



Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020

No. 78, 2020

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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**An Act to amend the *Tertiary Education Quality and
Standards Agency Act 2011*, and for related
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[Assented to 3 September 2020]

The Parliament of Australia enacts:

No. 78, 2020

*Tertiary Education Quality and Standards Agency Amendment
(Prohibiting Academic Cheating Services) Act 2020*

1

1 Short title

This Act is the *Tertiary Education Quality and Standards Agency Amendment (Prohibiting Academic Cheating Services) Act 2020*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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 September 2020

Note: This table relates only to the provisions of this Act as originally enacted.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

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

3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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 the academic integrity of courses provided by higher education providers by prohibiting academic cheating services.

2 At the end of section 4

Add:

- | |
|--|
| <ul style="list-style-type: none">• TEQSA has a role in preventing and minimising the use and promotion of academic cheating services in courses provided by higher education providers. |
|--|

3 Section 5

Insert:

academic cheating service means the provision of work to or the undertaking of work for students, in circumstances where the work:

- is, or forms a substantial part of, an assessment task that students are required to personally undertake; or
- could reasonably be regarded as being, or forming a substantial part of, an assessment task that students are required to personally undertake.

academic cheating services information means information that:

- was obtained under, or for the purposes of, this Act; and
- relates to the use or provision of an academic cheating service by a person; and
- identifies, or is reasonably capable of being used to identify, the person.

assessment task means an assignment, essay, examination, practicum, presentation, project or any other assessable part of a course of study, whether mandatory or optional.

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

commercial purpose means a purpose relating to the derivation of financial gain or reward.

entrusted person means a person who is or was any of the following:

- (a) a Commissioner;
- (b) a Panel member;
- (c) the Chief Executive Officer;
- (d) a member of the staff of TEQSA;
- (e) a person performing a service for TEQSA.

national security has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

national security information has the same meaning as in the *National Security Information (Criminal and Civil Proceedings) Act 2004*.

4 Division 4 of Part 1 (heading)

Repeal the heading, substitute:

Division 4—Act excludes State and Territory higher education laws

5 Section 8

Repeal the section.

6 Section 63 (heading)

Repeal the heading, substitute:

63 Requiring certain persons to give information etc.

7 After subsection 63(1)

Insert:

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

8 Paragraphs 63(4)(b) and (c)

Omit “(within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*)”.

9 At the end of section 63

Add:

- (5) Subsection (1A) does not apply to:
- (a) a lawyer who is acting, or has acted, for a person who is suspected of contravening, or has contravened, section 114A or 114B; or
 - (b) national security information; or
 - (c) documents or things relating to national security.

10 At the end of Subdivision A of Division 2 of Part 7

Add:

114A Prohibition on providing etc. academic cheating services

Providing etc. an academic cheating service for a commercial purpose

- (1) A person commits an offence if the person provides, offers to provide or arranges for a third person to provide an academic cheating service:
- (a) to a student undertaking, with a higher education provider:
 - (i) an Australian course of study; or

- (ii) an overseas course of study provided at Australian premises; and
- (b) for a commercial purpose.

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

- (2) Strict liability applies to:
 - (a) paragraph (1)(a); and
 - (b) the physical element of circumstance in paragraphs (a) and (b) of the definition of *academic cheating service* in section 5.

Providing etc. an academic cheating service

- (3) A person contravenes this subsection if the person provides, offers to provide or arranges for a third person to provide an academic cheating service to a student undertaking, with a higher education provider:
 - (a) an Australian course of study; or
 - (b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

Generally not necessary to prove provision etc. of an academic cheating service to a particular student

- (4) In proceedings for a contravention of subsection (1) or (3), it is not necessary to prove that the person provided, offered to provide or arranged for a third person to provide an academic cheating service to a particular student.
- (5) Subsection (4) does not apply in relation to proceedings for a contravention of subsection (1) or (3) (as that provision is given effect by paragraph 114C(4)(c)) if the student referred to in that subsection is an alien (within the meaning of paragraph 51(xix) of the Constitution).

114B Prohibition on advertising academic cheating services

- (1) A person commits an offence if:
-

-
- (a) the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:
 - (i) an Australian course of study; or
 - (ii) an overseas course of study provided at Australian premises; and
 - (b) either:
 - (i) the person does so for a commercial purpose; or
 - (ii) the academic cheating service has a commercial purpose.

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

- (2) A person contravenes this subsection if the person advertises, or publishes or broadcasts an advertisement for, an academic cheating service to students undertaking, with a higher education provider:
 - (a) an Australian course of study; or
 - (b) an overseas course of study provided at Australian premises.

Civil penalty: 500 penalty units.

