

Navitas response to Exposure Draft:
Tertiary Education Quality and Standards Agency Amendment
(Prohibiting Academic Cheating Services) Bill 2019

Navitas thanks the Australian Government for the opportunity to comment on the draft amendments to the *Tertiary Education Quality and Standards Agency (TEQSA) Act 2011* legislation, specifically aimed at tackling contract cheating.

Navitas fully supports the Government's move to legislate to make commercial cheating services illegal. Their existence undermines the integrity of the Australian higher education sector and we therefore commend this initiative by the Government.

We support the proposed new section 114A of the TEQSA Act that would make it an offence to provide academic cheating services, where the assignment, work or examination is a required part of a course of study. Cheating services include:

- completing an assignment or other work for a student
- providing any part of a piece of work or assignment
- providing answers for an examination
- sitting an examination

We note that the bill exempts legitimate assistance provided to a student with special needs – e.g. a scribe assisting a student with disability undertake an exam.

We also note that the proposed new section 114B would make it an offence to advertise such services. This section would apply to the person initiating or paying for the advert. It will also apply to the publisher of an advertisement, if they could reasonably have been expected to know the service being advertised is prohibited. Both new types of offences will attract criminal penalties of up to two years imprisonment or 500 penalty units (currently \$105,000) and/or Civil penalties of up to 1,000 penalty units (currently \$210,000).

Issues for consideration in the drafting and application of the legislation

Notwithstanding our strong support for stamping out cheating in all forms, particularly commercial / contract cheating that is the focus of this amendment, Navitas does raise a number of issues for consideration in the drafting and the application of the legislation. It is important to ensure these issues are addressed, or else there is a risk of unintended negative consequences.

The first six issues relate to the legislation itself and the seventh relates to the implementation of the legislation by the regulator and the regulatory burden on providers.

1. Recognition of legitimate student support and academic services

Navitas suggests that the legislation, or relevant instrument, state clearly that legitimate tutorial, academic support and subject summary services that enhance the student experience and outcomes are not the subject of this amendment. Navitas is concerned that there is potential for the current definition of 'academic cheating service' in 114A(3) of the draft amendment may unintentionally capture legitimate services, such as study guides, sample exams and new technologies and applications that support learning. By extension, the prohibition on advertising in 114B may likewise capture legitimate services.

There are a number of legitimate services that higher education providers and students access to support their learning. For example, commercial subject summaries for law subjects. Another such

example are online tutoring services, such as *Studiosity*¹. Studiosity is a recognised and legitimate online personal study support which connects students with education partners across the web and gives writing feedback service and an academic writing evaluation.² This service, which is offered on a fee for service basis, is regarded by many in the higher education sector as providing a valuable service to students. However, under proposed legislative amendments, such services could be deemed a contract cheating service. Navitas strongly recommends that the current text of the legislation be reviewed and revised to ensure all currently available and future legitimate study support tools be exempt from the Act. TEQSA may also consider developing a guidance note on this topic to ensure Higher Education Providers, students and education support service providers have clear advice on what is and is not a legitimate service.

2. Language of advertisements

Navitas highlights that the target of many contract cheating services are international students. Therefore, we suggest that if required, it should be made clear in the legislation or relevant instrument, that all advertisements whether in English or another language are subject to the proposed amendment.

3. Inclusion of all modes of advertisements

Navitas also highlights that often contract cheating services are 'advertised' in areas where there is a critical mass of students – e.g. around campuses of universities or CBDs – by posting a piece of paper on streetlamps and the like with 'tear-away' sections at the bottom. There are also instances of advertisements being placed in non-English newspapers and magazines. Navitas therefore suggests that the legislation is reviewed to ensure these kinds of 'low-tech' advertisements are not unintentionally overlooked.

4. Technology and the application of the legislation

Navitas highlights that there will be technical elements to the application of the legislation that the regulator will have to take account of in the application of the legislation. For example, the enforcement of the law where Internet Service Providers (ISPs) for cheating websites that are based outside of Australia and where Virtual Private Networks (VPNs) are being used. No doubt, other Commonwealth agencies, such as the Australian Federal Police, will have advice on how to manage these issues.

5. Equal application of the legislation to all citizens and non-citizens

Navitas is seeking clarification regarding whether the legislation is to be applied equally to both Australian citizens and non-citizens (aliens as per paragraph 51(xix) of the Constitution). This is both in the case of the person procuring these services (students) or the person providing them or advertising them.

It is unclear to Navitas with the current reference to 'alien' in Sections 114A and 114B of the amendment that the intention of the legislation is to apply to both groups – citizens and non-citizens. Our strong position is that the legislation should apply to both citizens and non-citizens – as procurers of the service as well as the provider / advertiser of the services.

¹ <https://www.studiosity.com/>

² An example of the type of assistance available is detailed here: <https://www.studiosity.com/howitworks/subjects>

6. Status / application of the legislation in transnational education contexts

Navitas highlights that many Australian Higher Education Providers operate programs offshore that are accredited by TEQSA. We are seeking guidance on the status and application of the legislation in these circumstances.

7. Obligations of higher education providers under the legislation

Navitas is supportive of the position stated in the *Overview – Draft legislation to tackle contract cheating*, that says 'students who cheat remain subject to their institutions' own academic integrity policies, processes and sanctions and any consequences that may flow from those'. All Higher Education Providers must maintain rigorous academic integrity standards, including as they relate to cheating.

However, Navitas seeks to understand the full regulatory and administrative impact of these proposed amendments on providers, particularly when TEQSA has been tasked with providing 'support to higher education providers to address contract cheating, including through the development of education materials, information sharing, intelligence gathering'. As noted above, the Higher Education Standards Framework already impose regulatory obligations on providers with regards to dealing with issues of academic integrity. Any further obligations under this amendment need to be clearly communicated to providers, but moreover, must not impose any unwarranted regulatory burden on providers.

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