2013-2014

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STUDENT IDENTIFIERS** **BILL 2014**

EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Industry, The Hon Ian MacFarlane MP)

**STUDENT IDENTIFIERS BILL 2014**

**OUTLINE**

The Student Identifiers Bill 2014 (“the Bill”) is an initiative of the Council of Australian Governments (COAG) that provides for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015. The Bill sets out how the identifier will be assigned, collected, used and disclosed. The Bill provides for the creation of an authenticated transcript of an individual’s record of nationally recognised training undertaken or completed after 1 January 2015. The Bill provides for the appointment of a Student Identifiers Registrar (the Registrar) who will administer the student identifier scheme.

The provisions of the Bill will commence by proclamation, with the Registrar expected to be appointed in July 2014. The student identifier scheme is designed to improve the transparency and responsiveness of the VET sector in a number of ways.

Currently, there is no single repository of records of VET student enrolments and achievements. This means that individuals cannot access a consolidated electronic record of VET attainments over their lifetime and, in turn, registered training organisations (RTOs) may be unable to readily confirm students’ pre-requisite course work or properly assess their prior learning. This also affects the capacity of state, territory and Commonwealth policy makers to assess how the VET system is performing and to administer government student subsidy programs.

The introduction of a student identifier will rectify each of these issues. VET students will be able to create an authenticated transcript of their training, regardless of where it was undertaken. This means they will not need to find several different certificates to show an employer as they move from the VET training they did in school, to further education and into the workforce. Their enrolment and achievement information will be available in one consolidated electronic record. Similarly, RTOs will be able to quickly confirm prior study and where necessary, credit transfers. For government and policy makers, de-identified information will provide a clearer picture of how many students are in the VET system, for what length of time, and the pathways students are taking through the sector. Strict protocols governing research will be developed in conjunction with all states and territories through the Ministerial Council or similar body established by the Council of Australian Governments (COAG) with responsibility for skills and training (the Ministerial Council). Over time, the scheme will better assist governments with the management of their student entitlement programs.

With an estimated 3 million plus enrolments in VET each year, collecting and analysing information is essential to ensuring that the VET system can respond to students’ preferences and to the skills needs of industry and the economy.

The student identifier is a randomly generated alpha-numeric code which will be issued upon application to individuals who undertake nationally recognised VET. Once assigned, VET students will use their identifier each time they enrol. RTOs will not be able to issue a VET qualification or statement of attainment to students who do not have an identifier, unless an appropriate exemption has been given by the Commonwealth Minister.

While the student identifier scheme will improve the de-identified information available on VET students, the Bill safeguards the privacy of individuals. It does this by establishing a confidentiality scheme which provides that student identifiers must not be collected, used or disclosed without the individual’s authorisation except in certain prescribed circumstances, as provided for in the Bill or as may be authorised by the regulations.

The Bill requires any personal information collected solely for the purpose of applying for the student identifier to be destroyed. This means, for example, that details of the identification document that an individual uses to apply for an identifier, such as their Medicare number, will not be kept by the Registrar or any other entity that may have assisted the student in the application process, unless it was also collected for another purpose which necessitates the keeping of the information. The Bill also requires the Registrar, and any other entity that has a record of student identifiers, to protect those records from misuse or unauthorised access. Any contravention of these requirements is taken by the Bill to be an interference with privacy under the *Privacy Act 1988* (the Privacy Act) that can be investigated by the Australian Information Commissioner. Further, the Registrar will only store information about an individual’s identity and contact details, noting that VET activity records will continue to be separately stored by the National Centre for Vocational Education and Research (NCVER) in its National VET Provider collection.

The Registrar will be an independent statutory office holder appointed by the Commonwealth Minister, following consultation with the Ministerial Council. The Bill requires the Registrar to submit an annual report to the Commonwealth Minister for presentation to the Parliament and to provide a copy of the same to the Ministerial Council.

The introduction of the student identifier will be supported by the inclusion of additional requirements to the Standards for RTOs under the *National Vocational Education and Training Regulator Act 2011* (the NVETR Act) and the Australian Quality Training Framework.

**FINANCIAL IMPACT STATEMENT**

The Registrar will be financed from an existing allocation for vocational education within the Department of Industry.

Overall, the development and introduction of the student identifier scheme will cost $20.8 over the four years from 2012-13 to 2015-16. This will include $5.9m over three years for the establishment of the Registrar’s office which will commence operations on 1 July 2014. The balance of the $20.8m has been provided over the four years to 2015-16 to fund the cost of the IT build ($7.7m which includes capital expenditure of $5.4m) and the cost of a Departmental taskforce that will manage the implementation of the scheme ($7.2m).

|  |  |  |  |
| --- | --- | --- | --- |
| 2012-13$m | 2013-14$m | 2014-15$m | 2015-16$m |
| $8.963 | $6.810 | $2.591 | $2.518 |

**Statement of Compatibility with Human Rights**

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

**STUDENT IDENTIFIERS BILL 2014**

This Bill 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 Bill**

As part of the Australian Government’s commitment to improve the transparency and responsiveness of the vocational education and training (VET) sector, a student identifier will be provided to individuals undertaking nationally recognised VET training as of 1 January 2015. The student identifier will be linked to records of nationally recognised training undertaken and the resulting qualifications achieved by learners over their lifetime. The student identifier will also help generate more accurate information on what nationally recognised education and training is being undertaken and what qualifications are achieved. The use of this information is to support a more flexible, transparent and demand-driven VET system in order to assess the quality of educational outcomes nation-wide and more effectively target Australia’s skills development needs into the future.

The student identifier scheme aims to enable:

* individuals to find, collate and authenticate all of their educational attainments into a single electronic record. Currently, there is no single repository of information for students in the VET sector that maps their enrolment and achievement records across their lifetime;
* registered training organisations (RTOs) to access consolidated individual enrolment and achievement information at the time a learner is enrolling in order to affirm pre-requisite course work and assess credit transfers; and
* government policy makers and researchers to access de-identified enrolment and achievement data at the individual student level in order to understand the pathways students take, assess the progress of disadvantaged students and better support the management of government student subsidy programs.

**Human Rights Implications**

The proposed measure engages the following human rights:

*The right to education*

The Bill engages the right to education contained in Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

In particular, Article 13(2)(b) states that secondary education, in all 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.

The introduction of the Bill will promote an individual’s right to education by:

* improving the accessibility of technical and vocational education. RTOs will be able to use the student identifier to facilitate an individual’s enrolment by accessing a consolidated, authenticated transcript of that individual’s existing qualifications and prior learning. This will mean that an individual need not miss out on enrolment due to difficulties demonstrating prior learning and will therefore expand the accessibility of technical and vocational education; and
* ensuring that eligibility for subsidised training can be determined with a higher degree of confidence than is currently possible. The current National Partnership Agreement on Skills Reform commits jurisdictions to create a more accessible and equitable training system through introducing and strengthening a national entitlement to a government subsidised training place to a minimum of the first Certificate III qualification. It also commits jurisdictions to improve training participation and qualification completions. Student identifiers will be used to link the outcomes of the current National Partnership Agreement on Skills Reform with the VET records held in the national collection. This means that subsidised places will go to those who most need them. This will further ensure that more students will be able to gain access to VET.

The Bill may also have the effect of limiting an individual’s access to education.

Under Article 4 of ICESCR, State Parties may subject rights under that Covenant only to such limitations as are determined by law and only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

The Bill may limit the right to education by prohibiting an RTO from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned an identifier. This prohibition will not apply in relation to certain RTOs, qualifications and individuals as specified by the Commonwealth Minister by legislative instrument.

To the extent that an RTO is prohibited from issuing a VET qualification or a VET statement of attainment, this will not initially limit the right to education as this will not inhibit students from accessing vocational education and training. However, for those students who do not obtain a student identifier (which is expected to be very few) and are not covered by an exemption, access to education may be limited if their ability to undertake further training is dependent on the student providing a VET qualification or a VET statement of attainment for a prerequisite course.

The purpose of prohibition is to ensure that there is maximum participation of students in the student identifier scheme and the exemptions to the prohibition will be necessarily limited to maintain the integrity of the scheme. This will ensure that the above mentioned benefits will more likely flow to the majority of the students in the VET system.

As there is no fee attached to applying for a student identifier, the application process is designed for maximum ease and flexibility and there is no detrimental effect on a student’s study resulting from obtaining a student identifier, this limitation on the right to education is necessary, reasonable and proportionate to ensure that the above mentioned benefits will flow to students and is for the purpose of promoting the general welfare of students. This is therefore consistent with the right to education under Article 13 of the ICESCR.

*The right to work*

The right to work in Article 6 of ICESCR includes the right of everyone to have the opportunity to gain a living by work which they freely choose or accept and will take appropriate steps to safeguard this right.

Article 6(2) states that the steps to be taken 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.

For the reasons outlined above, the Bill promotes the right to education by improving the accessibility of technical and vocational education and progressively realising the right to secondary education being generally available and accessible. As the Bill will improve access to education, this will ensure that students will have greater opportunities to work in areas that they choose and will therefore also promote the right to work.

Where formal recognition of a qualification is a prerequisite to work, the prohibition on RTOs from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned an identifier may limit the right to work.

Under Article 4 of ICESCR, State Parties may subject rights under that Covenant only to such limitations as are determined by law and only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

As outlined above, the prohibition on issuing a qualification is to ensure that there is maximum participation of students in the student identifier scheme and the exemptions to the prohibition will be necessarily limited to maintain the integrity of the scheme. As this legitimate policy aim is achieved in a way that is reasonable, necessary and proportionate (as outlined above), the Bill will be consistent with the right to work under Article 6 of the ICESCR.

*The right to privacy*

The Bill may engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR) as the Bill authorises the collection, use and disclosure of student identifiers.

Article 17 prohibits unlawful or arbitrary interferences with a person’s privacy. It provides that persons have the right to the protection of the law against such interference. In order 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.

This Bill creates a regime of student identifiers, unique alpha-numeric codes allocated to students and a Registrar to manage the scheme.

The primary purpose of the scheme established by the Bill is to assign a student identifier to individuals participating in nationally recognised VET. Ordinarily student identifiers will be stored with information regarding a particular person as part of a student record, such that the student record containing the student identifier would likely contain personal information when taken as a whole. It is anticipated that attaching student identifiers to these records will make it easier for VET system entities holding this information to identify the individual that the information is about, and these entities will also be able to ask the Registrar to verify that a particular student identifier belongs to a particular individual.

The Bill may limit the privacy of an individual as the Bill authorises the Registrar (or a delegate of the Registrar[[1]](#footnote-1)) to collect, use or disclose a student’s identifier for the purpose of performing her or his functions and these collections, uses and disclosures will often also involve the personal information of an identifiable student. However, it is important to note that the Registrar will be required to comply with the Privacy Act when collecting, using or disclosing personal information, including student records that contain a student identifier. These authorisations are necessary to ensure that the Registrar can properly perform her or his functions under the Bill, which in turn ensures greater access to education (as outlined above).

The Bill also authorises the Registrar to disclose a student’s identifier for certain research activities where those research activities relate to education or training and comply with the protocols established by the Ministerial Council. The Bill allows the collection, use and disclosure of student identifiers in the event of unlawful activities and law enforcement purposes. These authorisations are necessary to allow for research and law enforcement which will ultimately be for the benefit of students and the wider community.

This collection, use or disclosure is limited as the Bill will only allow such an authorisation if it is reasonably necessary for the purposes of law enforcement. While ‘reasonably necessary’ is lower threshold than ‘necessary’, such an authorisation is required to ensure that the legitimate policy objective of law enforcement can be achieved which will ultimately benefit students and the wider community.

In addition, the Bill allows for the collection, use or disclosure of student identifiers where authorised by regulations. It is envisaged that the regulations will provide authorisations for the collection, use and disclosure to a limited number of entities, primarily in the VET sector. These entities are likely to include former and current registered training organisations (as defined by the NVETR Act), schools whose students undertake a VET course as part of their education, the NCVER, VET-related bodies and VET Admission Bodies.

The authorisations which will be contained in the regulations will provide appropriate permissions for these entities to undertake their existing functions and continue with existing collections, uses and disclosures of student information once the student identifier is attached to that student data. However, the collection, use and disclosures of an identifier will only be for set purposes, meaning that decision makers will not have a wide discretion in how to collect, use or disclose the student identifier. These permissions are also necessary to allow for the proper administration of the VET sector and will enhance access to education and ultimately benefit students. These purposes are for:

* the prevention, detection, investigation or remedying of misconduct of a serious nature;
* assisting RTOs to meet their reporting obligations under the VET standards;
* establishing an individual’s eligibility to a training subsidy;
* the delivery of a VET course;
* the verification of a student identifier;
* resolving problems in the assignment of a student identifier (as outlined in Clause 12 of the Bill);
* the preparation and auditing of the National VET Statistics;
* conducting education-related policy development and research;
* the preparation of an authenticated VET transcript;
* auditing publicly registered training organisations and publically funded VET training or programs;
* allowing VET Regulators to perform their functions under their legislation; and
* when the law otherwise requires disclosure (such as when a subpoena is issued for such information).

To the extent that these authorisations for the use, collection and disclosure of student identifiers impact on the right to privacy, this will not be an arbitrary interference as the authorisations are for legitimate policy objectives. These policy objectives include improving the accessibility of vocational education and training and the promotion of free education which advances the right to education (as outlined above) and is consistent with the aims and objectives of the ICCPR.

