

EXPLANATORY STATEMENT

Student Identifiers Act 2014

Student Identifiers (Higher Education Exemptions) Instrument 2021

Authority

Subsection 53A(9) of the *Student Identifiers Act 2014* (the Act) empowers the Education Minister to, by legislative instrument, determine matters that the Registrar must have regard to when considering a request to make a determination that subsection 53A(1) of the Act does not apply in relation to an individual.

Legislative background and purpose

The Act provides for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015, and for higher education students from 6 March 2020. The Act sets out how the identifier will be assigned, collected, used and disclosed for both higher education and VET students. The Act also provides for the creation of an authenticated transcript of an individual's record of nationally recognised VET training undertaken or completed after 1 January 2015 (for VET students only). The *Higher Education Support Act 2003* (HESA) was also amended with effect from 1 January 2021 to provide that students are only eligible for certain types of HELP assistance, as detailed below, where they have a student identifier.

Subsection 53A(1) of the Act provides that a registered higher education provider must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier.

Subsection 53A(5) provides that an individual may request the Registrar to make a determination that subsection 53A(1) does not apply to the individual. The Registrar must, in making a decision on the request, have regard to the matters determined in an instrument made by the Education Minister under subsection 53A(9).

The *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Instrument) specifies the matters that the Registrar must have regard to when considering a request to make a determination that subsection 53A(1) of the Act does not apply in relation to an individual.

Commencement

The Instrument will commence the day after it is registered on the Federal Register of Legislation.

Consultation

The Student Identifiers Registrar is a Commonwealth statutory officer established by the Act, and has functions that include assigning student identifiers to individuals, verifying or giving an individual's student identifier, preparing and providing access to individuals' authenticated VET transcripts, and enabling individuals with student identifiers to set access controls on their authenticated VET transcripts. The Office of the Student Identifiers Registrar is located within the Department of Education, Skills and Employment, and assists

the Student Identifiers Registrar. The Student Identifiers Registrar and her office were consulted in the preparation of this Instrument and are supportive of the Instrument.

Detailed explanation of the *Student Identifiers (Higher Education Exemptions) Instrument 2021*

Section 1 – Name

This section provides that the title of the Instrument is the *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Instrument).

Section 2 – Commencement

This section provides for the commencement of the Instrument the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This section provides that the Instrument is made under section 53A of the *Student Identifiers Act 2014* (the Act).

Section 4 – Definitions

This section defines terms used in the Instrument. This section also notes that a number of terms used in the Instrument are defined in section 4 of the Act.

Section 5 – Matters to consider for exemptions by the Registrar

This section specifies the matters that the Registrar must have regard to when considering a request to make a determination that subsection 53A(1) of the Act does not apply in relation to an individual.

There are currently two Government-issued student identifiers in the tertiary education sector: the student identifier assigned under the Act and the Commonwealth Higher Education Student Support Number (CHESSN). CHESSNs are largely used by the Commonwealth to track the Higher Education Loan Program (HELP) loans of higher education students. The Act was amended in early 2020 to extend the application of the student identifier to higher education students with the intention of ensuring that students have a single student identifier that will record a student's entire tertiary education journey. Being assigned a student identifier is particularly important for higher education students as it is intended that the student identifier will replace the CHESSN, becoming the primary way the Commonwealth can track a student's HELP loans, and communicate details of student debt to the Australian Taxation Office.

The *Higher Education Support Act 2003* (HESA) was also amended with effect from 1 January 2021 to provide that, if students have not been assigned a student identifier, they will not be:

- eligible to be a Commonwealth supported student, or for HECS-HELP or FEE-HELP assistance for a course of study commenced on or after 1 January 2021 and for any unit of study on or after 1 January 2023;
- entitled to OS-HELP assistance for applications made on or after 1 January 2021; or
- eligible for SA-HELP assistance in relation to student services and amenities fees payable on or after 1 January 2023.

Under subsection 53A(6) of the Act, the Registrar has the power to make a determination that subsection 53A(1) of the Act does not apply to an individual – if such a determination is made, the individual is exempt from the requirement to have a student identifier to be conferred a regulated higher education award. However, this determination does not provide an exemption from the requirement to be assigned a student identifier to be eligible for Commonwealth financial assistance under HESA, as it is not possible for students to apply for an exemption from this requirement.

Obtaining an exemption from the requirement to have a student identifier (i.e. not being assigned an identifier) for the purposes of being conferred a regulated higher education award can have serious financial consequences for students. This is because students that have not been assigned an identifier will not be eligible for Commonwealth financial assistance (even if they have an exemption under section 53A). Students who are not eligible to receive Commonwealth financial assistance under HESA must pay their tuition fees up-front or risk withdrawing from their studies if they cannot afford to do so.

