



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA'S COMMENTS ON THE DRAFT BILL PROHIBITING ACADEMIC CHEATING SERVICES

28 June 2019

Submission to: Department of Education

Response to: *Draft Bill – Prohibiting Academic Cheating Services*

Independent Higher Education Australia

IHEA represents the majority of Australia’s registered and accredited independent higher education providers (including independent universities) with campuses across Australia. IHEA members educate students in a range of disciplines including Law, Engineering, Agricultural Science, Architecture, Business, Accounting, Tourism and Hospitality, Education, and Health Sciences, Theology, Creative Arts, Information Technology and Social Science. IHEA members are higher education institutions with both for-profit and not-for-profit models and educate domestic and international students in undergraduate and postgraduate programs.

The Australian independent higher education sector comprises more than 130,000 students and 120 institutions, with independent providers variously accredited to offer courses across the full AQF range (Diplomas to Doctorates).

IHEA holds a unique position within the higher education sector as a representative peak body of higher education providers only. Whilst some members are dual sector, only the registered higher education entity affiliates through IHEA membership.

Membership of IHEA is only open to providers that are registered with the Australian regulator – Tertiary Education Quality Standards Authority (TEQSA). Membership is also conditional on continued compliance with IHEA’s Code of Good Practice.

IHEA’s primary goal is promoting equity, choice and diversity for all Australian higher education students.

IHEA welcomes the opportunity to comment on the draft legislation to tackle contract cheating. Our members strongly support of the government’s efforts to ensure academic integrity in Australia’s higher education system and this legislation is a positive step forward in combatting commercial enterprises that seek to undermine academic standards in Australia.

Executive Summary

- 1. IHEA supports the draft legislation’s intent, and the approach taken to creating the set of offences to cover contract cheating and IHEA also believes, if it is able to be enforce**

effectively, it will act as a sufficient deterrent to commercial operations offering contract cheating services in Australia.

2. IHEA supports the tough penalties in the draft legislation, and although members can see reasoning behind differentiating penalties for relatives, or acquaintances and friends offering these kinds of services, and commercial operations, members are not supportive of weak penalties that undermine the deterrent value of the draft legislation.
3. IHEA is concerned that TEQSA be given sufficient resources and expertise, including legal and investigative resources, to be able to adequately fulfil its role as the regulatory agency responsible for enforcing this legislation.
4. IHEA members are unconcerned about TEQSA's provision in the draft legislation to be able to share information related to contract cheating operations and investigations on a wide scale.
5. IHEA recommends the Department considers adding clauses to the legislation around mandatory reporting to TEQSA of contract cheating activities by all higher education providers. This should not, however, impose any greater regulatory burden being placed on providers.
6. IHEA also recommends the legislation be accompanied by information that can be distributed to students about the activities that do and do not constitute a violation of the act and how institutions can continue to provide adequate assistance to students who need academic support without contravening the act.
7. IHEA requests that the Department clarify the coverage of contract cheating activities that occur offshore but involve Australian higher education providers.
8. IHEA recommends that the wording of Section 144A (3)(b) of the draft legislation be re-examined to ensure there is clarity around the threshold of activity that would be defined as contract cheating.

IHEA's comments on the draft legislation:

The Right Approach and Sufficient Deterrent

IHEA members are very supportive of the draft legislation and its aims and intentions. Our members already have a range of mechanisms in place to prevent academic integrity being brought into question at their institutions. Students are, for example, given information on what is acceptable academic practice and what constitutes cheating, and they are required to sign statements declaring that they have not cheated on every assignment they submit for their courses and a variety of assessment tasks are used to limit the ability for students to cheat.

Other measures are also being taken to alleviate and address the stressors students face that may make cheating an attractive option. These include providing counselling for students, clarifying academic expectations in consideration of workloads, ensuring their English language standards are adequate and that international students understand the expectations of them in a different cultural environment. These are important elements to preventing instances of cheating and they should also be encouraged.

Beyond these activities that our members already engage in, they welcome the steps the government is taking to reduce the supply side of the contract cheating problem. IHEA believes that the strong penalties this draft legislation imposes on commercial cheating operations are appropriate and necessary in order to provide a significant deterrent to those who offer these services in Australia. IHEA is very supportive of any step taken by the government to ensure the quality, credibility and reputation of Australian higher education, protecting the academic integrity of our system, and ensuring that students achieve the best learning and educational experience.

IHEA also welcomes the nature of the legislation covering both civil and criminal offences. This provides the widest framework of operation of the legislation and provides more opportunity to prosecute offenders. The broader the legislation's reach the better a deterrent the legislation is likely to be and so IHEA sees this as a positive aspect of the draft legislation.

IHEA also supports the approach being taken by the Department in producing draft Federal legislation that uses Commonwealth powers to cover such a broad range of activities. This approach seems the most logical to resolving the jurisdictional issues presented by the Higher Education Standards Panel in their discussion paper and their advice on this matter. Every effort has been made to limit the situations that are not covered by the legislation and IHEA believes the Department has been as successful as possible in achieving that aim. There are very few and only rare instances of contract cheating that will not be considered an offence under the current drafting of the legislation and IHEA welcomes this outcome.

