

EXPOSURE DRAFT

2016-2017-2018-2019

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES/THE SENATE

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Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Bill 2019

No. , 2019

(Education and Training)

**A Bill for an Act to amend the *Tertiary Education
Quality and Standards Agency Act 2011*, and for
related purposes**

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1 **A Bill for an Act to amend the *Tertiary Education***
2 ***Quality and Standards Agency Act 2011*, and for**
3 **related purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act is the *Tertiary Education Quality and Standards Agency*
7 *Amendment (Prohibiting Academic Cheating Services) Act 2019*.

8 **2 Commencement**

9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with

No. , 2019

Tertiary Education Quality and Standards Agency Amendment
(Prohibiting Academic Cheating Services) Bill 2019

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	

4 Note: This table relates only to the provisions of this Act as originally
5 enacted. It will not be amended to deal with any later amendments of
6 this Act.

7 (2) Any information in column 3 of the table is not part of this Act.
8 Information may be inserted in this column, or information in it
9 may be edited, in any published version of this Act.

3 Schedules

11 Legislation that is specified in a Schedule to this Act is amended or
12 repealed as set out in the applicable items in the Schedule
13 concerned, and any other item in a Schedule to this Act has effect
14 according to its terms.

Schedule 1—Amendments

Tertiary Education Quality and Standards Agency Act 2011

1 At the end of section 3

Add:

; and (g) to protect and enhance academic integrity by prohibiting academic cheating services.

2 At the end of section 4

Add:

- TEQSA has a role in preventing and minimising the use and promotion of academic cheating services.

3 Section 5

Insert:

carriage service provider has the same meaning as in the *Telecommunications Act 1997*.

4 Section 8

Omit “This Act relies on”, substitute “(1) Subject to subsections (2) and (3), this Act relies on”.

5 At the end of section 8

Add:

(2) Section 114A has effect only if one or more of the following paragraphs applies:

(a) the relevant service is provided in the course of, or intended for, trade or commerce to which paragraph 51(i) of the Constitution applies;

(b) the conduct constituting the contravention involves the use of postal, telegraphic, telephonic or other like services (within the meaning of paragraph 51(v) of the Constitution);

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Schedule 1 Amendments

- 1 (c) the student is an alien (within the meaning of
2 paragraph 51(xix) of the Constitution);
3 (d) the person engaging in the conduct is an alien (within the
4 meaning of paragraph 51(xix) of the Constitution);
5 (e) the person engaging in the conduct is a corporation (within
6 the meaning of paragraph 51(xx) of the Constitution);
7 (f) the conduct constituting the contravention occurs in a
8 Territory or a Commonwealth place;
9 (g) the conduct constituting the contravention occurs to any
10 extent outside Australia.
- 11 (3) Section 114B has effect only if one or more of the following
12 paragraphs applies:
13 (a) the relevant service is advertised in the course of trade or
14 commerce to which paragraph 51(i) of the Constitution
15 applies;
16 (b) the relevant service is advertised using a postal, telegraphic,
17 telephonic or other like service (within the meaning of
18 paragraph 51(v) of the Constitution);
19 (c) the person engaging in the conduct is an alien (within the
20 meaning of paragraph 51(xix) of the Constitution);
21 (d) the relevant service is advertised to a student who is an alien
22 (within the meaning of paragraph 51(xix) of the
23 Constitution);
24 (e) the person engaging in the conduct is a corporation (to which
25 paragraph 51(xx) of the Constitution applies);
26 (f) the conduct constituting the contravention occurs in a
27 Territory or a Commonwealth place;
28 (g) the conduct constituting the contravention occurs to any
29 extent outside Australia.

6 Section 63 (heading)

30 Repeal the heading, substitute:
31

1 **63 Requiring certain persons to give information etc.**

2 **7 After subsection 63(1)**

3 Insert:

4 (1A) This section also applies to a person if TEQSA believes on
5 reasonable grounds that the person is capable of giving or
6 producing information, or a document or a thing, relating to a
7 matter that constitutes or may constitute a contravention of
8 section 114A or 114B.

