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Student Identifiers Bill 2014

No. , 2014

(Industry)

**A Bill for an Act to provide for student identifiers
and access to transcripts relating to vocational
education and training, and for related purposes**

Contents

Part 1—Preliminary	1
1 Short title	1
2 Commencement	2
3 Simplified outline of this Act	3
4 Definitions	3
5 Act to bind the Crown	6
6 Extension to external Territories	6
7 Extraterritorial application	6
Part 2—Student identifiers	7
Division 1—Simplified outline of this Part	7
8 Simplified outline of this Part	7
Division 2—Assignment of student identifiers etc.	8
9 Application for the assignment of an identifier	8
10 Assignment of an identifier by the Registrar	8
11 Destruction of personal information collected for the purpose of making an application	9
12 Registrar to resolve problems in relation to the assignment of student identifiers	9
13 Review by the Administrative Appeals Tribunal	10
Division 3—Verification or giving of student identifiers	11
14 Request to verify or give a student identifier	11
15 Verification or giving of a student identifier	11
Division 4—Protection of records of student identifiers	12
16 Records of student identifiers must be protected from misuse etc.	12
Division 5—Collection, use or disclosure of student identifiers	13
17 Unauthorised collection, use or disclosure of student identifiers	13
18 Collection, use or disclosure by the Registrar	13
19 Collection, use or disclosure with the individual’s consent	13
20 Collection, use or disclosure relating to unlawful activities etc.	14
21 Collection, use or disclosure for law enforcement purposes etc.	14
22 Collection, use or disclosure authorised by regulations	15

Division 6—Interaction with the Privacy Act 1988	16
23 Contraventions that are interferences with the privacy of an individual.....	16
24 Additional functions of the Information Commissioner	16
25 Use or disclosure of personal information authorised for the purposes of the <i>Privacy Act 1988</i>	17
Part 3—Authenticated VET transcripts	18
26 Simplified outline of this Part.....	18
27 Individual may be given access to an authenticated VET transcript etc.	18
28 Registered training organisation or VET-related body may be given access to an authenticated VET transcript etc.	19
29 Requirement relating to extracts from authenticated VET transcripts	19
Part 4—Student Identifiers Registrar etc.	20
Division 1—Simplified outline of this Part	20
30 Simplified outline of this Part.....	20
Division 2—Student Identifiers Registrar	21
Subdivision A—Functions and powers	21
31 Student Identifiers Registrar	21
32 Functions of the Registrar.....	21
33 Commonwealth Minister may give directions to the Registrar	22
Subdivision B—Appointment of Registrar	22
34 Appointment	22
35 Term of appointment	22
36 Acting Registrar	22
Subdivision C—Terms and conditions of appointment	23
37 Remuneration and allowances	23
38 Leave of absence	23
39 Outside employment.....	24
40 Disclosure of interests	24
41 Other terms and conditions.....	24
42 Resignation.....	24
43 Termination of appointment	24
Subdivision D—Delegation	25
44 Delegation by the Registrar	25

Division 3—Staff and consultants assisting Registrar	26
45 Staff.....	26
46 Secondment of Commonwealth, State or Territory officers etc.....	26
47 Consultants.....	27
Division 4—Special Account	28
48 Student Identifiers Special Account	28
49 Credits to the Account.....	28
50 Purposes of the Account.....	28
Division 5—Annual report	30
51 Annual report.....	30
Part 5—Other matters	31
52 Simplified outline of this Part.....	31
53 Issue of VET qualifications etc.....	31
54 Saving of other laws and remedies	32
55 Disapplication of Division 5 of Part 2	32
56 Severability.....	33
57 Regulations.....	35

1 **A Bill for an Act to provide for student identifiers**
2 **and access to transcripts relating to vocational**
3 **education and training, and for related purposes**

4 The Parliament of Australia enacts:

5 **Part 1—Preliminary**
6

7 **1 Short title**

8 This Act may be cited as the *Student Identifiers Act 2014*.

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.

6

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 and 2 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Sections 3 to 52	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Section 53	1 January 2015.	1 January 2015
4. Sections 54 to 57	A day or days to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	

7 Note: This table relates only to the provisions of this Act as originally
8 enacted. It will not be amended to deal with any later amendments of
9 this Act.

10 (2) Any information in column 3 of the table is not part of this Act.
11 Information may be inserted in this column, or information in it
12 may be edited, in any published version of this Act.

3 Simplified outline of this Act

Generally, a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual after 2014 unless the individual has a student identifier.

The Student Identifiers Registrar must assign a student identifier to an individual on application.

On request by an individual, or an organisation or body involved with vocational education and training, the Registrar may verify that an identifier is the individual's student identifier, or give the individual's student identifier.

Records of student identifiers must be protected from misuse. Collection, use and disclosure of an individual's student identifier without the individual's consent is prohibited, unless it is authorised by this Act. The Information Commissioner may deal with breaches of these rules as interferences with privacy under the *Privacy Act 1988*.

On request, the Registrar may give all or part of an authenticated VET transcript of an individual who has a student identifier to the individual, a registered training organisation or a VET-related body. This is subject to access controls set by the individual.

4 Definitions

(1) In this Act:

access controls has the meaning given by paragraph 32(1)(f).

Account means the Student Identifiers Special Account established by section 48.

authenticated VET transcript of an individual means a document prepared by the Registrar that sets out information:

- (a) that relates to the VET undertaken by the individual; and
- (b) that is prescribed by the regulations.

