

RESPONSE TO CONTRACT CHEATING EXPOSURE DRAFT

28 June 2019

Universities Australia (UA) welcomes the opportunity to comment on the draft Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019.

Australia's universities have a strongly held view that contract cheating is a threat to academic integrity and will not be tolerated in Australia's higher education sector. It undermines both the education of Australians for a global knowledge economy, and Australia's third biggest export industry.

UA is grateful for the opportunity to continue to work with universities, Government and the regulator on academic integrity. Most recently, UA responded to the Higher Education Standards Panel's (HESP's) advice on enhancing academic integrity and combatting contract cheating, as well as the Government's response to this advice. In 2017, UA worked with the sector and the regulator to produce the UA Academic Integrity Best Practice Guidance Principles.

UNIVERSITIES SUPPORT LEGISLATION AGAINST CONTRACT CHEATING

UA supports the introduction of legislation as part of a broader strategy to address contract cheating in Australia's world-renowned higher education sector. A legislative approach sends a powerful signal to commercial organisations operating domestically and internationally that have historically acted with brazen advertising techniques to seek financial gain from students.

UA is pleased the proposed legislation is aimed at those who provide cheating services, and not at students who might use such services. Individual institutions are best placed to deal with students caught cheating through their own academic integrity policies, processes and sanctions. The sector will continue to use emerging technologies to work collaboratively – including with the regulator – to ensure policies/processes for dealing with cheating remain robust. We continue to work to ensure that information is shared across the sector.

Whilst UA is strongly supportive of the legislative approach, it is important that the Bill put to Parliament realises the policy intent. Drafting the legislation too broadly would pose a risk to its effectiveness, as well as increasing the likelihood of unintended consequences.

COMMERCIAL AND NON-COMMERCIAL PROVISION SHOULD BE TREATED DIFFERENTLY

UA notes the Government's intention to legislate against cheating services provided on both commercial and non-commercial bases. This is consistent with the New Zealand legislation on which the Bill is based. UA agrees that it is important to deter both commercial and non-commercial cheating, however, we argue strongly that there is a need for differentiation in the penalties for these two categories of offence. The current maximum penalty that would apply to all 'contract cheating' scenarios is a two-year prison sentence or a \$200,000 fine. This is appropriate to deter and to punish commercial operators that offer contract cheating services on an organised, commercial basis.

Applying the same maximum penalties to non-commercial offences – and offenders – would be excessively harsh and inconsistent with community standards.

UA advocates a civil, rather than a criminal penalty for non-commercial provision of cheating services, with a lesser maximum fine and no custodial sentence.

‘ANY PART OF A PIECE OF WORK OR ASSIGNMENT’ IS TOO BROAD

Proposed section 114A(3)(b) of the Bill which prohibits the providing of ‘any part of a piece of work or assignment that the student is required to complete.’ UA believes this definition is too broad and will result in ambiguity for the regulator, students, universities and legitimate academic support services.

For example, UA understands the current, very broad definition of ‘providing any part of a piece of work or assignment’ could capture instances where:

- tutors, friends or family proofread an essay and recommend the addition of text;
- a student’s previous essay has been submitted by another student (without the original students’ knowledge); or
- a student or students complete the lion’s share of a group work project on behalf of other students in the group.

If instances such as these are not intended to fall within the scope of the offences that the Bill would create, the text of this section needs to be redrafted. The current phrasing (‘any part of a piece of work’) is too broad.

The current drafting could also cause problems of ambiguity in relation to legitimate academic support services. Support services such as tutoring are a key strategy to increase outcomes for disadvantaged groups such as low SES, Indigenous students, students with disability and part-time or mature aged students. This was highlighted in the recent Productivity Commission report on the Demand Driven System that broadly suggested universities should continue to do more to actively support students to succeed in their university degree. Ambiguous language may result in a reluctance by universities to authorise or re-authorise these legitimate services.

JURISDICTIONAL COVERAGE

UA has previously noted the proposed Federal legislative approach is contrary to the advice of the Higher Education Standard’s Panel (HESP) – which suggested an ‘applied laws approach’. It is important that treatment and potential prosecution of contract cheating is consistently applied regardless of which Australian state the offence occurs. Consistent action by State and Territory Parliaments is also needed to cover areas that the Bill would leave open.

UA understands that the Constitutional powers upon which the Federal legislation applies are likely to cover the majority of cases. However, it will be important for the relevant States to follow suit and introduce similar measures. As the peak advocacy body, UA would be pleased to support the government in this process.

One of the key challenges in combatting contract cheating is the relative ease of advertising the service on the internet or other social media platform. Whilst TEQSA’s power to remove websites featuring this content is a positive step, UA notes this will likely be an area that will require continued action – including in trying to remove international content. UA is similarly keen to continue to work with Government and the regulator to address these issues.

TEQSA'S ROLE

Tackling contract cheating will need to be a collaborative effort where universities and the regulator work together cooperatively to make the Australian higher education sector a more difficult environment in which these operators can to operate. As stated already, this involves intelligence sharing across the relevant stakeholders as well as the sharing of good practice amongst providers.

The precise role of TEQSA – including how it will conduct investigations and collect information from universities is unclear. UA is particularly cautious about new powers or functions that may allow TEQSA to collect information for this purpose. It will be important for the information collection process to be developed in close consultation with the sector in order to address any misalignment.

Recommendations:

UA recommends that Government:

- proceed with the introduction of legislation to address contract cheating;
- differentiate between commercial entities and non-commercial entities in any proposed penalties that apply;
- revise the current wording of 114A(3)(b) of the Bill which prohibits the providing of 'any part of a piece of work or assignment that the student is required to complete' to make it more focussed;
- continue to work with the States and the sector to ensure consistent coverage and treatment of offences across the different jurisdictions; and
- work with the sector in the development of the regulator's information gathering process to ensure it is reasonable and transparent.