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**CONTRACT CHEATING: WILL STUDENTS PAY
FOR SERIOUS CRIMINAL CONSEQUENCES?**

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Contract cheating: Will students pay for serious criminal consequences?

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Abstract

There are increasing reports of university students contracting with third parties to write their essays and assignments. While getting caught is likely to mean the student faces disciplinary action within the university, the students and those offering the service may also be exposing themselves to criminal prosecution. This article looks at the range of offences that students and the contract cheating services could be committing – including fraud, forgery and conspiracy. The article also recommends specific statutory offences be introduced. Far from an entrepreneurial innovation, the activities can be construed as serious crimes.

Keywords

plagiarism, contract cheating, fraud, conspiracy, criminal law

There are increasing reports of university students contracting with third parties to write essays, assignments and projects (described in this article as assignments) for submission as assessment tasks. While this is a clear breach of academic integrity rules, and likely to mean the student faces disciplinary action within the university, students and those offering the service may also be exposing themselves to criminal prosecution. Students are unlikely to be aware of this. Law students, in particular, face the real prospect of being refused admission to the legal profession. Admission guidelines require the disclosure not only of convictions, but also any charges – even if acquitted, as well as any academic misconduct.¹

A full examination of the elements of relevant offences and their applicability to the range of possible behaviours in contract cheating would be a long and complex task, one suited to a specialist criminal law journal. With a broader audience in mind – students, those

tempted to provide such services, and those who enforce academic integrity – this article instead sketches the criminal ‘landscape’ in which this behaviour is situated. It begins with a brief outline of the manner in which contract cheating appears to occur and identifies the key participants. After considering the issue of jurisdiction, the potential liability of those participants is then mapped against the elements of a number of offences. The complexity this raises then leads to an examination of New Zealand’s statutory offence and whether that is a more appropriate approach.

Contract cheating: What is it?

The combination of the internet, digital word processing and simple online funds transfer has allowed the growth of an industry of online services offering to custom-write assignments for students. Those offering these services range from other students and individual writers to

¹Law Admissions Consultative Committee Disclosure Guidelines for Applicants for Admission to the Legal Profession July 2015 (NSW Version). http://www.lpab.justice.nsw.gov.au/Documents/LACC%20Disclosure_Guidelines_3%20July%202015.pdf. See also Mark Thomas, ‘Admission as a Lawyer: The Fearful Spectre of Academic Misconduct’ (2013) 13(1) *QUT Law Review* 73.

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large-scale businesses.² Many businesses openly advertise and offer rates as low as \$12.99 per page.³ The assignments produced can be of an undetectably high quality.⁴ The practice has come to wide public attention as a result of media exposés,⁵ and universities have begun to respond with public awareness campaigns.⁶

Contract cheating takes a range of forms. At the large-scale commercial end, businesses can provide bespoke assignments written to deadlines from a fortnight to as short as one day. They typically operate their own internal tendering process – with freelance writers bidding for the work.⁷ Some sites, such as the UK-based LawTeacher⁸ include in their terms that the paper produced is a ‘model’ answer and that the student should write their own assignment using the sources provided. It can be guessed that this rarely happens. In any event, use of research provided by others may of itself breach university plagiarism policies. At the sole trader end of the market, individuals advertise to write papers for students via sites such as Gumtree⁹ and Airtasker.¹⁰ The nature of any contractual terms or disclaimers is presumably highly variable.

For the purposes of a legal analysis of contract cheating we can identify four main types of participants: the client student (Student), the contractor writer (Contractor), the cheating site owner/operator (Operator)¹¹ and the victim educational institution (University).¹² In a sole trader situation, the roles of the Operator and Contractor are combined. Following is what appears to be one typical set-up for a commercial operation, based on the literature.¹³

The Operator sets up a website advertising that assignments will be written for students, sometimes with a nominal disclaimer about plagiarism; puts in place a system for the matching of student requests to available assignment writing contractors; and arranges credit card facilities to take the student’s money and disburse a

proportion to the Contractor. The system for allocating writing may vary from site to site but is likely to involve some form of bidding process. Once a Student request is matched to a Contractor, the Operator receives the paper from the Contractor and forwards it to the Student. The Student’s credit card is then charged. The Operator makes a profit from the process.