9 **8 At the end of section 63**

10 Add:

- 11 (5) Subsection (1A) does not apply to:
- 12 (a) a lawyer who is acting, or has acted, for a person who is
13 suspected of contravening, or has contravened, section 114A
14 or 114B; or
 - 15 (b) national security information (within the meaning of the
16 *National Security Information (Criminal and Civil*
17 *Proceedings) Act 2004*); or
 - 18 (c) documents or things relating to national security (within the
19 meaning of the *National Security Information (Criminal and*
20 *Civil Proceedings) Act 2004*).

21 **9 At the end of Subdivision A of Division 2 of Part 7**

22 Add:

23 **114A Prohibition on the provision etc. of academic cheating services**

24 *Offence*

25 (1) A person commits an offence if the person provides, offers to
26 provide or arranges the provision of a service of a kind mentioned
27 in subsection (3) to a student enrolled in a course of study.

28 Penalty: 2 years imprisonment or 500 penalty units, or both.

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Schedule 1 Amendments

1 *Civil penalty*

2 (2) A person contravenes this subsection if the person provides, offers
3 to provide or arranges the provision of a service of a kind
4 mentioned in subsection (3) to a student enrolled in a course of
5 study.

6 Civil penalty: 1,000 penalty units.

7 *Relevant services*

- 8 (3) The services are as follows:
- 9 (a) completing an assignment or any other work that the student
10 is required to complete as part of the course of study;
 - 11 (b) providing any part of a piece of work or assignment that the
12 student is required to complete as part of the course of study;
 - 13 (c) providing the answers for an examination that the student is
14 required to complete as part of the course of study;
 - 15 (d) sitting an examination that the student is required to complete
16 as part of the course of study.

17 *Exception*

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

21 Note: A defendant bears an evidential burden in relation to the matters in
22 this subsection (see section 124A of this Act and subsection 13.3(3) of
23 the *Criminal Code*).

24 Example: A university permits a student with a disability to use a scribe in an
25 examination.

26 **114B Prohibition on advertising academic cheating services**

27 *Offence*

28 (1) A person commits an offence if the person advertises, or publishes
29 or broadcasts an advertisement of, a service of a kind mentioned in
30 subsection (3).

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Amendments **Schedule 1**

1 Penalty: 2 years imprisonment or 500 penalty units, or both.

2 *Civil penalty*

3 (2) A person contravenes this subsection if the person advertises, or
4 publishes or broadcasts an advertisement of, a service of a kind
5 mentioned in subsection (3).

6 Civil penalty: 1,000 penalty units.

7 *Relevant services*

8 (3) The services are as follows:

9 (a) completing an assignment or any other work that a student is
10 required to complete as part of a course of study;

11 (b) providing, or arranging the provision of, any part of a piece
12 of work or assignment that a student is required to complete
13 as part of a course of study;

14 (c) providing, or arranging the provision of, the answers for an
15 examination that a student is required to complete as part of a
16 course of study;

17 (d) sitting an examination that a student is required to complete
18 as part of a course of study.

19 *Exception*

20 (4) Subsections (1) and (2) do not apply if the person did not know,
21 and could not reasonably have been expected to know, that the
22 advertisement was for a service of a kind mentioned in
23 subsection (3).

24 Note: A defendant bears an evidential burden in relation to the matters in
25 this subsection (see section 124A of this Act and subsection 13.3(3) of
26 the *Criminal Code*).

27 **10 After subsection 115(4)**

28 Insert:

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Schedule 1 Amendments

1 *Determining pecuniary penalty for breach of academic cheating*
2 *provisions*

3 (4A) The pecuniary penalty for a contravention of subsection 114A(2)
4 or 114B(2) must not be more than:

5 (a) if the person is a body corporate—5 times the pecuniary
6 penalty specified in the civil penalty provision; and

7 (b) otherwise—the pecuniary penalty specified in the civil
8 penalty provision.

