusion of such a disclaimer does not reduce your responsibility to ensure that the information you provide is as accurate as possible in the first place. If you mistakenly tell a student that fees will be \$10,000 and the student relies upon that even though the website says that fees will be \$20,000, the University could still be held to the original representation even though it is a mistake.

Disclaimers of liability

A typical example of a disclaimer of liability would read:

Participation in this activity is at your own risk. We will not be liable for any loss or damage you may suffer.

This sort of disclaimer does not override strict liability. Under Australian Consumer Law a service provider must provide services with "due care and skill". If a service provider fails to exercise due care and skill, the consumer has a right to claim damages regardless of any disclaimers or contracts. Even in the absence of any strict liability, such a disclaimer would only hold weight if:

- all relevant risks have been fully explained to enable participants to make an informed decision on whether or not to participate in the activity
- the University has done everything reasonable to minimise or control the risks
- the disclaimer is drafted clearly and unambiguously.

If you are planning an activity that has a higher than normal risk profile, you should actively manage the risks and the participants rather than relying on a disclaimer.

General liability waivers

A general liability waiver may be used by an organisation to protect itself from lawsuits or compensation claims. Typically an organisation may ask an individual to read and sign a waiver accepting that the organisation is not responsible for injuries, damage, or loss suffered as the result of the activity.

A liability waiver may also state that the participant fully comprehends the risks inherent in participating in the activity.

- Liability waivers offer some protection, but laws vary in different areas and locations
- If liability waivers are improperly written they may be overruled on the grounds that the claimant did not understand what they were signing
- A liability waiver may not protect an organisation which can be shown to have acted negligently

An individual who is presented with a general liability waiver may question whether or not they have any choice in the matter. For example, they may want to go on a bus trip but retain their rights in the event that the organisation somehow contributes to an injury or loss. While some organisations may make the signing of these forms voluntary, in most cases signing will be mandatory for participation.

The actual protection an organisation can expect from a general liability waiver may depend on the laws in the particular jurisdiction or whether:

- the form was properly drafted or not
- the participant can convince a court that s/he did not understand the implications of what they signed, or
- the damage occurred because someone in the university acted negligently or is guilty of misconduct.

Under such circumstances, the university may still be liable, even though it has received a signed general waiver of liability.

While waivers offer universities some protection, like disclaimers however, they offer the most protection when combined with effective risk management and prevention strategies.

Geraldine Yam, Associate Director, Legal Services

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THANK YOU

To everyone who recently completed our Client Satisfaction Survey. Your feedback will inform our service improvement planning for 2015.

The Risk Management Handbook was recently reviewed to align with the Beacon of Enlightenment. Access the Handbook and other risk resources through the resources page on the Legal and Risk website:
www.adelaide.edu.au/legalandrisk/resources.



**The following article (Sage Advice For The Silly Season: End of year employment law issues) was written by Emily Slaytor of Hunt & Hunt Lawyers for the Law Society SA Bulletin. This edited version has been reproduced with permission.*

Sage Advice for the Silly Season

As the end of the year approaches, we will all be turning our minds to the administrative tasks that need to be finalised and to other formal and social activities planned in the lead up to the festive season. Make time to also consider your obligations and responsibilities in preparing for...

The Office Christmas Party*

An office Christmas party is a great opportunity for team-building and celebrating employees' hard work throughout the year, however staff may not be the only ones with headaches if the event does not run smoothly. After all, there is a good reason this time of the year is called the 'silly season'.



The same rules and policies that apply in the workplace generally also apply to work functions, including the office Christmas party, regardless of whether the function takes place outside work hours and away from the office.

This means that workplace policies relating to, for example, discrimination, sexual harassment, bullying and work health and safety still apply, because there is an inherent connection between the workplace and the event.

If an employee suffers an injury at the party this can be the subject of a workers' compensation claim against the employer. Obligations on the employer to prevent sexual harassment or bullying also apply at the Christmas party, and responsible service of alcohol must be taken into account when managing these risks. Alcohol-fuelled sexual advances and other types of anti-social behaviour are real risks at an office Christmas party and employers have been on the receiving end of claims from employees as a result.

Dealing with the aftermath

Some examples where employers have had to deal with the aftermath of incidents at an office Christmas party include:

- ◇ An employer was unsuccessful in defending an unfair dismissal claim when it failed to take any disciplinary action against an employee who had earlier head-butted a colleague during a work Christmas party.
- ◇ An employer was forced to defend an unfair dismissal claim brought by an employee it dismissed for urinating off a balcony onto people dining in the restaurant below at its Christmas function. The employer was successful in this case because of the connection between the behaviour and the employment relationship.
- ◇ An employer that failed to moderate supply and consumption of alcohol at its Christmas party was ordered to pay compensation to a worker it dismissed as a result of her conduct at that party.
- ◇ An employer was forced to defend an unfair dismissal claim brought by an employee it dismissed for urinating off a balcony onto people dining in the restaurant below at its Christmas function. The employer was successful in this case because of the connection between the behaviour and the employment relationship.

- ◇ An employer was found to have discriminated against an employee on the basis of her gender when she was the only employee not invited to the work Christmas party where topless waitresses were serving guests.

Some steps to take before the event

The following steps may help to ensure that the function is safe and enjoyable for all:

- ◇ Ensure all employees are made aware that the Christmas party is a work function and that the usual standards of responsible behaviour and respectful attitudes during work hours continue to apply;
- ◇ Ensure workplace policies are up to date and easily accessible. Remind employees (prior to the Christmas party) that these policies continue to apply at work events;
- ◇ Consider your social media policy in light of the risk that embarrassing pictures can be taken at the Christmas party with a smart phone and uploaded to social media sites, potentially causing damage to the firm's (and individual employees') reputations. The last thing anyone wants is photographs appearing on social media sites which are akin to the end credits of the Hangover movies!
- ◇ Remind employees that failure to observe the employer's policies at all times during the Christmas party may be used by the employer as a basis for disciplinary action, or in certain circumstance, termination of employment;
- ◇ If there is a particular employee who has not responsibly consumed alcohol at work events in the past, consider sitting down with that employee to discuss the arrangements and remind them of the need to be responsible;
- ◇ If alcohol is being supplied, ensure there will be sufficient food;
- ◇ Consider available transport options, particularly where alcohol is supplied, to ensure employees arrive and depart from the event safely—will you provide the means of transport home such as a group bus or cab charge vouchers?
- ◇ Designate a responsible contact person at the event (and inform employees about this), who can deal with any issues that arise and provide assistance; and
- ◇ Make it clear to employees that moving on to a new venue is not part of the approved office Christmas party.



Season's Greetings

The Legal and Risk team

wish you a safe and
happy holiday