

Australian Catholic University

Feedback on the Draft Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019

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Australian Catholic University (ACU) welcomes the opportunity to comment on the Exposure Draft of the Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019 (Draft Bill).

ACU broadly supports the Government's proposal to make it an offence to provide or advertise academic cheating services ('contract cheating') in higher education, noting that the proposed legislation would, appropriately, make such service providers accountable for their actions. Holding those who provide, or facilitate, contract cheating services responsible could also serve as an important deterrent to others engaging in such activity.

Contract cheating not only undermines the quality of student learning and outcomes but also impairs the maintenance of the high educational standards expected at the higher education level. ACU takes this opportunity to reiterate that Australian universities take a strong stance against academic cheating in higher education and that such activity is not tolerated by the sector.¹ Furthermore, as the Higher Education Standards Panel (HESP) has identified, if contract cheating services are inadequately constrained, it could significantly damage the reputation of Australia's higher education sector.

ACU provides the following feedback to the Department of Education on the Draft Bill and the Government's proposed reforms, to assist with fine tuning the legislative provisions and clarifying associated administrative matters and reporting implications for universities.

Definition of 'Services'

With respect to contract cheating 'services', the Draft Bill specifies:

- (3) The services are as follows:
 - (a) completing an assignment or any other work that the student is required to complete as part of the course of study;
 - (b) providing any part of a piece of work or assignment that the student is required to complete as part of the course of study;
 - (c) providing the answers for an examination that the student is required to complete as part of the course of study;
 - (d) sitting an examination that the student is required to complete as part of the course of study.

It is unclear whether the Draft Bill envisages that 'work', 'assignments' and 'examinations' cover all assessable components in a course of study. To avoid any ambiguity, and the risk of inadvertently not capturing all assessable components in a course of study, ACU suggests that the Draft Bill's provisions could be amended to refer to 'any assessable component' of a course of study; rather than specifically to assignments, work or examinations. This would ensure the legislation covers all types of assessment administered in higher education courses.

Means of advertising and/or providing contract cheating services

ACU suggests reviewing the Draft Bill to ensure that it clearly covers, to the greatest extent possible, the broad range of communication mediums service operators could potentially use to advertise and/or provide contract cheating services to students.

¹ See the media statement by Universities Australia: 'New penalties support unis in the fight against contract cheating' (8 April 2019). Accessible via https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/New-penalties-support-unis-in-the-fight-against-contract-cheating#.XQhH5_5S-60

Notably, the current Draft Bill captures contract cheating services provided ‘in the course of, or intended for, trade or commerce’ or where the relevant service is ‘advertised using a postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution)’.

While there are evidently challenges in ensuring that legislative provisions remain up-to-date and reflective of the latest technological developments, it would perhaps be sensible to ensure that the provisions cover, as broadly and as clearly as possible (to the greatest extent possible, as legally permissible within the scope of the Commonwealth’s powers) the range of advertising mediums that could be used to communicate with students; including digital technologies. For instance, it is foreseeable that social media platforms and other digital communication mediums, as well as more conventional ‘word-of-mouth’ promotions, are likely to be utilised by contract cheating service operators and advertisers (and media reports reflect trends in this respect²). If the legislation is to achieve its objectives, it will be important to ensure that the scope and wording of the legislative provisions are broad enough to capture contract cheating activities of this nature, amongst others. Ideally, it should leave no room for shrewd service operators to take advantage of provisions that may be narrowly interpreted and thereby avoid prosecution based on a technicality.

Issues for clarification

Some questions and issues for clarification regarding the scope of the Draft Bill and its coverage, with respect to certain discrete issues, are outlined below.

Legitimate academic support service providers: It is unclear as to what the implications of the Draft Bill are for the continued operation of legitimate services which assist students with correcting their grammar (such as Grammarly.com) and academic writing support services. Some consideration, and perhaps accommodation or clarification, may need to be made with respect to such legitimate academic writing support service providers.