The Contractor offers writing credentials to the Operator and through them to the Student and enters a contractual relationship with the Operator. The Contractor receives assignment requests and any supporting materials – often as a result of a successful internal bid – and writes the paper using their own resources. The completed paper is forwarded to the Operator, and payment is received from the Operator.

The Student places a request for an assignment to be written, makes a payment for the assignment, downloads the assignment onto their own computer and submits the assignment to the University either from their computer or with a printed copy from their computer. The Student is also likely to have signed, for the University, a code of conduct/undertaking about plagiarism either on enrolment or at the time of submission of assignment.

The University sets an assessment for which the Student must submit an answer. The answer is identified as the Student’s work, marked and a grade awarded to the Student. That grade contributes to the ability of the Student to pass a subject and be awarded a degree.

The offences

The following sections deal with the jurisdictional basis for prosecution of contract cheating and the possible offences committed by the participants. To date there have been no Australian prosecutions.¹⁴ What follows

²This discussion draws on the existing literature, summarised in Philip M Newton and Christopher Lang, ‘Custom Essay Writers, Freelancers, and Other Paid Third Parties’ in Tracey Bretag (ed), *Handbook of Academic Integrity* (Springer, 2016) 249, and Thomas Lancaster and Robert Clarke, ‘Contract Cheating: The outsourcing of assessed student work’ in Tracey Bretag (ed), *Handbook of Academic Integrity* (Springer, 2016); Lisa Lines, ‘Ghostwriters Guaranteeing Grades? The Quality of Online Ghostwriting Services Available to Tertiary Students in Australia’ (2016) 21(8) *Teaching in Higher Education* 889; and the author’s discussions with colleagues.

³Australian Essay: Prices <http://www.australianessay.com/prices>.

⁴Lines, above n 2.

⁵For example, New South Wales (NSW) students purchasing custom assignments from My Master (Lisa Visentin, ‘MyMaster Essay Cheating Scandal: More than 70 University Students Face Suspension’, *The Sydney Morning Herald* (online), 18 March 2015 <http://www.smh.com.au/nsw/mymaster-essay-cheating-scandal-more-than-70-university-students-face-suspension-20150312-14250e.html>); Australian Capital Territory (ACT) students using papers from Assignment King (Henry Belot, ‘Cheating at Major Australian Universities May Be Easier than Many Realise’, *The Age* (online), 25 January 2016 <http://www.theage.com.au/national/education/cheating-at-major-australian-universities-may-be-easier-than-many-realise-20160122-gmbq30.html>); and at Deakin University (Timna Jacks, ‘Deakin Uni Cheats Get Kicked out’, *The Age* (online), 18 May 2016 <http://www.theage.com.au/victoria/deakin-university-students-kicked-out-for-contract-cheating-20160517-goxm1y.html>).

⁶Deakin University has instituted ‘Contract Cheating Awareness Week: Do You Know the Meaning of Contracting Cheating?’ <https://blogs.deakin.edu.au/deakinlife/2016/08/29/do-you-know-the-meaning-of-contracting-cheating>, and Curtin University and the University of South Australia took part in an International Day of Action Against Contract Cheating – 19 October 2016 <http://contractcheating.weebly.com/2016-participating-institutions.html>.

⁷Newton and Lang, above n 2.

⁸LawTeacher: The law essay professionals www.lawteacher.net.

⁹Olivia Lambert, ‘The Underground World of Cheating’, [news.com.au](http://www.news.com.au/lifestyle/parenting/school-life/students-are-paying-people-to-write-their-assignments-for-them/news-story/816f2da3bdeec5c231f2c8ec3377d9d0), 19 May 2016 <http://www.news.com.au/lifestyle/parenting/school-life/students-are-paying-people-to-write-their-assignments-for-them/news-story/816f2da3bdeec5c231f2c8ec3377d9d0>.

¹⁰Radio Mix 102.3, ‘Exclusive: Adelaide Cheating Scandal Exposed’, 28 October 2016 (Amy Taeuber) <http://www.mix1023.com.au/newsroom/exclusive-adelaide-cheating-scandal-exposed>.

¹¹The Operator is likely to be more than one person, and further legal complications around corporate entities and criminal liability could arise; however, they are beyond the scope of this article. See, e.g., *R v Rozeik* [1996] 3 All ER 28, *Police v Carradine* (1996) 66 SASR 584.

