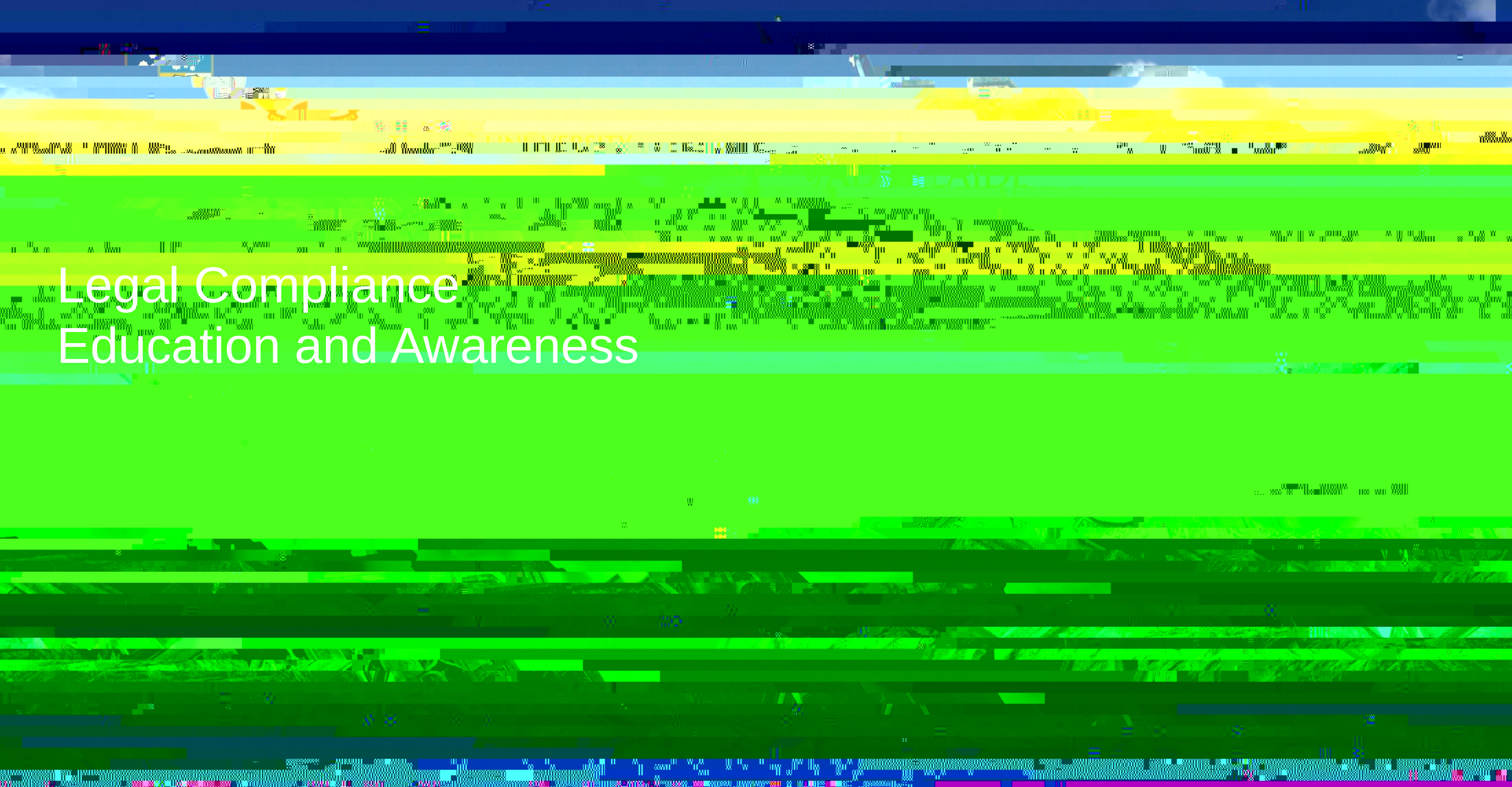

Legal Compliance Education and Awareness

Trustee Act 1936

(South Australian)

Trustee Act 1936 (SA)

- A Trust is a legal obligation binding a person or entity (a ‘trustee’) to deal with estate property in a particular way for the benefit of another
  - ***Trustee companies***

What does the Trustee Act do?

