



THE UNIVERSITY
of ADELAIDE

Legal Compliance Education and Awareness



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Misrepresentation Act 1972

(South Australian)

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What is Misrepresentation?

- A false statement of fact made during negotiations which plays a part in persuading someone to enter into a contract
- False statements or promises about the quality or nature of the product
 - *Eg: “One tutor for every 10 students”*
- Unrealistic predictions about future price, quality or performance
 - *Eg: “Our graduates are guaranteed a job”*
- An innocent, incorrect statement of fact will be a misrepresentation if not corrected when new information arises
- An omission of information can be a misrepresentation if it would lead a person to believe something other than the truth

What is Misrepresentation? (cont.)

- Generally, a statement of opinion is not a misrepresentation because it is merely an expression of personal belief
- Exceptions include;
 - *where the opinion is not actually held by the representor*
 - *where it is implied that the opinion is based on facts*
- It is a defence to a claim of misrepresentation that the representor had reasonable grounds to believe that the representation was true
- Misrepresentation allows the other party to terminate contract

What does the Misrepresentation Act do?

- Protects consumers from being deceived or misled by careless or unethical businesses
- Provides criminal sanctions against misrepresentation in certain commercial transactions

How does the Act apply to the University?

- The Act applies to all University conduct but some areas carry higher risk, including:
 - *Claims made by staff to existing or potential students*
 - *Claims made by staff when negotiating contracts*
 - *Marketing materials*
 - *Any discussion or agreement relating to price*
- Within the University context, ***deliberately*** fraudulent misrepresentation is ***less likely*** than innocent misrepresentation
 - ***however*** carelessness is not a defence

Who does the Act apply to?

- Anyone entering into a contract or interacting between competitors, suppliers or wholesalers
- Staff who provide information (formally & informally) about:
 - *courses on offer*
 - *conditions or terms & conditions of entry*
 - *the existence of scholarships*
- Faculties & Schools making claims (formally & informally) about:
 - *facilities & teaching staff*
 - *past & future success of University graduates*
 - *affiliates*
- Marketing & Strategic Communications promoting the University locally, nationally & internationally
 - *in TV, radio & print media*
 - *on posters, banners & letterheads*

Types of Misrepresentation

- **Fraudulent** misrepresentation involves an intention to deceive, for example;
 - *Exaggerating qualifications & experience of professional staff*
 - *Overstating the University's resources & capabilities in the delivery of courses*
- **Negligent** misrepresentation occurs when a person makes a careless representation which has no logical basis of truth, or which has not been investigated for accuracy, for example;
 - *Estimating attrition rates*
 - *Speculating on the availability of academic assistance or supervision*
- **Innocent** misrepresentation **only** occurs when there is reasonable grounds for believing that the false statement is true at the time of making the statement, for example;
 - *Incorrect details of assessments or timetables*

Who can give rise to a claim of Misrepresentation?

- Inaccurate written documents or advertisements
 - *typographical errors & misprints*
- Oral statements or representations (formal or informal)
 - *exaggerations or overstatements*
 - *understatements*
- A pattern of behaviour or impressions given by previous conduct
- Silence (in some cases)
 - *omitting information*
 - *not correcting someone's assumptions*

What can happen if I don't comply?

- There are potential legal consequences for both the University & for the individual staff member in their personal capacity
- A case of misrepresentation may also give rise to a claim of 'misleading conduct' under the [Competition & Consumer Act 2010 \(Cth\)](#) or the [ESOS Act 1997 \(Cth\)](#)
 - **Both Acts have much harsher penalties & even an innocent misrepresentation may breach them**

Individual Consequences:

- Fines of up to \$100,000 (for breaching the *Misrepresentation Act* only)
- A misrepresentation may also be misconduct under the University's Enterprise Agreement

University Consequences:

- Fines of up to \$100,000 (for breaching the *Misrepresentation Act* only)
- Negative publicity
 - *Damage to the University's reputation*
 - *Attraction & retention of staff & students is compromised*

University Obligations under the Act

- Be careful not to mislead, understate or overstate
 - *Do not rely on ‘fine print’, disclaimers or exclusion clauses to qualify an exaggerated statement or clarify an ambiguity*
- Always be open & honest with staff, students & customers & ensure **all** facts are disclosed during negotiations
- Be aware of the areas of the Act which carry higher risk of breach
- Keep in mind that simple error generally falls under “negligent misrepresentation” not “innocent misrepresentation”
 - *If you misrepresent facts that you should have reasonably known to be otherwise, the misrepresentation will be considered negligent*
- Take care when setting & communicating course fees
- ***Remember : it is not only staff involved in formal marketing & promotions who must be aware of the requirements of the Act***

University Obligations under the Act

- [Kim Evans](#), Senior Legal Counsel
 - 8313 6103
- [Misrepresentation Act 1972](#)
- [University of Adelaide Collective Agreement](#)
- [Trade Practices Act 1974 \(Cth\)](#)



Disclaimer

The content of this material is intended only to provide a summary & general overview of the *Misrepresentation Act* as it applies to the University of Adelaide.

It is not intended to be comprehensive nor does it constitute legal advice.

Please contact *Kim Evans* or Legal & Risk if you are unsure of your compliance obligations under the Act.