Additionally, the Bill provides significant safeguards to the privacy of individuals by providing for the following protections:

* individuals have control over their student identifier and can determine who can have access to the personal and educational records associated with it. The student identifier IT system is specifically being designed and built to incorporate these important safeguards.
* while the Bill does provide authorisations for the collection, use and disclosure of a student identifier which may lead to the disclosure of personal information, the Bill does not replace the protections provided to personal information under the Privacy Act (or the equivalent legislation within the State and Territory jurisdictions). Therefore any entity that collects, uses or discloses a student identifier will have to comply with the protections of this information under the Bill as well as the Privacy Act (to the extent that the collection, use or disclosure involves personal information).
* in addition, the Bill extends the application of the Privacy Act by providing that if an entity breaches Clauses 11, 16 or 17 of the Bill then the entity is taken to be an agency within the meaning of the Privacy Act and will therefore mean that the Australian Information Commissioner may exercise their powers under Part V of that Act with regards to this entity.
* the legislation will also ensure that if an RTO, VET admission body or any other entity collects personal information solely for the purpose of applying for the student identifier on behalf of an individual, then this information must be destroyed. This means that details of the identification document submitted will not be kept by any entity that may have assisted the student in the application process.
* personal and training information will be stored separately. An individual’s identity and contact details will be held by the Registrar, separate from their VET activity records held by the NCVER in its National VET Provider collection.

by storing these records separately, it will not be possible to identify an individual by their student identifier alone and will therefore mean that there is greater protection of the individual’s privacy.

In addition, individuals applying for a student identifier or interacting with the scheme will be provided with an appropriate notice as to how their information will be handled. This notice will cover:

* the legislative basis for the collection of the information;
* whether other information about the individual will be collected from other sources;
* what the information will be used for;
* the consequences for the individual, if the information is not collected;
* who the information may be disclosed to; and
* how the individual may access their information.

To the extent that the individual’s right to privacy is impacted by the Bill, any such impact is lawfully enacted, limits the discretion of a decision maker to interfere with an individual’s privacy, and is not arbitrary as it is done to achieve legitimate policy objectives. These legitimate policy objectives are achieved in a way that is reasonable, necessary and proportionate.

**Conclusion**

The Bill is compatible with human rights because it promotes the rights to education and work under Articles 13 and 6 of the ICESCR and protects the right to privacy under Article 17 of the ICCPR. Any potential limitations to these rights are reasonable, necessary and proportionate in achieving the Bill’s legitimate policy objectives.

# Regulation Impact Statement

## Background

In 2010, the Council of Australian Governments (COAG) directed the Ministerial Council for Tertiary Education and Employment (MCTEE) to develop a business case for the unique student identifier (USI) for the Vocational Education and Training (VET) sector.

The purpose of the USI would be to:

*‘To record all accredited education and training undertaken and qualifications achieved for each individual who access Vocational Education and Training (VET) over his or her lifetime.’*

In February 2011, COAG considered a preparatory business case for a VET USI and asked MCTEE to prepare the final business case based on the following five design principles:

* the USI will be established as a coherent national initiative with agreed administrative arrangements for the issuance, storage and use of the USI;
* a cross-sectoral framework for a unique identifier will be established for the whole education and training system, with the first phase of implementation in the VET sector;
* the USI will be based on a student-centred approach;
* the proposed model for the USI is one where student identifying information will be quarantined in a USI register, and stored separately from education and training activity; and
* other state-based unique identifiers, such as a Victorian Student Number (VSN) or a Queensland Learner Unique Identifier (LUI)[[2]](#footnote-2), can be accommodated in the design.

The final business case is due to be considered by COAG in early 2012.

The final business case is based on extensive work undertaken in three separate streams:

* a broad public consultation process, including the issuing of a discussion paper, the opportunity for stakeholders to comment and targeted stakeholder interviews (undertaken by the *NOUS Group*);
* an examination of the technical requirements, including the development of High Level Business Requirements, High Level Costs and Benefits and High Level Solution (by *3pillars asia pacific*); and
* an examination of the legal, governance and privacy issues (undertaken by *Information Integrity Solutions*).

The final business case was also informed by an Expert Advisory Group that included:

* Mr Peter Grant, Former Chair of the NCVER Board and Former Deputy Secretary, Department of Education, Training and Youth Affairs;
* Mr Bill Burmester, Former Deputy Secretary, DEEWR;
* Mr Lawrence Millar, technical and privacy expert who worked on similar reforms in New Zealand; and
* Dr Tom Karmel, Managing Director, National Centre for Vocational Education Research.

This RIS is also informed by the responses to the Consultation RIS issued in December 2011.

## Statement of the Problem

The National Centre for Vocational Education Research (NCVER)[[3]](#footnote-3) currently collects and holds unit level records of student enrolment and achievement in the VET sector, but these records are not mapped to an individual over the lifetime. This means that students cannot access the data and the data are able to be used to best effect by Registered Training Organisations (RTOs), government policy makers or researchers.

The inability to access enrolment and achievement data across the lifetime of individual VET students’ inconveniences students, affects the efficiency of RTOs and undermines the capacity of state/territory and Commonwealth policy makers to develop evidence-based programs and ensure accountability for the investments made.

This issue will be accentuated with the transparency agenda under the new National Agreement for Skills and Workforce Development. Under the planned reforms, it will be essential to be able to readily assemble student record data so students themselves, RTOs and governments can better understand how the VET system is performing. This represents a basic building block of the VET system and requires government action to establish a nationally consistent approach that covers all participants in VET in Australia.

**Students**

Currently, students have little or no control over their VET activity data and cannot easily find, collate and authenticate all of their educational attainments in a single portable record. Within the VET sector, students often enrol and attend courses with multiple training providers – there are approximately 2.3 million enrolments in the VET system each year and it is estimated that some 30 per cent of students use multiple providers. When students need to create a transcript of their achievements for enrolment, to show an employer or to establish credit for recognised prior learning, they currently need to contact and request information from more than one source. This situation is exacerbated when training providers go out of business and their records are either lost or unrecoverable.

**Registered Training Organisations**

The limitation in being able to readily access consolidated individual enrolment and achievement records over the lifetime is also a problem for RTOs, particularly at the time of student enrolment, in confirming appropriate pre-requisite course work and in assessing recognised prior learning.

**Governments**

The data currently collected by the NCVER is not sufficient to support the student-centred (or entitlements based) training models that are being implemented in some states/territories. In addition, the number of unique students undertaking VET cannot be accurately identified and there is no way of knowing the extent to which individuals undertake VET with a number of providers over a given period.

Further, the inability to access and analyse VET enrolment and achievement data at the individual student level over the lifetime means that state/territory and Commonwealth policy makers cannot readily understand the pathways students are taking, assess the progress of disadvantaged students or whether individual students are accessing resources at agreed levels.

In response, some states such as Victoria and Queensland, have already introduced unique student identifiers to assist in their own policy development and program administration. While these have improved the ability of individual states to create student records, this approach has limited value if students move and study across state and territory borders.

The lack of records identified at the individual level also limits the ability of governments to monitor issues arising from or improvements in the performance and transparency of the VET system. The ability to evaluate the achievement of education and training policy goals – including the monitoring of COAG performance measures – is limited. This limitation restricts the ability of policy makers to respond in a timely manner to industry needs as the labour market and economic environment changes.

**Analysts and researchers**

Currently, longitudinal research databases for the VET sector can only be created through statistical matching. This limits the capacity of researchers to examine the distribution of educational opportunities and attainment across the population and analyse educational pathways over an individual’s lifecycle.

## Objectives

When COAG considered a preparatory business case in February 2011, it was agreed that the purpose of a USI, as a response to the problems associated with accessing student records, would be to:

“*record all accredited education and training undertaken and qualifications achieved for each individual who accesses Vocational Education and Training (VET) over his or her lifetime*”.

The overarching objective of such a mechanism would be to establish a solid framework of information which can support and enable a flexible and demand-driven VET system in Australia. It would be expected to facilitate an information-base that can support all users of the system in an equitable and efficient way and promote continued improvement in the VET system. It would also be expected to contribute to the wider VET reform agenda by enabling greater transparency in the system and improving accountability and responsiveness across providers and governments.

## Statement of Options

The principal options initially considered in response to the problem are as follows:

* No change
* National Unique Student Identifier

During the consultations undertaken for the initiative, two further options were proposed. They are:

* State-based Unique Student Identifiers
* Data matching of existing records

All four options are described below and are evaluated in section 4.

***Description of options***

1. *No Change*

The status quo would remain with only two jurisdictions (Victoria and Queensland) having unique student identifiers applying to the VET sector. Under this option, there would be no mechanism for a student who has studied in other jurisdictions to find, collate and authenticate their education attainments without approaching each individual RTO.

1. *National Unique Student Identifier*

Under this option, a single national unique student identifier would be implemented to allow the creation of individual lifetime VET records. Each student would be given a single number on enrolment. This number would be included on enrolment and achievement records, generated by RTOs across the country and stored, as currently occurs, with NCVER. Student identifying information would be quarantined and stored separately from national data collections of activity. The USI register would be managed by an appropriate agency (the USI service), with strict controls to ensure privacy.

Students would be able to request their full VET transcripts from the USI service which would draw the data together from the NCVER data base. This would provide students with greater control of their VET activity by making it easier to find, collate and authenticate all their educational attainments in a single portable record, provide a training history beyond the life of the training provider and enable future services and innovations such as e-portfolios and qualification-verification systems.

Policy makers would be able to analyse data held in the NCVER database on a unit record, whole of lifetime basis while, at the same time, protecting the privacy of individual students – the data would include the USI itself, but would not be able to be re-identified as education and training data would be kept separate from the students’ personal information held by the USI service.

This option would be supported by legislation that defines arrangements for the collection, storage and disclosure of personal information that will be necessary to establish identifiers for students. It would also establish limits on the use of identifiers, thus reducing the risk of ‘function creep’, and would create a service that would be responsible for the creation and secure storage of identifiers. Furthermore, the identifiers and associated personal information will be quarantined in a USI register and stored separately from education and training activity.

To enable this option to work effectively, the USI would need to:

* be mandatory for all students when enrolling in any accredited VET course, whether in publicly or privately funded places; and
* extend to all students including international students undertaking accredited VET programs under the Australian Qualifications Framework (AQF) at an Australian Registered Training Organisation (RTO).

Appropriate technical solutions and protocols would be put in place to accommodate existing state-based identifier systems.

1. *State-based Unique Student Identifiers (with linkages)*

This option would involve a federated database system – each state government would have its own system supported by a virtual database which queries each separate system and draws the information together. There wouldn’t be a need for the same system to be implemented in each state, but each state would need to adhere to common standards sufficient to share identifying information to draw together an individual’s record.

Under this option, each state and territory would implement a unique student identifier system independently (following the Victorian and Queensland lead). State systems would then be linked by:

* a national indexing system that would be used to allocate an additional number to identify and track students as they move between state systems; or
* personally identifiable information (such as name, address, date of birth), allowing the identification and collation of records associated with specific individuals in different states.

Students would be able to request VET transcripts from their state/territory service, and the state government would coordinate with other systems to identify records associated with that student in other states/territories. Policy makers and researchers would be able to work with state governments to collate de-identified records to conduct studies for policy making and research.

One submission received in response to the consultation RIS proposed a variant of this option that could limit costs for state governments. This variant, identified as option 3b hereafter, would see the development of a national USI service for providers registered nationally or in states other than Victoria and Queensland, so that they could leverage a national infrastructure.

1. *Data Matching of Existing Records*

This option would involve using identifiable information that is held on existing NCVER records or provided to them through existing transfer systems as a key to matching relevant records. In this way, some of the data required for analysis of the functioning of the VET system could be assembled. However, this option would have significant limitations – for example, it would not be able to recreate transcripts of student records and the reliability of records created by data matching algorithms would not be sufficient to support entitlement-based training models.

## Impact Analysis

The impact analysis has been undertaken by examining the options in terms of the costs and benefits for the key users of VET student record information.

