

STUDENT IDENTIFIERS (EXEMPTIONS) INSTRUMENT 2014

EXPLANATORY STATEMENT

Subject – *Student Identifiers Act 2014*

– *Student Identifiers (Exemptions) Instrument 2014*

Background

- The *Student Identifiers Act 2014* (the Act) and the *Student Identifiers Regulation 2014* (the Regulation) provide for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015. The Act and Regulation set out how the student identifier will be assigned, collected, used and disclosed and provides for the creation of an authenticated transcript of an individual's record of nationally recognised training undertaken or completed after 1 January 2015.
- Sub-section 4(1) of the Act defines 'Commonwealth Minister' as the Minister administering the Act.
- Sub-section 53(1) of the Act specifies that a registered training organisation must not issue a VET qualification or a VET statement of attainment to an individual unless the individual has been assigned a student identifier. Sub-section 53(2) of the Act specifies that sub-section 53(1) does not apply to an issue specified under sub-section 53(3).

Authority

- Sub-section 53(3) of the Act provides that the Commonwealth Minister may, by legislative instrument, specify an issue to which sub-section 53(1) does not apply, by reference to:
 - the registered training organisation doing the issuing;
 - the VET qualification, or VET statement of attainment, being issued;
 - the individual to whom the VET qualification, or VET statement of attainment, is being issued.

Purpose and operation

- The purpose of the *Student Identifiers (Exemptions) Instrument 2014* is to specify the matters which are exempt from the requirement for an individual to have been assigned a student identifier before a VET qualification or VET statement of attainment can be issued.
- Exemptions for registered training organisations are provided to mirror exemptions from the need to collect and submit AVETMISS compliant data on nationally recognised training activities, as established under the National VET Provider Collection Data Requirements Policy (Policy). The Policy includes the following exemptions:
 - for a registered training organisation, where, following consultation with its VET Regulator, submission of AVETMISS compliant data would conflict with defence or national security legislation and/or could jeopardise the security or safety of defence, border protection, customs, national security or police personnel;

- prior to 1 January 2016, where a registered training organisation has notified its VET Regulator that it will not collect and submit AVETMISS compliant data on all or part of its nationally recognised training activity on the grounds that it is delivering vital community services (including emergency, fire, rescue or first aid services) and it considers that the submission of AVETMISS compliant data would adversely affect its ability to continue to deliver these vital community services to the Australian community;
- from 1 January 2016, where a registered training organisation has notified its VET Regulator that it will not collect and submit AVETMISS compliant data on its nationally recognised training activity for which it has not received a fee or other form of consideration on the grounds that it is delivering vital community services (including emergency, fire, rescue or first aid services) and it considers that the submission of AVETMISS compliant data would adversely affect its ability to continue to deliver these vital community services to the Australian community
- In addition, where, prior to 1 January 2016, a registered training organisation delivers a VET course over a single day or less to an individual and the individual is unable to obtain a student identifier before the completion of the VET course delivered over a single day or less then the registered training organisation may issue a VET qualification or a VET statement of attainment to that individual.
- Exemptions are also provided for an individual where:
 - the individual is an international student studying outside of Australia;
 - the individual has completed their VET prior to 1 January 2015; or
 - the individual has a genuine personal objection to being assigned a student identifier.

Consultation

- The Australian Government conducted extensive consultation with Australian States and Territories and the VET sector throughout the development of the Student Identifiers scheme.
- In 2013, public consultations into the proposed student identifiers scheme were undertaken. In addition the agreement of state and territory training ministers to introduce exemptions from the requirement to use a student identifier in certain circumstances was obtained.
- Sub-section 53(4) of the Act specifies that the Commonwealth Minister must obtain the agreement of the Ministerial Council to the making of the exemptions instrument. The current Ministerial Council is the Council of Australian Governments Industry and Skills Council (Council). This condition was met on 16 December 2014, being the date by which the majority of the members of the Council agreed to the making of the instrument.

Detailed explanation of the provisions

- Section 1 provides that the name of the legislative instrument is the *Student Identifiers (Exemptions) Instrument 2014*.
- Section 2 provides that the legislative instrument commences on the day after it is registered.
- Section 3 provides that the authority for the exemptions is sub-section 53(3) of the Act.

- Section 4 sets out the definitions of the terms used in the exemptions.
- Section 5 provides the purpose of part 2 of the instrument.
- Section 6 specifies that registered training organisations are allowed to issue a VET qualification or VET statement of attainment to an individual without a student identifier where the registered training organisation is exempted from the need to collect and submit AVETMISS compliant data under the relevant provisions of the National VET Provider Collection Data Requirements Policy, because this would conflict with defence or national security legislation and/or could jeopardise the security or safety of defence, border protection, customs, national security or police personnel.
- Section 6 also specifies that registered training organisations are allowed to issue a VET qualification or VET statement of attainment to an individual without a student identifier where:
 - prior to 1 January 2016, a registered training organisation is exempt from reporting on VET on the basis that it has notified its VET Regulator that it will not collect and submit AVETMISS compliant data on all or part of its nationally recognised training activity on the grounds that it is delivering vital community services (including emergency, fire, rescue or first aid services) and it considers that the submission of AVETMISS compliant data would adversely affect its ability to continue to deliver these vital community services to the Australian community;
 - commencing from 1 January 2016, a registered training organisation is exempt from reporting on VET on the basis that it has notified its VET Regulator that it will not collect and submit AVETMISS compliant data on its nationally recognised training activity for which it has not received a fee or other form of consideration on the grounds that it is delivering vital community services (including emergency, fire, rescue or first aid services) and it considers that the submission of AVETMISS compliant data would adversely affect its ability to continue to deliver these vital community services to the Australian community; and
 - where, prior to 1 January 2016, a registered training organisation delivers a VET course over a single day or less to an individual and the individual is unable to obtain a student identifier before the completion of the VET course delivered over a single day or less.
- Section 7 specifies that a registered training organisation can issue a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier where:
 - the individual is an international student who has completed all the requirements for the VET qualification or VET statement of attainment outside of Australia; or
 - the individual has completed all the requirements for the VET qualification or VET statement of attainment before 1 January 2015; or
 - the individual has a genuine personal objection to being assigned a student identifier.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Student Identifiers (Exemptions) Instrument 2014