- The Act provides a balance between the ***powers*** of trustees (what a trustee is entitled to do under the Act) and their ***obligations*** (what a trustee is required to do under the Act)

- The Act deals with:
  - how trust property must be managed
  - the duties of trustees in respect of their power of investment
  - matters to which trustees must have regard in exercising the power of investment
  - liability of trustees & relief from liability for breach of trust
  - the appointment & replacement of trustees
  - the powers of the Supreme Court in relation to trusts

How does the Act apply to the University?

- The Act applies where the University is a named ***beneficiary*** under a Trust
  - A beneficiary is a person or entity named in the Will or trust deed who is entitled to benefit from the trust
- The Act applies where a trust is created & the University is determined as a trustee or determines itself to be a trustee

  Example:

  - The University accepts a gift ‘on trust’ to be used for a specific purpose

How does the Act apply to the University? (cont.)

- The University is the trustee of hundreds of trusts established by donors
- As the trustee of those trusts, the University administers the assets & income in the manner specified by the donor

  Example:
  - Under the terms of a Will, a testator may bequeath *“Fifty Thousand Dollars to the University of Adelaide to be used for the purposes of medical research” or “Eighty Thousand Dollars to University of Adelaide for the purposes of the Dental School”*
- Such trusts provide income for a wide range of University purposes, including:
  - prizes & scholarships
  - research projects
  - Professorial & Research Fellow appointments

How does the Act apply to the University? (cont.)

The Trustee Act does <u>not</u> apply to the management of:

- Gifts or donations where there is an unconditional transfer of property or funds (ie. the University does not need to apply the funds for any specific stated purpose)
- A bequest under a will where there is no stipulation as to the manner in which the funds are to be used
- Sponsorships
- Research grants

Trustee Act 1936 (SA)

- Part 1 of the Trustee Act (sections 5 - 13) contains very specific rules & principles relating to trustee investments that a trustee should consider

Consequences of mismanagement or neglect of trust property

- Negative publicity & subsequent damage to the University’s reputation
  - ***This may result in potential benefactors being reluctant to donate to the University***
- Removal of an individual or an entity as a trustee
  - *There are provisions under the Act that allow trustees, beneficiaries & others to apply to the Supreme Court about the management of a trust*
- Monetary penalties

**** A trustee is only accountable for trust property actually received by him/her***

If you are a staff member who manages trusts on behalf of the University

- Become very familiar with the terms of the trust document & understand the structure of the foundation with which you are associated, as that will influence what is required of you

- ***ALWAYS*** seek advice if there is any concern or doubt about your responsibilities under a trust or under the Act

  - Andre Scott (Director, Finance Strategy)
  - 8313 5257

  - Kim Evans (Senior Legal Counsel)
  - 8313 6103

If you are a staff member who manages trusts on behalf of the University (cont.)

- If you are responsible for the preparation &/or authorisation of Rules for scholarships and/or prizes, ensure that you comply with the terms of the source document (ie. the Will) before publication
- Execute the trust according to its terms & only invest trust funds in a manner authorised by the trust document
  - *Trust funds are generally managed centrally through Financial Services by investment in the Composite Fund*
- Avoid any conflict of interest. If you find yourself in such a position, cease to act &/or exercise your powers of delegation
- Do not delegate your powers or discretions except in accordance with the provisions of the trust document
- Ensure you maintain the full list of records expected of a Trustee
  - Refer to s84B of the *Trustee Regulations*

Additional Resources

- Kim Evans (Senior Legal Counsel)
  - 8313 6103
- Andre Scott, Director, Finance Strategy
  - 8313 5257
- Trustee Act 1936 (SA)
- Trustee Regulations 1996 (SA)

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