Section 4

1 **Commonwealth Minister** means the Minister administering this
2 Act.

3 **corresponding law of a State or Territory** means a law of a State
4 or Territory that corresponds with Division 5 of Part 2 and the
5 regulations made under section 22.

6 **entity** means:

- 7 (a) a person; or
8 (b) a partnership; or
9 (c) any other unincorporated association or body; or
10 (d) a trust.

11 **identifier** means a unique combination of any or all of the
12 following:

- 13 (a) letters;
14 (b) numbers;
15 (c) symbols.

16 **Ministerial Council** means:

- 17 (a) if there is a body established by the Council of Australian
18 Governments to deal with training and skills—that body; or
19 (b) otherwise—a body prescribed by the regulations.

20 **misconduct** includes fraud, negligence, default, breach of trust,
21 breach of duty, breach of discipline or any other misconduct in the
22 course of duty.

23 **personal information** has the same meaning as in the *Privacy Act*
24 1988.

25 **public body** of a State or Territory means:

- 26 (a) the Crown in right of the State or Territory; or
27 (b) a State or Territory authority (within the meaning of the
28 *Privacy Act 1988*) of that State or Territory; or
29 (c) the head (however described) of a Department of State of the
30 State or Territory; or
31 (d) the Parliament of the State or the legislature of the Territory;
32 or

1 (e) a member of the Parliament of the State or of the legislature
2 of the Territory.

3 **registered training organisation** has the same meaning as in the
4 *National Vocational Education and Training Regulator Act 2011*.

5 **Registrar** means the Student Identifiers Registrar.

6 **student identifier** means an identifier assigned to an individual by
7 the Registrar under section 10 or 12.

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

9 **VET admission body** means an entity specified in an instrument
10 under subsection (2).

11 **VET-related body** means:

- 12 (a) a Department of the Commonwealth, or a Department of a
13 State or Territory, that deals with matters relating to VET
14 (including the funding of VET); or
15 (b) a body (whether incorporated or not) established by or under
16 a law of the Commonwealth, a State or a Territory that
17 performs functions relating to VET (including the funding of
18 VET); or
19 (c) a VET Regulator (within the meaning of the *National*
20 *Vocational Education and Training Regulator Act 2011*); or
21 (d) an entity specified in an instrument under subsection (3).

22 (2) The Registrar may, by legislative instrument, specify an entity for
23 the purposes of the definition of **VET admission body** in
24 subsection (1).

25 Note: For specification by class, see subsection 13(3) of the *Legislative*
26 *Instruments Act 2003*.

27 (3) The Registrar may, by legislative instrument, specify an entity for
28 the purposes of paragraph (d) of the definition of **VET-related**
29 **body** in subsection (1).

30 Note: For specification by class, see subsection 13(3) of the *Legislative*
31 *Instruments Act 2003*.

Part 1 Preliminary

Section 5

1 **5 Act to bind the Crown**

2 This Act binds the Crown in each of its capacities.

3 **6 Extension to external Territories**

4 This Act extends to every external Territory.

5 **7 Extraterritorial application**

6 This Act extends to acts, omissions, matters and things outside
7 Australia.

1 **Part 2—Student identifiers**

2 **Division 1—Simplified outline of this Part**

3 **8 Simplified outline of this Part**

4 The Student Identifiers Registrar must assign a student identifier to
5 an individual on application by or on behalf of the individual if the
6 Registrar is satisfied of the individual's identity and that the
7 individual does not already have a student identifier.

8 Generally, anyone who collects personal information about an
9 individual to apply for an identifier for the individual must destroy
10 the information as soon as practicable after it is no longer needed
11 for that purpose.

12 On request by an individual, or an organisation or body involved
13 with vocational education and training, the Registrar may verify
14 that an identifier is the individual's student identifier, or give the
15 individual's student identifier.

16 Anyone (including the Registrar) who keeps a record of student
17 identifiers must protect it from misuse and unauthorised access and
18 disclosure.

19 Collection, use and disclosure of an individual's student identifier
20 without the individual's consent is prohibited, unless it is
21 authorised. This Part authorises collection, use and disclosure by
22 the Registrar for certain purposes or by others to deal with
23 unlawful acts or to help law enforcement.

24 The Information Commissioner may deal with breaches of the
25 rules about destroying personal information, protecting records of
26 student identifiers and unauthorised collection, use and disclosure
27 of student identifiers as interferences with privacy under the
28 *Privacy Act 1988*.

Section 9

1 **Division 2—Assignment of student identifiers etc.**

2 **9 Application for the assignment of an identifier**

- 3 (1) An individual may apply to the Registrar for an identifier to be
4 assigned to the individual.
- 5 (2) The following entities may apply to the Registrar for an identifier
6 to be assigned to an individual if authorised by the individual to
7 make an application under this section:
8 (a) a registered training organisation;
9 (b) a VET admission body;
10 (c) another entity.
- 11 (3) The application must:
12 (a) be made in a manner and form approved by the Registrar;
13 and
14 (b) include any information required by the Registrar.