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The instrument is made under sub-section 53(3) of the *Student Identifiers Act 2014* (the Act) with the agreement of the Ministerial Council.

The purpose of the instrument is to specify the matters which are exempt from the requirement under sub-section 53(1) of the Act, for an individual to have been assigned a student identifier before a VET qualification or VET statement of attainment is issued.

The instrument provides exemptions for registered training organisations where the VET training would affect the delivery of vital community services such as fire, first-aid and rescue services or where the VET training would conflict with defence or national security legislation or could jeopardise the security of personnel working in defence, border protection, customs, or police agencies.

The instrument also provides exemptions for an individual where the individual is an international student studying outside of Australia, the individual has completed their VET training prior to 1 January 2015 or the individual has a genuine personal objection to being assigned a student identifier.

Human rights implications

Right to Education

The instrument engages the right to education contained in Article 13 of the *International Covenant on Economic, Social and Cultural Rights 1966* (ICESCR).

In particular paragraph 13(2)(b) of the ICESCR provides:

'b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education'

Sub-section 53(1) of the Act provides that a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier. Sub-section 53(1) may limit an individual's right to education by prohibiting a registered training organisation from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier. To the extent a registered training organisation is prohibited from issuing a VET qualification or a VET statement of attainment, this will not initially limit the right to education as this will not inhibit individuals from accessing vocational education and training. However, for those individuals who do not obtain a student

identifier (which is expected to be very few) and are not covered by an exemption, access to education may be limited if their ability to undertake further training is dependent on the individual providing a VET qualification or a VET statement of attainment for a prerequisite course.

In exempting certain individuals from the requirement in sub-section 53(1) of the Act, the instrument allows certain individuals to access VET qualifications and VET statements of attainment without a student identifier. Therefore, the instrument promotes the right to education by reducing the scope of the possible limitation found under sub-section 53(1) of the Act.

Right to Work

The instrument engages the right to work contained in Article 6 of the ICESCR. The right to work ‘includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.’

In particular, paragraph 6(2) of the ICESCR states:

‘2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.’

In the same way that sub-section 53(1) of the Act may limit an individual’s right to education, sub-section 53(1) may also limit an individual’s right to work. Where formal recognition is a prerequisite to work, the prohibition on registered training organisations from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier and are not covered by an exemption, may limit the right to work.

As described above, the instrument allows certain individuals to access VET qualifications and VET statements of attainment. Therefore, the instrument promotes the right to work by reducing the scope of the possible limitation found under sub-section 53(1) of the Act.

Right to Privacy

The instrument engages the right to privacy contained in Article 17 of the *International Covenant on Civil and Political Rights 1966* (ICCPR). Article 17 provides:

- ‘1. No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation.*
- 2. Everyone has the right to the protection of the law against such interference or attacks.’*

The use of the word arbitrary in Article 17 suggests that any limitation on the right to privacy should be in accordance with the purposes and aims of Article 17 and the ICESCR and should be reasonable in the circumstances.

The instrument provides that individuals may apply to the Student Identifiers Registrar (Registrar) for an exemption to the requirement under sub-section 53(1) of the Act. The application will include individuals’ personal information, including but not limited to individuals’ names and addresses. Through the application process the Registrar will be collecting individuals’ personal information.

Under *Australian Privacy Principle (APP) 3*, found under Schedule 1 of the *Privacy Act 1988 Cth* (Privacy Act), an APP entity (such as the Registrar) must not collection personal information ‘*unless the information is reasonably necessary for, or directly related to, one or more of the entity's functions or activities.*’ Where the personal information collected includes sensitive information (including race or ethnic origin and religious and philosophical beliefs), the individual’s consent must also be sought before collecting such personal information.

The purpose of collecting of personal information in an application for exemption from the requirement under sub-section 53(1) is to allow the Registrar to assess whether an exemption is available to an individual. The personal information will only be used for this purpose. Therefore, the purpose for collecting the personal information is reasonably necessary for and directly related to the activity of considering such applications. Further, in collecting the personal information, the Registrar will be subject to the provisions of the Privacy Act, including but not limited to, investigations into complaints against breaches of privacy.

In addition, individuals interacting with the Student Identifiers scheme will be provided with a privacy notice, consistent with APP 5, and detailing amongst other things, the reasons for collecting the personal information, how the personal information will be used and how an individual may access their personal information.

Conclusion

The Legislative Instrument is compatible with human rights because it advances the protection of human rights and to the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate.

The Hon Ian Macfarlane MP
Minister for Industry