In recognition of this, the matters listed in section 5 of the Instrument are intended to ensure that the Registrar will give appropriate consideration to the serious consequences that not being assigned a student identifier will have on students, and ensure that the Registrar considers whether students are properly made aware of these serious consequences before granting the exemption. Specifying in the Instrument the matters that the Registrar must consider when making determinations under subsection 53A(6) will also provide greater visibility to students who may be seeking a determination as to the factors that will be considered and, by extension, will make more readily apparent the consequences of a determination of this type.

Statement of Compatibility with Human Rights

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

Student Identifiers (Higher Education Exemptions) Instrument 2021

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 *Student Identifiers Act 2014* (Act) provides for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015, and for higher education students from 6 March 2020. The Act sets 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 VET training undertaken or completed after 1 January 2015.

Subsection 53A(1) of the Act provides that a registered higher education provider must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier.

Subsection 53A(5) provides that an individual may request the Registrar to make a determination that subsection 53A(1) does not apply to the individual. The Registrar must, in making a determination on the request, have regard to the matters specified, for the purposes of subsection 53A(7), in an instrument made by the Education Minister under subsection 53A(9).

The *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Instrument) specifies those matters prescribed by the Education Minister that the Registrar must have regard to when considering a request to make a determination that subsection 53A(1) of the Act does not apply in relation to an individual.

Human rights implications

Right to education

The Instrument supports the right to education, under Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Paragraph 13(2)(c) of the ICESCR provides that higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

The Instrument provides that, when considering a request to make a determination that subsection 53A(1) of the Act does not apply in relation to an individual, the Registrar must have regard to the impact of not being assigned a student identifier on the individual and whether the individual understands the consequences of not being assigned a student identifier in relation to their higher education studies (including that they will not be eligible to receive Commonwealth financial assistance under the *Higher Education Support Act 2003* (HESA)).

No longer being eligible for Commonwealth financial assistance can have serious consequences for an individual, as the individual will not be able to defer their tuition fees via the Higher Education Loan Program (HELP) scheme i.e. the individual will have to pay their tuition fees upfront. Paying tuition fees upfront presents a significant barrier to accessing higher education for most students who are likely to be unable to afford these fees. The matters listed in section 5 of the Instrument recognise this and seek to support the right of individuals to access education by ensuring the Registrar considers whether the individual truly understands the consequences of not being assigned a student identifier, before making a decision to grant the student an exemption under section 53A of the Act.

Right to privacy

The Instrument engages the right to privacy under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), which provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation and that everyone has the right to the protection of the law against such interference or attacks. The right to privacy also includes the right to control the dissemination of information about one's private life, and requires that States Parties take effective measures to ensure that information concerning a person's private life does not reach the hands of persons who are not authorised by law to receive, process and use it. It also requires that legislation must specify in detail the precise circumstances in which an interference with privacy will be permitted. The right to privacy may be subject to permissible limitations where the limitation pursues a legitimate objective; is rationally connected to that objective; and is a proportionate means of achieving that objective.

Section 53A(5) of the Act provides that an individual may request the Registrar to make a determination that subsection 53A(1) does not apply in relation to the individual. The request must be made in a manner and form approved by the Registrar and include any information required by the Registrar. The request will contain personal information of the individual.

Under Australian Privacy Principle (APP) 3, in Schedule 1 to the *Privacy Act 1988* (the Privacy Act), an APP entity (which relevantly includes 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 the individual's personal information in an application is to ensure that the Registrar can identify the individual and consider the matters set out in this Instrument when making a determination regarding the application of subsection 53A(1) of the Act in relation to that individual. As a result, collecting the personal information is reasonably necessary for, and directly related to, the activity of considering such requests. Further, in collecting the 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, mandating that personal information can only be used or disclosed for the purpose for which it was collected or for a secondary purpose if an exception applies, and that the Registrar must take reasonable steps to protect personal information from misuse, interference and loss, as well as unauthorised access, modification or disclosure.

The Instrument supports the right to privacy as it facilitates exemptions for certain individuals from the requirement to be assigned a student identifier to be conferred a higher education award. This will allow these individuals to avoid having their personal information – in the form of a student identifier – collected while still being able to have regulated higher education awards conferred upon them.

To the extent the Instrument limits the right to privacy, these limitations are reasonable, necessary and proportionate to achieving a legitimate objective (making exemption decisions under section 53A), and appropriate safeguards and accountability measures apply to the Registrar when collecting personal information for the purpose of making exemption decisions consistent with the Instrument.

Conclusion

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

Alan Tudge
Minister for Education and Youth