



# **Draft Bill – Prohibiting Academic Cheating**

**University of Melbourne response**

**June 2019**

## Executive Summary

The University of Melbourne is pleased to respond to the exposure draft of the legislation targeting contract cheating in Australian universities. Contract cheating represents a significant threat to fairness and integrity. If not properly managed, this activity has the potential to undermine teaching and learning outcomes as well as public confidence in our higher education system. The University is committed to the core values of integrity, honesty and openness. Any instance of academic misconduct amounts to an educational failure for the particular student, and carries additional risks to the standing of education qualifications, and to the reputation of the institution and sector. The Government is to be commended for taking a strong stance on contract cheating, and for taking a consultative approach in responding to it.

The University broadly supports the direction set out in the draft Bill. Universities have extensive integrity frameworks in place for dealing with academic misconduct. New laws that make commercial contract cheating an offence will complement these.

While supporting the broad intent of the proposed Bill, the University of Melbourne has concerns that there may be unintended consequences generated by the new laws. We argue that a minimal approach to the new laws is appropriate: the laws should be restricted to interventions that universities are not able to undertake themselves, i.e. measures that target commercial contract cheating providers. The scope of the Bill should be limited further, ensuring that unintended outcomes are avoided while respecting the core intent of the laws. Our concerns relate to three areas:

- Non-commercial contract cheating activity (e.g. carried out by friends or family members). While wrong, this activity should not be included in the scope of the new laws.
- University delivered academic support services. The draft Bill seeks to exempt support activities that are authorised by the person setting the assessment requirement (Section 114A (4)). We argue that the exception is too narrow, potentially resulting in some university-delivered support activities not being covered it.
- Externally delivered academic support services. It is important that legitimate support activities, such as private tutoring, are not adversely impacted by the laws.

Each of these issues concern what we believe are *unintended* consequences of the proposed Bill. While we support the Bill's intent, its wording should be more precise and narrowed in scope to avoid these consequences.

We also note that there are considerable challenges that confront any legal approach to combating contract cheating. Our own research into cheating services suggests that they are based in a variety of overseas countries. Hence, while the proposed laws help to highlight the seriousness of academic misconduct, there are obvious impediments to pursuing those entities and individuals who offend against them.

### Recommendations

*The University of Melbourne recommends that:*

- *The University of Melbourne recommends that Section 114A (3) be amended to apply only to commercial cheating activities – or that it be amended to only apply to cases where more than one student was offered the cheating service – to avoid the problems associated with their extension to non-commercial activities.*
- *Section 114A (4) be amended to exempt all academic support activities delivered from within the relevant academic institution from the new laws.*
- *TEQSA makes clear that legitimate, externally delivered academic support activities will not be targeted or discouraged through policing and enforcement of the new laws.*

For further information or to discuss this submission Professor Richard James, Deputy Vice-Chancellor (Academic & International) and deputy Provost can be contacted on (03) 9035 4800 or [r.james@unimelb.edu.au](mailto:r.james@unimelb.edu.au).

## University of Melbourne integrity framework

The University of Melbourne has a comprehensive framework in place for safeguarding academic integrity. The University's "[Student Academic Integrity Policy](#)" articulates the principles that govern the approach taken to academic misconduct. Importantly, the University's integrity framework is multi-faceted, encompassing a range of practices that manage the risk of academic misconduct. These include:

- **Awareness-building:** Students are [made aware](#) of the requirements around academic integrity, and acknowledge that they will adhere to all relevant requirements when they enrol, as well as consenting to having their work checked for plagiarism.
- **Ethical practice:** The University seeks to build a commitment to ethical practice into the thought and behaviour of our students. Ethical practice in scholarly work and professional behaviour are included among the University's graduate attributes. Rather than viewing academic integrity as a compliance requirement, the aim is to build integrity into the thinking of our students by instilling in them an appreciation of the value of genuine scholarship.
- **Adequate support:** Students are most likely to meet the integrity standards expected of them where they are adequately supported. This includes support routinely provided through teaching activity as well as additional academic support services e.g. disability support, study skills seminars etc.
- **Course design:** Course design represents an important means of assuring academic integrity. For example, some courses will require students to demonstrate the development of their ideas over the course of a semester, simultaneously providing transparency in the authorship of that work while also advancing key pedagogical aims e.g. training students in the planning and development of longer pieces of writing.
- **Detection of misconduct:** Students consent to their work being checked for plagiarism and collusion when they enrol in a subject. The University uses 'Turnitin' text-matching software, and teaching staff have additional ways of identifying work that is – or is likely to be – inauthentic. The University is also considering means of investigating the activities of private service providers that involve students from the University of Melbourne.
- **Co-operation with other institutions:** The University seeks to co-operate with other institutions, sharing information and co-ordinating responses to misconduct where appropriate.
- **Penalties:** The "Student Academic Integrity Policy" allows for the imposition of penalties where a claim of misconduct has been substantiated. The policy also allows for an educative response to plagiarism and collusion where appropriate.
- **Research into the nature of misconduct:** The University is engaged in research into the nature of misconduct and is continuously evolving its integrity in line with the findings of this research.

