

## **EXPLANATORY STATEMENT**

Issued by the authority of the Hon Stuart Robert MP, Minister for Employment, Workforce,  
Skills, Small and Family Business

*Student Identifiers Act 2014*

*Student Identifiers (VET Exemptions) Instrument 2021*

### **AUTHORITY**

The *Student Identifiers (VET Exemptions) Instrument 2021* (the **Instrument**) is made under subsections 53(3) and 53(9) of the *Student Identifiers Act 2014* (the **Act**).

Subsection 53(3) of the Act empowers the Commonwealth Minister to, by legislative instrument, specify an issue to which subsection 53(1) of the Act does not apply, by reference to one or more of the following:

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

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

### **PURPOSE AND OPERATION**

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, 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 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 unless the individual has been assigned a student identifier.

The Instrument repeals and replaces the *Student Identifiers (Exemptions) Instrument 2018* (the **2018 Instrument**) and is consequential to the passage of the *Student Identifiers Amendment (Enhanced Student Permissions) Act 2020* (the Amendment Act). The Instrument has a similar operation to the 2018 Instrument, with an additional part that provides for matters to be taken into account by the Registrar for the granting of exemptions.

The Instrument sets out the exemptions from the prohibition under subsection 53(1) so that a VET qualification or VET statement of attainment may be issued to an individual who does not have a student identifier.

The Instrument specifies, for the purposes of subsection 53(3) of the Act, certain classes specified by the Commonwealth Minister by reference to a registered training organisation, VET qualification or VET statement of attainment, or the individual, to which subsection 53(1) of the Act does not apply.

This Instrument recognises that the Registrar, following the commencement of the Amendment Act, has the power to exempt individuals from the requirement of having a student identifier in order to be issued with a VET qualification or VET statement of attainment. Subsection 53(5) of the Act provides that an individual may request the Registrar to make a determination that subsection 53(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 Commonwealth Minister under subsection 53(9). The Instrument sets out, for the purposes of subsection 53(7) of the Act, those matters prescribed by the Commonwealth Minister that the Registrar must have regard to when considering a request to make a determination that subsection 53(1) of the Act does not apply in relation to an individual. These include for example, not being eligible for a VET Student Loan or be able to obtain a VET transcript.

As the creation of a student identifier is within the control of the individual, the provision of information regarding the effect of seeking an exemption assists the individual to make an informed decision.

While similar provisions govern the granting of exemptions in relation to the conferral of regulated higher education awards, this Instrument applies only for VET purposes.

## **REGULATORY IMPACT**

These changes are largely administrative and for the purpose of bringing the instrument in line with the Amendment Act. The exemptions contained in the Instrument do not introduce additional regulatory burden.

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

## **COMMENCEMENT**

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

## **CONSULTATION**

The Commonwealth informed the Ministerial Council in July 2018 (update provided in September 2019) of the need to make consequential amendments to the Instrument, subject to the passage of the Amendment Act.

The Registrar and the National Centre for Vocational Education Research, were also consulted in relation to the Instrument. In addition, the Skills Senior Officials' Network Data Strategy Working Group was provided with an update in April 2021. No concerns have been raised regarding this Instrument.

## STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

### Student Identifiers (VET Exemptions) Instrument 2021

The *Student Identifiers (VET Exemptions) Instrument 2021* (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 *Student Identifiers Act 2014* (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, and provides for the creation of an authenticated VET transcript of an individual's record of nationally recognised VET training undertaken or completed after 1 January 2015.

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 unless the individual has been assigned a student identifier.

The Instrument is made under subsections 53(3) and 53(9) 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, so that a registered training organisation may issue a VET qualification or VET statement of attainment to an individual who does not have a student identifier. The Instrument repeals and replaces the *Student Identifiers (Exemptions) Instrument 2018* (the **2018 Instrument**).

Subsection 53(3) of the Act empowers the Commonwealth Minister to, by legislative instrument, specify class exemptions by reference to registered training organisations, individuals or qualifications to which subsection 53(1) of the Act does not apply. Subsection 53(5) provides that an individual may request the Registrar to make a determination that subsection 53(1) does not apply to the individual. The Registrar must, in making a determination decision on the request, have regard to the matters specified, for the purposes of subsection 53(7), in a legislative instrument made by the Commonwealth Minister under subsection 53(9).