114C Additional operation of sections 114A and 114B

- (1) In addition to the effect they have in relation to higher education providers, sections 114A and 114B also have effect as provided by this section.

Note: For the meaning of *higher education provider*, see section 5.

Section 114A—trade and commerce

- (2) Section 114A also has the effect it would have as if:
 - (a) each reference to providing an academic cheating service were expressly confined to a service that is, or is to be, provided in the course of trade and commerce to which paragraph 51(i) of the Constitution applies; or
 - (b) each reference to an offer to provide, or to an arrangement to provide, an academic cheating service were expressly confined to an offer or arrangement made in the course of trade and commerce to which paragraph 51(i) of the Constitution applies.

Section 114A—communications

- (3) Section 114A also has the effect it would have as if:
- (a) each reference to providing an academic cheating service were expressly confined to a service that is, or is to be, provided by means of a service to which paragraph 51(v) of the Constitution applies; or
 - (b) each reference to an offer to provide, or to an arrangement to provide, an academic cheating service were expressly confined to an offer or arrangement made by means of a service to which paragraph 51(v) of the Constitution applies.

Section 114A—aliens

- (4) Section 114A also has the effect it would have as if:
- (a) each reference to a person who provides, offers to provide or arranges for a third person to provide an academic cheating service were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution); or
 - (b) each reference to a third person in respect of whom an arrangement is made were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution); or
 - (c) each reference to a student were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution).

Sections 114A—constitutional corporations (other than higher education providers)

- (5) Section 114A also has the effect it would have as if:
- (a) each reference to a person who provides, offers to provide or arranges for a third person to provide an academic cheating service were expressly confined to a constitutional corporation; or
 - (b) each reference to a third person in respect of whom an arrangement is made were expressly confined to a constitutional corporation.

Section 114B—trade and commerce

- (6) Section 114B also has the effect it would have as if:
- (a) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to a service that is, or is to be, provided in the course of trade and commerce to which paragraph 51(i) of the Constitution applies; or
 - (b) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to advertising, publishing or broadcasting in the course of trade and commerce to which paragraph 51(i) of the Constitution applies.

Section 114B—communications

- (7) Section 114B also has the effect it would have as if:
- (a) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to a service that is, or is to be, provided by means of a service to which paragraph 51(v) of the Constitution applies; or
 - (b) each reference to advertising, or publishing or broadcasting an advertisement for, an academic cheating service were expressly confined to advertising, publishing or broadcasting by means of a service to which paragraph 51(v) of the Constitution applies.

Section 114B—aliens

- (8) Section 114B also has the effect it would have as if each reference to a person who advertises, or publishes or broadcasts an advertisement for, an academic cheating service were expressly confined to a person who is an alien (within the meaning of paragraph 51(xix) of the Constitution).

Section 114B—constitutional corporations

- (9) Section 114B also has the effect it would have as if each reference to a person who advertises, or publishes or broadcasts an

advertisement for, an academic cheating service were expressly confined to a constitutional corporation.

11 Subsection 115(2)

Omit “(but not exceeding the amount specified for the provision)”.

12 After subsection 115(2)

Insert:

- (2A) Subject to subsection (2B), in determining a pecuniary penalty for the purposes of subsection (2), the Court must not determine a penalty exceeding the pecuniary penalty specified for the civil penalty provision.
- (2B) If a court is satisfied that a body corporate has contravened subsection 114A(3) or 114B(2) (which deal with academic cheating services), the Court may determine a pecuniary penalty not exceeding an amount equal to 5 times the pecuniary penalty specified for the civil penalty provision.

Note: If a body corporate is convicted of an offence against subsection 114A(1) or 114B(1), subsection 4B(3) of the *Crimes Act 1914* allows a court to impose a fine of up to 5 times the penalty set out in the relevant subsection.

13 Subsection 125(1)

Omit “regulated entity”, substitute “person”.

14 Paragraphs 125(1)(a), (b) and (c)

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

15 Subsections 125(3) and (4)

Omit “regulated entity”, substitute “person”.

16 Subsection 125(5)

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

17 Paragraph 126(1)(a)

Omit “regulated entity”, substitute “person”.

18 Paragraph 126(1)(c)

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

19 Subsection 126(2)

Omit “regulated entity”, substitute “person”.

20 Paragraphs 126(2)(a), (b) and (c)

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

21 Section 127 (heading)

Repeal the heading, substitute:

127 Restraining and performance injunctions

22 Subsection 127(1)

Omit “regulated entity”, substitute “person”.

23 Paragraphs 127(1)(c) and (d)

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

24 Paragraph 127(2)(a)

Omit “regulated entity”, substitute “person”.