9 **11 At the end of Division 2 of Part 7**

10 Add:

11 **124A Exceptions etc. to civil penalty provisions—burden of proof**

12 If, in proceedings for a civil penalty order against a person for a
13 contravention of a civil penalty provision, the person wishes to rely
14 on any exception, exemption, excuse, qualification or justification
15 provided by the law creating the civil penalty provision, then the
16 person bears an evidential burden in relation to that matter.

17 **12 Subsection 125(1)**

18 Omit “regulated entity”, substitute “person”.

19 **13 Paragraphs 125(1)(a), (b) and (c)**

20 Omit “the entity” (wherever occurring), substitute “the person”.

21 **14 Subsections 125(3) and (4)**

22 Omit “regulated entity”, substitute “person”.

23 **15 Subsection 125(5)**

24 Before “TEQSA may”, insert “If the person giving the undertaking is a
25 regulated entity”.

26 **16 Paragraph 126(1)(a)**

27 Omit “regulated entity”, substitute “person”.

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Amendments **Schedule 1**

1 **17 Paragraph 126(1)(c)**

2 Omit “the entity”, substitute “the person”.

3 **18 Subsection 126(2)**

4 Omit “regulated entity”, substitute “person”.

5 **19 Paragraphs 126(2)(a), (b) and (c)**

6 Omit “the entity” (wherever occurring), substitute “the person”.

7 **20 Section 127 (heading)**

8 Repeal the heading, substitute:

9 **127 Restraining and performance injunctions**

10 **21 Subsection 127(1)**

11 Omit “regulated entity”, substitute “person”.

12 **22 Paragraphs 127(1)(c) and (d)**

13 Omit “the entity”, substitute “the person”.

14 **23 Paragraph 127(2)(a)**

15 Omit “regulated entity”, substitute “person”.

16 **24 Subsection 127(2)**

17 Omit “the entity”, substitute “the person”.

18 **25 After section 127**

19 Insert:

20 **127A Injunctions relating to online locations that facilitate provision**
21 **of, or advertising of, academic cheating services**

22 *Application for an injunction*

23 (1) TEQSA may apply, on behalf of the Commonwealth, to the
24 Federal Court to grant an injunction that requires a carriage service
25 provider to take such steps as the Court considers reasonable to

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Schedule 1 Amendments

1 disable access to an online location that contravenes, or facilitates a
2 contravention of, section 114A or 114B.

3 (2) The application under subsection (1) may also request that the
4 injunction require an online search engine provider (other than a
5 provider that is covered by a declaration under subsection (11)) to
6 take such steps as the Court considers reasonable so as not to
7 provide a search result that refers users to the online location.

8 *Granting the injunction*

9 (3) The Court may grant the injunction in the terms, and subject to the
10 conditions, that the Court considers appropriate.

11 Note 1: For the matters that the Court may take into account when determining
12 whether to grant the injunction, see subsection (7).

13 Note 2: The terms and conditions of the injunction that apply to a carriage
14 service provider under subsection (1) may be different from those that
15 apply to an online search engine provider under subsection (2).

16 (4) Without limiting subsection (3), the injunction may:

17 (a) require the carriage service provider to take reasonable steps
18 to do either or both of the following:

19 (i) block domain names, URLs and IP addresses that
20 provide access to the online location and that are
21 specified in the injunction;

22 (ii) block domain names, URLs and IP addresses that the
23 carriage service provider and TEQSA agree, in writing,
24 have started to provide access to the online location
25 after the injunction is made; and

26 (b) require the online search engine provider to take reasonable
27 steps to do either or both of the following:

28 (i) not provide search results that include domain names,
29 URLs and IP addresses that provide access to the online
30 location and that are specified in the injunction;

31 (ii) not provide search results that include domain names,
32 URLs and IP addresses that the online search engine
33 provider and TEQSA agree, in writing, have started to
34 provide access to the online location after the injunction
35 is made.