For the purposes of subsection 53(3) of the Act, the Instrument provides exemptions in relation to registered training organisations where the following sections in the National VET Data Policy provide that the registered training organisation is exempt from the requirement to collect and submit AVETMISS compliant data to the National VET Provider Collection:

- sections 5.3 and 5.4 (National security, border protection and policing exemption)

- sections 5.5 and 5.6 (Delivery of emergency or safety community services exemption)

The Instrument also provides exemptions 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; or
- who have completed all of the requirements of their VET qualification or statement of attainment prior to 1 January 2015.

The Instrument also sets out, for the purposes of subsection 53(7) of the Act, the matters that the Registrar is to have regard to when making a decision on an individual's request for an exemption from the prohibition in subsection 53(1) of the Act on a registered training organisation issuing a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier. These matters are:

- the purpose of VET students being assigned student identifiers;
- the impact of not being assigned a student identifier on the individual;
- whether the individual will, or is likely to, apply for a VET student loan; and
- whether the individual understands the consequences of not being assigned a student identifier, including that the individual will not be eligible for a VET student loan where an application for the loan is made on or after 1 January 2021.

### **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 subsection 53(1) of the Act may restrict a registered training organisation from issuing a VET qualification or a VET statement of attainment to an individual without a student identifier, those individuals will not be prevented from

accessing and participating in VET courses. To the extent that the Act may limit a person's access to education where evidence of a VET qualification or a VET statement of attainment is a course prerequisite, the Instrument promotes the right to education by exempting certain individuals from the requirement in subsection 53(1) of the Act. The class exemptions prescribed under section 7 of the Instrument allows those individuals to access VET qualifications and VET statements of attainment without having a student identifier. The matters that the Registrar must have regard to under section 9 of the Instrument ensures that important factors will be taken into account for each individual's request for exemption under subsection 53(5) of the Act, including the impact of not being assigned a student identifier. These matters have the effect of assessing the individual's understanding of the consequences of not having a student identifier so as to not disadvantage the individual from unintended consequences of not having a student identifier, such as the inability to access VET student loan due to having an exemption being granted.

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 that students can access a consolidated electronic record of VET attainments over their lifetime and, in turn, registered training organisations can readily confirm students' prerequisite 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.

The Instrument exempts certain classes by reference to registered training organisations and individuals so that individuals may receive a VET qualification or VET statement of attainment despite not having a student identifier. The Instrument recognises that VET qualification and VET statements of attainment is a key precursor to entry into particular occupations and of importance to the public safety and community. The exemptions under section 7 enable the obtaining of VET qualification or VET statement of attainment in order to promote work and professional development of individuals in relation to:

- specific programs where the submission of data accommodating a student identifier by a registered training organisation may jeopardise the security of defence, border protection, customs, national security or police personnel;
- the provision of emergency or safety related services to the community;
- the provision of VET by a charity organisation or for which the registered training organisation provides to the community without receiving payment.

This facilitative measure removes a potential structural obstacle which would otherwise hinder the full enjoyment of Article 6. To the extent that the right to work 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 that individuals can access and rely on an authenticated VET transcript over their lifetime in order to apply for work, regardless of whether the registered training organisation continues to operate. The research data produced from the collection and reporting of student identifiers also contributes towards the better targeting of policy development to assist the Australian workforce.

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 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.

Subsection 53(5) of the Act provides that an individual may request the Registrar to make a determination that subsection 53(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 53(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.

Individuals interacting with the student identifiers scheme are 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.

The Instrument supports the right to privacy in the context of facilitating exemptions for certain individuals from the requirement to be assigned a student identifier in order to be issued with a VET qualification or a VET statement of attainment. This will allow these individuals to avoid having their personal information – in the form of a student identifier – collected while still being able to receive their VET qualification or VET statement of attainment.

In the context where an exemption is not granted and an individual needs to have a student identifier, one of the benefits is that a student identifier, which is a randomised set of alphanumeric characters, ensures that an individual's VET data may be accessed and used as provided under the Act without relying on the individual's personally identifiable information. Where a student identifier is assigned, the protection under the Act applies, which provides a broader reach than the Privacy Act that only governs an APP entity. In particular, section 17 of the Act prohibits an entity that is not the individual from the collection, use or disclosure of a student identifier that is not authorised under the Act or the *Student Identifiers Regulation 2014*.