¹²This could be any educational institution, public or private.

¹³See, e.g., Lancaster and Clarke, above n 2; Newton and Lang, above n 2, and the sources referred to in those chapters.

¹⁴There are a number of older prosecutions under statutory provisions in the United States, and one underway in New Zealand. Lancaster and Clarke, above n 2.

is therefore based on general principles with references to those precedents likely to be applied in a prosecution. For simplicity, this article refers to the law applicable in New South Wales ('NSW'),¹⁵ the state with the most tertiary students.¹⁶

Contract cheating can amount to a breach of a range of offences – from fraud to proceeds of crime. In NSW, these are indictable offences with maximum penalties from three to 15 years' imprisonment or a fine of \$110,000.¹⁷ Intuitively, fraud would appear the obvious offence, but there are other offences that may be easier to prove.



Jurisdictional issues

Students not only attend universities in the town or city where they live but also increasingly enrol in online courses or degrees that may be interstate or international. For those engaging in contract cheating, it is possible that each of the participants, and the website where the contracts are made, is in different jurisdictions.¹⁸ NSW, like other Australian jurisdictions, overcomes this issue by deeming prohibited behaviour to be a crime punishable by NSW courts if it is either committed partly in the state or has an effect in the state.¹⁹

This means that a person can be liable in NSW if they are physically within NSW and send, receive or submit an

email, assignment or payment – even if the service or University is outside NSW; and liable even if outside NSW if they obtain an email, assignment or payment from a person, computer or server physically within NSW, or submit an assignment to a NSW University. Any person in NSW contracting to write assignments for others internationally, or offering a service for such contracting, could also be liable if the behaviour amounts to an offence under NSW law, even if the behaviour is not an offence in the jurisdiction where the assignment is submitted. Of course, if the Operator or Contractor is outside of Australia it may be practically difficult to identify and institute proceedings against them. No such anonymity is available for the Students as they submit the assignment.

Fraud

It is an offence for any person to dishonestly gain a financial advantage for themselves or another person, or cause a financial disadvantage as a result of a deception (s 192E and s 192D *Crimes Act 1900* (NSW)).²⁰ Further, it must be proved that the deception of the University²¹ was a substantial cause of the person obtaining a financial advantage/disadvantage.²² That is, liability is based on proving that the deception caused a financial effect, not the deception itself.

It is a preliminary requirement that the University be deceived by the offender into considering the submitted assessment as the Student's work.²³ But this is a result of the actions of the Student, not any act of the Operator or Contractor who are open about their activities.²⁴ Consequently, it is likely that only the Student could be charged with fraud.

Both the Operator and Contractor gain a direct financial advantage²⁵ from the Student's payment. Proving that the Student's deception of the University caused these parties to become financially advantaged is more complex. The Operator and the Contractor are likely to be paid irrespective of whether the Student chooses to use the assessment to deceive the University and the terms and conditions of these contract-cheating sites sometimes attempt to disclaim such use of the assignment²⁶

¹⁵Australia contains nine criminal jurisdictions. There are similar offences in all Australian jurisdictions, some of which are more broadly cast.

¹⁶Australian Government, Department of Education and Training, uCube Enrolment Count by Citizenship Category <http://highereducationstatistics.education.gov.au/>.

¹⁷*Crimes (Sentencing Procedure) Act 1999* s 15. While these are maximum penalties when proceedings are on indictment, prosecution statistics suggest that other than in exceptional circumstances prosecutors are more likely to pursue a summary hearing with a maximum of two years or a fine of \$11 000 (s 267 *Criminal Procedure Act 1986*). See David Brown et al., *Criminal Laws: Materials and Commentary on Criminal Law and Process of New South Wales* (Federation Press, 2015) 963.

¹⁸Newton and Lang, above n 2.

¹⁹*Crimes Act 1900* s 10C(2). This addresses the jurisdictional issues raised by Newton and Lang, *ibid*.

²⁰For a detailed examination of the offence, see Brown, above n 17, 999–1013.

²¹The University is an organisation that can be seen as a legal person for the purposes of establishing criminal liability. Whether the paper is submitted in physical or digital form, at some point an employee of the university will be required to accept that the assignment was written by the Student. If at that point the employee is deceived by a contract assignment, the law is likely to hold that the University has been deceived.

