

ADDRESSING CONTRACT CHEATING IN AUSTRALIA

Submissions on the:

***Tertiary Education Quality and Standards Agency Amendment
(Prohibiting Academic Cheating Services) Bill 2019***

Asia Pacific Forum on Educational Integrity

June 2019

Email: contact@apfei.com.au; annr@uow.edu.au (Chair)

www.apfei.com.au

Introduction to APFEI

Mission Statement:

The Asia Pacific Forum on Educational Integrity (APFEI) is a multi-institutional, cross-disciplinary and non-profit organisation that fosters research and collaboration on issues relating to educational and academic integrity. Currently based in Australia, APFEI aims to provide a platform for the discussion, investigation and promotion of ethical research and writing practices by students, teaching staff, educational and learning developers, librarians, academic misconduct officers and policy professionals. Overall, APFEI is dedicated to the promotion of education about academic integrity, the educative approaches to promote sound academic practice as well as the more effective minimisation and management of academic misconduct (APFEI, n.d.).

The Committee of APFEI makes the following submissions:

1. Ethical considerations

Evidence indicates that most contract cheating is not the result of a financial transaction (Bretag et al. 2018). Consequently, there is a danger that the proposed changes to the legislation have the potential to primarily affect parents or friends of students who might seek to assist students in a coaching and mentoring capacity rather than the contract cheating websites and providers who are engaging in ethically questionable behaviours. Although the proposed changes identify commercial services as the target of the proposed sanctions, the wording of the amendments raises concerns that some unpaid providers of assignment help could be prosecuted. The amendments to 114A of the *TEQSA Act* suggest criminal penalties for services mentioned in subject (3). These services, particular (a) and (b) describe, as Lancaster (2019) notes, assistance for students that might be provided by those who desire to help a student. If broadly applied, this could potentially include some feedback services offered by libraries and learning development facilities that are provided to students by registered education providers as part of their enrolment.

The current proposed wording of the legislation ('completing an assignment or any other work' or 'providing any part of a piece of work or assignment', 'that the student is required to complete as part of the course of study') does not appear to restrict penalties to those

who undertake such help within the context of a commercial venture and is not clear about the extent of assistance that would constitute a criminal act. Conceivably, then, criminal penalties might be applied to the provision of a paragraph or a conclusion to an essay, or even a template provided by a lecturer or tutor that a student has to complete. This is an alarming prospect and appears to run contrary to the intention of the proposed amendments.

Further, ethical consideration is required related to the equitable treatment of international and domestic students. Amendment 5 lists conditions for section 114A applying. These conditions appear to indicate that a domestic student who provides unpaid help to another domestic student would not be subject to penalties, while an international student providing the same unpaid help would be able to be prosecuted. This appears to be discriminatory.

2. Educational considerations

The proposed amendments appear to criminalise and penalise people for engaging in unpaid (fee-free) as well as paid (financially motivated) behaviours.

Australian universities should be encouraged to continue their educative, rather than a primarily punitive approach to academic integrity issues, where warnings and penalties are applied after due institutional processes have been followed. The provisions of the Bill, if enacted, would appear to view contract cheating as a matter for TEQSA who would impose penalties and sanctions on contract cheating sites, students and others by-passing the institutional processes established for the management of identified academic integrity issues. Amigud and Dawson (2019) argue that the desire for criminalisation 'shifts academic integrity into being a legal matter' (p. 8-9). A criminalisation approach bypasses the educational benefits of low-level penalties for students to realign learning behaviours using educative support provided by higher education institutions to one where a low level issue for a transitional student has the potential to become an offence recorded under law.

3. Legal considerations

The new provisions proposed for the *TEQSA Act* appear to be outside the current objectives, scope and powers of the authority. It appears that under the current legislation, TEQSA has

sufficient powers to issue sanctions against institutions for failure to comply with the Higher Education Standards (HES) Framework (Threshold Standards (2015)). The regulator also has powers under the current provisions of the *TEQSA Act* to refuse registration or re-registration of institutions for failing to have adequate provisions which address academic integrity or for failing to follow the threshold standards as set out in the HES Framework (2015). What is not clear is the requirements for institutions about implementing and supporting the proposed legislation, and how this will relate to legislative requirements applicable to higher education providers.

