

## **EXPLANATORY STATEMENT**

**Issued by the authority of the Minister for Education**

***Student Identifiers Act 2014***

***Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) Instrument 2023***

### **AUTHORITY**

Subsection 53A(3) of the *Student Identifiers Act 2014* (the Act) provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1) of the Act 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.

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. The amendments to the *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Principal Instrument) made by the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) Instrument 2023* (the Amendment Instrument) rely on this provision.

### **PURPOSE AND OPERATION**

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(3) of the Act provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1) of the Act.

The Amendment Instrument amends the Principal Instrument to specify that the requirement in subsection 53A(1) of the Act does not apply in relation to international offshore students who commenced their course of study prior to 1 January 2023.

The extension of the student identifiers scheme to higher education is intended to provide the ability to track a student through the higher education and vocational education and training systems to provide insight into the pathways individuals take throughout their education and, ultimately, to employment. Student identifiers have replaced the Commonwealth Higher Education Support Student Number for administering Commonwealth assistance, including the Higher Education Loan Program to which international offshore students are not entitled.

The current exemption in section 6(c) was added into the Principal Instrument by the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022*. This exemption was drafted to exclude international students who either undertake the entirety of their degree offshore or do not have a current Australian visa and completed all the requirements of their degree prior to 1 January 2023, but did not have their higher education award conferred before this date. International students who do not have a current Australian visa, do not currently reside in Australia but completed part of the requirements of their degree in Australia and started their degree before 1 January 2023 but did not complete all requirements of their degree before 1 January 2023 are excluded from the current exemption.

This new cohort of international offshore students are required to be exempted from the requirement to have a student identifier as they are also unable to obtain a student identifier. While it was originally expected that this cohort would be small enough to make it practical for affected individuals to seek individual exemptions by applying to the Student Identifiers Registrar, a larger number of individuals than expected have been affected, creating a significant administrative burden on students, providers and the Student Identifiers Registrar, who makes decisions on individual exemptions from the requirement to have a student identifier. Broadening the original exemption will reduce this administrative burden.

It is necessary and appropriate to use delegated legislation to grant exemptions from the requirement in subsection 53A(1) in order to enable flexibility regarding the exemptions made by the Education Minister, which will allow the Education Minister to respond to the different circumstances that could reasonably prevent a student from being able to meet the student identifier requirements. Delegated legislation also allows the Education Minister to react with flexibility to new circumstances that occur after the primary legislation has commenced, or that have an impact that was not foreseen at the time of drafting, such as the issue surrounding this new cohort of international offshore students that need to be exempt from the requirement to have a student identifier.

The Principal Instrument is subject to the standard sunset period of ten years. It is necessary and appropriate for the Principal Instrument, and the exemptions in the Principal Instrument (including the exemption in this Amendment Instrument) to sunset in ten years because the situations in which students should be granted exemptions from the requirement to have a student identifier to be conferred a higher education award will continue to be relevant and persist past the usual three year duration for instruments exempting persons from the operation of primary legislation. Many of the affected students will be studying for a period longer than three years, and will continue to need this exemption beyond this time period.

## **IMPACT ANALYSIS**

The Office of Impact Analysis (formerly the Office of Best Practice Regulation) was consulted in relation to the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022* and found it had no regulatory impact and the preparation of a Regulation Impact Statement (RIS) was not required (Impact Analysis reference number: OBPR22-03229).

## **COMMENCEMENT**

The Amendment Instrument takes effect from the day after the Amendment Instrument is registered on the Federal Register of Legislation.

## **CONSULTATION**

The expanded exemption in section 6(c) to the Principal Instrument is made in response to feedback from the Student Identifiers Registrar and her staff in the Office of the Student Identifiers Registrar, who have identified that a larger than expected number of students have been excluded from the current exemption and are thus seeking individual exemptions.

The Education Minister updated the Principal Instrument to include the current exemption in response to feedback from higher education providers and peak provider bodies, as well as affected students, who had identified that non-Australian citizens residing outside of Australia were not able to receive a student identifier, which was an issue for students, and provider student management processes and systems. Stakeholders continue to support broad exemptions for individuals who are unable to obtain a student identifier.

The Department of Education has consulted with the Student Identifiers Registrar and the Office of the Student Identifiers Registrar in the preparation of the Amendment Instrument, and has taken their feedback into consideration. The Student Identifiers Registrar is supportive of the expanded exemption set out in the Amendment Instrument.

## 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) Amendment (Education Minister Exemptions) Instrument 2023*

The *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) Instrument 2023* (the Amendment 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**

Subsection 53A(1) of the *Student Identifiers Act 2014* (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(3) of the Act provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1) to the Act.

The Amendment Instrument amends the *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Principal Instrument) to specify that the requirement in subsection 53A(1) to the Act does not apply in relation to international offshore students who commenced their course of study prior to 1 January 2023.

The extension of the student identifiers scheme to higher education is intended to provide the ability to track a student through the higher education and vocational education and training systems. This is intended to provide insight into the pathways individuals take throughout their education and, ultimately, to employment. Student identifiers have replaced the Commonwealth Higher Education Support Student Number for administering Commonwealth assistance, including the Higher Education Loan Program to which international offshore students are not entitled. The current exemption in section 6(c) was added into the Principal Instrument by the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022*. This exemption was drafted to exclude international students who either undertake the entirety of their degree offshore or do not have a current Australian visa and completed all the requirements of their degree prior to 1 January 2023, but did not have their higher education award conferred before this date. International students who do not have a current Australian visa, do not currently reside in Australia but completed part of the requirements of their degree in Australia, and started their degree before 1 January 2023 but did not complete all requirements of their degree before 1 January 2023 are excluded from the current exemption.