**Students**

| **Option** | **Costs** | **Benefits** |
| --- | --- | --- |
| 1. No Change | Students are unable to access a reliable record of their training history. Transition of students between institutions, and credit transfer and recognition of prior learning processes would not be improved. Cost of obtaining and assembling transcripts will vary depending on individual training history, such as the number of RTOs attended and range of qualifications attempted. The cost of a transcript from an RTO can be around $20. Students who attended RTOs that are no longer operating may have no means of obtaining transcripts. There are 268 RTOs no longer operating. The inability to gather authoritative information about one’s own VET qualifications can represent a significant cost over an individual’s working life.  | No benefits |
| 2. National USI | Surveys have identified that privacy is a concern for some students. This concern can be managed through robust privacy controls in the design of the USI. These are set out in detail in the section below headed ‘Impact on Privacy’. Students will need to make contact with the USI register service to obtain their USI, and for sourcing and providing the necessary identifying information (or apply through an RTO). Although no decision in this regard has been made, minor fees might be charged for the provision of academic transcripts. Costs would be minimal, or for example in the order of $10 to $20 for each transcript (based on current charges by universities for transcripts).  | This option would give students improved access to their own VET records. The USI will make it easier for students to find, collate and authenticate all their vocational educational attainments in a single portable record. It is estimated that of the approximately 2.3 million VET students enrolled each year some 30 per cent, or about 700,000, attend courses with multiple providers. Therefore, the ability for these students to obtain over their working life a single consolidated transcript from the USI agency, as opposed to individual ones from each provider, would not only constitute a major convenience, but potentially a saving from not having to pay multiple transcript fees, where these are charged. The benefits generated over their working life by students of RTOs that are no longer operating being able to receive transcripts from the USI agency cannot be readily quantified. However, these benefits could be expected to be significant and arise from improved employment opportunities, greater recognition of skills and improved earning potential and less need for repeat training as a result of Recognition of Prior Learning (RPL) and credit transfer arrangements. The national USI will also enable future services and innovations, such as e-portfolios and qualification-verification systems, by enabling an electronic record of learner attainment, supporting the transition of students between institutions. It will provide a training history beyond the life of the training provider. This will benefit students in their ongoing training, ensure they are adequately assessed for prior learning and facilitate their recruitment into the workforce by being able to provide a prospective employer with their complete training record. International students undertaking accredited courses with an Australian training provider will benefit in the same way as indicated above under this option.  |
| 3. State-based USIs  | Privacy concerns are not as easily managed as through the implementation of option 2, as state and territory privacy legislation covering training providers and students varies widely.As above for option 2 in terms of identity checks and fees for transcripts.  | Benefits to students are limited as this option would make it difficult or in some cases impossible to authenticate student records and ensure records are not duplicated between states. Further, a respondent to the consultation RIS suggested that the long term advantages of the Victorian Student Number were not apparent to students.  |
| 3b. State-based variant | Privacy concerns are not as easily managed as through the implementation of option 2. That is, students from Vic and Qld would be more easily identifiable.As above for option 2 in terms of identity checks and possible fees for transcripts.  | Benefits to students are limited as this option would make it difficult or in some cases impossible to authenticate student records and ensure records are not duplicated between states. There would be a heightened risk of students having both a state and national identifier or being registered in different jurisdictions with different identifiers.  |
| 4. Data matching | Students are unable to access a reliable record of their training history. | No benefits. |

**Registered Training Organisations**

| **Option** | **Costs** | **Benefits** |
| --- | --- | --- |
| 1. | None. | None. |
| 2. | There are moderate short-term cost implications for implementation of the USI as RTOs will need to adjust their student management systems to accommodate the USI. However, costs will be reduced by aligning the timing of the USI with the timing of the introduction of the new AVETMIS standard[[4]](#footnote-4) on 1 January 2014. The estimated size of the impact varies based on RTO size, and their use of proprietary or custom-built student management systems (SMS). The following guide was developed by 3pillars Asia Pacific as part of the project business case. Estimated cost per RTO of introducing the USI

| RTO size | % of all RTOs\* | Low | High | Comments |
| --- | --- | --- | --- | --- |
| Small | 55% | $1,000 | $2,000 | Assumes using ‘tools’ or proprietary SMS software |
| Medium | 25% | $2,000 | $100,000 | Assumes using proprietary SMS software or custom built SMS |
| Large  | 20% | $100,000 | $300,000 | Assumes custom-built SMS |

\*At December 2011, there were approximately 4,900 RTOs operating across all states and Territories in Australia. (Source: <http://training.gov.au/Reports/RtoCount>)  | The introduction of a USI would, over time, reduce the administrative burden for RTOs in a number of ways. It will streamline data collection and reporting reducing double entry of data and by providing an electronic record of learner attainment, and assist with enrolment details when students re-enrol.This electronic record could assist with skills development, training plans, RPL and credit transfer, and assist in managing student-centred training models.It would also reduce the administrative effort associated with data collection and reporting by providing an electronic record of learner attainment, particularly for smaller RTOs who have low tech administrative systems. This would also assist RTOs to meet their obligations under national registration and Australian Quality Training Framework (AQTF) obligations in relation to the retention, archiving, retrieval and transfer of records.   |
| 2. Continued | These costs have not been used to calculate an indicative overall cost to be incurred by RTOs to introduce the USI because they are likely to over-estimate cost impacts. For example, a large TAFE institute in Victoria has estimated the costs of implementing the Victorian Student Number at $65,000, while, in response to a direct question in the consultation RIS, a large WA TAFE has indicated that a USI could be integrated at minimal cost in existing systems. Also, these costs assume that RTOs will need to make changes to their software in addition to their regular cycle of upgrades. In reality, all RTOs will need to make changes to their software systems to become compliant with AVETMISS 7.0. It is intended that the introduction of a USI will be a part of AVETMISS 7.0. Thus, the costs attributable directly to the USI introduction, as opposed to compliance with the new AVETMIS Standard, are likely to be minor. There are minimal ongoing costs for RTOs, once implemented, as ongoing administration costs will be offset by improvements in data management efficiency provided by the system.There might be additional costs to RTOs in terms of identity checks and liaison with the USI register service. However, the USI system will to the extent possible rely on RTOs’ existing identity check procedures to minimise costs and inconvenience Further, any costs of identity checks by training providers will be offset when re-enrolling or transferring students since they will need only provide their USI.Advice received as part of the consultations is that enterprise RTOs, that is Australian employers delivering VET training to their employees, will not have concerns about the cost of incorporating a USI in their existing training record systems.  | RTOs will have better access to student records to make more informed decisions around assessments of prior learning and student capabilities for undertaking particular levels of training. Other important benefits include more equitable access to VET and improvement in the quality of outcomes for students as they are better aligned to appropriate courses and learning pathways. It would also reduce the cost of transition between institutions by minimising the amount of information that would need to be collected and stored relating to previous educational experience. |
| 3. | Similar short-term cost implications for most RTOs as for option 2. RTOs operating in multiple states and territories may face higher costs as differences in state systems may need to be accommodated separately. Proprietary software system costs will also likely increase due to the need to accommodate differences in state systems.One national RTO association raised strong objections to this option in view of the inefficiencies and inconsistencies of state-based processes. Similar costs to option 2 in terms of identity checks and liaison with the USI register service. | Same as option 2 for those records that can be authenticated.  |
| 3b | Similar short-term cost implications for most RTOs as for option 2. RTOs operating in multiple states and territories may face higher costs as differences in state systems may need to be accommodated separately. Proprietary software system costs will also likely increase due to the need to accommodate differences in state systems.Similar costs to option 2 in terms of identity checks and liaison with the USI register service. | Same as option 2 for those records that can be authenticated. RTOs in Vic and Qld will incur lesser costs by not having to introduce USI; however these RTOs would still be required to meet costs associated with AVETMISS 7.0 compliance.  |
| 4. | No change; RTOs would not be able to easily access transcripts of student records for purposes of RPL etc.  | No costs to RTO since this option does not require changes at the RTO level. |

**Governments**

| **Option** | **Costs** | **Benefits** |
| --- | --- | --- |
| 1. | Lack of data for use in performance measurement and policy development will necessitate additional research and data collection through surveys and other means. The national reform agenda for VET will increase requirements for this kind of data collection and reporting.Implementation of student entitlement funding models will not be achievable.  | None. |
| 2. | Implementation will require an ongoing management agency, to be funded jointly by Commonwealth and State governments. One state government agency responding to the consultation RIS commented that the capacity of state governments to contribute to the estimated costs has not been determined. Capital costs for the project are estimated to be in the order of $13-15 million over two years to be funded from the national Training System Commonwealth Own Purpose Expenses (NTS COPE).Implementation by the Commonwealth of a similar system in the higher education sector, the Higher Education Information Management System, was costed at $20 million over 4 years (2005-2009 budget) for the Commonwealth.The USI agency is expected to require ongoing annual funding of approximately $4-5 million based on the ongoing costs of similar systems.While potential costs to regulatory bodies have not been estimated, the national regulator has indicated in its response to the consultation RIS that the USI will assist it in its functions, although it did not quantify the value of such assistance. | The USI will enable the implementation of student-centred training programs and the capture of training activity, irrespective of where the training occurs. In conjunction with the national qualifications framework, a USI will assist in assuring the quality of VET by providing data on levels of VET activity. Data associated with the USI would also be invaluable for performance reporting and driving accountability in the VET sector through demonstrating progress and achievements of learners and systems. Enables longitudinal studies of VET activity and educational pathways over an individual’s lifecycle, including the monitoring of learner pathways and transitions for disadvantaged learners. Analysis of de-identified lifetime VET records of enrolment and achievement will underpin key areas of the VET reform agenda.A national USI will lead to better data that can assist governments to assess and identify and act on emerging issues in a more timely way. This will have a key long term benefit to underpin a more rapid response of the VET sector to changes in the economy thus making it more responsive to the needs of the labour market and the economy.  |
| 3. | Implementation will require state-based bodies to manage state systems, as well as a national framework to ensure the systems communicate effectively. This is the most cost-intensive approach for governments, particularly at the state level.The costs for the implementation of the Victorian Student Number were estimated at $5.1m; those for the Queensland LUI at $3m in capital costs plus $1m per year in recurrent costs. Only Victoria and Queensland have student identifier schemes. Based on these cost estimates the initial costs for all the other jurisdictions to implement independent state-based unique identifier systems could be around $25m, plus ongoing costs of around $6m per year. However, it is worth noting that the Queensland scheme currently does not cover all accredited training and there would be additional costs incurred in that jurisdiction for expanding their scheme. In addition, there would be costs for the Commonwealth Government to develop and manage a system that draws all state based systems together and undertakes appropriate data checking and student identification processes.  | Benefits to governments are similar to option 2. State-based USIs in Victoria and Queensland have the potential to provide accurate information on a student’s movement through the educational system and transition to and between VET providers, but only within those jurisdictions. However, the benefits in respect of VET are significantly reduced by the unreliability of records when sourced from across different state systems.This approach will make it difficult to ensure records are not duplicated between states, and may not be reliable enough to underpin student entitlement funding models.  |
| 3b | Same as for option 2, as the Commonwealth Government would still need to develop and manage a system that draws all state based systems together and undertakes appropriate data checking and student identification processes. | Jurisdictions that do not currently have their own identifier would be able to leverage the national USI infrastructure without incurring set up costs such as Victoria and Queensland. However, benefits will be significantly reduced relative to option 2 by the unreliability of records when sourced from across different state systems.This approach will make it difficult to ensure records are not duplicated between states, and may not be reliable enough to underpin student entitlement funding models. |
| 4. | Costs associated with development of data matching facility and algorithms. Costs associated with running data matching analysis and data cleansing | Access to limited additional information about student pathways. |

**Employers**

| **Option** | **Costs** | **Benefits** |
| --- | --- | --- |
| 1. | Employers are not easily able to obtain consolidated and authenticated training histories from their potential employees.  | None |
| 2. | None | Employers are able to request from potential employees an authenticated record of their consolidated and complete training history. While employers can now ask their employees to supply this information, it may be incomplete, not timely or not comprehensive or authenticated. Improved data on training supply and demand will assist with workforce planning for large employers.As noted in some responses to the Consultation RIS, this option could help employers adopt a more structured approach to training and eventually help Australia develop a stronger training culture. This is because the introduction of the USI will help employers identify skill gaps and strengths of their workforce, especially new recruits, and improve the productive capacity of their organisation.  |
| 3. | Employers are not easily able to obtain consolidated and authenticated training histories from their potential employees, where training has been undertaken in other jurisdictions.  | Same as option 2, except the value of student records will be reduced due to their lesser reliability. |
| 3b. | None. Employers are not easily able to obtain consolidated and authenticated training histories from their potential employees, where training has been undertaken in other jurisdictions.  | Same as option 2, except the value of student records will be reduced due to their lesser reliability. |
| 4. | Employers are not easily able to obtain consolidated and authenticated training histories from their potential employees.  | None. This option is the status quo. |

A summary of costs and benefits of each option follows.

**Summary of costs and benefits**

| **Option** | **Students** | **RTOs** | **Governments** | **Employers** |
| --- | --- | --- | --- | --- |
|  | **Cost** | **Benefit** | **Cost** | **Benefit** | **Cost** | **Benefit** | **Cost** | **Benefit** |
| Option 1 | No reliable record of training history.  | No benefits | None. | None. | Extra research and data collection; Cannot implement student entitlement models.  | None. | None | None |
| Option 2 | Privacy is a concern to be managed. Students will need to contact USI service to get USI or do so via an RTO. Minor fees might be charged for academic transcripts.  | Improved access to own VET records. Can provide prospective employer complete training record. Enable services like e-portfolios. Potential savings from consolidated transcripts.  | Adjust student management systems (cost reduced by aligning with introduction of new AVETMISS) and minor ongoing costs. Cost varies based on RTO size. | Help meet data collection, reporting and archiving obligations; assist with enrolment process and RPL/credit transfer. | Capital costs ($13-15m) and ongoing annual costs ($4-5m) to be funded jointly by Commonwealth and State governments | Enable student-centred training; capture of training data will assist in assuring quality of VET and performance reporting and accountability; essential for key areas of VET reform agenda.  | None | Authenticated training record of employees; help with workforce planning; more structured approach to training.  |
| Option 3 | As above for option 2. Privacy harder to assure. | Limited benefits  | Higher cost than option 2 for RTOs operating in multiple states; Inefficiencies and inconsistencies of state-based processes.  | Same as option 2 for those records that can be authenticated.  | Highest cost of all options (estimated to be more than $25m set up costs, plus $6m annual costs).   | Significantly reduced by unreliability of records when sourced from across different state systems. Difficult to ensure records are not duplicated.  | None | Same as option 2, but value of student records reduced as less reliability. |
| Option 3b | As above for options 2 and 3. | Limited benefits; risk of students having both state and national identifier.  | Same as option 3.  | Same as option 2 Lesser costs for RTOs in Vic and Qld, but they still face cost of new AVETMISS.  | Same as for option 2 | Same as option 3, but jurisdictions that do not currently have their own identifier could leverage national USI infrastructure.  | None | Same as option 3. |
| Option 4 | Students unable to access a reliable record of their training. | No benefits. | Cannot easily access student records. | No benefits. | Costs of data matching and data cleansing | Access to limited additional information about student pathways. | None. | None. |

***Impact on Competition***

Under option 1 and 4, differences in state systems would maintain inconsistencies in RTO costs across jurisdictions.