Fellow students, or staff: There is some ambiguity as to what happens when the provider of cheating services is a fellow student, or a staff member of the higher education institution. Some clarification and guidance for institutions is sought on whether these individuals would be covered by the proposed legislation, or if they should be dealt with by the institution’s internal policies instead. Guidance on addressing issues that may arise with respect to group work, particularly the treatment of group assessments and defences (if any), would also be welcome.

Unintended prosecutions: It is unclear whether the Draft Bill’s provisions cover (or envisage covering) circumstances where a student’s immediate family or friends have assisted with, or completed the student’s assessment for them. There is a concern that the Bill’s provisions could lead to unintended prosecutions of, and/or overly harsh penalties being administered to, such individuals. For instance, if a parent writes their child’s assignment for them, could they potentially be facing a jail sentence of up to 2 years if successfully prosecuted under the legislation. In this context, some consideration should also perhaps be given to the comparatively lighter penalties that might typically be faced by the student (the child) in such an instance (e.g. a fail grade or exclusion from the University).

Administrative matters and TEQSA interactions

ACU notes that an outcome sought from the proposed legislation is the appointment of the Tertiary Education Quality and Standards Agency (TEQSA) as the regulator responsible for administering the new law. TEQSA would have responsibility for monitoring, intelligence gathering and information sharing on related activity, and a mandate to investigate and prosecute identified offenders, alongside a capacity to support institutions and law enforcement agencies to investigate and/or prosecute suspected offences. In this context, ACU considers it will be necessary to provide further clarification

² For instance, see Christian, N., ‘Facebook, YouTube and Google ads for essay writing companies coax students into cheating’, *Herald Sun* (7 June 2019). Accessible via <https://www.heraldsun.com.au/technology/facebook-youtube-and-google-ads-for-essay-writing-companies-coax-students-into-cheating/news-story/2753697ec95622bdd53ffadbd31166cc>

to universities with respect to matters of process and implementation, and associated institutional obligations. ACU would particularly appreciate clarification on the following:

Reporting requirements for universities: The expectation and reporting requirements for universities once incidences of contract cheating have been identified are unclear. For example, will a minimum reporting timeline be imposed and what documentation or evidence (if any) is required to supplement the reporting to TEQSA.

Data collection by TEQSA and usage: Advice is sought on TEQSA's future plans with respect to the use of data on contract cheating and potential publication of such information. If the information will be published in some way, what information and in what level of detail would it be published?

Implications for higher education provider profiles and risk assessments: Advice is also sought on whether the number of incidences of contract cheating reported by an institution would be factored into their future risk profile assessment with respect to TEQSA registration.

Broader comments

ACU supports the direction of additional funding to TEQSA to support universities in tackling contract cheating in higher education. However, it should be ensured that universities ultimately are not required to bear the burden of financing this additional work in the future. ACU particularly makes this point in light of the Government's previously announced intention to introduce cost recovery measures for TEQSA's administration work; whereby an annual levy would be imposed on universities to recover all of the costs of TEQSA's sector risk monitoring and sector oversight activities.

ACU agrees, as identified by the Government, that work to support action (legislative and other) at the state/territory levels would also help to strengthen efforts to tackle contract cheating in higher education, and could serve to address regulatory gaps and issues that may not adequately be covered at the national level.

With respect to information sharing in the higher education sector, ACU considers it would be useful to have a centralised register of detected cheating services. Knowledge sharing between universities in this way would be helpful for all those involved.

Finally, in relation to the proposal to develop a template statement of commitment to academic integrity that students could be asked to sign on enrolment, it is unclear what additional value this would deliver. Universities already ask students to make similar commitments, and educate students on the importance of academic integrity. Pursuing a 'blanket approach' across universities also would not allow for any nuance or context with respect to breaches and sanctions (and some accommodation should be made in this regard if this option is pursued); nor does it sufficiently emphasise the educative aspects, which is so important in preventing breaches. The educative process regarding academic honesty/integrity is perhaps the most important.