This new cohort of international offshore students are required to be exempted from the requirement to have a student identifier as they are also unable to obtain a student identifier. While it was originally expected that this cohort would be small enough to make it practical for affected individuals to seek individual exemptions by applying to the Student

Identifiers Registrar, a larger number of individuals than expected have been affected, creating a significant administrative burden on students, providers and the Student Identifiers Registrar, who makes decisions on individual exemptions from the requirement to have a student identifier). Broadening the original exemption will reduce this administrative burden.

It is necessary and appropriate to use delegated legislation to grant exemptions from the requirement in subsection 53A(1) in order to enable flexibility regarding the exemptions made by the Education Minister, which will allow the Education Minister to respond to the different circumstances that could reasonably prevent a student from being able to meet the student identifier requirements. Delegated legislation also allows the Education Minister to react with flexibility to new circumstances that occur after the primary legislation has commenced, or that have an impact that was not foreseen at the time of drafting, such as the issue surrounding this new cohort of international offshore students that need to be exempt from the requirement to have a student identifier.

The Principal Instrument is subject to the standard sunset period of ten years. It is necessary and appropriate for the Principal Instrument, and the exemptions in the Principal Instrument (including the exemption in this Amendment Instrument) to sunset in ten years because the situations in which students should be granted exemptions from the requirement to have a student identifier to be conferred a higher education award will continue to be relevant and persist past the usual three year duration for instruments exempting persons from the operation of primary legislation. Many of the affected students will be studying for a period of longer than three years, and will continue to need this exemption beyond this time period.

## **Human rights implications**

### Right to education

The Amendment 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 Amendment Instrument provides that international offshore students who commenced their course of study prior to 1 January 2023, undertook part of their degree in Australia, and are not visa holders who have entered Australia on that visa, are exempt from the requirement to have a student identifier to be conferred a regulated higher education award. These students are not currently able to obtain a student identifier, and are required to seek an individual exemption from the requirement in subsection 53A(1) of the Act from the Student Identifiers Registrar. Extending the current exemption to this cohort of students will reduce the administrative burden on students, providers and the Student Identifiers

Registrar. The Amendment Instrument makes clear that those individuals do not need to have a student identifier to be conferred a regulated higher education award.

As such, the Amendment Instrument supports the right to education as it removes barriers for individuals to be conferred a higher education award. It does so by ensuring that individuals who are not able to be assigned a student identifier are not prevented from being conferred a higher education award because of the operation of subsection 53A(1) to the Act.

### **Conclusion**

The Amendment Instrument is compatible with human rights because it supports the right to education.

**Minister for Education, the Hon Jason Clare MP**

# STUDENT IDENTIFIERS (HIGHER EDUCATION EXEMPTIONS) AMENDMENT (EDUCATION MINISTER EXEMPTIONS) INSTRUMENT 2023

## EXPLANATION OF PROVISIONS

### Section 1: Name

1. This is a formal provision specifying the name of the instrument.

### Section 2: Commencement

2. This provision provides that the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) Instrument 2023* (the Amendment Instrument) commences the day after it is registered on the Federal Register of Legislation.

### Section 3: Authority

3. This provision explains that the Amendment Instrument is made under section 53A of the *Student Identifiers Act 2014* (the Act).

### Section 4: Schedules

4. This is a technical provision that explains that each instrument that is specified in the Schedule to this Amendment Instrument is amended or repealed as set out in the items in the Schedule concerned.

### Schedule 1 – Amendments

#### ***Student Identifiers (Higher Education Exemptions) Instrument 2021***

#### Items 1 to 3

5. These items make changes to paragraph 6(c) in the *Student Identifiers (Higher Education Exemptions) Instrument 2021* to insert a new cohort of individuals who are exempt from the requirement to have a student identifier to be conferred a higher education award (as set out in subsection 53A(1) of the Act).
6. Item 3 provides that individuals who are not Australian citizens, or visa holders that has validly entered Australia on their visas, and are not residing in Australia at the time of the conferral of the higher education award, are exempt from the requirement to have a student identifier if they commenced the course of study to

which the conferral of the regulated higher education award relates prior to 1 January 2023.

7. The current exemption in section 6(c) of the Principal Instrument was drafted to exclude international students who either undertake the entirety of their degree offshore or do not have a current Australian visa, completed all the requirements of their degree prior to 1 January 2023, but did not have their higher education award conferred before this date. International students who do not have a current Australian visa, do not currently reside in Australia but completed part of the requirements of their degree in Australia, and started their degree before 1 January 2023 but did not complete all requirements of their degree before 1 January 2023 are excluded from the current exemption.
8. This new cohort of international offshore students are required to be exempted from the requirement to have a student identifier as they are also unable to obtain a student identifier. While it was originally expected that this cohort would be small enough to make it practical for affected individuals to seek individual exemptions from the Student Identifiers Registrar, a larger number of individuals than expected have been affected, creating a significant administrative burden on students, providers and the Student Identifiers Registrar, who makes decisions on individual exemptions from the requirement to have a student identifier). Broadening the original exemption will reduce this administrative burden.