Differentiated Penalties

There was some debate among members about whether the penalties for commercial operations should be the same as for those, such as relatives, or acquaintances and friends, who offer to complete assessment tasks for students. Ultimately, while IHEA members would not condone cheating in any form or allowing any activity that falls into that definition to go unpunished, there is some support among our members for a differentiated penalty for different levels of commercialisation of the cheating services offered. Sufficient information needs to be provided to institutions so that they can inform students of what constitutes cheating, and therefore is a violation of the Act, and what does not.

It is IHEA's view, though, that in order for the legislation to work effectively and send the right signals to the market and would-be cheaters, the penalty needs to be severe enough to demonstrate the seriousness of the activity and to act as a deterrent to contract cheating.

The penalty for more commercialised operations should reflect the profit-making aspect of their enterprise and hence their ability to pay. For other individuals, although the penalty may be reduced, it should still be severe enough to act as a deterrent to supplying contract cheating.

IHEA believes that the offences as defined by the draft legislation are clear and include an adequate range of activities that constitute cheating (apart from section sub-section 114A (3)(b) which is addressed below). The exemptions listed in the draft legislation also provide enough opportunity for higher education providers to offer assistance and extra help to those students who need it. IHEA would like to see an awareness campaign around what activities and academic support is still able to be provided for students without contravening the act.

TEQSA's Role

IHEA's biggest concern with the draft legislation is TEQSA's role. TEQSA will be responsible for enforcement and investigation of the instances of cheating occurring and it has been allocated funding for this extra role. There is, however, some concern among IHEA members that TEQSA has access to the necessary expertise and other resources to conduct adequate investigations, close down websites and gather the necessary, sufficient and correct information to successfully prosecute offenders. The legislation's deterrence value is contingent on this outcome.

There was some discussion during the consultations with the Department about a level of discomfort with TEQSA being able, under sub-sections 63(1A) and 197(A) to gather and share information in its investigative role (and only information gathered in this role) with unlimited distribution. IHEA members, however, were not concerned with this element of the draft legislation and were supportive of providing this power to TEQSA. It is IHEA's view that without this provision in the legislation it will be impossible to disseminate information about those supplying contract cheating services and their operations to complete prosecutions and obtain convictions.

International as well as domestic agencies may need to be consulted. The wider the distribution of information about these operations uncovered by TEQSA can be, and the more agencies and government departments that can be brought into cooperation to combat these activities, the more effectively TEQSA can enforce the legislation and prevent the cheating. It is the enforcement and TEQSA's ability to prosecute operators that will be the deterrent arising from this legislation and provide the value of clearly criminalising this activity.

IHEA requests that there be some clarification of whether offshore operations of Australian Higher Education providers that come under TEQSA's jurisdiction for regulation are also covered by the legislation.

Suggested Additions to/Clarification of the Legislation

IHEA suggests some consideration of an element of “mandatory reporting” to TEQSA for providers who become aware of commercial contract cheating operations occurring on their campuses or within their institutions. This will assist TEQSA in its investigative role and also encourage cooperation between providers and the regulator and allow a greater range of instances of these offenses to be uncovered and scrutinised. It will also build a culture of responsibility among providers to assist in the detection of these activities and to ensure there is correct signalling that they are not tolerated by any provider.

Although IHEA believes the legislation as currently drafted provides adequate provision under sub-section 114A(4), it could also be made clear what steps need to be taken to be able to provide enough evidence of the provider’s authorisation that this unintended consequence can be avoided. An information campaign should also accompany the legislation that ensures providers have adequate policies in place to allow legitimate and appropriate academic assistance for students who need it to help remove cheating as a solution to challenges and to ensure that those providing that assistance are not inadvertently engaging in a criminal act and are prosecuted for that. That information campaign should clearly articulate for students and providers what constitutes a violation of the Act and what is a legitimate form of student support or academic assistance.

For order this to be achieved and to avoid any unintended consequences, greater clarity needs to be provided in sub-section 114A (3)(b) of the draft legislation. As drafted, the legislation would prohibit “providing any part of a piece of work or assignment”. The intention may be to capture instances of providing some but not all of the assignment for the student, but it is unclear where the threshold lies and so this may lead to unintended consequences. Is providing one sentence of an assignment “any part”? And if so, is this sensible? Would wording such as “significant portion” be more sensible? IHEA would like to see this clause of the draft legislation re-examined and reworded to clarify the threshold of activity that would be considered contract cheating.

IHEA would like to thank the Department of Education for the opportunity to provide advice and comments on the draft legislation and looks forward to continuing to work with the Department on this important issue.

Contacts

Independent Higher Education Australia

Dr. Sally Burt

Policy & Research Manager

Email: sally.burt@ihea.edu.au

Phone: (03) 9642 5212

Mr Simon Finn

Chief Executive Officer

Email: simon.finn@ihea.edu.au

Phone: (03) 9642 5212