

EXPLANATORY STATEMENT

Issued by the authority of the Hon Jason Clare MP, Minister for Education

Student Identifiers Act 2014

Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Study Hubs Programs) Regulations 2024

AUTHORITY

Subsection 57(1) of the *Student Identifiers Act 2014* (the Act) empowers the Governor-General to make regulations prescribing matters required or permitted by the Act to be prescribed by the regulations, or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Section 22 of the Act provides that regulations may authorise an entity to collect, use or disclose a student identifier of an individual.

Subsection 57(2) of the Act provides that (unless subsection (2A) applies) before the Governor-General makes regulations under subsection (1), the Minister must obtain the agreement of the Ministerial Council to the making of the regulations. However, subsection 57(2A) of the Act applies to the *Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Study Hubs Programs) Regulations 2024* (the Amendment Regulations), because the amendments made by the Amendment Regulations are in respect of matters relating to higher education.

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 Regulation 2014* (the Principal Regulations) made by the Amendment Regulations rely on this provision.

PURPOSE AND OPERATION

The Amendment Regulations amend the Principal Regulations to provide authorisation for the collection, use or disclosure of student identifiers by entities to whom a grant has been made under the Suburban University Study Hubs Program. The Suburban University Study Hubs Program is a grant program established under Part 2-3 of the *Higher Education Support Act 2003* and is specified in section 66A of the *Higher Education Support (Other Grants) Guidelines 2022*.

This authorisation applies in addition to the existing authorisations for collection, use and disclosure of student identifiers in the Principal Regulations.

The proposed authorisation is required to enable Suburban University Study Hubs (Suburban Hubs) (which are located in metropolitan and peri-urban areas of Australia and provide study support and infrastructure to students) to collect, use and disclose student identifiers of students registered with or supported by them to the Department of Education (Education), for the purposes of assisting Education to administer, or to undertake policy development in relation to, the Suburban University Study Hubs Program.

The ability to analyse student identifier data relating to Suburban Hubs will enable Education to track long-term student outcomes through existing data management platforms which will be integral to measuring and evaluating performance of the Suburban University Study Hubs Program.

Enabling Suburban Hubs to collect, use and disclose student identifiers will facilitate Education linking student identifier data to existing data management platforms to provide further detailed information, including:

- student characteristics;
- course/s of study undertaken by students attending a Suburban Hub;
- attrition and completion rates for students attending a Suburban Hub;
- Quality Indicators for Learning and Teaching outcomes of students attending a Suburban Hub; and
- comparisons in the outcomes of students studying at a Suburban Hub relative to other students in the same area not attending a Suburban Hub.

The Amendment Regulations also make minor amendments to update references to the 'Regional University Centres Program' to the 'Regional University Study Hubs Program', consistent with the program's recent name change, and to clarify definitions of both the Regional University Study Hubs Program and Suburban University Study Hubs Program.

IMPACT ANALYSIS

The Office of Impact Analysis has advised an Impact Analysis is not required for the amendments relating to the Suburban University Study Hubs Program. (ID: OIA24-08051)

COMMENCEMENT

The Amendment Regulations will commence the day after they are registered on the Federal Register of Legislation.

CONSULTATION

The Suburban University Study Hubs team consulted with the Regional University Study Hubs team about their regular consultation and engagement with Hub operators regarding data collection, including the use of student identifiers.

The team also consulted with Regional University Study Hub operators regarding the process and impacts of student identifier collection. The operators shared that the current process for student identifier collection and disclosure (the same process proposed for the Suburban University Study Hubs Program) is straightforward. The operators indicated that the insights provided by Education, based on student identifiers and other student data collected by Hubs, are useful to inform service planning and decisions. The operators stated that they would welcome further insights from Education on data trends which would further inform service delivery and strategy. Education has documented this feedback and will take it into account when managing student identifiers collected under the Amendment Regulations.

Consistent with subsection 57(2A) of the Act, the Education Minister is satisfied that the regulations are in respect of higher education and recommended to the Governor-General the making of the Amendment Regulations. As such, it was not necessary for the Ministerial Council to be consulted and agree to the Amendment Regulations (which would otherwise be the case under subsection 57(2) of the Act).

