

EXPLANATORY STATEMENT

Student Identifiers (Exemptions) Instrument 2018

Authority

Subsection 53(1) of the *Student Identifiers Act 2014* (**the Act**) provides that a registered training organisation must not issue a vocational education and training (**VET**) qualification or a VET statement of attainment to an individual unless the individual has been assigned a student identifier. Subsection 53(2) of the Act specifies that subsection 53(1) does not apply to an issue specified under subsection 53(3).

The Student Identifiers (Exemptions) Instrument 2018 (**the Instrument**) is made under subsection 53(3) of the Act. Subsection 53(3) of the Act provides that the Minister may, by legislative instrument, specify an issue to which subsection 53(1) does not apply, by reference to:

- a) the registered training organisation doing the issuing;
- b) the VET qualification, or VET statement of attainment, being issued;
- c) the individual to whom the VET qualification, or VET statement of attainment, is being issued.

Subsection 13(3) of the *Legislation Act 2003* (**the Legislation Act**) provides that if enabling legislation, such as the Act, confers on a person the power to make a legislative instrument specifying a matter, then, in exercising the power, the person may identify the matter by referring to a class or classes of matters.

Subsection 53(4) of the Act requires the Minister to obtain the agreement of the Ministerial Council before making a legislative instrument under subsection 53(3). The current Ministerial Council is the Council of Australian Governments Industry and Skills Council (**CISC**). This condition was met for the Instrument in August 2018, during which the members of CISC unanimously agreed to the making of the Instrument.

The Instrument variously incorporates by reference, the National VET Data Policy (**the Policy**). Paragraph 14(1)(b) of the Legislation Act allows a legislative instrument to incorporate any other document in writing which exists at the time the legislative instrument is made. However, subsection 14(2) of the Legislation Act provides that such other documents may not be incorporated as in force or existing from time to time unless a specific provision in the authorising Act overrides subsection 14(2). There is no provision in the Act expressly authorising the Instrument to incorporate matters in an external document as amended from time to time. Rather, the Instrument prescribes issues to which subsection 53(1) of the Act does not apply by reference to the Policy, as a date-specific, point in time document. The purpose of the Policy is to:

- assist users to more easily understand their responsibilities for collecting, submitting, using and accessing VET data by consolidating content from three previous documents into one policy;
- increase the efficiency and transparency of Australia's VET sector by minimising exemptions from data collection and submission;
- enable more students to obtain records of all the nationally recognised training they have undertaken since January 2015, regardless of where it occurred, by the wider inclusion of student identifiers in data submissions; and

- make more comprehensive VET data available for consumers and provide them with the information they need to make decisions about registered training organisations and courses in order to inform their training choices.

The Policy is readily and freely accessible on the Department of Education and Training's (the department's) website at: <https://docs.education.gov.au/node/46116>.

Background

Generally, a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual after 2014 unless the individual has a student identifier. This requirement is contained in section 53 of the Act.

VET qualification and VET statement of attainment each have the same meaning as in the *National Vocational Education and Training Regulator Act 2011*. A VET qualification means a testamur, relating to a VET course, given to a person confirming that the person has achieved learning outcomes and competencies that satisfy the requirements of a qualification. A VET statement of attainment, in relation to units of competency or modules of a VET course, means a statement given to a person confirming that the person has satisfied the requirements of units of competency or modules specified in the statement.

A student identifier is an alphanumeric reference that is unique to each student, which allows them to link their previous and future VET qualifications into a single, authenticated transcript based on records kept in the National Vocational Education and Training Data Collection.

The Student Identifiers Registrar (**the Registrar**) must assign a student identifier to an individual on application.

On request by an individual, or an organisation or body involved with vocational education and training, the Registrar may verify that an identifier is the individual's student identifier, or give the individual's student identifier.

On request, the Registrar may give all or part of an authenticated VET transcript of an individual who has a student identifier to the individual, a registered training organisation or a VET-related body. This is subject to access controls set by the individual.

The Act and Student Identifiers Regulation 2014 (**the Regulation**) provide for the assignment, collection, use or disclosure of student identifiers, as well as the creation of a transcript recording any nationally recognised training that an individual has undertaken or completed after 1 January 2015.

Purpose and Operation of the Instrument

The Instrument repeals and replaces the Student Identifiers (Exemptions) Instrument 2014 (**the 2014 Instrument**), which contained a number of interim measures that were intended to ease the transition towards the full adoption of student identifiers.

The Instrument specifies exemptions to the requirement in subsection 53(1) of the Act that a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual unless they have been assigned a student identifier. The exemptions in the Instrument have been updated to clarify the interaction between the Act and the new National VET Data Policy. The Instrument mirrors the exemptions set out under the Policy, with respect to the need for registered training organisations to collect and submit Australian Vocational Education and Training Management Information Statistical Standard (**AVETMISS**) compliant data on nationally recognised training activity.