²²*Cf R v Donjerkovic* [2012] SASFC 2.

²³This could be through the deceiving of an administrative officer, the marker; or possibly through the misuse of an automated process by the student (see s 192B(1)(b) *Crimes Act 1900* (NSW)).

²⁴There may be some complicity, discussed below, but the core fraud offence makes liable the person making the representation.

²⁵See the discussion in Alex Steel, 'Money for Nothing, Cheques for Free? The Meaning of "Financial Advantage" in Fraud Offences' (2007) 31(1) *Melbourne University Law Review* 201.

²⁶LawTeacher, 'Get the grade from your tutor or your money back' <http://www.lawteacher.net/guarantees/>.

or offer refunds for poor grades.²⁷ So it would seem unlikely that there is a strong causal link between the deception of the University and that financial advantage.²⁸

This means causation has to rest on the more debatable proposition that the financial advantage is found in the Student's own reduction of risk of failing the course. In the recent case of *Duncan v ICAC (Duncan)*²⁹ it was accepted that such a financial advantage could accrue if deceptions had the effect of reducing a risk of financial loss. In *Duncan*, it was the risk that shares would fall in value if the involvement of corrupt politicians in obtaining a mining lease was made public. In contract cheating it would be the risk of failing the course through submitting a poor assignment, or no assignment, and thus bearing the financial costs of retaking the course. The deception would be intended to avoid this financial disadvantage.³⁰

If that approach is correct, then submission of the assignment (absent later detection) may have causally led to the Student avoiding re-enrolment fees for that course. This might be hard to prove, particularly as the Student might pass the course on the marks from other assessments, but there is case law which suggests that so long as the deception remains an underlying basis for later outcomes it remains a substantial cause.³¹ In this situation it might be that passing the course requires all assessment items to have been submitted.

The final element to prove is that the Student's obtaining of this financial advantage was dishonest (i.e., against the standards of ordinary people and known by the Student to be so (s 4B *Crimes Act 1900* (NSW)).³² It would be relatively easy to convince a court that ordinary people do not believe it is acceptable to obtain marks for assessment without submitting one's own work. The Code of Conduct or submission Declaration signed by a Student in submitting the assessment would also be strong proof of knowledge of those standards of behaviour.

False statements

If the contracted assessment is uncovered before the Student is given a mark, or the Student still fails the course, it will not be possible to prove that any financial advantage has accrued. In such cases the offence in 192G of *Intention to defraud by false or misleading statement* is available. This offence, which has a lesser maximum penalty of five years' imprisonment, only requires the

dishonest making of a false statement (here the act of submitting an assignment as if it was the Student's) with an intention to gain a financial advantage.³³ No deception is required, nor need the financial advantage be realised.³⁴ This avoids issues of causation, but still requires that retaking a course be seen as a financial disadvantage. It does however allow Universities to intervene prior to awarding grades.

Forgery

Forgery is another possible offence (ss 253, 254 *Crimes Act 1900* (NSW)). The offence prohibits the making, copying or using of a false document with the intention of obtaining a financial advantage/disadvantage.³⁵ The essence of a false document (as opposed to a document with false statements) is that the document 'tells a lie about itself',³⁶ rather than contains just a lie in the text of the document. Under NSW law those possible lies include an implicit assertion that the document was 'made or altered... in circumstances in which, it was not in fact made or altered'(s 250(1)(g)). The document produced by the Operator or the Contractor may not be false in this way: it is a commissioned piece of assessment. But when the Student adds their own name, student number, etc. the document may then claim to have been made wholly by the Student – the lie is that it is the Student's own assessment answer. Further, even if the file submitted was in fact created by the Student (i.e., copied into another document or printed by the Student), it is still possible to argue that the document makes the lie that the contents were the individual work of the Student.³⁷

In addition to establishing this 'false document' the prosecution would also need to establish that the Student made or used³⁸ the document with the intention that the University would accept it as genuinely written by the Student – which would seem easy to establish – and with intention to obtain a financial advantage. Similar issues apply to those discussed above.

To this point it seems that there are charges that could be brought against the Student – though establishing financial advantage may require detailed argument – but nothing against the Operator and Contractor who are arguably more culpable on the basis that they repeatedly profit from the situation of the Students.³⁹ Accessorial charges such as aiding and abetting or joint

²⁷Australian Essay FAQ <http://www.australianessay.com/faqs>.