15 **10 Assignment of an identifier by the Registrar**

- 16 (1) If an application is made under section 9 in relation to an
17 individual, the Registrar must assign an identifier to the individual
18 if the Registrar is satisfied that:
19 (a) the identity of the individual has been appropriately verified;
20 and
21 (b) the individual has not already been assigned a student
22 identifier.
- 23 (2) The Registrar must give written notice of the Registrar's decision
24 on the application to:
25 (a) the applicant; and
26 (b) if the applicant is not the individual—the individual.
- 27 (3) If the Registrar assigns an identifier to the individual, the notice
28 given under subsection (2) must:
29 (a) set out the identifier; and
30 (b) if the notice is given to the individual—explain the purposes
31 and uses of the identifier.

- 1 (4) If the Registrar refuses to assign an identifier to the individual, the
2 notice given under subsection (2) must set out the reasons for the
3 refusal.

4 **11 Destruction of personal information collected for the purpose of**
5 **making an application**

- 6 (1) If:
7 (a) a registered training organisation, VET admission body or
8 other entity is authorised by an individual to make an
9 application under section 9; and
10 (b) the organisation, body or entity collects personal information
11 about the individual for the purpose of making the
12 application; and
13 (c) some or all of the personal information is collected solely for
14 the purpose of making the application;
15 the organisation, body or entity must destroy the personal
16 information collected solely for that purpose as soon as practicable
17 after the application is made or it is no longer needed for that
18 purpose.
- 19 (2) Subsection (1) does not apply if the registered training
20 organisation, VET admission body or other entity is required by or
21 under any law to retain the information.

22 Note: A contravention of this section is taken to be an interference with the
23 privacy of an individual for the purposes of the *Privacy Act 1988* (see
24 section 23 of this Act).

25 **12 Registrar to resolve problems in relation to the assignment of**
26 **student identifiers**

- 27 (1) The Registrar may do either or both of the following in order to
28 resolve a problem that has occurred in relation to the assignment of
29 one or more student identifiers to one or more individuals:
30 (a) revoke one or more of those student identifiers;
31 (b) assign a new identifier to one or more of those individuals.

Part 2 Student identifiers

Division 2 Assignment of student identifiers etc.

Section 13

- 1 (2) If the Registrar does a thing mentioned in subsection (1) in relation
2 to an individual, the Registrar must give written notice of the
3 Registrar's decision to:
4 (a) the individual; and
5 (b) a VET-related body of a kind referred to in paragraph (a) of
6 the definition of that expression in subsection 4(1); and
7 (c) any other entity that the Registrar considers appropriate in the
8 circumstances.
- 9 (3) The notice given under subsection (2) must set out:
10 (a) if a student identifier of the individual has been revoked—the
11 revoked identifier; and
12 (b) if a new identifier has been assigned to the individual—the
13 new identifier.

14 **13 Review by the Administrative Appeals Tribunal**

- 15 (1) Applications may be made to the Administrative Appeals Tribunal
16 by an individual for review of the following decisions of the
17 Registrar:
18 (a) a refusal to assign an identifier to the individual under
19 section 10;
20 (b) a decision under section 12 to revoke a student identifier of
21 the individual or to assign a new identifier to the individual.
- 22 (2) Subsection (1) has effect despite subsection 27(1) of the
23 *Administrative Appeals Tribunal Act 1975*.

1 **Division 3—Verification or giving of student identifiers**

2 **14 Request to verify or give a student identifier**

- 3 (1) Any of the following entities may request the Registrar to verify
4 that an identifier is the student identifier of an individual, or to give
5 the entity the student identifier of an individual:
6 (a) the individual;
7 (b) a registered training organisation;
8 (c) a VET-related body;
9 (d) a VET admission body authorised by the individual to make
10 a request under this section.
- 11 (2) The request must:
12 (a) be made in a manner and form approved by the Registrar;
13 and
14 (b) include any information required by the Registrar.

15 **15 Verification or giving of a student identifier**

- 16 (1) If a request is made under section 14 in relation to an individual,
17 the Registrar may, by written notice given to the entity that made
18 the request, verify or give the student identifier of the individual.
- 19 (2) If the Registrar refuses to verify or give the student identifier, the
20 Registrar must give the entity that made the request written notice
21 of the refusal and the reasons for the refusal.

1 **Division 4—Protection of records of student identifiers**

2 **16 Records of student identifiers must be protected from misuse etc.**

3 (1) The Registrar must take reasonable steps to protect a record of
4 student identifiers kept by the Registrar:

5 (a) from misuse, interference and loss; and

6 (b) from unauthorised access, modification or disclosure.

7 (2) If any other entity keeps a record of student identifiers, the entity
8 must take reasonable steps to protect the record:

9 (a) from misuse, interference and loss; and

10 (b) from unauthorised access, modification or disclosure.

11 (3) Subsection (2) does not apply to an individual who keeps a record
12 of the student identifier of the individual.

13 Note: A contravention of this section is taken to be an interference with the
14 privacy of an individual for the purposes of the *Privacy Act 1988* (see
15 section 23 of this Act).

1 **Division 5—Collection, use or disclosure of student**
2 **identifiers**

3 **17 Unauthorised collection, use or disclosure of student identifiers**

4 An entity must not collect, use or disclose a student identifier of an
5 individual if:

- 6 (a) the entity is not the individual; and
7 (b) the collection, use or disclosure is not authorised under this
8 Division.

9 Note: A contravention of this section is taken to be an interference with the
10 privacy of the individual for the purposes of the *Privacy Act 1988* (see
11 section 23 of this Act).