The Policy was developed following a review, after the introduction of the Act and the Regulation in 2015 and the first collection of Total VET Activity data in 2014. The Policy was agreed at the CISC meeting on 24 November 2017 and took effect from 1 January 2018 with a six-month transition period until 1 July 2018.

Consultation

In 2017, targeted consultations were conducted with training providers on the reduction of reporting exemptions contained in the Instrument.

The department consulted with Australian state and territory government Ministers and senior officials advising those members of the Skills Senior Officials' Network (SSON) and CISC in November 2017 that legislative amendments may be required to support implementation of the Policy. In May-June 2018, SSON endorsed the proposed amendments. CISC agreement followed in August 2018.

Other stakeholders such as the SSON Data Strategy Working Group, the Registrar and the National Centre for Vocational Education Research also supported the legislative amendments.

Regulation Impact Statement

The reporting exemptions contained in the Instrument mirror those set out under the Policy and do not introduce additional regulatory burden.

The Office of Best Practice Regulation (OBPR) determined that a Regulation Impact Statement is not required as the measures are minor in nature (OBPR reference 22730).

Detailed Explanation of the Provisions

Part 1 Preliminary

Section 1 – Name of legislative instrument

Section 1 provides that the name of the Instrument is the Student Identifiers (Exemptions) Instrument 2018.

Section 2 – Commencement

Section 2 provides for the commencement of the Instrument on the day after the Instrument is registered.

Section 3 – Authority

Section 3 provides that the Instrument is made under subsection 53(3) of the Act.

Section 4 – Repeal of the Student Identifiers (Exemptions) Instrument 2014

Section 4 provides for the repeal of the 2014 Instrument, on the commencement of the Instrument.

Section 5 – Definitions

Section 5 defines terms used in the Instrument.

Part 2 Issues of VET qualifications and VET statements of attainment

Section 6 – Purpose of Part 2

Section 6 sets out the purpose of Part 2 of the Instrument which is that Part 2 specifies, for the purposes of subsection 53(3) of the Act, the exemptions which allow a VET qualification or a

VET statement of attainment to be issued to an individual who has not been assigned a student identifier.

Section 7 – Registered Training Organisations

Section 7 of the Instrument specifies exemptions to the requirement in subsection 53(1) of the Act by reference to classes of registered training organisations issuing the VET qualification or VET statement of attainment.

The first class, which is provided for under paragraph 7(a), is where the registered training organisation is exempted from the need to collect and submit AVETMISS compliant data by operation of section 5.3 of the Policy on the basis that collecting and submitting that data:

- would conflict with defence or national security legislation; or
- could jeopardise the security of defence, border protection, customs, national security or police personnel.

The second class, which is provided for under paragraph 7(b), is where the registered training organisation is exempted from the need to collect and submit AVETMISS compliant data by operation of section 5.5 of the Policy on the basis that the:

- registered training organisation is providing emergency or safety related services to the Australian community;
- registered training organisation is registered as a charity with the Australian Charities and Not-For-Profits Commission;
- registered training organisation provides volunteers, employees, contractors or other students with training or assessment in a VET course, for which it receives no payment; and
- ability of the registered training organisation to provide services to the community may be adversely impacted if it was required to collect and submit AVETMISS compliant data to the National VET Provider Collection on individuals who undertake training or assessment with that registered training organisation.

If the circumstances in either paragraph 7(a) or 7(b) are met, the registered training organisation may issue a VET qualification to an individual who has not been assigned a student identifier and has undertaken training or assessment to which either paragraph 7(a) or 7(b) relate.

Section 8 – Individuals

Section 8 of the Instrument specifies exemptions to the requirement in subsection 53(1) of the Act by reference to classes of individuals to whom the VET qualification, or VET statement of attainment, is being issued. It specifies three classes of individual.

The first class, which is provided for under paragraph 8(a), is where an individual is not an Australian citizen or visa holder and has completed outside of Australia all the requirements to be issued the VET qualification or VET statement of attainment. The Registrar is unable to ensure the accuracy of authenticated VET transcript information for these individuals, as they do not have the necessary documentation to confirm their identities using the Australian Document Verification Service.

The second class, which is provided for under paragraph 8(b), is where an individual has completed all of the requirements for the VET qualification or VET statement of attainment before 1 January 2015, when student identifiers were introduced.

The final class, which is provided for under paragraph 8(c), is where an individual has elected not to be assigned a student identifier because they have a genuine personal objection. Paragraph 8(c) provides that the individual must have completed, and provided to the Registrar, a statutory declaration, in which they have declared that they:

- have a genuine personal objection to being assigned a student identifier; and
- understand the consequences and potential consequences of not being assigned a student identifier.

Consequences of not being assigned a student identifier include that an authenticated VET transcript cannot be provided by the Registrar. An authenticated VET transcript includes information about any VET courses, modules or units of competency undertaken by the individual after 1 January 2015, and may have an impact on the student's ability to establish eligibility for financial assistance to undertake VET in future. The requirement to complete such a statutory declaration prevents individuals foregoing the benefits of a student identifier and compromising the integrity of the student identifiers initiative without adequate consideration of the consequences.