²⁸*Cf R v Ho & Szeto* (1989) 39 A Crim R 145.

²⁹[2016] NSWCA 143.

³⁰In NSW financial advantage and disadvantage are alternatives (s 192E(1)(b) *Crimes Act 1900* (NSW)).

³¹*R v Lambassi* [1927] VLR 349. In that case a deception that allowed entry in a footrace competition was found to be a cause of all subsequent achievements even though the races were won by Lambassi's own efforts.

³²*Cf R v Ghosh* [1982] QB 1053.

³³See Alex Steel, 'New fraud and identity-related crimes in New South Wales' (2010) 22(3) *Judicial Officers Bulletin* 1.

³⁴Alternately prosecutors could charge attempted fraud, which retains the maximum penalty of 10 years (s 344A *Crimes Act 1900*(NSW)).

³⁵A brief overview is in Steel, above n 33. See also Attorney General's Reference (No 1 of 2000) [2001] 1 WLR 331; *R v Sewell* [2001] NSWCCA 299.

³⁶*Cf R v More* [1987] 1 WLR 1578.

³⁷*Cf Attorney General's Reference (No 1 of 2000)* [2001] 1 WLR 331.

³⁸*CF R v Sultan* [2008] NSWCCA 175.

criminal enterprise may be available, but their success requires proof that a substantive offence was committed by the Student, and this again requires proof of financial advantage.⁴⁰

Conspiracy to defraud

Conspiracy to defraud is more flexible. This offence is established if parties enter into an agreement with a common design of using dishonest means to bring about a result that prejudices or imperils the economic interests or existing legal rights or interests of others, or the performance of a public duty.⁴¹ Importantly the offence does not require any proof of deception, and the outcome intended by the conspirators may be entirely legal. The criminal liability is based on the intended use of dishonest means which is broadly defined. One judicial explanation of the concept includes within it the ‘making... of representations... which they knew were false...; concealing facts which they had a duty to disclose; or engaging in conduct which they had no right to engage in’.⁴² Applying these principles to contract cheating, there is a clear agreement between the Student, the Operator and the Contractor that an assessment answer be written. The courts accept that a conspiracy can exist even if all the conspirators do not know each other.⁴³ Despite any contractual terms purporting to avoid liability, it is arguable that all parties understand that the work which is produced will be or is likely to be submitted to a University – and that such a submission would undermine the interests of the University in accurately and rigorously assessing its students’ achievement and conferring degrees.

There are numerous ways to describe that outcome in the terms of the defrauding offence. The University will have awarded a subject credit and possibly full degree to the Student which it would otherwise have not done, and this is of economic value⁴⁴; there may be a risk of reputational damage with economic implications if the cheating is exposed, and the regulatory scheme by which degrees are accredited, and the statutory basis of many universities may well mean the University would be deflected from its public duty.⁴⁵ Submitting the paper as the Student’s own, signing declarations that it is the Student’s own work and failing to disclose

the true authorship would all be clear uses of dishonest means.

As conspiracy to defraud is a common law offence without statutorily defined elements, it can appear more complex to charge, but its emphasis on undermining the legal interests of the victim rather than a financial advantage to the accused maps well onto contract cheating. As a common law offence, it has no maximum penalty but is seen to be analogous to fraud, i.e., 10 years maximum imprisonment.

Proceeds of crime offences

There may however be no need to prove these offences. So long as there is a suspicion the crimes have been committed, the Operator and possibly Contractor may be liable for proceeds of crime offences.

Section 193C prohibits dealing with property that is reasonably suspected of being the proceeds of crime. ‘Proceeds of crime’ is any property derived from a serious criminal offence, defined as any indictable offence – as are all offences discussed above. If any offences are complete at the time the money is paid, that payment may be proceeds of crime. Conspiracy to defraud is complete at the time of agreement – the moment the Student’s request is accepted by the Contractor or Operator.⁴⁶ Section 193C is also a strict liability offence.⁴⁷ All that is required is that the prosecution prove that there ‘are reasonable grounds to suspect the property is the proceeds of crime’. In other words, there is no need to prove that the substantive offence has in fact occurred,⁴⁸ only that there is a reasonable suspicion that it has – for example, a reasonable suspicion that there was an agreement to defraud. The maximum penalty is three years’ imprisonment.