Detecting misconduct and imposing penalties on students found to have engaged in it are important parts of the framework for safeguarding academic integrity. They are, however, only part of the story. In the first instance, the threat of misconduct is managed through developing the scholarly attributes of our students, and by ensuring that students are properly supported in their studies.

What is also important is that the policies and practices are subject to ongoing review. The University is confident in the robustness of the integrity framework that we have established. Nonetheless, we recognise that no set of institutional arrangements provides a perfect guarantee against academic misconduct, and that changing conditions generate new challenges that require changes to the way the University responds. The task of ensuring optimal arrangements for addressing the risk of academic misconduct is never-ending.

## Response to the draft Bill

The Draft Bill proposes amendments to the *Tertiary Education Quality and Standards Agency Act 2011* which target cheating by:

- prohibiting the provision of academic cheating services (Section 114A); and
- prohibiting the advertising of academic cheating services (Section 114B).

The Draft Bill would introduce criminal and civil penalties for both activities. The University of Melbourne welcomes the Government's commitment to addressing the threat that cheating services represent to integrity in Australia's higher education system. We support a legislative approach that makes it an offence to provide or advertise contract cheating services.

Importantly, however, such measures should complement already established institutional frameworks for dealing with academic misconduct. Institutional responses are, and should remain, the primary means by which the risks of misconduct in Australia's universities are managed. Legal measures should add to these responses by enabling interventions that universities are not themselves in a position to undertake. While universities are best positioned to deal with students who have committed some form of misconduct, they have no direct means of preventing commercial entities from offering contract cheating services or from advertising such services. The Government has a valuable role to play in helping to disrupt those commercial activities.

Notwithstanding this potential contribution, there are inevitable risks that are associated with any legal approach to tackling contract cheating. Given these risks, and given the key point that universities have mature frameworks in place for dealing with academic misconduct, the University of Melbourne urges a minimalist approach to the introduction of new laws. This means that the new laws should not seek to encroach on areas that are already adequately managed at an institutional level, and that the Government should err on the side of caution in limiting the scope of the laws in the face of risks of undesired consequences.

The proposed Bill reflects this approach to the extent that it targets those who provide cheating services and not students. This is an important limit to the scope of the new laws, and one that the University of Melbourne supports. We argue, however, that the proposed measures should be limited further. The University of Melbourne identifies the following conditions for ensuring that in the scope of the new laws is appropriately limited:

- i. Students are not targeted by the new laws, nor unduly impacted by investigation and enforcement activities.
- ii. Legitimate activities (e.g. disability support, tutoring etc.) are not caught up in the laws.
- iii. The penalties are proportionate to the relevant offence.
- iv. There are no other unintended and undesired consequences.

We have concerns that, as proposed in the Draft Bill, the new laws may fail to meet these conditions. There are three specific areas where the proposed measures are broader than they need to be, potentially delivering outcomes that are not intended:

1. Non-commercial cheating activity (involving friends, family members, peers etc)
2. University delivered academic support services
3. Externally delivered academic support services (e.g. private tutoring).

The first of these issues concerns genuine misconduct which we argue is best managed at the institutional level. The other two issues both involve legitimate academic support activities that do not amount to misconduct. While the new laws do not intend to target these activities, we have concerns that they may be impacted as an unintended consequence of them. The following comments address each of these issues in turn.

## 1. Non-commercial cheating activity

The draft Bill does not distinguish between assessment material completed by contract cheating service providers operating on a fee-for-service basis and assessment material completed by a friend, family member, peer etc. The amendments proposed in Section 114A (3) would prohibit any of the following activities<sup>1</sup>:

- (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.

Since the receipt of payment is not included in any of the prohibited activities, the proposed measures observe no difference between commercial and non-commercial forms of cheating. Clearly, cheating is wrong in either case and needs to be addressed. That said, the two types of activity are quite different and should be treated as such. The University of Melbourne opposes the application of the proposed laws to cases where cheating is committed on a non-commercial basis. The extension of the proposed laws to such cases is problematic on a number of grounds:

- *It is inconsistent with the core rationale of introducing laws to address contract cheating.*

The rationale for the proposed laws is to disrupt *organised* cheating services. The Higher Education Standards Panel's (HESP) "Advice on student academic integrity and cheating" makes it clear that services "provided on an organised or commercial basis" are the primary problem that the recommended laws seek to address. While the practice of family and friends completing assessment material on behalf of students is unambiguously wrong, this activity does not exhibit the type of organisation which the new laws are intended to disrupt. It should also be noted that targeting non-commercial cases is likely to be costly and difficult to enforce.