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Study Hubs Programs) Regulations 2024

The *Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Study Hubs Programs) Regulations 2024* (the Amendment Regulations) 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 Amendment Regulations amend the *Student Identifiers Regulation 2014* (the Principal Regulations) to provide authorisation for the collection, use or disclosure of student identifiers by entities to whom a grant has been made under the Suburban University Study Hubs Program. The Suburban University Study Hubs Program is a grant program established under Part 2-3 of the *Higher Education Support Act 2003* and is specified in subsection 66A of the *Higher Education Support (Other Grants) Guidelines 2022*.

This authorisation applies in addition to the existing authorisations for collection, use and disclosure of student identifiers in the Principal Regulations.

The proposed authorisation is required to enable Suburban University Study Hubs (Suburban Hubs) (which are located in metropolitan and peri-urban areas of Australia and provide study support and infrastructure to students) to collect, use and disclose student identifiers of students registered with or supported by them to the Department of Education (Education) for the purposes of assisting Education to administer, or to undertake policy development in relation to, the Suburban University Study Hubs Program.

The ability to analyse student identifier data relating to Suburban Hubs will enable Education to track long-term student outcomes through existing data management platforms, which will be integral to measuring and evaluating the success of the Suburban Hubs Program.

Enabling Suburban Hubs to collect, use and disclose student identifiers will allow Education to link student identifier data to existing data management platforms to provide further detailed information, including:

- student characteristics;
- course/s of study undertaken by students attending a Suburban Hub;

- attrition and completion rates for students attending a Suburban Hub;
- Quality Indicators for Learning and Teaching outcomes of students attending a Suburban Hub; and
- comparisons in the outcomes of students studying at a Suburban Hub relative to other students in the same area not attending a Suburban Hub.

The Amendment Regulations also make minor amendments to update references to the ‘Regional University Centres Program’ to ‘Regional University Study Hubs Program’, consistent with the program’s recent name change, and to clarify definitions of both Regional University Study Hubs Program and Suburban University Study Hubs Program.

Human rights implications

Right to privacy

The Amendment Regulations engage 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.

For the interference with privacy not to be ‘arbitrary’, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality to the end sought and necessity in the circumstances. The right to privacy can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary.

The Amendment Regulations may limit the privacy of an individual as they authorise entities to collect and use student identifiers and disclose student identifiers to the Secretary of, or an APS employee in, Education, or a third party engaged by Education. Third parties could include, for example, a committee established to review the operation and success of the Suburban University Study Hubs Program.

The proposed authorisation in new section 15B is required to enable Suburban Hubs to collect, use and disclose student identifiers of registered students to Education for the purposes of assisting Education to administer, or to undertake policy development in relation to, the Suburban University Study Hubs Program.

The *Privacy Act 1988* (the Privacy Act) regulates the collection, use, storage and disclosure of personal information. Student identifiers are personal information within the meaning of the Privacy Act and would also likely be a ‘government related identifier’ for the purposes of

Australian Privacy Principle (APP) 9 in Schedule 1 to that Act. This means that, when collecting student identifiers from Suburban Hubs, and using and disclosing student identifiers, Education, and any third parties engaged by Education, must comply with the APPs and the Privacy Act more generally. To the extent Suburban Hubs are required to comply with the Privacy Act, they must also comply with the APPs when collecting, using and disclosing student identifiers.

For the purposes of APP 3.1, collection of information by Suburban Hubs and by Education, and any third parties engaged by Education, is reasonably necessary for, or directly related to, the relevant entity's functions or activities, being the administration of the Suburban University Study Hubs Program.

Similarly, the new authorisation in section 15B would authorise use and disclosure of student identifiers by entities for the purposes of the Suburban University Study Hubs Program, invoking the exception in APP 6.2(b), which permits the disclosure of an individual's personal information for a secondary purpose where the disclosure is authorised by law.

Education is permitted to use and disclose student identifiers it collects from Hubs under section 18B of the *Student Identifiers Act 2014*, which enables use and disclosure of student identifiers for the purposes of the *Higher Education Support Act 2003* (HESA) and any instruments made under HESA. This means that Education could use or disclose student identifiers for the purposes of the Suburban University Study Hubs Program as that program is established under the *Higher Education Support (Other Grants) Guidelines 2022*, which is an instrument made under HESA. Such a disclosure would also invoke the authorised by law exception in APP 6.2(b).

The legitimate objective for the authorisation in section 15B is to assist Education, and any third parties engaged by Education, in administering, or undertaking policy development in relation to, the Suburban University Study Hubs Program.