Under option 2 and 3, the increased costs to student management systems could represent a minor additional barrier to entry for new RTOs, but this increase is unlikely to be significant in the context of typical RTO start-up costs. The existence of proprietary student management systems that small RTOs can purchase also reduces the potential impacts. Furthermore, it is intended that the changes to RTO systems to accommodate a USI will be made as part of the 2014 AVETMISS 7.0 data standard upgrade required by NCVER. This would have the effect of minimising costs attributable to the USI component.

Under option 3, cost impacts would be higher for those RTOs operating in multiple states and territories, and may discourage small to medium sized RTOs from expanding across state lines where they might otherwise do so.

The USI is considered important for facilitating student entitlement funding models which enhance competition.

***Impact on Privacy***

Addressing issues of privacy and confidentiality will be a major factor in the successful design and implementation of a USI for VET. The stakeholder consultation highlighted the sensitivities relating to privacy for the USI as privacy advocates are sensitive to the introduction of a USI and they and other stakeholders are looking for strong privacy protection. Privacy is especially important for the USI because the system involves the transfer of personal information to and from a central agency, which could be linked and used for an expanding range of uses.

The following high-level strategies are proposed to be adopted:

* Separation of educational and demographic data from personal data in two separate databases, managed by separate business entities.
* Creation of a USI that is a randomly generated 10-character, upper and lower-case, alpha-numeric string with an additional check digit.
* Mandatory minimum level of personal identification checks before a USI is issued.

Further, a detailed privacy and confidentiality policy for the USI will be implemented. This is envisaged to include several elements, such as rules for the collection, use and disclosure of a student’s USI and the information attached to it; an independent national agency to administer the system, including exercising control over access to the central database and specification of the purposes for which the USI can be used; commitment to nationally consistent privacy regulation and a mechanism for complaints handling; privacy-enhancing technology, with encryption of the data in the database when ‘at rest’ (database encryption) and security implemented to the highest industry standards. `

## Consultation

The Consultation RIS was open for comment from 23 December 2011 to 20 January 2012, and built on previous extensive public consultations in 2010 and 2011. There were 24 responses from stakeholders in the 2010 consultations. In the 2011 consultations, 37 stakeholders were interviewed, including peak business and training bodies and state training authorities, and a total of 850 students responded to a survey. To inform that consultation process, a discussion paper prepared by NCVER was made available to all stakeholders (publicly available at <http://www.ncver.edu.au/publications/2412.html> ).

The outcome of the consultations conducted for the final business case, as summarised in the Consultation RIS, is at **Attachment A**.

A broad range of stakeholders was similarly approached with the Consultation RIS. Industry, RTOs, state and national agencies were explicitly invited to comment on the Consultation RIS. A total of 16 responses were received.

In seeking views on the Consultation RIS, the following specific issues were drawn to the attention of stakeholders:

* Whether issues of privacy, which were raised by some stakeholders as a concern, had been addressed satisfactorily in the development of the options.
* Whether costs and benefits had been fully considered across the range of options considered.
* Whether incorporating the required systems changes for introduction of a USI with the systems changes required by AVETMISS 7.0 is an appropriate approach to minimise the initial costs to RTOs or whether other mechanisms to minimise cost could or should be considered.

***Summary of views***

National agencies expressed generally strong support and preference for a national USI over other options as it could provide a more accurate picture of VET participation and outcomes; enhance the efficiency of data collection and usefulness of the data so collected; and improve the quality and reliability of data to support the VET reform agenda. A national USI would also align with existing work towards a national e-portfolio approach as a seamless (technology-based) solution for recognition of learning wherever acquired. In addition to benefiting students, it could also provide a more accurate and complete information base for a demand driven VET system.

National industry bodies were similarly highly supportive of a national USI, which was seen as assisting in workforce planning, taking a more structured approach to training and in developing a strong training culture in Australia. By contrast they did not favour a state-based USI, which was seen as inefficient.

State agencies were supportive of an identifier system, but expressed concern about the potential for a national USI to duplicate or fail to properly accommodate state-level identifier systems, where they already exist. The capacity of jurisdictions to contribute towards a national system was also raised as an issue in two instances. One suggestion was that the USI system should be capable of linking with identifiers at state-level, where these are issued, and of issuing identifiers to students of nationally registered providers. This would then enable a phased implementation of a national USI system. The issue of privacy was the focus of one submission, which noted the importance of separate agencies storing identifier information and VET enrolment and achievement, consistent with the proposed model.

Training providers commenting on the Consultation RIS were generally supportive of a USI system. However, some raised concerns about cost, privacy of individual information, implementation timeframe and data security. The rationale for extending the USI to students undertaking accredited VET offshore was questioned. The need to clearly articulate the long-term benefits to students of a USI was also stressed. All of these concerns will be carefully addressed in the planning and design of the USI scheme. For example, the issue of costs will be addressed, in part, by timing the implementation of the USI with that of the new AVETMIS Standard and by building on existing RTO arrangements wherever possible. Privacy will be addressed comprehensively in the manner explained elsewhere in this document, and suitable information products developed to explain the benefits to students. Further, a national USI would need to take account of dual VET and Higher Education providers and ensure appropriate linkages across the two levels. This aspect will be addressed in detail in the course of consultations with stakeholders that will be taking place in the development of the IT system and other arrangements.

Not all who commented agreed that the above were significant issues. For example, a large public RTO, which strongly supported a national USI as the model providing the greatest benefits, noted that it may be possible to achieve integration of a USI into its student management system at minimal cost.

Enterprise VET providers noted that a national USI could deliver a more accurate national VET data base, as much enterprise based VET activity is not currently reported.

Students surveyed separately in 2011 were generally in favour of the introduction of a USI, provided privacy and data integrity were addressed and they could maintain control over their record of achievement. The benefit of a single unique identifier across a student’s lifetime was particularly attractive.

Overall, the Consultation RIS elicited responses that were indicative of wide-spread in-principle support for a national USI (option 2), although some issues of concern were raised, especially around potential cost implications, privacy of information, linkages with existing identifier systems and other education sectors, and the need to articulate clearly the purpose, scope and benefits of the system.

***Implications for final business case***

The final business case is supported by the outcomes of the consultation process.

A national USI approach which would deliver the greatest benefits for VET reform aligns well with the views of the broad range of stakeholders who could see the benefits of a USI in progressing such reforms.

In direct response to the concerns about privacy and governance raised by some stakeholders, the adopted approach in the business case, that is the separate collection and storage of student identifier and training information, is a key element in ensuring appropriate protections are put in place to store and maintain individuals’ records. Also, legislation is expected to be developed that will delineate limits on the use of information by stakeholders, thereby addressing concerns about privacy and ‘function creep’. Specifically, the business case for the USI indicates that the legislation will set out clearly:

* what information is to be stored;
* who has access to the stored (identity) information;
* the use and disclosure of the USI and related information;
* who has responsibility for establishing and maintaining the USI register;
* who has responsibility for allocating a USI, and to whom, and when;
* the required identifying information to be collected prior to allocating a USI;
* the purposes for which it can be used; and
* the criminal penalties for collection, use of disclosure beyond these specified purposes.

Some stakeholders saw the benefits of a USI, but preferred alternative approaches or its immediate implementation across all education sectors. In response to the VET sector concerns about costs, the business case suggests aligning the introduction of a USI with other proposed systems changes that would impact on key stakeholders – for example aligning introduction with changes to the data standards required by NCVER (AVETMISS). In response to concerns about the need for linkages with and expansion to other education sectors, the business case sets out the establishment from the outset of a cross-sectoral framework for the unique identifier for the whole education and training system, with the first phase of implementation in the VET sector. Further analysis of the impacts of expanding the USI into other sectors will be needed before a commitment is made to this.

Purpose, scope and operation will be communicated clearly and widely to stakeholders in a stakeholder engagement strategy planned for the introduction of the USI.

Further consultations with all the stakeholders will be undertaken to develop implementation details. These will be facilitated by the Commonwealth/state working groups that have been established as part of the planning for the USI.

## Evaluation and Conclusion

A mechanism to enable the creation of a record of all accredited education and training undertaken and qualifications achieved for each individual who accesses Vocational Education and Training (VET) over his or her lifetime is an essential building block for the future of the VET reform agenda. The alternatives to the national approach canvassed in this document on balance indicate that they have either fewer benefits or greater costs than a national USI system.

Of the options considered in the context of this RIS, the option to do nothing will not provide the necessary data to fill current information gaps and support the VET reform agenda. This could be expected to continue to have negative impacts on the efficiency of the VET system and its ability to respond to skills requirements, and therefore ultimately undermine Australia’s productive capacity.

The option to introduce student identification systems state by state could provide some of the data required, but at a greater cost to both RTOs and governments than a national system. Its fragmentation and lack of coherence would inevitably cause uncertainty about the reliability of separately built systems and their capacity to provide accurate linked data consistent with requirements. Moreover, it would be of limited benefit to students undertaking training over their working life in different jurisdictions and would require a significant level of cross-jurisdictional data matching to generate consolidated training records whose reliability could not be guaranteed. Similarly, option 3b would have limited benefit and would end up requiring Commonwealth funding to develop and manage a system that draws all state based systems together and undertakes appropriate data checking and student identification processes.

By contrast, the proposal to establish a national unique student identifier, option 2, responds to the data problem identified in the VET sector. The proposed approach would allow for the safe generation and storage of unique student numbers in VET and for these numbers to be attached to enrolment and achievement records for each student participating in training provided by registered training organisations. There will be costs to RTOs (in software changes and handling of identity checks) and governments (to establish and maintain a USI register service).

However, these costs would be offset by the benefits that would accrue directly to students and RTOs by simplifying processes and to governments in their being able to better understand the needs of those engaged with the VET sector and being able to measure the effectiveness of their investment. The costs will also be reduced by relying on existing processes where possible and by timing the introduction of the USI with the new AVETMIS standard. Further, the benefits would include significant cumulative savings from the ability of the USI agency to generate consolidated transcripts of VET attainments of students over their working life. [[5]](#footnote-5)

Importantly, a national USI will lead to better data that can assist the identification of emerging VET sector issues and trends, such as gaps in the training in particular skills that may be on demand, in a more timely way for RTOs, employers and governments. This will have a key long term benefit to underpin a more rapid response of the VET sector to changes in the economy thus making it more responsive to the needs of the labour market and the economy and make the workforce more readily adaptable to the changing skills needs of the future, thus enhancing opportunities for productivity improvements. As such option 2 is the one that delivers the highest net benefit of the options canvassed.

## Implementation and Review

The implementation of the national USI is planned to coincide with the introduction of the new VET data standard for data generated by RTOs. This standard is updated from time to time by the National Centre for Vocational Education Research – and the new standard, AVETMISS 7.0, is due for implementation on 1 January 2014. This is also the proposed implementation date for the USI as it would allow data requirements for the USI to be included in AVETMISS 7.0, thereby minimising costs for software changes required by RTOs.

An implementation date of 1 January 2014 would also allow for the planning and development of the USI solution to be undertaken in a considered way – and will allow appropriate consultation with stakeholders in the development of business requirements for the IT system and other arrangements. The business case recommended that the Department of Education, Employment and Workplace Relations (DEEWR)[[6]](#footnote-6) take the lead for the implementation of the USI. A taskforce has been set up in DEEWR for this purpose and planning is underway pending COAG's decision. Commonwealth/state working groups have been established to develop detailed proposals around the governance and legislation, IT, data and communications aspects of the project. An engagement strategy is being developed to ensure that all stakeholders are included in the planning and implementation phase of the project – should COAG decide to proceed – and are kept informed about progress.

A review of the operations of the USI initiative will be provided to COAG or its nominated committee following its introduction.

The introduction of the USI will support the broader VET reform currently being considered. The USI proposal is a key component of the $1.4b National Agreement for Skills and Workforce Development being renegotiated with the States and the National Partnership to reform the Vocational Education and Training System, due to commence on 1 July 2012.  The USI will add greater transparency to the VET sector and help provide the reassurance to Government that funds are being properly targeted to skills needs.  In addition, the USI will improve transparency by enabling students and training providers to access comprehensive and authenticated information about VET attainments from a single source, and once fully implemented, potentially improving efficiency by reducing the administrative burden on training providers associated with data collection and reporting.

The revised NASWD and reform NP is to be considered by First Ministers in early 2012.

**Attachment A**

**Excerpt from the Consultation Regulatory Impact Statement on Consultations in 2011.**

Following the endorsement of the preparatory business case by COAG in February 2011, a consultation process regarding the introduction of a USI was carried out during June 2011. This process was designed to canvass the views of a wide cross section of relevant stakeholders regarding the purpose and use of a USI across the VET system to assist in the preparation of the final business case. Views on the implementation of a USI were also canvassed during the process.

Stakeholders included in the process were VET students, peak bodies such as state training authorities and policy makers such as state government and Commonwealth Government officials, and a range of RTOs both large and small and public and private.

To inform the consultation process, a discussion paper prepared by NCVER was made available to all stakeholders. This is publicly available at <http://www.ncver.edu.au/publications/2412.html>

In undertaking these consultations, a range of views about the possible options and uses of a USI was canvassed. Specifically, the consultations sought and collected views on the introduction of a USI from stakeholders focussing on the following broad issues:

* What is a USI and why is it needed?
* What are the benefits to all stakeholders?
* What are the risks and challenges for implementation?
* How can these be overcome?

