

ROCKET NETWORK

# HOUR OF POWER

## FEBRUARY TAKEAWAY NOTES

FROM SUZANNE BROWN, MCKAYS SOLICITORS

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Ok, so law isn't sexy [unless you're Harvey Spector from Suits... yum] – but it is an essential [Harvey, not so much]. That's why we kicked off 2017 with the vivacious Suzanne Brown, Principal of McKays Solicitors. Suz is anything but boring, and she knows her stuff. Suz has put together the following takeaway notes on email disclaimers and her top tips on Risk Proofing your business for you.



## WHY YOU NEED AN EMAIL DISCLAIMER

1. **Viruses** – you want to warn that the email and its attachments may not be free from viruses, spamwear, bugs etc. and put the onus on the recipient to do their own checks before opening. Otherwise, for example, if you introduce a virus into someone's system, you could be liable for damages;
2. **Contractual Rights** – to avoid inadvertently creating a binding legal contract, especially if the email contains an offer and ends up in the hands of the wrong person;
3. **Confidentiality** – to put the recipient on notice that the contents of the email are confidential and only intended for the addressee;
4. **Defamation** – assists to provide some possible argument against a defamation claim if the email contains defamatory content and ends up in the hands of the wrong person;
5. **Employer Liability** – as employers are generally responsible for everything their employees do (vicarious liability), assists to protect the employer if the employee does something in their personal capacity and/or against company policy;
6. **Legal Professional Privilege** – can help protect client/lawyer communications being disclosed and used by the other party (ie. in Court); and
7. **Marketing** – to protect intellectual property and certain representations that may be made.



An email disclaimer is certainly not iron clad or a magic bullet to escape all liability, but may give you “tools in your toolbox” to argue if you did face risk of claim arising from the contents of an email or it being sent to the wrong person.

**ROCKET**  
*ladies who launch*

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# SUZANNE'S TOP 10 TIPS TO LEGALLY RISK PROOF YOUR BUSINESS



- 01.** | **Service and Loyalty** – provide exceptional service, build loyalty and trust with your clients and that will get you a long way. Sometimes, it is better to lose the battle to win the war, so make the customer experience paramount in how you do business.
- 02.** | **Be SELECTIVE with which clients, employees and suppliers you deal with** – look for warning signs and trust your instincts. Do not allow 'trouble' into your professional life. Concentrate on your "A" class clients and be careful when giving credit.
- 03.** | **Collect and pay your debts** – keep on top of it. Get creative by offering payment plans or trying to get extra security if concerned.
- 04.** | **Get Pro-Active Advice** – a lot of problems arise because business owners react in the moment or try to save money by DIY instead of paying a professional for advice.
- 05.** | **Have a well drafted Terms of Trade customised for your business** – and ensure these are made available at or before the time the customer places the order (that is, before the contract is formed);
- 06.** | **Employee Management** – have written employment agreements (and go the extra mile to include protective features such as restraints for your key managers/salespersons); have up to date policies and procedures and ensure you TRAIN your employees regularly on these; keep file notes of key discussions with employees regarding their performance; and take appropriate disciplinary action when needed.
- 07.** | **Know your Rights and Obligations** – know what is in the fine print of contracts you sign and have a management system (ie. diarise key dates). Don't just sign blindly – negotiate terms where not acceptable. Note the new protections under Unfair Contract Terms for Small Businesses (see ACCC website for more information).
- 08.** | **Insurance** – ensure you have the right insurance for your business;
- 09.** | **Asset Protection** – set up your professional and personal affairs to separate risk from wealth, to minimise the impact if things do turn pear-shaped;
- 10.** | **Control Risk** – take the time regularly to actively identify and consider how you will manage risks (ie. risk register). Do not take your eye off the ball and blindly "trust" managers or accounts staff – you need to personally stay across all aspects of the business, particularly the finances.



Suzanne Brown is a Principal at McKays, 34 Wood Street, Mackay, Queensland.  
**Want More?** She has a regular column called "Taking Care of Business" in the Daily Mercury on Thursdays and regularly contributes to Wild Oats Blog run by Rebel Marketing.  
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This information is only of a general nature and should not be applied to individual situations without seeking further specialised advice.  
The information presented is focused on particular issues and is not intended to be an exhaustive representation of the different legal issues.  
Information is current as at 12 February, 2017.



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