12 **18 Collection, use or disclosure by the Registrar**

- 13 (1) The Registrar is authorised to collect, use or disclose a student
14 identifier of an individual if the collection, use or disclosure is for
15 the purposes of the Registrar performing his or her functions or
16 exercising his or her powers.
- 17 (2) The Registrar is authorised to use or disclose a student identifier of
18 an individual if the use or disclosure is for the purposes of
19 research:
- 20 (a) that relates (directly or indirectly) to education or training, or
21 that requires the use of student identifiers or information
22 about education or training; and
23 (b) that meets the requirements specified by the Ministerial
24 Council.

25 **19 Collection, use or disclosure with the individual's consent**

- 26 (1) An entity is authorised to collect, use or disclose a student
27 identifier of an individual if the individual consents (expressly or
28 impliedly) to the collection, use or disclosure.

Section 20

- 1 (2) However, the individual cannot consent to the entity using the
2 individual's student identifier as the entity's own identifier of the
3 individual.

4 **20 Collection, use or disclosure relating to unlawful activities etc.**

5 An entity is authorised to collect, use or disclose a student
6 identifier of an individual if:

- 7 (a) the entity has reason to suspect that unlawful activity, or
8 misconduct of a serious nature, that relates to the entity's
9 functions or activities has been, is being or may be engaged
10 in; and
11 (b) the entity reasonably believes that the collection, use or
12 disclosure is necessary in order for the entity to take
13 appropriate action in relation to the matter.

14 **21 Collection, use or disclosure for law enforcement purposes etc.**

15 An entity is authorised to collect, use or disclose a student
16 identifier of an individual if the entity reasonably believes that the
17 collection, use or disclosure is reasonably necessary for one or
18 more of following things done by, or on behalf of, an enforcement
19 body (within the meaning of the *Privacy Act 1988*):

- 20 (a) the prevention, detection, investigation, prosecution or
21 punishment of:
22 (i) criminal offences; or
23 (ii) breaches of a law imposing a penalty or sanction;
24 (b) the conduct of surveillance activities, intelligence gathering
25 activities or monitoring activities;
26 (c) the conduct of protective or custodial activities;
27 (d) the enforcement of laws relating to the confiscation of the
28 proceeds of crime;
29 (e) the protection of the public revenue;
30 (f) the prevention, detection, investigation or remedying of
31 misconduct of a serious nature, or other conduct prescribed
32 by the regulations;

1 (g) the preparation for, or conduct of, proceedings before any
2 court or tribunal, or the implementation of the orders of a
3 court or tribunal.

4 **22 Collection, use or disclosure authorised by regulations**

5 An entity is authorised to collect, use or disclose a student
6 identifier of an individual if the collection, use or disclosure is
7 authorised by the regulations.

1 **Division 6—Interaction with the Privacy Act 1988**

2 **23 Contraventions that are interferences with the privacy of an**
3 **individual**

- 4 (1) An act or practice that contravenes:
5 (a) section 11 in relation to personal information about an
6 individual; or
7 (b) section 16 or 17 in relation to a student identifier of an
8 individual;
9 is taken, for the purposes of the *Privacy Act 1988*, to be an
10 interference with the privacy of the individual (within the meaning
11 of that Act).

12 Note: An act or practice that is an interference with the privacy of the
13 individual may be the subject of an investigation by the Information
14 Commissioner under Part V of that Act.

- 15 (2) If:
16 (a) an act or practice of an entity that contravenes section 11, 16
17 or 17 is the subject of a complaint to, or an investigation by,
18 the Information Commissioner under Part V of the *Privacy*
19 *Act 1988*; and
20 (b) the entity is not an agency (within the meaning of that Act) or
21 organisation (within the meaning of that Act);
22 the entity is taken, for the purposes of that Part and any other
23 provision of that Act that relates to that Part, to be an organisation
24 (within the meaning of that Act).

25 **24 Additional functions of the Information Commissioner**

- 26 (1) In addition to the Information Commissioner's functions under the
27 *Privacy Act 1988*, the Information Commissioner has the following
28 functions:
29 (a) to investigate an act or practice that may be an interference
30 with the privacy of an individual under subsection 23(1) and,
31 if the Information Commissioner considers it appropriate to
32 do so, to attempt by conciliation to effect a settlement of the
33 matters that gave rise to the investigation;

- 1 (b) to conduct an assessment of whether the Registrar is
2 maintaining or handling student identifiers in accordance
3 with the requirements of this Act;
4 (c) to do anything incidental or conducive to the performance of
5 those functions.
- 6 (2) The Information Commissioner has power to do all things that are
7 necessary or convenient to be done for or in connection with the
8 performance of his or her functions under subsection (1).
- 9 (3) The Information Commissioner may conduct an assessment under
10 paragraph (1)(b) in such manner as the Commissioner considers fit.
- 11 (4) Section 56 (rather than section 12B of the *Privacy Act 1988*)
12 applies in relation to the matters referred to in paragraph (1)(a) or
13 (b) of this section in the same way as it applies to this Act.

14 **25 Use or disclosure of personal information authorised for the**
15 **purposes of the *Privacy Act 1988***

- 16 (1) The use or disclosure by an entity of personal information about an
17 individual is taken, for the purposes of the *Privacy Act 1988*, to be
18 authorised by this Act if the use or disclosure is for the purposes of
19 the Registrar performing his or her functions or exercising his or
20 her powers.
- 21 (2) The use or disclosure by the Registrar of personal information
22 about an individual is taken, for the purposes of the *Privacy Act*
23 *1988*, to be authorised by this Act if the use or disclosure is for the
24 purposes of research:
25 (a) that relates (directly or indirectly) to education or training, or
26 that requires the use of student identifiers or information
27 about education or training; and
28 (b) that meets the requirements specified by the Ministerial
29 Council.