The consultation process used a range of approaches including: face-to-face and telephone interviews with Commonwealth, State and Territory VET regulatory bodies and discussions with RTOs. A customised online survey was developed to engage and collect information from students.

Responses from the consultation process are available at:

<http://www.ncver.edu.au/publications/2413.html>

Key messages arising from the consultations are outlined as follows:

**The USI will support ongoing reforms to the VET sector** – the majority of stakeholders saw that the USI would be a very useful tool in supporting reforms in the VET sector, including a more evidenced-based approach to policy and planning and the ability to create new student-centric innovations. Also, stakeholders could see the benefits of the introduction of a USI to improve operations within the VET sector.

**The USI is seen as important but not widely seen as essential** – providing longitudinal data and enabling other initiatives whilst, at the same time, potentially reducing administrative burden were seen as important for the future of the sector. Those who thought the USI was not essential suggested there could be other ways to improve data and that there are other initiatives that are potentially more important.

Concerns that surfaced during the consultation process include:

**Purpose and Scope** – few stakeholders had a clear understanding of the purpose and scope of the USI. Others doubted the ability of the government to deliver and implement the project.

**Privacy concerns** – the protection of an individual’s privacy was of moderate concern to some and critical concern to a few stakeholder groups.

**Governance** – effective and transparent governance was considered crucial to the creation and maintenance of high quality, secure data.

**Cost of compliance** – for many RTOs the cost of the system is a strong concern and they are nervous about further additional costs.

**Students, RTOs and ownership of data** – there is a tension between students desiring ownership of training information and the ability to select the information able to be viewed by others and, on the other hand, a requirement for RTOs to submit complete records.

***Overall findings***

Overall, there is strong support for the concept of a USI among VET students, peak bodies and policy-makers, with Registered Training Organisation (RTOs) and regulators expressing a range of views. It is also apparent that stakeholders are looking for more detail and a clearer statement of the USI’s purpose and scope.

***Implications for final business case***

The final business case is supported by the outcomes of the consultation process.

A national USI approach which would deliver the greatest benefits for VET reform aligns well with the views of the broad range of stakeholders who could see the benefits of a USI in progressing such reforms.

In direct response to the concerns about privacy and governance raised by some stakeholders, the adopted approach in the business case ensures appropriate protections would be put in place to store and maintain individuals’ records. Also, protocols around the use of information by stakeholders would be developed.

Some stakeholders saw the benefits of a USI but preferred alternative approaches.

To address concerns about costs from stakeholders, the business case suggests aligning the introduction of a USI with other proposed systems changes that would impact on key stakeholders – for example aligning introduction with changes to the data standards required by NCVER (AVETMISS).

The project clearly has an opportunity to clarify the purpose, refine its scope and communicate this widely through its stakeholders in a communication strategy planned for the introduction of the USI.

**STUDENT IDENTIFIERS BILL 2014**

**NOTES ON CLAUSES**

1. Part 1
Preliminary

## Outline of Part

Part 1 of the Bill provides for the preliminary provisions of the Bill which includes clauses on the citation of the Bill, the commencement, an outline, definitions, the application of the Bill to the Crown and the extension to the external territories and extraterritorial application.

**Detailed explanation**

**Part 1— Preliminary**

**Clause 1** provides that the Bill, when it is enacted, is to be cited as the *Student Identifiers Act 2014*.

**Clause 2** inserts a three column table setting out commencement information for various provisions of the Bill. Each provision of the Bill specified in column 1 of the table commences (or is taken to have commenced) in accordance with column 2 of the table and any other statement in column 2 has effect according to its terms.

The table has the effect of providing for Clauses 1 and 2 and any other provisions of the Bill not otherwise covered by the table are to commence on Royal Assent.

The table provides that Clauses 3 to 52 and Clauses 54 to 57 commence on a day, or days, to be proclaimed, or if any of the provisions do not commence within 6 months from Royal Assent, they commence on the day after that 6 month period expires.

The table also provides that Clause 53 commences on 1 January 2015. If the requirements for a VET qualification or statement of attainment are completed after this date, the VET qualification or statement of attainment will not be able to be awarded to individuals who have not been issued a student identifier, unless an exemption from the student identifier scheme applies. The commencement of Clause 53 is delayed to give RTOs sufficient time to make the necessary preparations for the introduction of the scheme.

Subclause 2(2) provides that information in column 3 of the table does not form part of the Bill. Information in column 3 may be inserted or varied in any published version of the Bill (once enacted).

**Clause 3** provides a simplified outline of the operation of the Bill. While simplified outlines are included to assist readers to understand the substantive provisions of the Bill, the outlines are not intended to be comprehensive. It is intended that readers should rely on the substantive provisions.

**Clause 4** defines terms that appear in the Bill. These definitions include the following:

***Commonwealth Minister*** means the Minister administering this Bill once it is enacted. The Minister for Industry is the administering minister at the time when the Bill is enacted.

***entity*** means a person, partnership, any other unincorporated association or body or a trust. This definition is intended to operate broadly.

***personal information*** has the same meaning as in the Privacy Act. This has been defined in such a way as to ensure that any amendments to the definition of personal information in the Privacy Act will automatically apply to the Bill.

***Registrar*** means the holder of the office of Student Identifier Registrar.

***RTO*** means registered training organisation.

***Ministerial Council*** means a body established by the Council of Australian Governments to deal with training and skills (if there is such a body) or otherwise a body prescribed by the regulations.

As the Ministerial Council’s name and composition is subject to change, it is necessary to allow such a body to be prescribed in the regulations to ensure that there is sufficient flexibility to accommodate these changes.

***VET*** means vocational education and training.

**Subclause 4(2)** provides that the Registrar may specify an entity for the purposes of the definition of VET admission body through a legislative instrument. It is envisaged an instrument made under this subclause would include entities which do not provide VET but facilitate the enrolment of students into VET courses.

**Subclause 4(3)** provides that the Registrar may specify an entity for the purposes of the definition of VET-related body through a legislative instrument.

This provision is intended to operate so all bodies that are intended to be considered a VET-related body can be captured by a legislative instrument if they do not fall within subsection (a), (b) or (c) of the definition of VET-related body. Subsection (d) of this definition enables the Registrar to specify an entity for the purposes of the definition of VET-related body.

Please note that subsection 13(3) of the *Legislative Instruments Act 2003* (the Legislative Instruments Act) will allow the Registrar to specify a class or multiple classes of entities when specifying VET-related bodies rather than a specific VET-related body.

**Clause 5** provides that the Commonwealth is bound by the provisions of the Bill in each of its capacities. The effect of this clause is to bind the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory in respect of the Bill.

**Clause 6** provides that the Bill will apply in every external Territory of Australia.

**Clause 7** provides that this Bill will extend to acts, omissions, matters or things outside of Australia.

1. Part 2
Student identifiers

## Outline of Part

Part 2 of the Bill sets out the ways in which a student identifier may be assigned or verified, the protection of records containing student identifiers, the use, collection and disclosure of student identifiers and the interaction of the Bill with the Privacy Act.

**Detailed explanation**

**Part 2— Student identifiers**

**Division 1 – Simplified outline of this Part**

**Clause 8** provides a simplified outline of this Part.

**Division 2 - Assignment of student identifiers etc.**

**Clause 9** provides that an individual may apply to the Registrar, which is established in Part 4 of the Bill, for a student identifier to be assigned to the individual.

A registered training organisation, a VET admission body or another entity may also apply to the Registrar for a student identifier to be assigned to an individual if the individual authorises such an entity to make an application to the Registrar.

The purpose of allowing another entity to apply on the behalf of an individual is to ensure that the individual is not limited in who, or what kind of entity, may apply on their behalf.

The application must be made in a manner and form approved by the Registrar and must include any information required by the Registrar. The IT system being built to underpin the scheme will reflect the approved manner and form of the application. The application will require the individual to provide the following kinds of information: first name, last name, date of birth, gender, address, city and country of birth, country in which the student is studying and evidence of identity. Applications will be made on-line, by individuals or their authorised entity providing personal information sufficient to verify the identity of the individual.

An individual will then be able to nominate how they would like to receive their student identifier, such as via a text message to their mobile phone, an email address or the post. Once a student has received their identifier, they log on to the on-line system, enter their name and the password that they have chosen and they are then able to generate an authenticated transcript of their VET achievements linked to the student identifier.

For the avoidance of doubt, the authorisation of the Registrar to collect personal information under the Bill does not displace any provisions of the Privacy Act or an equivalent Act of a State or Territory. This will mean that theRegistrar and staff assisting him or her are subject to the current Information Privacy Principles (and will be subject to the Australian Privacy Principles (APPs) when the *Privacy Amendment (Enhancing Privacy Protection) Act 2012* (the Privacy Amendment (Enhancing Privacy Protection) Act) commences) in regard to the collection and holding of an individual's personal information for the purposes of processing an application for a student identifier by that individual.

An application for a student identifier will not involve the Registrar charging any fee.

Any individual providing false or misleading information when applying for a student identifier may be liable for criminal penalties under Section 137 of the *Criminal Code Act 1995*.

**Clause 10** provides that if an application is made to the Registrar in accordance with Clause 9, the Registrar must assign a student identifier to the individual if the Registrar is satisfied that the identity of the individual has been appropriately verified and the individual has not already been assigned a student identifier.

Please note that once assigned, an individual will have the same student identifier for all time. Only in exceptional circumstances will an individual be assigned a new student identifier. An example of such an exceptional circumstance is when a problem has been identified with the first issued student identifier and its cancellation is required to solve the problem (please see the explanation of Clause 12).

For the avoidance of doubt, the authorisation of the collection, use and disclosure of a student identifier made under the Bill does not displace any provisions of the Privacy Act or an equivalent Act of a state or territory. This will mean that to the extent a student identifier is contained in personal information about an individual that an entity collects, uses or discloses then the entity will still be bound by any provisions in the Privacy Act or an equivalent Act of a state or territory which would ordinarily apply to that entity. Please also note that the Registrar and staff assisting him or her are subject to the current Information Privacy Principles (and will be subject to the APPs when the Privacy Amendment (Enhancing Privacy Protection) Act commences) in regard to the authorisation of the collection, use and disclosure of a student identifier for the purpose of assigning a student identifier to that individual.

The Registrar must give written notice of the decision regarding the application to the applicant as well as the individual (in the event that the individual to whom the identifier is assigned is not the applicant).

If the Registrar does assign a student identifier to an individual, the notice of this decision must set out the student identifier. In addition, if the student identifier is given to an individual, it must also explain the purposes and uses of the student identifier. The explanation of the purpose and use of the student identifier will include:

• the legislative basis for the collection of the identifier, and other personal information;

• whether other information about the individual will be collected from other sources;

• what the information will be used for;

• the consequences for the individual, if the information is not collected;

• who the information may be disclosed to; and

• how the individual may access their information.

If the Registrar refuses to assign a student identifier to an individual, the notice of this decision must set out the reasons for the refusal.

**Clause 11** provides that if an RTO, a VET admission body or another entity is authorised by an individual to apply on their behalf to the Registrar for a student identifier and the entity collects personal information solely for the purpose of making the application, the entity must destroy that personal information as soon as practicable after the application is made or it is no longer required for that purpose.

The intent of this provision is principally to ensure the protection of the details of the evidence of identity document provided by the individual for the purpose of applying for a student identifier. This provision ensures entities do not keep records of information that it is not necessary for them to hold after having made an application for a USI.

This clause also provides that the requirement to destroy the personal information does not apply if the entity is required by or under any law to retain the information or if the information is also collected for another reason.

A contravention of this clause is taken to be an interference with the privacy of an individual for the purposes of the Privacy Act. Please see Clause 23 for a further explanation of the effect of a contravention of this clause.

**Clause 12** provides that if a problem has occurred in relation to an assignment of one or more student identifiers to one or more individuals, the Registrar may either revoke one or more of the student identifiers and/or assign a new student identifier to one or more of those individuals.

This provision operates so the Registrar *must* give the written notice to each of the entities mentioned within the provision if the Registrar revokes a student identifier or assigns a new student identifier.

The entities that are required to be notified are the individual, a VET-related body (if the VET-related body is a Department of the Commonwealth or a Department of a State or Territory, that deals with matters relating to VET (including the funding of VET)) as well as any other entity that the Registrar considers appropriate in the circumstances.

By storing these records separately, it will not be possible to identify an individual by their student identifier alone and will therefore mean that there is greater protection of the individual’s privacy.

The provision will operate so that the individual will receive the notice via the mode of communication they have advised the Registrar is their preferred mode of communication.

A VET-related body or other entity mentioned in this provision will receive the notification via an electronic exchange of information or by such other method as agreed with the Registrar.

Clause 12 also provides that the notice must set out the revoked identifier, in the event the student identifier of an individual has been revoked, and the new identifier, in the event a new identifier is assigned to an individual.

**Clause 13** provides that applications may be made to the Administrative Appeals Tribunal (AAT) by an individual for a review of a decision to refuse assignment of an identifier to an individual or a decision to revoke a student identifier of the individual or to assign a new identifier to an individual.

**Division 3 – Verification or giving of student identifiers**

**Clause 14** provides that an individual, an RTO, a VET-related body, or a VET admission body (if the VET admission body is authorised by the individual to do so), can request the Registrar to verify that a student identifier is the student identifier of a particular individual. These entities can also request the Registrar give the entity the student identifier of an individual.