Statement of Compatibility with Human Rights

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

Student Identifiers (Exemptions) Instrument 2018

The Student Identifiers (Exemptions) Instrument 2018 (**the 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 subsection 53(3) of the *Student Identifiers Act 2014 (the Act)* with the agreement of the Ministerial Council.

The Instrument specifies exemptions to the requirement in subsection 53(1) of the Act that a registered training organisation must not issue a vocational education and training (VET) qualification or VET statement of attainment to an individual unless they have been assigned a student identifier.

The Instrument provides exemptions to this requirement in relation to registered training organisations:

- that are registered charities providing emergency or safety related services to the Australian community, who have received no payment for the relevant training or assessment and where the collection and submission of VET training data would adversely impact the ability of the registered training organisation to deliver services to the community; or
- where the collection and submission of VET training data 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 to this requirement in relation to individuals:

- who are not Australian citizens or visa holders and have completed outside of Australia all of the requirements to be issued the VET qualification or VET statement of attainment;
- individuals who have completed all of the requirements of their VET qualification or statement of attainment prior to 1 January 2015; or
- individuals who have completed and provided a statutory declaration to the Student Identifiers Registrar (**the Registrar**), in which they have declared they have a genuine personal objection to being assigned a student identifier and confirming that they understand the consequences and potential consequences of not being assigned a student identifier.

Human rights implications

The Instrument engages the following human rights:

- *the right to education* – Article 13 of the *International Covenant on Economic, Social and Cultural Rights* [1976] ATS 5 (**ICESCR**);
- *the right to work* – Article 6 of ICESCR;
- *the right to privacy* – Article 17(1) of the *International Covenant on Civil and Political Rights* [1980] ATS 23 (**ICCPR**)

Right to Education

The Instrument engages the right to education contained in Article 13 of the ICESCR.

Paragraph 13(2)(b) of the ICESCR provides that 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.

Subsection 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. While individuals without student identifiers will not be prevented from accessing vocational education and training, subsection 53(1) of the Act may restrict 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. This may in turn limit a person's access to education 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.

However, the Instrument exempts certain individuals from the requirement in subsection 53(1) of the Act, including by allowing individuals to opt out of being assigned a student identifier when they have a genuine personal objection. This, in turn, will allow those individuals to access VET qualifications and VET statements of attainment without a student identifier, reducing the scope of the limitations introduced under subsection 53(1) of the Act.

The Instrument supports the right to education by specifying circumstances where a VET qualification or VET statement of attainment may be issued by a registered training organisation where an individual does not have a student identifier. To the extent that the right to education is limited by the exemption regime, such limitation is reasonable and proportionate to the overriding policy objective of the student identifier scheme. Namely, to create a single repository of records of VET student enrolments and achievements so students access a consolidated electronic record of VET attainments over their lifetime and, in turn, registered training organisations can readily confirm students' pre-requisite course work or properly assess their prior learning.

The Instrument is compatible with the right to education.

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 or her living by work which or she freely chooses or accepts, and will take appropriate steps to safeguard this right.

In particular, Article 6(2) of the ICESCR provides that the steps to be taken by a State Party to achieve the full realisation 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.

To the extent that the Instrument exempts certain individuals from requiring student identifiers in particular circumstances, this measure in turn facilitates their access to VET qualifications and VET statements of attainment without a student identifier. Such access is a key precursor to entry into particular occupations and lines of work. This facilitative measure removes a potential structural obstacle which would otherwise hinder the full enjoyment of Article 6.

This Instrument promotes and is compatible with the right to work.

Right to Privacy

The Instrument engages the right to privacy contained in Article 17 of the ICCPR. Article 17 of the ICCPR prohibits unlawful or arbitrary interferences with a person's privacy, family, home and correspondence. It also prohibits unlawful attacks on a person's reputation. It provides that persons have the right to the protection of the law against such interference or attacks.

The Instrument provides that individuals may be exempt from the requirement under subsection 53(1) of the Act, by providing a statutory declaration to the Registrar. The statutory declaration will include an individual's personal information, including, but not limited to, the individual's name and address.

Under Australian Privacy Principle (APP) 3, in Schedule 1 to the *Privacy Act 1988 (the Privacy Act)*, an APP entity (such as the Registrar) must not collect 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 (such as 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 personal or sensitive information is to ensure that only persons with a genuine personal objection opt out of being assigned a student identifier for the purposes of subsection 53(1) of the Act. As a result, the purpose of 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.

Individuals interacting with the student identifiers scheme will be provided with a privacy notice, consistent with APP 5, detailing amongst other things, the legislative basis for the collection of the personal information, the reasons for collecting the personal information, how the personal information will be used and how an individual may access their personal information.

This Instrument promotes and is compatible with the right to privacy.

Conclusion

The 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.

Senator the Hon Michaelia Cash

Minister for Small and Family Business, Skills and Vocational Education