More serious offences are also available. Section 193D, which requires approval of the Attorney General to prosecute, prohibits the dealing with property that subsequently becomes an instrument of crime – in this case the contracted assessment answer. The maximum penalties vary according to the mental elements proved. If it can be proved that the accused intended the assignment to be used to commit a crime, the maximum penalty is 15 years imprisonment

³⁹*Australian Competition and Consumer Commission v TPG Internet Pty Ltd* [2013] HCA 54; (2013) 250 CLR 640 at [65].

⁴⁰For a detailed analysis of complicity offences, see Brown, above n 25, 1136–1206.

⁴¹*Peters v R* (1998) 192 CLR 493.

⁴²*McHugh J in Spies v R* (2000) 201 CLR 603.

⁴³*Gerakiteys v The Queen* (1984) 153 CLR 317. In any event, there is clearly an agreement between the Contractor and Operator and between the Operator and the Student.

⁴⁴*Cf Brown v Deveroux* [2008] WASC 299.

⁴⁵*Cf DPP v Shaw* [2013] TasCCA 3.

⁴⁶Whether the payment is proceeds derived from a forgery or later fraud is more problematic. There appears to be no case law on the issue of whether property can be derived before the foundational offence is complete.

⁴⁷That is, there is no burden on the prosecution to prove that the accused did the act with any particular state of mind – such as an intention to cheat. There is a statutory defence in s 193C that allows for acquittal if the defendant can prove that they had no reasonable grounds for suspecting that the property was substantially derived from an act or omission constituting an offence. This may be a difficult proposition for those professionally writing assignments for others.

⁴⁸Importantly it is not necessary for the accused to have committed the foundational serious offence. The criminality lies in dealing with any property that is derived – directly or indirectly – from that crime. Thus, if there are reasonable grounds to suspect that the Student has committed an indictable offence, the Operator and Contractor could be liable for receiving any proceeds.

(193D(1)). If the accused were reckless (i.e., aware of a possibility it could be so used) the penalty is 10 years (193D(2)).

Confiscation orders are also a possible avenue, but in NSW the *Criminal Assets Recovery Act 1989* requires the NSW Crime Commission to begin proceedings.⁴⁹ Such a use of the powers is likely to be controversial as they have, to date, been largely used for organised crime and drug trafficking.⁵⁰ It does however form the basis of a current New Zealand prosecution.⁵¹

Specific statutory offences

There is also the possibility of enacting specific offences to prohibit contract cheating, although these are not yet in existence in Australia. Section 292E of New Zealand's *Education Act 1989* prohibits provision or advertising of cheating services:

292E Offence to provide or advertise cheating services

1. A person commits an offence if the person provides any service specified in subsection (4) with the intention of giving a student an unfair advantage over other students.
2. A person commits an offence if the person advertises any service described in subsection (4) knowing that the service has or would have the effect of giving a student an unfair advantage over other students.
3. A person commits an offence who, without reasonable excuse, publishes an advertisement for any service described in subsection (4).
4. The services referred to in subsections (1) to (3) are as follows:
 - (a) completing an assignment or any other work that a student is required to complete as part of a programme or training scheme;
 - (b) providing or arranging the provision of an assignment that a student is required to complete as part of a programme or training scheme;
 - (c) providing or arranging the provision of answers for an examination that a student is required to sit as part of a programme or training scheme;
 - (d) sitting an examination that a student is required to sit as part of a programme or training scheme or providing another person to sit the exam in place of the student.
5. A person who commits an offence against this section is liable on conviction to a fine not exceeding \$10,000.

In light of the discussion of the general criminal law offences above, this specific statutory offence is

noteworthy for a number of reasons. Instead of basing the offence on deception or falsity, and requiring a financial motive, it instead bases the criminality solely on intending to give a student an 'unfair advantage' in completing assignments or writing exams. Exactly how this would be determined is unclear. There could be issues if the Operator was reckless as to the effect of the assignment, or provided an assignment of such low quality that students failed. But there would be advantages for prosecutors and Universities in the offence being complete at the moment of provision of the assignment, not at the time of submission.