To the extent the Instrument limits the right to privacy, these limitations are reasonable, necessary and proportionate to achieving a legitimate objective (providing exemptions under subsection 53(3) and making exemption decisions under section 53), 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.

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.

**The Hon Stuart Robert MP**  
**Minister for Employment, Workforce, Skills, Small and Family Business**

# STUDENT IDENTIFIERS (VET EXEMPTIONS) INSTRUMENT 2021

## EXPLANATION OF PROVISIONS

### **Part 1 – Preliminary**

#### Section 1: Name

This section provides that the name of the Instrument is the *Student Identifiers (VET Exemptions) Instrument 2021* (the Instrument).

#### Section 2: Commencement

This section provides that the whole of the Instrument will commence on the day after the Instrument is registered on the Federal Register of Legislation.

#### Section 3: Authority

This section provides that the Instrument is made under subsections 53(3) and 53(9) of the *Student Identifiers Act 2014* (the Act).

#### Section 4: Definitions

This section defines terms used in the Instrument. A note is included at the top of this section, which states that a number of expressions used in the Instrument are described in section 4 of the Act.

#### Section 5: Schedules

This section provides that each instrument that is specified in a Schedule to the Instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Instrument has effect according to its terms.

### **Part 2 – Exemptions given by Commonwealth Minister**

#### Section 6: Purpose of Part 2

This section provides for the purpose of Part 2 of the Instrument which is to set out, for the purposes of subsection 53(3) of the Act, the exemptions specified by the Commonwealth Minister in relation to the prohibition in subsection 53(1) of the Act. Subsection 53(1) of the Act prohibits a registered training organisation from issuing a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier.

Subsection 53(3) of the Act empowers the Commonwealth Minister to exempt a registered training organisation from the prohibition in subsection 53(1) of the Act, by reference to a registered training organisation, VET qualification or VET statement of attainment, or an individual, so that a registered training organisation may issue a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier.

## Section 7: Exemptions

This section 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, or classes of individuals to whom the VET qualification, or VET statement of attainment, is being issued.

Paragraph 7(a) provides for class exemptions for a registered training organisation that is exempted from the requirements to collect and submit AVETMISS compliant data in accordance with the National VET Data Policy (Policy). These exemptions are outlined under section 5 of Part B of the Policy, which provides for two classes of exemptions where a registered training organisation is not required to collect and submit AVETMISS compliant data to the National VET Provider Collection.

The definition of the “National VET Data Policy” in the Instrument refers to the most up to date policy at the time the Instrument is made, which is the version updated in December 2020, available at the Department of Education, Skills and Employment’s website at [www.dese.gov.au/national-vet-data/resources/national-vet-data-policy](http://www.dese.gov.au/national-vet-data/resources/national-vet-data-policy).

The first class of exemption for registered training organisations, which is provided for under subparagraph 7(a)(i), is for national security, border protection and policing reasons, as outlined under sections 5.3 and 5.4 of the Policy.

Section 5.3 of the Policy provides that a registered training organisation is exempt from collecting and submitting data compliant with AVETMISS for the National VET Provider Collection where collection or submission of that data:

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

Section 5.4 provides that the exemptions under section 5.3 only apply to specific programs or students where security may be jeopardised. Where a registered training organisation also delivers training that would not conflict with defence or national security legislation or where the security of defence, border protection, customs, national security or police

personnel is not jeopardised, it must collect and report data compliant with AVETMISS for the National VET Provider Collection on the training and students that are not exempt under section 5.3.

The second class of exemption for registered training organisations, which is provided for under subparagraph 7(a)(ii), is for the delivery of emergency or safety community services, as outlined under sections 5.5 and 5.6 of the Policy.

Section 5.5 of the Policy provides that a registered training organisation is exempt from collecting and submitting data compliant with AVETMISS for the National VET Provider Collection where the:

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

Section 5.6 of the Policy provides, however, that where an registered training organisation comes within the scope of section 5.5 and a student does provide their student identifier to the registered training organisation, the exemption does not apply and the registered training organisation must report data compliant with AVETMISS for the National VET Provider Collection.

If the circumstances in either subparagraph 7(a)(i) or 7(a)(ii) 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 subparagraph 7(a)(i) or 7(a)(ii) relate.