This clause also provides that a request must be made in the manner and form approved by the Registrar and must include any information required by the Registrar. For the purposes of verification this includes first name, last name, date of birth and the student identifier. For the purposes of giving student identifiers to an entity this will include all of the information required for the purpose of making an application. Please see Clause 9 for a further explanation of the information required.

The purpose of this clause is to allow the above mentioned organisations to cross-check with the Registrar an identifier in order to verify that the identifier is properly assigned to the right individual.

Please note that a request to verify or give a student identifier will not involve the Registrar charging any fee.

**Clause 15** provides that if an individual, an RTO, a VET-related body, or a VET admission body makes a request under Clause 14 to the Registrar to verify or give the student identifier of an individual to the requesting entity, the Registrar may by written notice, verify or give the student identifier of the individual. The effect of this clause is to allow the Registrar to properly respond to the above mentioned organisations.

This clause also provides that if the Registrar refuses to verify or give the student identifier, the Registrar must give the entity that made the request a written notice of the refusal and the reasons for the refusal.

**Division 4 – Protection of records of student identifiers**

**Clause 16** provides that the Registrar must take reasonable steps to protect a record of student identifiers kept by the Registrar from misuse, interference, loss, unauthorised access, modification and disclosure.

This clause also provides that if any other entity keeps a record of student identifiers, the entity must take reasonable steps to protect the record from misuse, interference, loss, unauthorised access, modification and disclosure.

This clause further provides that an individual who keeps a record of their own student identifier is not required to take reasonable steps to protect the record from misuse, interference, loss, unauthorised access, modification and disclosure.

The purpose of this clause is to ensure that all entities, including the Registrar, are obliged to protect a record of student identifiers. Please note that a contravention of this clause is taken to be an interference with the privacy of an individual for the purposes of the Privacy Act. Please see Clause 23 for a further explanation of the effect of a contravention of this clause.

The Registrar and staff assisting him or her are subject to the current Information Privacy Principles (and will be subject to the APPs when the Privacy Amendment (Enhancing Privacy Protection) Act commences) in relation to the security of personal information held by the Registrar. The Registrar and staff assisting him or her are also subject to the *Crimes Act 1914* in relation to the unauthorised disclosure of information by a Commonwealth Officer. A breach of this Act may incur a penalty of imprisonment for two years.

**Division 5 – Collection, use or disclosure of student identifiers**

**Clause 17** provides that an entity must not collect, use or disclose a student identifier of an individual if the entity is not the individual who has been assigned the student identifier and the collection, use or disclosure of the student identifier is not authorised under Division 5 of Part 2 of the Bill.

The effect of this clause is to ensure the student identifier, and by extension the privacy of the individual who has been assigned the student identifier, is protected. This clause achieves this by ensuring that the collection, use or disclosure can only occur on the grounds of the limited number of authorisations contained in Clauses 18 to 22 of the Bill. In any other case, the collection, use or disclosure of an identifier is a breach of this clause.

Please note that a contravention of this clause is taken to be interference with the privacy of an individual for the purposes of the Privacy Act. Please see Clause 23 for a further explanation of the effect of a contravention of this clause.

**Clause 18** provides that the Registrar is authorised to collect, use or disclose a student’s identifier if it is for the purposes of the Registrar performing his or her functions or exercising his or her powers. The functions of the Registrar are listed in Clause 32 (which is explained below).

This clause also provides that the Registrar is authorised to use or disclose a student identifier of an individual if the use or disclosure is for the purposes of research that relates either directly or indirectly to education or training, or that requires the use of student identifiers or information about education and training. The use or disclosure for the purpose of research must also meet the requirements specified by the Ministerial Council. Strict protocols governing research will be developed in conjunction with all states and territories through the Ministerial Council, to ensure that the integrity of the scheme is maintained. It is expected that the protocols could require research proposals to demonstrate, for example, that the information is reasonably necessary for the proposed research, or the compilation or analysis of statistics, and that these are is in the public interest; provide an assurance that, if the information could reasonably be expected to identify individuals, the information will not be published in generally available publications. The protocols are also expected to provide for an appropriate process to examine and approve disclosures for research purposes on the basis that the public interest in the research substantially outweighs the public interest in the protection of privacy.

The strict protocols governing disclosure of student identifiers for research purposes reflect an appropriate balance between providing a high level of privacy protection for individuals regarding the collection, use and disclosure of student identifiers, and allowing sufficient flexibility to accommodate the wide range of legitimate requests for access to student identifiers by researchers

**Clause 19** provides that an entity is authorised to collect, use or disclose the student identifier of an individual if the individual consents, either expressly or implicitly, to the collection, use or disclosure.

It is a design principle of the student identifier scheme that the student identifier will be controlled by the individual to which it was assigned. Specifically, an individual's consent is required:

* in the preparation of an authenticated VET transcript;
* for an RTO or VET admission body to apply for a student identifier on the individual’s behalf;
* for an RTO to access that individual's authenticated VET transcript;
* for a VET-related body to access that individual's authenticated VET transcript when that individual enquires about or applies for a government funded training place; and
* for a VET-related body to access that individual's authenticated VET transcript when that individual seeks advice about their academic future.

This clause also provides that an individual cannot consent to the entity using the individual’s identifier as the entity’s own identifier of the individual. This clause operates broadly to ensure that the entity cannot use the student identifier as the entity’s student number for the individual and that the entity cannot use it for other identification purposes, such as printing it on a student card issued by the entity for the individual, for example.

**Clause 20** provides that an entity is authorised to collect, use or disclose a student identifier of an individual if the entity has reason to suspect that unlawful activity, or misconduct of a serious nature, that relates to the entity’s functions or activities has been engaged in, or is being, or may be engaged in provided that the entity reasonably believes that the collection, use or disclosure is necessary in order for the entity to take appropriate action in relation to the matter.

This clause operates broadly to ensure that an entity is authorised to collect, use or disclose a student identifier in the event that there is a suspicion of unlawful activity, or misconduct of a serious nature. This clause, by specifying that the unlawful activity or serious misconduct must relate to an entity’s functions or activities, intends that the exception will apply to an entity’s internal investigations. Examples of ‘appropriate action’ in this context may include collection, use or disclosure of a student identifier for an internal investigation in relation to internal fraud or breach of an entity’s code of conduct, noting that disclosure for law enforcement purposes is provided in Clause 21.

This clause is consistent with the approach to the collection, use and disclosure of personal information that will appear in Item 2 of the table in section 16A of the Privacy Act once the amendments inserted by Item 82 of thePrivacy Amendment (Enhancing Privacy Protection) Act take effect.

**Clause 21** authorises an entity to collect, use or disclose a student identifier of an individual if the entity reasonably believes that the collection, use or disclosure is reasonably necessary for one of a list of things to be done by, or on behalf of, an enforcement body. These things are: for the prevention, detection, investigation, prosecution or punishment of criminal offences or breaches of a law imposing a penalty or sanction; the conduct of surveillance, intelligence gathering, or monitoring activities; the conduct of protective or custodial activities; the enforcement of laws relating to the confiscation of the proceeds of crime; the protection of the public revenue; the prevention, detection, investigation or remedying of misconduct of a serious nature, or other conduct prescribed by the regulations; and the preparation for, or conduct of, proceedings before any court or tribunal, or the implementation of the order of a court or tribunal.

These types of activities have been included to accurately reflect the range of activities that law enforcement agencies currently undertake in performing their legitimate and lawful functions.

The clause recognises that the limited use and disclosure of student identifiers for criminal law enforcement purposes is in the public interest when balanced with the interest in protecting an individual’s privacy.

**Clause 22** provides that an entity is authorised to collect, use or disclose a student identifier of an individual if the collection, use or disclosure is authorised by the regulations.

It is envisaged that the regulations made under Clause 22 of the Bill may authorise RTOs to collect and use student identifiers for the purposes of meeting their reporting obligations under the Australian Quality Training Framework Essential Conditions and Standards for Initial Registration and the Australian Quality Training Framework Essential Conditions and Standards for Continuing Registration. These documents are approved by the Ministerial Council and are amended from time to time. It is therefore necessary for the regulations to refer to these documents as they exist from time to time in order to ensure that RTOs collect and use the student identifier to meet their up to date reporting obligations.

The regulations will be a disallowable instrument, necessitating the scrutiny of the Commonwealth Parliament in relation to their creation and amendment. The creation and amendment of these regulations will also require the agreement of the States and Territories through the Ministerial Council. This constitutes an appropriate delegation of legislative powers.

It is envisaged that the regulations will provide authorisations for the collection, use and disclosure to a limited number of entities in specific circumstances. These entities are likely to include former and current RTOs (as defined by the NVETRAct), schools whose students undertake a VET course as part of their education, the National Centre for Vocational Education Research, VET-related bodies and VET Admission Bodies.

The national training system is managed by the Commonwealth and State and Territory governments to be responsive to the skills needs of industries and the economy. To ensure the requisite responsiveness is maintained, all other permitted uses of the student identifier will be established under regulations.

Initially, it is anticipated that the regulations will provide for the collection, use and disclosure of a student’s identifier in certain specific circumstances relating to:

* RTOs and VET-related bodies meeting their reporting obligations under the VET standards and RTOs meeting their contractual obligations with VET-related bodies;
* establishing an individual’s eligibility to a training subsidy;
* delivering and reporting on VET courses;
* the verification of a student identifier;
* assisting the Registrar to resolve problems in the assignment of a student identifier (as outlined in Clause 12 of the Bill);
* the preparation and auditing of the National VET Statistics;
* conducting education-related policy development and research;
* the preparation of an authenticated VET transcript;
* auditing publicly registered training organisations and publically funded VET or programs;
* VET Regulators performing their functions under their legislation;
* the prevention, detection, investigation or remedying of obtaining student identifiers fraudulently or issuing student identifiers as a result of misconduct; and
* disclosure otherwise required by law (such as when a subpoena is issued for such information).

Please note that the Bill does not replace the protections provided to personal information under the Privacy Act (or the equivalent legislation within the State and Territory jurisdictions). Therefore any entity that collects, uses or discloses a student identifier will have to comply with the protections of this information under the Bill as well as the Privacy Act or the equivalent legislation within the State and Territory jurisdictions (to the extent that an identifier contains personal information).

**Division 6 – Interaction with the *Privacy Act 1988***

**Clause 23** provides that an act or a practice that contravenes Clause 11 in relation to personal information or Clauses 16 or 17 in relation to a student identifier is taken to be an interference with the privacy of the individual concerned, within the meaning, and for the purpose of, the Privacy Act. Clause 23 deems the contravention to be an interference of privacy for the entirety of the Privacy Act, including the current Sections 13 and 13A of the Privacy Act.

Please note that interference with the privacy of the individual may be the subject of an investigation by the Australian Information Commissioner under Part V of the Privacy Act.

This clause also provides that if an act or practice of an entity that contravenes Clauses 11, 16 or 17 is subject of a complaint to or an investigation by the Australian Information Commissioner, the entity is then taken to be an organisation within the meaning of the Privacy Act. This is to ensure that any entity that contravenes Clauses 11, 16 or 17 will be captured within the definition of organisation in the Privacy Act and the necessary provisions that apply to organisations within that Act will apply to the entities that contravene Clauses 11, 16 and 17.

**Clause 24** provides that in addition to his or her functions under the Privacy Act, the Australian Information Commissioner has certain additional functions. The first additional function is that the Australian Information Commissioner may investigate an act or practice that may be an interference with the privacy of an individual under subclause 23(1) and, if the Australian Information Commissioner considers it appropriate, attempt to effect a settlement of the matters that give rise to the investigation by conciliation. The second additional function is that the Australian Information Commissioner may conduct an assessment of whether the Registrar is maintaining or handling student identifiers in accordance with the Bill. The final function is that the Information Commissioner can do anything incidental or conducive to the performance of the first two additional functions.

This clause also provides that the Australian Information Commissioner has the power to do all things that are necessary or convenient to be done for, or in connection with, his or her additional functions under this clause.

The Australian Information Commissioner may also conduct an assessment of whether the Registrar is maintaining or handling student identifiers in accordance with the requirements of this Bill in such a manner as the Australian Information Commissioner considers fit. This clause operates broadly to allow the Australian Information Commissioner the necessary flexibility required to conduct an assessment.

This clause further provides that Clause 56 of the Bill (rather than Section 12B of the Privacy Act) applies to investigations or assessments made under this clause in the same way it applies to this Bill.

Both Section 12B of the Privacy Act and Clause 56 of the Bill, which is discussed below, outline the various heads of power that the Commonwealth may rely on under Section 51 of the Constitution in order to validly enact the respective piece of legislation. As the Bill will rely on different heads of power to be validly enacted than the Privacy Act, it is necessary for Clause 56 to apply to Clause 24.

**Clause 25** provides that the use or disclosure by an entity of personal information about an individual is taken, for the purposes of the Privacy Act, to be authorised by the Bill, if the use or disclosure is for the purpose of the Registrar performing his or her functions or exercising his or her powers. This provision is necessary to allow the Registrar to carry out his or her functions and powers under the Bill. The Registrar is still bound by the requirements of the Privacy Act in handling any personal information that is disclosed to him or her by an entity.

This clause also provides that the use or disclosure by the Registrar of personal information about an individual is taken, for the purposes of the Privacy Act, to be authorised by the Bill if the use or disclosure is for the purposes of research that relates to education or training that requires the use of student identifiers or information about education or training. The use or disclosure for the purpose of such research must also meet the requirements which will be specified by the Ministerial Council as provided for under Subclause 18(2) of the Bill. It is envisaged that the Ministerial Council will enact a data protocol that would establish a committee for considering such requests and the principles against which such a request should be considered. The requirements to be set by the Ministerial Council, as noted in relation to Clause 18, will be a further safeguard to the personal information of an individual.