1 **Part 3—Authenticated VET transcripts**

2

3 **26 Simplified outline of this Part**

4

An individual's authenticated VET transcript is a document prepared by the Student Identifiers Registrar that sets out information that relates to vocational education and training undertaken by the individual and is prescribed by the regulations.

5

6

7

8

On request, the Registrar may give access to all or part of an authenticated VET transcript of an individual who has a student identifier to the individual, a registered training organisation or a VET-related body. However, access by such an organisation or body is subject to access controls set by the individual.

9

10

11

12

13 **27 Individual may be given access to an authenticated VET transcript etc.**

14

15

(1) The Registrar may, on request, give an individual who has been assigned a student identifier access to:

16

17

(a) an authenticated VET transcript of the individual; or

18

(b) an extract from an authenticated VET transcript of the individual.

19

20

(2) The request must:

21

(a) be made in a manner and form approved by the Registrar; and

22

23

(b) include any information required by the Registrar; and

24

(c) if the request is for an extract—specify the information to be excluded from the extract.

25

26

(3) If the Registrar refuses to give access under subsection (1), the Registrar must give the individual written notice of the decision and the reasons for the decision.

27

28

1 **28 Registered training organisation or VET-related body may be**
2 **given access to an authenticated VET transcript etc.**

- 3 (1) The Registrar may, on request, give a registered training
4 organisation or VET-related body access to:
5 (a) an authenticated VET transcript of an individual who has
6 been assigned a student identifier; or
7 (b) an extract from an authenticated VET transcript of an
8 individual who has been assigned a student identifier;
9 in accordance with the access controls set by the individual.
- 10 (2) The request must:
11 (a) be made in a manner and form approved by the Registrar;
12 and
13 (b) include any information required by the Registrar.
- 14 (3) The Registrar must not give access under subsection (1) unless
15 access controls have been set by the individual.
- 16 (4) If the Registrar refuses to give access under subsection (1), the
17 Registrar must give the registered training organisation or
18 VET-related body written notice of the decision and the reasons for
19 the decision.

20 **29 Requirement relating to extracts from authenticated VET**
21 **transcripts**

- 22 (1) If the Registrar gives access to an extract from an authenticated
23 VET transcript of an individual, the extract must include a
24 statement that it is an extract.
- 25 (2) Subsection (1) does not apply if:
26 (a) the only information not included in the extract is
27 information of a kind prescribed by the regulations; or
28 (b) the Registrar considers that it is not appropriate for the
29 extract to include a statement that it is an extract.

1 **Part 4—Student Identifiers Registrar etc.**

2 **Division 1—Simplified outline of this Part**

3 **30 Simplified outline of this Part**

4 There must be a Student Identifiers Registrar appointed by the
5 Commonwealth Minister after consulting the Ministerial Council.

6 The Registrar's functions include the following:

- 7 (a) assigning student identifiers to individuals;
8 (b) verifying or giving an individual's student identifier;
9 (c) preparing and providing access to individuals'
10 authenticated VET transcripts;
11 (d) enabling individuals with student identifiers to set access
12 controls on their authenticated VET transcripts.

13 The Registrar is to be assisted by staff from the Department and by
14 other staff and consultants under arrangements made by the
15 Registrar.

16 There is a Student Identifiers Special Account, to be used for
17 meeting the Commonwealth's costs in the performance of the
18 Registrar's functions.

19 The Registrar is to report annually to the Commonwealth Minister
20 and the Ministerial Council.

1 **Division 2—Student Identifiers Registrar**

2 **Subdivision A—Functions and powers**

3 **31 Student Identifiers Registrar**

4 There is to be a Student Identifiers Registrar.

5 **32 Functions of the Registrar**

- 6 (1) The Registrar has the following functions:
- 7 (a) to assign student identifiers to individuals;
- 8 (b) to verify or give a student identifier of an individual;
- 9 (c) to prepare and provide access to authenticated VET
10 transcripts of individuals or extracts from such transcripts;
- 11 (d) to ensure that a record of all student identifiers is kept in such
12 form as the Registrar considers appropriate;
- 13 (e) to resolve problems that have occurred in relation to the
14 assignment of student identifiers, including cases where:
- 15 (i) an individual has been assigned more than one student
16 identifier; or
- 17 (ii) the same student identifier has been assigned to 2 or
18 more individuals;
- 19 (f) to establish and maintain a mechanism to enable an
20 individual who has been assigned a student identifier to set
21 controls (the *access controls*) on:
- 22 (i) the registered training organisations and VET-related
23 bodies that may request access to an authenticated VET
24 transcript of the individual; and
- 25 (ii) the registered training organisations and VET-related
26 bodies that may request access to an extract from an
27 authenticated VET transcript of the individual and the
28 content of the extract;
- 29 (g) any other functions conferred on the Registrar by this Act,
30 the regulations or any other law of the Commonwealth;
- 31 (h) to do anything incidental or conducive to the performance of
32 those functions.
-

Section 33

- 1 (2) The Registrar has power to do all things that are necessary or
2 convenient to be done for or in connection with the performance of
3 his or her functions.