25 Subsection 127(2)

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

26 After section 127

Insert:

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

Application for an injunction

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

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

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

Granting the injunction

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

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

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

- (4) Without limiting subsection (3), the injunction may:
- (a) require the carriage service provider to take reasonable steps to do either or both of the following:
 - (i) block domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;
 - (ii) block domain names, URLs and IP addresses that the carriage service provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made; and
 - (b) require the online search engine provider to take reasonable steps to do either or both of the following:
 - (i) not provide search results that include domain names, URLs and IP addresses that provide access to the online location and that are specified in the injunction;
 - (ii) not provide search results that include domain names, URLs and IP addresses that the online search engine provider and TEQSA agree, in writing, have started to provide access to the online location after the injunction is made.

Parties

- (5) The parties to an action under subsection (1) are:
- (a) TEQSA; and
 - (b) the carriage service provider; and
 - (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
 - (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.

Service

- (6) TEQSA must notify:
- (a) the carriage service provider; and
 - (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
 - (c) the person who operates the online location;
- 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.

Matters to be taken into account

- (7) In determining whether to grant the injunction, the Court may take the following matters into account:
- (a) whether disabling access to the online location is a proportionate response in the circumstances;
 - (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;
 - (c) the impact on any person, or class of persons, likely to be affected by the grant of the injunction;

- (d) whether it is in the public interest to disable access to the online location;
- (e) if the application under subsection (1) also sought for the injunction to apply against an online search engine provider—whether it is in the public interest not to provide search results that refer users to the online location;
- (f) whether TEQSA complied with subsection (6);
- (g) any other remedies available under this Act;
- (h) any other matter prescribed by the regulations;
- (i) any other relevant matter.

Rescinding and varying injunctions

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

Declarations excluding online search engine providers

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

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.

27 Section 128

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

28 Paragraphs 128(a) and (b)

Omit “regulated entity”, substitute “person”.

29 Subsection 130(1)

Omit “regulated entity”, substitute “person”.

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

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

31 Subsection 130(2)

Omit “regulated entity”, substitute “person”.

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

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

33 After paragraph 134(1)(d)

Insert:

(da) to protect and enhance academic integrity by:

- (i) gathering, providing and sharing information, and providing education, in relation to the conduct prohibited by sections 114A and 114B; and
- (ii) conducting research relating to academic cheating services; and
- (iii) taking action to prevent access to online sources of academic cheating services;

34 Division 2 of Part 10 (heading)

Repeal the heading, substitute:

Division 2—Management of higher education information**35 Paragraph 188(1)(a)**

Repeal the paragraph, substitute:

- (a) the person obtains higher education information in the person's capacity as an entrusted person; and

36 Section 197

Omit "(within the meaning of the *National Security Information (Criminal and Civil Proceedings) Act 2004*)".

37 At the end of Part 10

Add:

Division 3—Management of academic cheating services information

197A Offence of unauthorised disclosure or use of academic cheating services information

- (1) A person commits an offence if:
 - (a) the person obtains academic cheating services information in the person's capacity as an entrusted person; and
 - (b) the person:
 - (i) discloses the information to another person; or
 - (ii) uses the information.

Penalty: Imprisonment for 2 years.

Exception

- (2) Subsection (1) does not apply if:
 - (a) the disclosure or use is made for the purposes of this Act or the *Education Services for Overseas Students Act 2000*, or otherwise is in connection with the performance of the person's duties as an entrusted person; or
 - (b) the disclosure or use is authorised by section 197B.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2) (see subsection 13.3(3) of the *Criminal Code*).

197B Authorised disclosure and use of academic cheating services information

Disclosing etc. information relating to providers of academic cheating services

- (1) TEQSA may disclose or use academic cheating services information if the disclosure or use is of information that a person provides, or is reasonably suspected by TEQSA of providing, an academic cheating service.

Disclosing information relating to users of academic cheating services

- (2) TEQSA may disclose academic cheating services information to a higher education provider if:
 - (a) the disclosure is of information that a person has used, or is reasonably suspected by TEQSA of using, an academic cheating service; and
 - (b) TEQSA knows, or reasonably suspects, that the person is or has been enrolled in a course of study with the higher education provider.
- (3) TEQSA may disclose academic cheating services information to a regulatory authority of another country if:
 - (a) cooperative arrangements exist with that authority or country that relate to the regulation of higher education; and
 - (b) the disclosure is consistent with those arrangements.

197C Obtaining academic cheating services information

A person may disclose academic cheating services information to TEQSA to assist TEQSA in performing its functions under paragraph 134(1)(c), (da) or (j).

197D Information about national security

Section 197B does not apply to national security information.

*[Minister's second reading speech made in—
House of Representatives on 4 December 2019
Senate on 12 June 2020]*

(257/19)

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