- *It is unclear how non-commercial cheating cases will be identified and investigated.*

Our working understanding is that commercial cheating activity will be identified through providers advertising their own services, and through information-sharing between higher education providers and TEQSA. It not clear how cheating carried out by friends or family is to be identified, or if there is any intention to investigate such cases. If there is no intention to actively target non-commercial cheating, then this should be reflected in the law itself.

- *There is a risk of discouraging students from seeking support*

Friends, family and peer networks represent valuable sources of support for students, particularly in the early part of their university studies. While students having others complete assessment material for them is unacceptable, there is a risk that an overly heavy-handed legal approach sends a signal to students that they should not be drawing from this support at all. Teaching and learning outcomes will be compromised if students are discouraged from utilising the support networks available to them.

In view of these problems, we argue that the proposed laws should be limited to commercial contract cheating activity, provided on a fee-for-service basis. The problem of non-commercial cheating activity is best managed at an institutional level through detection of misconduct, which is adequately provided for in University policy and procedures.

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<sup>1</sup> As per the proposed amendment to Section 8 of the *TEQSA Act*, the prohibition of these activities is to be dependent upon their being performed via the telephone network, internet or related service, or upon the student or service provider being an 'alien'.

Notwithstanding these points, we acknowledge that demonstrating the exchange of money may be difficult in some cases and excluding all non-commercial activity may therefore weaken the effectiveness of the proposed laws. An alternative way of limiting the proposed laws is to exclude cases where only one student was offered the cheating service.

#### Recommendation

*The University of Melbourne recommends that Section 114A (3) be amended to apply only to commercial cheating activities – or that it be amended to only apply to cases where more than one student was offered the cheating service – to avoid the problems associated with their extension to non-commercial activities.*

## **2. University delivered academic support services**

Universities provide a range of academic support services which complement the support routinely provided to students through teaching activity. This includes tailored support for students with a disability and support provided through academic skills units.

For most part, there is not likely to be any question of these services falling within the prohibited activities described in the proposed Section 114A (3). Despite this, the “exception” contained in Section 114 (4) is intended to ensure that there is no possibility of university-provided support activities being caught up in the new law:

- (4) Subsections (1) and (2) do not apply if the person who made the requirement referred to in subsection (3) authorised the provision of the service to the student.

The University of Melbourne supports an explicit exemption of university-provided academic support. However, we are concerned that the exemption included in the proposed Bill is too narrow, resulting in some student support activities offered within a university potentially not being covered by it. The term, “the person who made the requirement”, could be interpreted as referring to the teaching academic who prescribed the assessment requirement. Academic support services run on a university-wide basis – with no direct involvement of teaching staff from the relevant course – would in theory not be covered by the exception. Plainly, the new laws do not intend to capture support services delivered from within the university. Nonetheless, any ambiguity in this area may risk impeding the provision of these support mechanisms.

The issue could be addressed by replacing “the person who made the requirement” with the “relevant academic institution” thereby ensuring that academic support services provided from within a university cannot be caught up in the new laws.

#### Recommendation

*The University of Melbourne recommends that Section 114A (4) be amended to exempt all academic support activities delivered from within the relevant academic institution from the new laws.*

## **3. Externally delivered academic support**

There are a range of academic support services provided independently of the institutions in which students are enrolled. These include one-on-one tutoring in specific discipline areas and language support. In many cases, these services are provided by current or former students, supplementing their income. It should be noted that while many of these services are delivered on a commercial basis, not all are: in some cases, individuals volunteer their time to provide additional help to students who need it.

These activities represent a valuable source of support for students. The prospects for successful completion, and the overall learning outcomes, are enhanced for students who engage this external

support. It is therefore important that policing and enforcement of the new laws neither targets nor discourages the provision of legitimate academic support activities.

The University of Melbourne does not argue that the wording contained in the Bill needs to be amended to achieve this end. It would however be helpful for the information that TEQSA provides relating to the new measures to make clear that legitimate support services will not be targeted, and to include examples that help delineate legitimate activity from misconduct.

Recommendation

*The University of Melbourne recommends that TEQSA makes clear that legitimate, externally delivered academic support activities will not be targeted or discouraged through policing and enforcement of the new laws.*