Enabling Suburban Hubs to collect, use and disclose student identifier data to Education will allow Education to link student identifier data to existing information management platforms to provide further detailed information, including student characteristics and attrition rates as well as track long term student outcomes which will be integral to measuring and evaluating the success of the Suburban University Study Hubs Program.

The Amendment Regulations provide safeguards and accountability mechanisms to protect against arbitrary interferences with privacy. The entities are only permitted to collect, use or disclose student identifiers for the purposes of assisting Education to administer, or undertake policy development in relation to, the Suburban University Study Hubs Program. The Amendment Regulations also only permit entities to disclose student identifiers to the Secretary of, or an APS employee in, Education, or a third party engaged by Education. The

Amendment Regulations do not displace the protections provided for personal information under the Privacy Act or equivalent State and Territory legislation. Therefore, entities that collect, use or disclose a student identifier will also have to comply with the requirements of relevant privacy legislation.

Conclusion

The Amendment Regulations are compatible with the right to privacy as the limitations to the right of privacy are reasonable, necessary and proportionate to achieving a legitimate objective and ensures that appropriate safeguards and limitations apply to bodies corporate that collect, use and disclose student identifiers.

Minister for Education, the Hon Jason Clare MP

Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Study Hubs Programs) Regulations 2024

EXPLANATION OF PROVISIONS

Section 1: Name

1. This is a formal provision specifying the name of the *Student Identifiers Amendment (Authorised Collection, Use or Disclosure—Study Hubs Programs) Regulations 2024* (the Amendment Regulations).

Section 2: Commencement

2. This section provides that the Amendment Regulations commence on the day after they are registered.

Section 3: Authority

3. This section provides that the Amendment Regulations are made under the *Student Identifiers Act 2014* (the Act).

Section 4: Schedules

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

Schedule 1 – Amendments

Student Identifiers Regulation 2014

Item 1 – Section 4

5. Item 1 repeals the definition of Regional University Centres Program in section 4 of the *Student Identifiers Regulation 2014* (the Principal Regulations). As this term is only used in one provision, section 15A, the definition (reflecting the updated name of the program) has been moved to that provision.

Item 2 - Section 15A (heading)

6. Item 2 replaces “Centres” in the heading of section 15A of the Principal Regulations with “Study Hubs” to reflect the change of name from Regional University Centres Program to Regional University Study Hubs Program.

Item 3 - Subsection 15A(1)

7. Item 3 omits “Regional University Centres Program” from subsection 15A(1) of the Principal Regulations and substitutes “program specified in subsection 64(1) of the *Higher Education Support (Other Grants) Guidelines 2022* (that is, the Regional University Study Hubs Program)”. This replaces the previous definition in section 4, and updates the definition to reflect the current name of the program.

Item 4 – Subsection 15A(2)

8. Item 4 omits “Regional University Centres Program” from subsection 15A(2) of the Principal Regulations and substitutes “that program” because the term is now defined within section 15A.

Item 5 – After subsection 15A

9. Item 5 inserts new section 15B after section 15A in the Principal Regulations, which is the new provision authorising collection, use and disclosure of student identifiers for the purposes of the Suburban University Study Hubs Program. The wording of this provision mirrors the wording of current section 15A in the Principal Regulations, which authorises collection, use and disclosure of student identifiers for the purposes of the Regional University Study Hubs Program.
10. New subsection 15B(1) provides that the section applies if a grant has been made to an entity under Part 2-3 of the *Higher Education Support Act 2003*, the program specified in subsection 66A(1) of the *Higher Education Support (Other Grants) Guidelines 2022* (that is, the Suburban University Study Hubs Program). This subsection defines Suburban University Study Hubs Program.
11. New subsection 15B(2) provides that the entity is authorised to collect or use a student identifier of an individual who is registered with the entity or to whom the entity provides support, or to disclose a student identifier of such an individual to

the Secretary of, or an APS employee in, the Department of Education (Education) or a third party engaged by Education for the purposes of assisting Education to administer, or to undertake policy development in relation to, that program. Third parties could include, for example, a committee established to review the operation and success of the program

12. New section 15B facilitates Education linking student identifier data to existing information management platforms, to provide further detailed information, including student characteristics and attrition rates, as well as track long term student outcomes, which is integral to measuring and evaluating the success of the Suburban University Study Hubs Program.

Item 6 – at the end of the instrument

13. This item inserts new section 20 at the end of the Principal Regulations, which provides that new section 15B applies in relation to the use or disclosure of a student identifier on or after the commencement of new section 20, regardless of when the student identifier was collected.