Extending the offence to advertising for the contracting services is a significant and welcome expansion of liability. It has potential to significantly impact on the growth of the services, given charges can be laid prior to any evidence of assignments being drafted. The requirement that the Operator 'know' that the service would create an unfair advantage might cause some complexity, but it may be that the issuing of initial warnings to advertisers could then be evidence of the knowledge for any subsequent advertisements.

The offence criminalises the conduct of the owners of sites and writers but not students. Students who succumb to plagiarising the work of others to improve their own work can face severe disciplinary penalties, but at the same time there is strong evidence that a range of pressures lead to this behaviour.⁵² The complete outsourcing of a student's work to another is, however, a fundamental rejection of the learning process and educational institutions. It may be appropriate to recognise this in a criminal offence, even if it is not prosecuted.

A significant advantage of a statutory offence of this nature over the existing offences discussed above is the clarity with which it prohibits contract cheating. The behaviour is identified and labelled as cheating, which some have argued is a different form of wrongdoing to fraud.⁵³ The statutory elements make prosecutions simpler and can also act as an effective public education tool. Its focus on the Operators and Contractors emphasises the greater culpability of those seeking to profit from the distress of Students.

Conclusions

As demonstrated in the previous discussion, contract cheating may involve the commission of a number of

⁴⁹'Confiscation Fact Sheet' http://www.crimecommission.nsw.gov.au/files/Confiscations_Fact_Sheet.pdf.

⁵⁰Lorana Bartels, 'Unexplained Wealth Laws in Australia': *Trends and issues in crime and criminal justice* (Australian Institute of Criminology, 2010) 395.

⁵¹*Commissioner of Police v Li* [2014] NZHC 479. The defendants operated the service Assignment4u <http://www.assignment4u.com/> which it was alleged produced contracted assessment answers. Prosecutors chose to commence proceedings by obtaining an order freezing the assets of the defendants as a preliminary step to seeking forfeiture of those assets. Evidence before the court was of email correspondence between the accused (an Operator) and an alleged 'ghostwriter' (Contractor), between the accused's company and a Student, including a draft contract, newspaper advertising and bank account statements together with evasive actions by the accused. This was sufficient for the court to find there could be a reasonable belief that cheating services were provided to students that amounted to possible offences. Those possible offences were as follows: obtaining by deception (s 240 *Crimes Act 1961* (NZ)), forgery (s 256 *Crimes Act 1961* (NZ)), using forged documents (s 257 *Crimes Act 1961* (NZ)) and providing cheating services (s 292E *Education Act 1989* (NZ)). Of interest is the ready acceptance by the New Zealand court that there was a reasonable basis to believe crimes of fraud and forgery had occurred.

⁵²Anita Stuhmcke, Tracey Booth and Jane Wangmann, 'The Illusory Dichotomy of Plagiarism' (2015) 41(7) *Assessment & Evaluation in Higher Education* 1.

⁵³Stuart P Green, *Lying, Cheating, and Stealing: A moral theory of white-collar crime* (Oxford University Press, 2006).

general criminal offences. While there may be practical difficulties with enforcement against international participants, media reports suggest that currently there are local Operators. As these participants engage in contact cheating with a profit motive they are often more culpable than the individual Students who use their services. While the definition of 'unfair advantage' and the limited penalties are open for debate, New Zealand's introduction of a clear and specific statutory offence targeting Operators is an approach Australian jurisdictions could emulate.

If the owners and writers are not easily prosecuted, focus may turn to criminal prosecution of Students. The nature of contract cheating is such a fundamental rejection of the expected behaviour of students that its use by students is more than academic misconduct and passes into the realm of criminal wrongdoing. However, when set against the range of behaviours that can be prosecuted under fraud, forgery and conspiracy, the wrongdoing appears minor. A statutory offence, limited to a fine could be more appropriate. If such an offence were to be introduced the elements of the offence might appropriately be the submission of an item of assessment falsely claiming it was the student's own work. Financial advantage need not be required.

The total outsourcing of assessment writing to third parties on a commercial footing is a significant paradigm shift that is likely to be seen by universities as justifying referral to police. This would be a significant evolution from the notion of academic integrity to one of criminal dishonesty. As this article demonstrates, contract cheating can be seen as fraud, forgery and conspiracy – serious crimes that are connected to proceeds of crime legislation. In light of this, specific statutory offences would bring both increased clarity around elements and penalty and heightened public awareness of the nature of the wrongdoing.

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