4 **33 Commonwealth Minister may give directions to the Registrar**

- 5 (1) The Commonwealth Minister may, by legislative instrument, give
6 written directions to the Registrar about the performance of the
7 Registrar's functions.

8 Note: Section 42 (disallowance) and Part 6 (sunsetting) of the *Legislative*
9 *Instruments Act 2003* do not apply to the directions (see sections 44
10 and 54 of that Act).

- 11 (2) The Registrar must comply with a direction under subsection (1).
12 (3) Before giving a direction under subsection (1), the Commonwealth
13 Minister must consult the Ministerial Council.

14 **Subdivision B—Appointment of Registrar**

15 **34 Appointment**

- 16 (1) The Registrar is to be appointed by the Commonwealth Minister by
17 written instrument, on a full-time basis.

18 Note: The Registrar may be reappointed: see section 33AA of the *Acts*
19 *Interpretation Act 1901*.

- 20 (2) Before making an appointment, the Commonwealth Minister must
21 consult the Ministerial Council.

22 **35 Term of appointment**

23 The Registrar holds office for the period specified in the instrument
24 of appointment. The period must not exceed 5 years.

25 **36 Acting Registrar**

- 26 (1) The Commonwealth Minister may, by written instrument, appoint
27 a person to act as Registrar:

- 1 (a) during a vacancy in the office of Registrar (whether or not an
2 appointment has previously been made to that office); or
3 (b) during any period, or during all periods, when the Registrar:
4 (i) is absent from duty or from Australia; or
5 (ii) is, for any other reason, unable to perform the duties of
6 the office.

7 Note: See sections 33AB and 33A of the *Acts Interpretation Act 1901* for
8 rules that apply to acting appointments.

- 9 (2) Before the Commonwealth Minister appoints a person to act as
10 Registrar for a continuous period of 3 months or more, the Minister
11 must consult the Ministerial Council.

12 **Subdivision C—Terms and conditions of appointment**

13 **37 Remuneration and allowances**

- 14 (1) The Registrar is to be paid the remuneration that is determined by
15 the Remuneration Tribunal. If no determination of that
16 remuneration by the Tribunal is in operation, the Registrar is to be
17 paid the remuneration that is prescribed by the regulations.
- 18 (2) The Registrar is to be paid the allowances that are prescribed by
19 the regulations.
- 20 (3) This section has effect subject to the *Remuneration Tribunal Act*
21 *1973*.

22 **38 Leave of absence**

- 23 (1) The Registrar has the recreation leave entitlements that are
24 determined by the Remuneration Tribunal.
- 25 (2) The Commonwealth Minister may grant to the Registrar leave of
26 absence, other than recreation leave, on the terms and conditions as
27 to remuneration or otherwise that the Minister determines.

Section 39

1 **39 Outside employment**

2 The Registrar must not engage in paid employment outside the
3 duties of his or her office without the Commonwealth Minister's
4 approval.

5 **40 Disclosure of interests**

6 The Registrar must give written notice to the Commonwealth
7 Minister of all interests, pecuniary or otherwise, that the Registrar
8 has or acquires and that conflict or could conflict with the proper
9 performance of the Registrar's functions.

10 **41 Other terms and conditions**

11 The Registrar holds office on the terms and conditions (if any) in
12 relation to matters not covered by this Act that are determined by
13 the Commonwealth Minister.

14 **42 Resignation**

- 15 (1) The Registrar may resign his or her appointment by giving the
16 Commonwealth Minister a written resignation.
- 17 (2) The resignation takes effect on the day it is received by the
18 Commonwealth Minister or, if a later day is specified in the
19 resignation, on that later day.

20 **43 Termination of appointment**

- 21 (1) The Commonwealth Minister may terminate the appointment of
22 the Registrar:
23 (a) for misbehaviour; or
24 (b) if the Registrar is unable to perform the duties of his or her
25 office because of physical or mental incapacity.
- 26 (2) The Commonwealth Minister may terminate the appointment of
27 the Registrar if:
28 (a) the Registrar:
29 (i) becomes bankrupt; or

- 1 (ii) takes steps to take the benefit of any law for the relief of
2 bankrupt or insolvent debtors; or
3 (iii) compounds with one or more of his or her creditors; or
4 (iv) makes an assignment of his or her remuneration for the
5 benefit of one or more of his or her creditors; or
6 (b) the Registrar is absent, except on leave of absence, for 14
7 consecutive days or for 28 days in any 12 months; or
8 (c) the Registrar engages, except with the Minister's approval, in
9 paid employment outside the duties of his or her office (see
10 section 39); or
11 (d) the Registrar fails, without reasonable excuse, to comply with
12 section 40.
- 13 (3) If the Commonwealth Minister terminates the appointment of the
14 Registrar, the Minister must notify the Ministerial Council of the
15 termination.

16 **Subdivision D—Delegation**

17 **44 Delegation by the Registrar**

- 18 (1) The Registrar may delegate, in writing, all or any of the Registrar's
19 functions or powers to:
20 (a) a person who is a member of the staff mentioned in
21 section 45; or
22 (b) a person to whom an arrangement under section 46 relates.
- 23 (2) In performing functions or exercising powers under the delegation,
24 the delegate must comply with any written directions of the
25 Registrar.

1 **Division 3—Staff and consultants assisting Registrar**

2 **45 Staff**

3 The staff necessary to assist the Registrar are to be persons
4 engaged under the *Public Service Act 1999* and made available for
5 the purpose by the Secretary of the Department.

