Innovative Research Universities

# IRU Submission on Draft Bill - Prohibiting Academic Cheating Services

## Overview

Making it an offence to offer or advertise a cheating service is important for ensuring the integrity of Australia's higher education system. Criminal and civil penalties targeting contract cheating service providers sends a strong message to those seeking to provide such services to students in Australia. Amending the TEQSA Act and using TEQSA as the regulator responsible for administering the law is appropriate.

The IRU is concerned that the draft legislation is too broad in seeking to cover all cases of cheating through use of another party. The university concern is commercial services doing this. They should be the target.

Longer term, action by the States and Territories would ensure equal treatment of all potential cheating services.

Legislation on its own cannot completely disrupt the supply of contract cheating services, but when combined with institutional educative approaches targeting the demand from students, contract cheating can be minimised. Targeting providers and advertisers of contract cheating services, rather than students, remains the most appropriate approach. Universities have in place educational programs, rules and sanctions to deal with instances of cheating and are best placed to manage the complexity and nuances of each instance. As a national regulator, TEQSA is better placed to disrupt the supply of cheating services.

For the legislation to be effective as a deterrent to providers, it is essential that students, universities and stakeholders understand its scope. This means clearly defining what constitutes cheating and a contract cheating service provider in a way that can be credibly enforced in a consistent manner.

It is in these areas that the approach outlined in the draft legislation faces challenges.

The draft legislation defines cheating and cheating service provider very broadly. Cheating includes "providing any part of a piece of work or assignment". A cheating service provider can be "any person" who provides or advertises these services, irrespective of if it is intentional or for any gain for the person providing the service. This breadth creates uncertainty over what will be practically enforceable by TEQSA, whether universities become obligated to report all cases to TEQSA and when to involve TEQSA in investigations.

If strictly enforced by TEQSA, it may create considerable uncertainty amongst students and create fear that all forms of peer support (including student-to-student, or support from family and friends) should be avoided to avoid incriminating themselves or their support group.

The IRU proposes two options to target the legislation at the area of greatest concern, leaving other infringements to universities' existing rules:

1. Restricting the scope of the legislation to commercial contract cheating services; or
2. Retain current list of cheating activities, but better define "part of a piece of work or assignment".

In addition, to understand in advance of it being passed how the legislation would be enforced, TEQSA should set out its expectations of when and how universities will inform it of potential cases.

## Three areas for action

### 1. Restricting the scope to commercial contract cheating services

The most pernicious effects of contract cheating are from formal contracts involving financial exchanges from students to service providers. Universities have limited ability to disrupt the supply of these services. Restricting the scope of the Act and TEQSA's role from "any persons" to only those involving commercial service providers is a more appropriate use of TEQSA's resources and more likely to be effective in disrupting supply.

The effects would be to remove the risk of inadvertent breaches of the Act, bring the definition in line with community understandings of what "contract cheating" entails and address university concerns about the activity they wish to target. It would not target informal voluntary offers of support. Such instances could fall within the scope of the current draft legislation, but are not appropriate or practicably enforceable.

Universities have educational programs, rules and sanctions to deal with instances of cheating and minimise demand from students. Where voluntary offers of support from fellow students lead to cheating, universities are well placed to manage these effectively, with discretion to handle the complexity and nuances of each instance. Universities do not have authority to penalise others who assist a student to cheat (e.g. family, friends or other supporters) but they would in effect be punished through the sanctions placed on the student.

Commercial contract cheating services cause the greatest harm. Targeting them is the essential requirement.

### 2. Retaining current list of cheating activities, but better defining "part of a piece of work or assignment"

The draft legislation is intended "to tackle contract cheating", but the scope extends beyond "contract cheating" to student-to-student support or support from family and friends. Four specific activities are included in the definition of cheating:

1. Completing an assignment or any other work that the student is required to complete as part of the course of study;
2. Providing any part of a piece of work or assignment that the student is required to complete as part of the course of study;
3. Providing the answers for an examination that the student is required to complete as part of the course of study;

4. Sitting an examination that the student is required to complete as part of the course of study.

Three of the above activities – completing an assignment, providing answers to or sitting an examination on behalf of a student – are unequivocally cheating. Inadvertent breaches of these are highly unlikely. However, support from fellow students and others, provided in good faith, without a formal contract and for no financial gain, could inadvertently become providing "part of a piece of work or assignment". Minor editing, proof reading or suggestions of references or quotes could easily become parts of assignments.

If the scope of the Act were restricted to commercial providers, then all four of the defined activities would be appropriate. Commercial contracts are unlikely to be for minor parts of assignments or provided on a goodwill basis. But if the scope remains "all persons", then there must be a clearer and more limited definition for "part of a piece of work or assignment" that would catch a significant contribution to the assessment to avoid inadvertent and honest breaches of the Act.

## 3. Clear guidelines for how universities can assist TEQSA with investigations

Contract cheating spans a continuum from relatively minor activities (e.g. providing a single quote or reference) to substantial breaches which threaten the integrity of Australia's higher education system (e.g. sitting an examination or completing an assignment). Universities need to know their obligations when cheating is discovered, including how much information they need to record about the assisting party and when to provide this information to TEQSA. TEQSA is unlikely to pursue all cases for criminal or civil penalties.

It would assist universities respond to the legislation that is tabled for passage for TEQSA to outline its expectations of universities once the parliament passes the legislation.

Universities and other commentators have raised other specific legal issues concerning the drafting of the Bill. These should be considered and resolved.

Concerns have also been raised about the way in which the Commonwealth's limited powers to legislate has led to Clause 5 of Schedule 1 of the Bill. The IRU understands the need to specify the contexts in which it is possible for TEQSA to act. To remove the sense that some people or only some acts are being targeted, the IRU supports the States introducing matching legislation.

**28 June 2019**