



1 March 2019

Broadway 140 Broadway | Darlinghurst 160 Oxford Street
PO Box 944, Broadway NSW 2007
+61 2 8204 4400

The University of Notre Dame Australia's response to contract cheating laws

A legal approach to addressing the growing concern of contract cheating should be considered. Whilst universities and independent providers in Australia are working hard to combat plagiarism and fraudulent behaviour through educative as well as disciplinary approaches, the number of contract cheating services is on the rise. It has become big business.

Introducing a law that criminalises contract cheating however is complex. Some of the issues that need to be clarified before doing so are outlined below:

1. Given the multiple players that are often involved in contract cheating (e.g., the student, the contract cheating service, the website, advertisers) who is actually prosecuted in the application of this new law?

Any new law should be targeted primarily at commercial *third party* entities offering contract cheating services. As in the case of the New Zealand legislation, it should be a criminal offense for contract cheating organisations to both *advertise* and *provide* services. Such a law would act as a deterrent to the entity given the serious penalties if found guilty of an offense (Draper and Newton, 2017).

It will be problematic, however, if students were also entangled in the application of this law. Students who are found to have breached academic integrity should continue to be dealt with according to the institution's policies and procedures for academic misconduct. If students were also to be criminally prosecuted it could result in unclear boundaries around jurisdiction and impinge on an institution's ability to discharge its legal functions and duties.

However, if as is stated in the *Australian Government response to recommendations of the Higher Education Standards Panel* that...

"TEQSA will ... be able to work intensively with providers who experience significant incidences or attempts at academic fraud or commercial cheating; to assist the providers' own efforts to detect, manage and respond to these threats. This could include working with law enforcement and public prosecution authorities to mount legal action where necessary".

... then institutions might be more willing to engage. More clarity is required however around the definition of "significant incidents" and as to how this support from TEQSA will be provided and what it will entail.

It also appears that the gap between a national and state laws favours domestic students, i.e. the laws are intended to prosecute international students. If such a bias does exist, it focuses on those students who the research tells us are the most vulnerable (TEQSA, 2017).

2. Any new law should be carefully crafted such that culpability is not dependent on the need to establish “an intent to cheat”, but rather that the mere act of a third party *supplying* a fraudulent piece of work is sufficient. In other words, the burden of proof should not lie with the prosecution trying to establish intent; rather it should lie with the contract cheating service to establish its innocence (Draper and Newton, 2017).

The slick and sophisticated nature of many of the contract cheating organisations often market their services under the pretext of providing “study support” for students. Vulnerable students (e.g., non-English speaking students, students with low grades, including domestic students) will often engage with these services for genuine support only to find themselves paying for fraudulent assessments. Trying to prove that the service intended to supply fraudulent material is very difficult. The very act of supplying the material, on the other hand, is easy to prove.

3. The question of requiring students to sign a contract upon enrolment to demonstrate their commitment to ethical scholarship is an interesting proposition. The *Australian Government response to recommendations of the Higher Education Standards Panel* states that:

“Providers would be encouraged, on a voluntary basis, to adopt the statement for all students at enrolment as part of induction processes aimed at ensuring all students have a clear understanding of expectations and their responsibilities”.

This activity would possibly strengthen and support an institution’s efforts to nurture a culture of ethical scholarship. However for students to “have a clear understanding of expectations and responsibilities” it is likely that students would first need to engage in learning about academic integrity. Rather than signing an agreement on enrolment, a better time would be at the conclusion of an initial immersion in a course on academic integrity. To encourage students to see the value of ethical scholarship requires that the course is embedded into a unit of discipline study, rather than a standalone, bolt-on approach.

It also requires a culture whereby all academics are alert to, and responsible for ensuring that students consistently practice ethical scholarship. Essay mills will continue to flourish if academics require students to submit traditional and very similar/same, essay type assessments year after year. Thus, emphasis on continuing professional learning for academics would be very productive. This includes support to create assessments which make breaches of academic integrity by students difficult (e.g. authentic assessment such as reflections on work integrated learning/professional practicum). The culture should be underpinned by institutional policy and processes of equitable and transparent consequences for breaches.

In brief, institutions need to be supported to continue and perhaps increase their efforts also. For example:

- Institutions should have in place transparent and robust processes to address academic integrity
- Students should be educated about the importance of ethical scholarship (what it is; why it is important; how to practice it).
- Academics must consider alternative methods of assessment that require students to apply knowledge and skills in real life scenarios.

In summary, a legal approach to contract cheating should be considered. However, further clarity is needed regarding:

- Jurisdiction boundaries including TEQSA’s role
- Determining burden of proof

- Penalties that ensue as a result of a breach
- Methods and processes that ensure students have knowledge and opportunities to apply ethical scholarship before agreeing to its practice.

Regards,



Prof Carole Steketee
Director, Learning & Teaching Office
Associate Head of Campus, Fremantle



Prof Margot Kearns
Deputy Vice Chancellor Academic
Interim Head of Campus, Sydney

References

Draper, M.J., & Newton, P.M. (2017). A legal approach to tackling contract cheating? *International Journal for Educational Integrity*, 13:11

Tertiary Education Quality and Standards Agency. (2017). *Good Practice Note: Addressing contract cheating to safeguard academic integrity – October 2017*. Retrieved from <https://www.teqsa.gov.au/sites/default/files/good-practice-note-addressing-contract-cheating.pdf?v=1507082628>

Tertiary Education Quality and Standards Agency (2018). *TEQSA Stakeholder Survey 2018: Report of overall findings*. Retrieved from <https://www.teqsa.gov.au/sites/default/files/teqsa-stakeholder-survey-report-2018.pdf?v=1545361941>