6 **46 Secondment of Commonwealth, State or Territory officers etc.**

7 *Secondment of Commonwealth officers etc.*

- 8 (1) The Registrar may arrange with:
9 (a) an Agency Head (within the meaning of the *Public Service*
10 *Act 1999*) of an Agency (within the meaning of that Act); or
11 (b) an authority of the Commonwealth;
12 for the services of officers or employees of the Agency or authority
13 to be made available to assist the Registrar in the performance of
14 the Registrar's functions.

15 *Secondment of State or Territory officers etc.*

- 16 (2) The Registrar may arrange with the appropriate authority of a State
17 or Territory for the services of officers or employees of the
18 following to be made available to assist the Registrar in the
19 performance of the Registrar's functions:
20 (a) the Public Service of the State or Territory;
21 (b) a body, whether incorporated or not, established by or under
22 a law of the State or Territory.
- 23 (3) An arrangement under subsection (2) may provide for the
24 Commonwealth to reimburse the appropriate authority of a State or
25 Territory with respect to the services of a person to whom the
26 arrangement relates.

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Directions of the Registrar

2

- (4) In assisting the Registrar in the performance of the Registrar's functions, a person to whom an arrangement under subsection (1) or (2) relates is subject to the directions of the Registrar.

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47 Consultants

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- (1) The Registrar may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Registrar's functions.

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- (2) The consultants are to be engaged on the terms and conditions that the Registrar determines in writing.

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1 **Division 4—Special Account**

2 **48 Student Identifiers Special Account**

3 (1) The Student Identifiers Special Account is established by this
4 section.

5 (2) The Account is a Special Account for the purposes of the *Financial*
6 *Management and Accountability Act 1997*.

7 **49 Credits to the Account**

8 There must be credited to the Account amounts equal to the
9 following:

- 10 (a) amounts allocated by the Ministerial Council in accordance
11 with the National Agreement for Skills and Workforce
12 Development between the Commonwealth, States and
13 Territories, as in force from time to time;
14 (b) amounts received by the Commonwealth in connection with
15 the performance of the Registrar's functions;
16 (c) interest received by the Commonwealth from the investment
17 of amounts debited from the Account;
18 (d) amounts of any gifts given or bequests made for the purposes
19 of the Account.

20 Note 1: An Appropriation Act may contain a provision to the effect that, if any
21 of the purposes of a Special Account is a purpose that is covered by an
22 item in the Appropriation Act (whether or not the item expressly refers
23 to the Special Account), then amounts may be debited against the
24 appropriation for that item and credited to that Special Account.

25 Note 2: Amounts standing to the credit of the Account may be invested under
26 section 39 of the *Financial Management and Accountability Act 1997*,
27 but such investments may only be made by the Finance Minister, the
28 Treasurer, or a delegate under section 62 or 62A of that Act.

29 **50 Purposes of the Account**

30 The purposes of the Account are as follows:

Section 50

- 1 (a) paying or discharging the costs, expenses and other
2 obligations incurred by the Commonwealth in the
3 performance of the Registrar's functions;
4 (b) paying any remuneration and allowances payable to any
5 person under this Act;
6 (c) meeting the expenses of administering the Account.
7 Note: See section 21 of the *Financial Management and Accountability Act*
8 *1997* (debits from Special Accounts).

1 **Division 5—Annual report**

2 **51 Annual report**

3 (1) The Registrar must, as soon as practicable after the end of each
4 financial year, prepare and give to the Commonwealth Minister,
5 for presentation to the Parliament, a report on the operations of the
6 Registrar during that year.

7 Note: See also section 34C of the *Acts Interpretation Act 1901*, which
8 contains extra rules about annual reports.

9 (2) The Registrar must give a copy of the report to the Ministerial
10 Council at the same time as the report is presented to the
11 Parliament.

12 (3) If this section does not commence at the start of a financial year,
13 the period:

14 (a) starting at the commencement of this section; and

15 (b) ending at the end of the first 30 June after that
16 commencement;

17 is taken, for the purposes of this section, to be a financial year.

Part 5—Other matters**52 Simplified outline of this Part**

Generally, a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual after 2014 unless the individual has a student identifier.

The Commonwealth Minister may exempt a public body of a State or Territory from rules in this Act prohibiting unauthorised collection, use and disclosure of an individual's student identifier without the individual's consent if:

- (a) the Minister is satisfied that equivalent State or Territory rules apply to the body; and
- (b) a Minister of the State or Territory has asked for the exemption; and
- (c) the Ministerial Council agrees to the exemption.

This Act does not limit rights under other laws and does not limit State and Territory laws that can operate concurrently with this Act.

This Part also contains other rules about the constitutional scope of this Act and about making regulations.

53 Issue of VET qualifications etc.

- (1) A registered training organisation must not issue either of the following to an individual unless the individual has been assigned a student identifier:
 - (a) a VET qualification (within the meaning of the *National Vocational Education and Training Regulator Act 2011*);
 - (b) a VET statement of attainment (within the meaning of that Act).

Section 54

- 1 (2) Subsection (1) does not apply to an issue specified under
2 subsection (3).
- 3 (3) The Commonwealth Minister may, by legislative instrument,
4 specify an issue to which subsection (1) does not apply, by
5 reference to one or more of the following:
6 (a) the registered training organisation doing the issuing;
7 (b) the VET qualification, or VET statement of attainment, being
8 issued;
9 (c) the individual to whom the VET qualification, or VET
10 statement of attainment, is being issued.
- 11 Note: For specification by class, see subsection 13(3) of the *Legislative*
12 *Instruments Act 2003*.
- 13 (4) Before making an instrument under subsection (3), the
14 Commonwealth Minister must obtain the agreement of the
15 Ministerial Council to the making of the instrument.