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Parties

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(5) The parties to an action under subsection (1) are:

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(a) TEQSA; and

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(b) the carriage service provider; and

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(c) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

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(d) the person who operates the online location if, but only if, that person makes an application to be joined as a party to the proceedings.

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Service

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(6) TEQSA must notify:

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(a) the carriage service provider; and

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(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—the online search engine provider; and

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(c) the person who operates the online location;

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of the making of an application under subsection (1), but the Court may dispense, on such terms as it sees fit, with the notice required to be sent under paragraph (c) if the Court is satisfied that TEQSA is unable, despite reasonable efforts, to determine the identity or address of the person who operates the online location, or to send notices to that person.

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Matters to be taken into account

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(7) In determining whether to grant the injunction, the Court may take the following matters into account:

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(a) whether disabling access to the online location is a proportionate response in the circumstances;

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(b) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether not providing search results that refer users to the online location is a proportionate response in the circumstances;

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Schedule 1 Amendments

- 1 (c) the impact on any person, or class of persons, likely to be
2 affected by the grant of the injunction;
3 (d) whether it is in the public interest to disable access to the
4 online location;
5 (e) if the application under subsection (1) also sought for the
6 injunction to apply against an online search engine
7 provider—whether it is in the public interest not to provide
8 search results that refer users to the online location;
9 (f) whether TEQSA complied with subsection (6);
10 (g) any other remedies available under this Act;
11 (h) any other matter prescribed by the regulations;
12 (i) any other relevant matter.

Rescinding and varying injunctions

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14 (8) The Court may:
15 (a) limit the duration of; or
16 (b) upon application, rescind or vary;
17 an injunction granted under this section.
18 (9) An application under subsection (8) may be made by:
19 (a) any of the persons referred to in subsection (5); or
20 (b) any other person prescribed by the regulations.
21 (10) An application under subsection (8) must not request the Court to
22 vary the injunction so that it applies to an online search engine
23 provider that is covered by a declaration under subsection (11).

Declarations excluding online search engine providers

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25 (11) The Minister may, by legislative instrument, declare that:
26 (a) a particular online search engine provider; or
27 (b) an online search engine provider that is a member of a
28 particular class;
29 must not be specified in an application under subsection (1) or (8).

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Costs

(12) A carriage service provider or, if applicable, an online search engine provider is not liable for any costs in relation to the proceedings unless the provider enters an appearance and takes part in the proceedings.

26 Section 128

After “under section 127”, insert “or 127A”.

27 Paragraphs 128(a) and (b)

Omit “regulated entity”, substitute “person”.

28 Subsection 130(1)

Omit “regulated entity”, substitute “person”.

29 Paragraphs 130(1)(a), (b) and (c)

Omit “the entity”, substitute “the person”.

30 Subsection 130(2)

Omit “regulated entity”, substitute “person”.

31 Paragraphs 130(2)(a), (b) and (c)

Omit “the entity”, substitute “the person”.

32 After paragraph 134(1)(d)

Insert:

(da) to protect and enhance academic integrity by:

- (i) gathering, providing and sharing information, and providing education, about matters relating to academic cheating services;
- (ii) conducting research relating to academic cheating services; and
- (iii) taking action to prevent access to online sources of academic cheating services;

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Schedule 1 Amendments

1 **33 Division 2 of Part 10 (heading)**

2 Repeal the heading, substitute:

3 **Division 2—Information management—regulated entities**

4 **34 At the end of Division 2 of Part 10**

5 Add:

6 **Division 3—Information management—academic cheating**
7 **services**

8 **197A Information or documents obtained under subsection 63(1A)**

9 TEQSA may disclose any information or documents obtained
10 under subsection 63(1A) for the purpose of performing its
11 functions.