Paragraph 7(a) is intended to have the same effect as section 7 of the 2018 Instrument.

Paragraph 7(b) of the Instrument provides a class exemption by reference to individuals who have not been assigned a student identifier. It specifies two classes of individuals.

The first class of exemption for individuals, which is provided for under subparagraph 7(b)(i), 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 of exemption for individuals, which is provided for under subparagraph 7(b)(ii), 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.

Paragraph 7(b) is intended to have the same effect as paragraphs 8(a) and 8(b) of the 2018 Instrument.

Unlike the 2018 Instrument, the Instrument does not provide an exemption for individuals who have completed and provided a statutory declaration to the Registrar declaring particular matters prescribed in paragraph 8(c) of the 2018 Instrument. An individual's request for an exemption by the Registrar is dealt with under subsections 53(4) to 53(11) of the Act and Part 3 of the Instrument.

### **Part 3 – Exemptions given by Registrar**

#### **Section 8: Purpose of Part 3**

This section provides for the purpose of Part 3 of the Instrument which is to specify, for the purposes of subsection 53(7) of the Act, the matters that the Registrar is to have regard to when making a decision on an individual's request for an exemption from the prohibition in subsection 53(1) of the Act.

#### **Section 9: Matters to consider for exemption given by Registrar**

This section sets out the matters to which the Registrar must have regard, as required by subsection 53(7) of the Act, when making a decision under subsection 53(6) of the Act to grant an exemption to an individual.

These matters are:

- the purpose of VET students being assigned student identifiers;
- the impact of not being assigned a student identifier on the individual;
- whether the individual will, or is likely to, apply for a VET student loan or other financial assistance for which having a student identifier is a requirement; and

- whether the individual understands the consequences of not being assigned a student identifier, including that the individual will not be eligible for a VET student loan where an application for the loan is made on or after 1 January 2021.

The *VET Student Loans Act 2016* was amended by the *Education Legislation Amendment (2020 Measures No. 1) Act 2020*, with the effect that all applications for a VET Student Loan made on or after 1 January 2021 must include the individual's student identifier.

Although exemptions under this Instrument only relate to the issuance of a VET qualification or VET statement of attainment, the impact of not having a student identifier also affects the individual's ability to be conferred with a regulated higher education award as well as the individual's eligibility for or entitlement to higher education financial assistance. The relevant matters that a Registrar must have regard to in relation to a request for an exemption under subsection 53A(5) of the Act, for higher education purposes, is provided for under a separate legislative instrument made by the Education Minister.

#### **Part 4 – Application and transitional provisions**

##### **Section 10: Request for exemptions before, on or after commencement of this instrument**

This section provides an application provision in relation to the Instrument and a savings provision in relation to the 2018 Instrument.

Subsection 10(1) provides that section 9 of the Instrument applies in relation to the Registrar's consideration of a request on or after the commencement of the Instrument, regardless of when the request was made to the Registrar under subsection 53(5) of the Act. This subsection ensures that the Registrar must have regard to the matters specified under section 9 of the Instrument from the commencement of the Instrument when considering a request for exemption, even if a request for exemption under subsection 53(5) of the Act was made before the commencement of the Instrument.

Subsection 10(2) provides that despite the repeal of the 2018 Instrument by Schedule 1 to this Instrument, subsection 53(1) of the Act shall continue to not apply to an individual who met and continued to meet the conditions in paragraph 8(c) of the 2018 Instrument before the commencement of this Instrument.

Paragraph 8(c) of the 2018 Instrument provides for a class exemption from the requirements of subsection 53(1) of the Act for individuals who completed, and provided to the Registrar, a statutory declaration in which they have declared that they:

- had a genuine personal objection to being assigned a student identifier; and

- understood the consequences and potential consequences of not being assigned a student identifier.

Subsection 10(2) ensures that repealing the 2018 Instrument does not have the effect of invalidating previous exemptions given by the Commonwealth Minister under paragraph 8(c) of the 2018 Instrument. Individuals who, before the commencement of the Instrument, submitted a statutory declaration in accordance with paragraph 8(c) of the 2018 Instrument will continue to be exempted and may be issued with a qualification, even if they do not have a student identifier.

### **Schedule 1 – Repeals**

Schedule 1 repeals the whole of the 2018 Instrument.