16 **54 Saving of other laws and remedies**

- 17 (1) This Act is not intended to exclude or limit the operation of a law
18 of a State or Territory that is capable of operating concurrently
19 with this Act.
- 20 (2) Nothing in this Act limits, restricts or otherwise affects any right or
21 remedy that a person would have had if this Act had not been
22 enacted.

23 **55 Disapplication of Division 5 of Part 2**

- 24 (1) Division 5 of Part 2 does not apply to a public body of a State or
25 Territory if a declaration made under subsection (2) is in force in
26 relation to the body.
- 27 (2) The Commonwealth Minister may, in writing, declare that
28 Division 5 of Part 2 does not apply to a public body of a State or
29 Territory if:
30 (a) a Minister of the State or Territory requests, by written
31 notice, the Commonwealth Minister to make the declaration;
32 and

Section 56

- 1 (b) the Commonwealth Minister is satisfied that a corresponding
2 law of a State or Territory is in force in the State or Territory
3 and the law applies to the body; and
4 (c) the Ministerial Council agrees to the making of the
5 declaration.
- 6 (3) The Commonwealth Minister may, in writing, revoke a declaration
7 made under subsection (2) in relation to a public body of a State or
8 Territory if:
9 (a) a Minister of the State or Territory requests, by written
10 notice, the Commonwealth Minister to do so; or
11 (b) both of the following apply:
12 (i) the Commonwealth Minister is satisfied that a
13 corresponding law of a State or Territory is no longer in
14 force in the State or Territory or no longer applies to the
15 body;
16 (ii) the Ministerial Council agrees to the revocation of the
17 declaration.
- 18 (4) A declaration under subsection (2), and a revocation of a
19 declaration under subsection (3), are legislative instruments, but
20 neither section 42 (disallowance) nor Part 6 (sunsetting) of the
21 *Legislative Instruments Act 2003* applies to the declaration or
22 revocation.

56 Severability

- 23
24 (1) Without limiting its effect apart from each of the following
25 subsections of this section, this Act also has effect as provided by
26 that subsection.
- 27 (2) This Act also has the effect it would have if its operation were
28 expressly confined to matters:
29 (a) in relation to which the Commonwealth is under an
30 obligation under an international agreement, including
31 Article 17 of the International Covenant on Civil and
32 Political Rights, done at New York on 16 December 1966; or
33 (b) that are of international concern, including the matters dealt
34 with in paragraphs 9, 10 and 11 of the Guidelines governing

Section 56

1 the Protection of Privacy and Transborder Flows of Personal
2 Data, recommended by the Council of the Organisation for
3 Economic Co-operation and Development on 11 July 2013.

4 Note 1: The Covenant is in Australian Treaty Series 1980 No. 23 ([1980] ATS
5 23) and could in 2014 be viewed in the Australian Treaties Library on
6 the AustLII website (<http://www.austlii.edu.au>).

7 Note 2: The Guidelines could in 2014 be viewed on the Organisation for
8 Economic Co-operation and Development website
9 (<http://www.oecd.org>).

- 10 (3) This Act also has the effect it would have if its operation were
11 expressly confined to acts or omissions that occur outside
12 Australia.
- 13 (4) This Act also has the effect it would have if its operation were
14 expressly confined to entities that are corporations to which
15 paragraph 51(xx) of the Constitution applies.
- 16 (5) This Act also has the effect it would have if its operation were
17 expressly confined to acts or omissions that relate to aliens.
- 18 (6) This Act also has the effect it would have if its operation were
19 expressly confined to acts or omissions done for purposes relating
20 to census or statistics.
- 21 (7) This Act also has the effect it would have if its operation were
22 expressly confined to acts done using a postal, telegraphic,
23 telephonic or other like service.
- 24 (8) This Act also has the effect it would have if its operation were
25 expressly confined to acts or omissions done in connection with the
26 provision of benefits to students.
- 27 (9) This Act also has the effect it would have if its operation were
28 expressly confined to acts or omissions that occur in a Territory.
- 29 (10) This Act also has the effect it would have if its operation were
30 expressly confined to acts or omissions done in the course of trade
31 or commerce:
32 (a) between Australia and other countries; or
33 (b) among the States; or

1 (c) between a Territory and a State or another Territory.

2 (11) A term used in this section and the Constitution has the same
3 meaning in this section as it has in the Constitution.

4 **57 Regulations**

5 (1) The Governor-General may make regulations prescribing matters:
6 (a) required or permitted by this Act to be prescribed; or
7 (b) necessary or convenient to be prescribed for carrying out or
8 giving effect to this Act.

9 (2) Before the Governor-General makes regulations under
10 subsection (1), the Commonwealth Minister must obtain the
11 agreement of the Ministerial Council to the making of the
12 regulations.

13 (3) Despite subsection 14(2) of the *Legislative Instruments Act 2003*,
14 the regulations made under subsection (1) of this section may make
15 provision in relation to a matter by applying, adopting or
16 incorporating, with or without modification, a matter contained in
17 an instrument or other writing as in force or existing from time.