Further, there may be issues with the terminology found in the proposed amendments. For example; adding *(g) to protect and enhance academic integrity by prohibiting academic cheating services* to section 3 of the *TEQSA Act* appears to be in line with the objects of the legislation; however, enforcement of this provision may prove difficult in terms of finding and punishing contract cheating sites.

The proposed provision *134(1) (d)taking action to prevent access to online sources of academic cheating services'* might also be difficult for the regulator to enforce as it might not have sufficient powers over or access to these services or sites.

Potentially, there are other pieces of legislation where amendments could be made to make the operation of contract cheating sites, or provision of contract cheating services, illegal. These include legislation such as the *Corporations Act, 2001* (illegal entities; *Australian Consumer Law* (misleading and deceptive conduct); in addition to the *Criminal Codes* of each Australian state (fraud).

As there is the danger that the new provision has the potential to affect family, friends and fellow students who may also provide papers to students seeking help, it is unclear at this stage how TEQSA would be in a position to take any action for individuals or groups who are not associated with educational institutions under the remit of TEQSA, or how this assistance could even be identified.

4. Considerations about the effectiveness of the legislation

A number of concerns about the effectiveness of legislation aimed at outlawing contract cheating are detailed by Amigud and Dawson (2019). Firstly, the digital nature of the product means that contract cheating services can be managed from any location. For

example, Ellis et al. (2018) identified many of the providers operating from locations in Africa. Secondly, enforcement is difficult and ‘resource-intensive’ (p. 3). Thirdly, as identified by Sutherland-Smith and Dullaghan (2019), intention is difficult to prove, since some contract cheating sites instruct students not to submit their products for assessment; and finally, contract cheating sites could easily move to the dark web should they be universally outlawed making them far more difficult to identify and therefore prosecute.

Conclusion

APFEI remains committed to supporting the current approach to academic integrity adopted by Australian universities, involving a focus on education along with sanctions and penalties relevant to the policies and provisions of their institutions. The provisions of the Bill, if enacted, would appear to view all contract cheating issues as matters for TEQSA which would then impose penalties and sanctions on contract cheating sites, students and others. The burdens and responsibilities for individuals and institutions are not clear, nor is the dividing line noting where institutional policies and penalties about contract cheating end and where the proposed legislation and criminal penalties under the responsibility of TEQSA begin. APFEI seeks clarity on these important issues in any proposed legislation to best reflect the intent of focussing on commercial providers seeking to undermine education and assessment.

References

APFEI (n.d.). Retrieved from <http://www.apfei.edu.au/>

Amigud, A., & Dawson, P. (2019). The law and the outlaw: Is legal prohibition a viable solution to the contract cheating problem? *Assessment & Evaluation in Higher Education*, 1-11. doi:10.1080/02602938.2019.1612851

Bretag, T., Harper, R., Burton, M., Ellis, C., Newton, P., Rozenberg, P., Saddiqui, S., van Haeringen, K. (2018). Contract cheating: a survey of Australian university students. *Studies in Higher Education*, 1-20. doi:10.1080/03075079.2018.1462788

Ellis, C., Zucker, I. & Randall, D. (2018). The infernal business of contract cheating: Understanding the business processes and models of academic custom writing sites, *International Journal for Educational Integrity*, 14, doi:10.1007/s40979-017-0024-3

Higher Education Standards Framework (Threshold Standards). (2015).

Lancaster, T. (2018). Profiling the international academic ghost writers who are providing low-cost essays and assignments for the contract cheating industry, *Journal of Information, Communication and Ethics in Society*, doi:10.1108/JICES-04-2018-0040

Sutherland-Smith, W., & Dullaghan, K. (2019). You don't always get what you pay for: User experiences of engaging with contract cheating sites. *Assessment & Evaluation in Higher Education*, 1-15. doi:10.1080/02602938.2019.1576028

Tertiary Education Quality and Standards Agency Act (TEQSA) 2011 (Cth).