1. Part 3
Authenticated VET transcripts

## Outline of Part

Part 3 of the Bill sets out how individuals can access their authenticated VET transcript and how they may authorise RTOs and VET-related bodies to also gain access to the transcript or an extract of the transcript.

**Detailed explanation**

**Part 3— Authenticated VET transcripts**

**Clause 26** provides a simplified outline of this Part.

**Clause 27** provides that, on request, the Registrar may give an individual who has been assigned a student identifier access to their authenticated VET transcript or an extract from the authenticated transcript.

An authenticated VET transcript of an individual means a document prepared by the Registrar that relates to the VET undertaken by an individual that contains information prescribed by the regulations. It is envisaged that an authenticated VET transcript will contain the following information:

* the name of the individual;
* the date the transcript was issued;
* the name of each unit of competency or module of a VET course commenced or completed by the individual after 1 January 2014 unless an exemption under Clause 53 of the Bill applies;
* the date the unit or module was commenced;
* the date the unit or module was completed;
* the name the registered training organisation that delivered the unit or module;
* the funding source for the unit or module;
* the outcome for each unit or module;
* the name of each VET qualification completed; and
* the issuer of each VET qualification.

This information will be prescribed by the regulations as the kinds of information that will be contained in an authenticated VET transcript which will change from time to time. It is therefore necessary that this information is prescribed by the regulations to ensure that there is sufficient flexibility to accommodate future changes.

The request for either the authenticated VET transcript or an extract must be made in a manner and form approved by the Registrar and must include any information required by the Registrar. If the request is for an extract, the request must specify the information to be excluded from the extract.

While the decision of the Registrar to give access to either an authenticated VET transcript or an extract is discretionary, such decision will be taken only in circumstances where the Registrar has reason to believe that there is a problem with the student identifier that requires investigation and resolution before a correct and complete transcript can be issued. The type of student identifier problem that could lead to the issue of an incorrect or incomplete transcript include where an individual may have more than one student identifier or where more than one individual have the same identifier. In all other cases transcripts will be generated automatically upon request by the individual or someone authorised by the individual. In recognition of the potential impact that not providing an authenticated VET transcript may have on the individual, this clause further provides that the Registrar must give the individual notice of his or her decision and a statement of reasons for that decision.

Please note a request by an individual for an authenticated VET transcript will not involve the Registrar charging any fee.

**Clause 28** provides that, on request, the Registrar may give an RTO or a VET-related body access to an authenticated VET transcript (or an extract) of an individual who has been assigned a student identifier in accordance with the access controls set by the individual.

This clause operates to provide access where an individual has authorised a particular RTO or a VET-related body access to an authenticated VET transcript. The request for either the authenticated VET transcript or an extract must be made in a manner and form approved by the Registrar and must include any information required by the Registrar. If the request is for an extract, the request must specify the information to be excluded from the extract.

At the time of being assigned a student identifier, each individual will be given access to an on-line account with the Registrar, which can be used to request transcripts and update personal information. By using the access controls associated with their account, an individual has control over which RTOs or VET-related bodies can be given access to an authenticated VET transcript.

This clause also provides that the Registrar must not give an RTO or a VET-related body access to an authenticated VET transcript or extract unless the controls have been set by the individual. This means that the default access control is to prohibit all RTOs and VET-related bodies from being given access to an authenticated VET transcript (or an extract). This means that the individual will have to positively approve any access to an RTO or a VET-related body.

The decision of the Registrar to give access to either an authenticated VET transcript or an extract is discretionary and this clause further provides that if the Registrar refuses access to a transcript, the Registrar must give the RTO or VET-related body written notice of the decision and the reasons for making such a decision.

Please note a request by an RTO or VET-related body for an authenticated VET transcript will not involve the Registrar charging any fee.

**Clause 29** provides that if the Registrar does give access to an extract to an individual, an RTO or a VET-related body, the extract must include a statement that it is an extract. This requirement is to ensure that those entities that do receive access to an extract are aware that not all the information that would otherwise be contained in an authenticated VET transcript has been provided.

The requirement to include a statement that a document is an extract does not apply if the information not in the extract is information that is prescribed by the regulations or if the Registrar considers that it is not appropriate for the extract to state that it is an extract.

The purpose of this exemption is to ensure that if an authenticated VET transcript would otherwise contain sensitive information, this information could be omitted from the document without the document containing a statement that it is an extract of an authenticated VET transcript. The kinds of information that could be omitted from the document without the document containing a statement that it is an extract would include information that is otherwise required to be suppressed by law, or any other information that may not be appropriate to be contained within an authenticated VET transcript. This provision allows the Registrar to use his or her discretion as to what would be considered information that is not appropriate to be included in an authenticated VET transcript. The power to prescribe a kind of information in the regulations provides flexibility to prescribe a category of information which is not appropriate to be included in an authenticated VET transcript. This flexibility is required, noting that the types of information contained in a transcript may change over time, as noted above in relation to Clause 27.

It is initially envisaged that the regulations will prescribe that the funding source for a unit or module may be omitted from a transcript without that transcript needing to include a statement that it is an extract.

1. Part 4
Student Identifiers Registrar

## Outline of Part

Part 4 of the Bill provides for the establishment of the office of Registrar, who will administer the student identifier scheme, as well as the appointment and functions and powers of the Registrar, the staff and consultants assisting the Registrar, the Student Identifiers Special Account and the requirements of the Registrar’s annual report.

**Detailed explanation**

**Part 4 – Student Identifiers Registrar**

**Division 1 – Simplified outline of this part**

**Clause 30** provides a simplified outline of this Part.

**Division 2 – Student Identifiers Registrar**

**Subdivision A – Functions and powers**

**Clause 31** creates the office of Registrar.

**Clause 32** provides a list of the functions of the Registrar. Where these functions correlate to other provisions within the Bill that confer a power on the Registrar, this is as outlined below:

* to assign student identifiers to individuals (see **Clause 10**);
* to verify or give a student identifier of an individual (see **Clause 14**);
* to prepare and provide access to authenticated VET transcripts of individuals or extracts from such transcripts (see **Clause 27**);
* to ensure that a record of all student identifiers is kept in such form as the Registrar considers appropriate;
* to resolve problems that have occurred in relation to the assignment of student identifiers, including cases where:
	+ an individual has been assigned more than one student identifier; or
	+ the same student identifier has been assigned to 2 or more individuals (see **Clause 12**);
* to establish and maintain a mechanism to enable an individual who has been assigned a student identifier to set controls (the ***access controls***) on:
	+ the RTOs and VET‑related bodies that may request access to an authenticated VET transcript of the individual; and
	+ the RTOs and VET‑related bodies that may request access to an extract from an authenticated VET transcript of the individual and the content of the extract (see **Clause 28**);
* any other functions conferred on the Registrar by this Act, the regulations or any other law of the Commonwealth; and
* to do anything incidental or conducive to the performance of those functions.

This clause also provides that the Registrar has the power to do all things that are necessary or convenient to be done for, or in connection with, the performance of his or her functions. This clause operates to ensure that the Registrar has the necessary flexibility required to perform his or her functions.

**Clause 33** provides that the Commonwealth Minister may, by legislative instrument, give written directions to the Registrar about the performance of the Registrar’s functions and that the Registrar must comply with a direction given under this clause.

This clause further provides that the Commonwealth Minister must consult the Ministerial Council before giving a direction to the Registrar.

A note to this clause explains that neither Section 42 (disallowance), nor Part 6 of the *Legislative Instruments Act* relating to ‘sunsetting’ apply to the directions. The note also draws reference to Sections 44 and 54 of the Legislative Instruments Act.

Pursuant to Section 42 of the Legislative Instruments Act, where a legislative instrument has been tabled in one of the Houses of Parliament and a notice of motion to disallow the instrument has been given and passed (within the times prescribed in Section 42), the instrument ceases to have effect. Subsection 44(1) of the Legislative Instruments Act provides that Section 42 does not apply in relation to a legislative instrument where enabling legislation for the instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme - unless the instrument is a regulation, or the enabling legislation or some other Act has the effect that the instrument is disallowable (which is not the case here). Subsection 44(1) of the Legislative Instruments Act would apply with respect to directions under this clause and render Section 42 inapplicable. This means that the instrument containing a ministerial direction under Clause 33 will not be disallowable.

Part 6 of the Legislative Instruments Act ensures that legislative instruments are kept up to date and only remain in force for so long as they are needed. Subsection 54(1) of the Legislative Instruments Act provides that Part 6 does not apply where enabling legislation for an instrument facilitates the establishment or operation of an intergovernmental body or scheme involving the Commonwealth and one or more States and authorises the instrument to be made by the body or for the purposes of the body or the scheme. That is the case with respect to directions under Clause 33 of the Bill, so they will not be subject to the sunsetting arrangements in Part 6 of the Legislative Instruments Act.

**Clause 34** provides that the Registrar is to be appointed by the Commonwealth Minister by written instrument on a full-time basis. The Commonwealth Minister must consult the Ministerial Council before making such an appointment. Pursuant to Section 33A of the *Acts Interpretation Act 1901,* (the Acts Interpretation Act) this provision will be taken to allow the Commonwealth Minister to reappoint the Registrar.

Please note that an instrument of appointment would not be a legislative instrument by virtue of the existing exemption in item 9 of Part 1 of Schedule 1 to the *Legislative Instruments Regulations 2004* (the Legislative Instruments Regulations).

**Clause 35** provides that the Registrar holds office for the period specified in the instrument of appointment, and that the period of appointment specified in the instrument must not exceed 5 years. For the avoidance of doubt, this clause does not prohibit the reappointment of the Registrar under Clause 35 after the expiry of the term of the original instrument of appointment..

**Clause 36** provides that the Commonwealth Minister may, by written instrument, appoint a person to act as Registrar during a vacancy in the office of Registrar. This includes where no Registrar has previously been appointed. The Commonwealth Minister may also appoint a person to act as Registrar during any or all periods when the Registrar is absent from duty or outside Australia or for any other reason is unable to perform the duties of the office.

This clause also provides that the Commonwealth Minister must consult the Ministerial Council before appointing a person to act as Registrar for a continuous period of three or more months.

Please note that Section 33A of the Acts Interpretation Act*,* which relates to acting appointments, provides that while the appointee is acting in the office, he or she has, and may, exercise all the powers and shall perform all the functions and duties of the holder of the office. Please also note that Section 33AB of the Acts Interpretation Act provides that anything done by, or in relation to, a person purporting to act under an acting appointment under an Act is not invalid merely because the occasion to act had not arisen or had ceased.

Please note that an instrument of appointment would not be a legislative instrument by virtue of the existing exemption in item 9 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

**Subdivision C – Terms and conditions of appointment**

**Clause 37** provides that the Registrar is to be paid such remuneration as is determined by the Remuneration Tribunal or, if no determination of that remuneration is in operation, the Registrar is to be paid such remuneration that is prescribed by the regulations.

This clause also provides that the Registrar is to be paid such allowances as are prescribed by the regulations.

This clause has effect subject to the *Remuneration Tribunal Act 1973* which provides for the Remuneration Tribunal to conduct inquiries and make determinations on the remuneration of certain office holders.

Such a determination would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

**Clause 38** provides that the Registrar’s recreation leave entitlements are determined by the Remuneration Tribunal.

Such a determination would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

This clause also provides that that the Minister may grant the Registrar leave of absence on such terms and conditions as the Minister determines. Such a grant of leave would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

**Clause 39** provides that the Registrar must not engage in paid outside employment without the Minister’s approval.

**Clause 40** provides that the Registrar must give written notice to the Commonwealth Minister of all interests, pecuniary or otherwise, that the Registrar has, or acquires, and that conflict or could conflict with the performance of the Registrar’s functions.

**Clause 41** makes allowance for the Minister to determine any terms and conditions of the Registrar in relation to matters that are not covered in this Bill.

Such determinations made in writing would not be a legislative instrument, by virtue of the existing exemption under item 11 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

**Clause 42** provides that the Registrar may resign by giving a written resignation to the Commonwealth Minister.

Such resignations take effect on the day they are received by the Commonwealth Minister or, if a later day is specified in the resignation, on that later date.

The written resignations would not be a legislative instrument, by virtue of the existing exemption under item 10 of Part 1 of Schedule 1 to the Legislative Instruments Regulations.

**Clause 43** provides the grounds upon which the Registrar’s appointment may be terminated by the Commonwealth Minister. The grounds on which the Commonwealth Minister may terminate an appointment are:

* for misbehaviour; or
* if the Registrar is unable to perform the duties because of physical or mental incapacity; or
* if the Registrar:
	+ becomes bankrupt; or
	+ takes steps to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
	+ compounds with one or more of his or her creditors; or
	+ makes an assignment of one or more of his or her remuneration for the benefit of his or her creditors; or
* the Registrar is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
* the Registrar engages, except with the Minister’s approval, in paid employment outside the duties of his or her office (see Clause 39); or
* the Registrar fails, without reasonable excuse, to comply with Clause 40 (the requirement to give notice of conflicts of interest).

This clause also provides that the Commonwealth Minister must notify the Ministerial Council in the event the Registrar is terminated under this clause.

**Subdivision D - Delegation**

**Clause 44** provides that the Registrar may delegate, in writing, all or any of his or her functions or powers to a person that is a member of staff assisting the Registrar under Clause 45 or a person to whom an arrangement under Clause 46 relates (i.e. seconded officers).

It is necessary for the Registrar to delegate his or her functions and powers to any staff or seconded officers assisting him or her as it is envisaged that it will be administratively unfeasible for the Registrar to personally exercise all their functions and powers under the Bill. The power to delegate any or all of his or her powers will allow the Registrar to ensure all of his or her functions are effectively exercised. Without assistance it may be impracticable for the Registrar to meet all of the operational needs surrounding his or her functions.

This clause further provides that the delegate must comply with any written directions the Registrar may give in relation to the delegate performing or exercising powers under the delegation.

**Division 3 – Staff and consultants assisting Registrar**

**Clause 45** provides that the staff assisting the Registrar must be engaged under the *Public Service Act 1999 (Public Service Act)* and made available by the Secretary of the Department.

**Clause 46** allows the Registrar to make an arrangement with an Agency Head (as defined by the Public Service Act*)* or an authority of the Commonwealth for the services of officers or employees of such an Agency or authority to be made available to assist the Registrar in the performance of his or her functions.

The Registrar may also arrange with the appropriate authority of a state or territory for the services of officers or employees to be made available to assist the Registrar in the performance of their functions. Appropriate authorities are limited to the Public Service of the state or territory or a body established by or under a law of the state or territory. Such an arrangement may provide for the Commonwealth to reimburse the appropriate authority of a state or territory with respect to the services of an officer or an employee.

This clause further provides that an officer or an employee who is subject to an arrangement under this clause must follow the directions of the Registrar.

**Clause 47** provides that the Registrar may, on behalf of the Commonwealth, engage consultants to assist in the performance of their functions. The consultants are to be engaged on the terms and conditions that the Registrar determines in writing.

The written instrument engaging the consultants would not be a legislative instrument, by virtue of the existing exemption under item 9 of Part 1 of Schedule 1 to the Legislative Instruments Regulations*.*

**Division 4 – Special Account**

**Clause 48** establishes the Student Identifiers Special Account as a Special Account for the purposes of Section 21 of the *Financial Management and Accountability Act 1997 (FMA Act)*.

A Special Account is an appropriation mechanism that sets aside an amount within the Consolidated Revenue Fund to be expended for specific purposes. Any amounts credited to the Student Identifiers Special Account are quarantined from the rest of the Consolidated Revenue Fund and can only be debited from the Student Identifiers Special Account for the purposes set out in Clause 50.

**Clause 49** provides the mechanism for amounts to be credited to the Student Identifiers Special Account. This clause provides that there must be credited to the Account amounts equal to the amounts allocated by the Ministerial Council in accordance with the National Agreement for Skills and Workforce Development between the Commonwealth, States and Territories, as in force from time to time.

There must also be amounts credited to the account equal to the amounts received by the Commonwealth in connection with the performance of the Registrar’s functions, interest received by the Commonwealth from the investment of amounts debited from the Account, and amounts of any gifts given or bequests made for the purposes of the Account.

Please note that an Appropriation Act may contain a provision that if any of the purposes of a Special Account is covered by an amount in such an Act (whether or not the Special Account is expressly referred to), then amounts may be debited from the appropriation for that item and credited into a Special Account.

Please note that Sections 39, 62 and 62A of the FMA Actapply to any investment of public money, which includes amounts standing to the credit of the Special Account. Section 39 provides for the investment of public money where Sections 62 and 62A provide for the delegation of the powers that the Finance Minister and Treasurer have under these sections respectively.

**Clause 50** provides a list of purposes for which the Student Identifiers Special Account can be debited from.

The Student Identifiers Special Account can be debited for the purposes of paying or discharging the costs, expenses and other obligations incurred by the Commonwealth in the performance of the Registrar’s functions.

The Student Identifiers Special Account can also be debited for the purposes of paying any remuneration and allowances payable to any person under the Bill. This will allow, amongst other things, employees, secondees and consultants assisting the Registrar to be remunerated.

In addition, the Student Identifiers Special Account can also be debited for the purposes of meeting the expenses of administering the Account.

Please note that Section 21 of the FMA Act further provides for, amongst other things, debits from Special Accounts.

**Division 5 – Annual Report**

**Clause 51** provides that the Registrar must give the Commonwealth Minister (for presentation to Parliament) annual reports relating to the operations of the Registrar during the year. These annual reports relate to each financial year and must be provided to the Minister as soon as practicable after the end of each financial year.

Please note that Section 34C of the Acts Interpretation Act contains provisions about periodic reports. Subsection 34C(3) provides that, where an Act requires a periodic report to be given to the Minister for presentation to Parliament, but does not specify a time for tabling the report, the Minister must cause a copy of the report to be tabled in both Houses of Parliament within 15 sitting days after receipt.

This clause also provides that the Registrar must give a copy of the report to the Ministerial Council at the same time as the report is presented to the Parliament.

This clause further provides that if this clause does not commence at the start of a financial year the period starting at the commencement of this section and ending at the end of the first 30 June after that commencement is taken for the purposes of this clause to be a financial year. This will allow the first annual report to report on the time from which the office of the Registrar is established until the end of that financial year, rather than requiring the report to cover a period before this event.

1. Part 5
Other matters

## Outline of Part

Part 5 of the Bill provides for other matters including the issuing of VET qualifications, the disapplication of Division 4 of Part 2 of the Bill (provisions relating to the collection, use or disclosure of student identifiers), the severability of the Bill and the power to make regulations.

**Detailed explanation**

**Part 5 – Other matters**

**Clause 52** provides a simplified outline of this Part.

**Clause 53** provides that an RTO must not issue either a VET qualification or a VET statement of attainment (within the meaning of the NVETR Act) unless the individual has been assigned a student identifier.

The purpose of this clause is to ensure that there is maximum participation of students in the national scheme.

This clause also provides that the prohibition against an RTO issuing a VET qualification or a VET statement of attainment will not apply where the Commonwealth Minister specifies, by legislative instrument, an exemption relating to one or more of:

* the RTO issuing the qualification or a statement of attainment;
* the qualification or a statement of attainment being issued; or
* the individual to whom the qualification or a statement of attainment is being issued.

The legislative instrument must be agreed with the Ministerial Council.

These exemptions will be limited to maintain the integrity of the scheme. It is necessary to provide for limited exemptions in order to be consistent with existing and prospective legislative provisions (for example national security); to allow for interaction with other regulatory instruments in the sector, some of which are under review; and to address issues which may not yet have arisen.

It is preferable to exempt specific RTOs, qualifications and classes of individuals by way of legislative instrument rather than specifying the exemptions in the primary legislation as this will enable the exemptions to be more easily updated as the need arises.

**Clause 54** provides, for the avoidance of doubt that the Bill is not intended to exclude or limit the operation of the law of a state or territory that is capable of operating concurrently with the Bill.

This clause also provides, for the avoidance of doubt, that nothing in the Bill limits, restricts or otherwise affects any right or remedy that a person would have had if the Bill had not been enacted.

**Clause 55** provides a mechanism by which Division 5 of Part 2 of the Bill (provisions relating to the collection, use or disclosure of student identifiers) can be disapplied from a public body of a State or Territory if a declaration is made under this clause.

The purpose of this clause is to allow a State or Territory law to apply to these bodies if there is existing or future legislation that corresponds to Division 5of Part 2 of the Bill and the regulations made under Clause 22.

Please note that the requirement that the State or Territory law to correspond with regulations made under Clause 22 will not necessarily mean that, for the purposes of this clause, the State or Territory law corresponds to the entirety of any regulations made under the Bill. It is envisaged that regulations will be made under this Bill, once enacted, that will rely on several clauses within the Bill as authority to make such regulations. It is only necessary for the State or Territory law to correspond to provisions in any regulations made under Clause 22 of the Bill (in addition to Division 5 of Part 2).

The Commonwealth Minister may, in writing, declare that Division 5 of Part 2 of the Bill does not apply to a public body of a State or Territory if a Minister of the State or Territory requests the Commonwealth Minister to make such a declaration. The Commonwealth Minister must also be satisfied that a corresponding law of the State or Territory is in force and applies to the body. The Ministerial Council must also agree to the making of the declaration.

The Commonwealth Minister may, in writing, revoke a declaration made under this clause in relation to a public body of a State or Territory if the Minister of the State or Territory requests, by written notice, the Commonwealth Minister to do so. The Commonwealth Minister may also revoke such a declaration if the Commonwealth Minister is satisfied that the corresponding law of the State or Territory is no longer in force or no longer applies to the body and the Ministerial Council agrees to the revocation of the declaration.

Please note that it is not necessary for the Commonwealth Minister to be satisfied that the corresponding law no longer applies nor is it necessary for the Ministerial Council to agree to the revocation if the Minister of a State or Territory requests such a revocation.

This clause further provides that a declaration made under this clause or a revocation of a declaration are legislative instruments, however Section 42 (which provides for disallowance) and Part 6 (which provides for ‘sunsetting’) of the Legislative Instruments Act does not apply to these declarations or revocations. For an explanation of disallowance and ‘sunsetting’ and why this does not apply to this clause, please see the above explanation of Clause 33 of the Bill.

**Clause 56** is intended to ensure that the Act is given the widest possible operation consistent with Commonwealth constitutional legislative power. This clause outlines the various heads of power that the Commonwealth may rely on under Section 51 of the Constitution in order to validly enact the Bill.

This clause provides that without limiting its effect, the Act also has the effect it would have if its operations were expressly confined to:

* matters in relation to which the Commonwealth is under an obligation under an international agreement, including Article 17 of the International Covenant on Civil and Political Rights, done at New York on 16 December 1966;
* matters that are of international concern, including the matters dealt with in paragraphs 9, 10 and 11 of the *Guidelines Governing the Protection of Privacy and Transborder Flows of Personal Data*, recommended by the Council of the Organisation for Economic Co‑operation and Development on 23 September 1980;
* acts or omissions that occur outside Australia;
* entities that are corporations to which paragraph 51(xx) of the Constitution applies;
* acts or omissions that relate to aliens;
* acts or omissions done for purposes relating to census or statistics;
* acts done using a postal, telegraphic, telephonic or other like services;
* acts or omissions done in connection with the provision of benefits to students;
* acts or omissions that occur in a Territory; and
* acts or omissions done in the course of trade or commerce:
	+ between Australia and other countries; or
	+ among the states; or
	+ between a territory and a state or another territory.

This clause further provides that a term used in this clause has the same meaning as it has in the Constitution.

**Clause 57** enables the Governor-General to make regulations prescribing matters required or permitted by the Bill or necessary or convenient for the operation of or giving effect to this Bill.

This clause also provides that the Commonwealth Minister must obtain the agreement of the Ministerial Council to the regulations before the Governor-General makes the regulations. Any such regulations would be legislative instruments under subsection 6(a) of the Legislative Instruments Act.

This clause further provides that despite subsection 14(2) of the Legislative Instruments Act, a regulation made under this clause may make provision in relation to a matter by applying, adopting or incorporating, without modification, a matter contained in an instrument or other writing as in force or existing from time to time.

The vocational education and training (VET) sector is governed by Commonwealth legislation in most jurisdictions and by State legislation in the non-referring states. The national consistency across the sector is maintained through the Australian Quality Training Framework (AQTF), changes to which are agreed by the Ministerial Council. Subsection 14(2) of the Legislative Instruments Act would prohibit the regulation referring to, or incorporating, the AQTF as it is amended. Therefore, to ensure that a reference to the AQTF framework is a reference to the AQTF framework as it is amended, a specific clause in the Bill is required to show contrary intention to that prohibition.

Subclause 57(3) of the SI Bill ensures that the regulation, once made, can refer to the documents such as the Standards under the AQTF as they are amended from time to time. It is anticipated that within the proposed regulations, certain entities will be authorised to collect and use an individual’s student identifier in order to meet the entity’s reporting obligations under the VET Standards. The definition of VET Standards in the proposed regulation includes the AQTF and it is intended that a reference to the AQTF should be a reference to the AQTF as it is amended.

The AQTF comprises a series of public documents which are readily accessed by interested parties. They are widely accessed by RTOs in jurisdictions in which they apply as the basis for obtaining initial and ongoing registration of their businesses.

1. Please note that the Bill allows the Registrar to delegate his or her functions to a staff member or a secondee assisting him or her. It is necessary for the Registrar to delegate his or her functions to these officers as it is envisaged that it will be administratively unfeasible for the Registrar to personally exercise all their functions and powers under the Bill. [↑](#footnote-ref-1)
2. Only Victoria and Queensland operate state-based unique identifiers. . [↑](#footnote-ref-2)
3. The National Centre for Vocational Education Research is a not-for-profit company owned by state, territory and federal ministers responsible for training. It is responsible for collecting, managing, analysing, evaluating and communicating research and statistics about vocational education and training (VET) nationally. [↑](#footnote-ref-3)
4. The Australian Vocational Education and Training Management Information Statistical Standard (AVETMISS) provides a national framework for the consistent collection and dissemination of vocational education and training (VET) information throughout Australia. The AVETMIS Standard 7.0 is due to be introduced in January 2014. [↑](#footnote-ref-4)
5. In January 2014, the Business Cost Calculator was completed and agreed with the Office of Best Practice Regulation. The measure was found to be deregulatory in impact and will reduce the regulatory burden on business and individuals by an estimated $5.4m per annum. [↑](#footnote-ref-5)
6. Following Machinery of Government changes, the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) will take the lead. [↑](#footnote-ref-6)