Student Identifiers Bill 2013
Leonie Doyle
Social Policy Section

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Student Identifiers Bill 2013

Date introduced: 20 March 2013

House: House of Representatives

Portfolio: Industry, Innovation, Science, Research and Tertiary Education

Commencement: Sections 3-57 commence on a day fixed by Proclamation, or on the day after six months has passed following the day on which the Act receives the Royal Assent.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through http://www.aph.gov.au/Parliamentary_Business/Bills_Legislation. When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website at http://www.comlaw.gov.au/.

Purpose of the Bill

The purpose of the Student Identifiers Bill 2013 (the Bill) is to provide for a unique student identifier for vocational education and training (VET) students. The Bill also makes rules about obtaining access to an individual’s authenticated VET transcript, and establishes a Student Identifiers Agency to administer student identifiers.

The Agency is to commence on 1 July 2013, with student identifiers allocated to students from 1 January 2014.

Structure of the Bill

The Bill has five parts:

- Part 1 contains preliminary provisions including commencement details and definitions
- Part 2 describes student identifiers including assignment, verification, protection, use and disclosure requirements
- Part 3 makes rules about who may access an individual’s authenticated VET transcript, and how to obtain one
- Part 4 establishes the Student Identifiers Agency to administer the scheme and makes rules about the Agency’s operation and
- Part 5 deals with residual matters such as application of the Act.¹

¹ Clause 3 of the Bill.
Background

Development of the student identifier

The idea of a student identifier has been floated as part of the reform agenda for the VET system for years, as has the idea of a universal student number spanning all tertiary education. In 2000, the National Centre for Vocational Education Research (NCVER), the body responsible for national VET statistics, recommended work to determine whether:

Students should be assigned a universal student number to be used in all tertiary education institutions and courses. This would allow comprehensive data to be collected on student flows between institutions and the sectors. It would also provide reliable and consistent data on student outcomes since it would be possible to report student retention and completions for the whole system.²

Although the adoption of a student number spanning all tertiary education is not under consideration, the NCVER has continued to raise the benefits of a VET student identifier throughout the 2000’s. In December 2009 the Council of Australian Governments (COAG) gave in-principle support, subject to the development of a business case.³

This process took longer than expected, however in early 2011:

COAG welcomed progress on the development of the Vocational Education and Training Unique Student Identifier (USI) and agreed to develop a formal business case by June 2011.⁴

COAG reiterated its support for the introduction of a unique student identifier in August 2011.⁵

The final business case was considered and endorsed by COAG’s Standing Council on Tertiary Education, Skills and Employment (SCOTÉSE), comprising Australian, state and territory ministers, in November 2011. The Department of Education, Employment and Workplace Relations released a Regulation Impact Statement in early 2012 to support COAG’s consideration of the issue.⁶

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In November 2012 SCOTESE noted ‘significant progress has been made’ towards the implementation of a unique student identifier.7

The unique student identifier was included in the Government’s Mid-Year Economic and Fiscal Outlook (MYEFO) 2012–13.8 (See ‘Financial implications’ section of this Bills Digest for further information.)

The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (the Department), which was by then responsible for vocational education and training9, ran a public consultation process on the unique student identifier from 21 January 2013 to 15 February 2013. The departmental website notes that ‘in response to the issues raised by stakeholders, the legislation was [sic] been slightly amended before being introduced to Parliament’ but does not describe what these amendments were.10 Submissions were not made public.

Rationale behind the initiative

Despite the major progress made in creating a national system, vocational education and training is still predominantly managed at the state and territory level and there are around 4800 currently registered training organisations (RTOs).11 This means that students cannot currently get a complete record of their VET enrolment and achievement history from a single source.

The unique student identifier will allow any student who undertakes nationally recognised VET through an Australian RTO to see their complete enrolment and achievement record in a single transcript. (The transcript will include all the VET training a student does from 1 January 2014—it is not retrospective.)

The major advantage for students and for prospective employers is that the student identifier will be able to generate a consolidated record of achievement prepared by a single, authoritative agency.

There are other important benefits for training providers and policy makers as a result of the data that could be produced. NCVER says that a unique student identifier:

9. The VET/skills portfolio was transferred from the Department of Education, Employment and Workplace Relations (DEEWR) to the Department of Industry, Innovation, Science, Research and Tertiary Education (DIISRTE) in 2012. DIISRTE became the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE) in March 2013.
... would enable all training activity to be linked, facilitating electronic training records of learner attainment (e-portfolios), irrespective of where the training took place. This would be useful to students, training providers and employers. A USI will also help governments to better measure training activity and, through broader application, eventually allow researchers to link training across the education and training sectors, negating the need for expensive longitudinal surveys.12

Committee consideration

Senate Education, Employment and Workplace Relations Legislation Committee


Senate Standing Committee for the Scrutiny of Bills

In its Alert Digest No. 5 of 2013, released on the 15 May 2013, the Senate Standing Committee for the Scrutiny of Bills (the Scrutiny of Bills Committee) examined the provisions of the Bill and raised concerns about14:

• privacy—trespass on personal rights and liberties (in particular clauses 17 and 24 of the Bill)
• delegation of legislative power (clause 21 of the Bill)
• merits review (clause 25 of the Bill) and
• parliamentary scrutiny (clause 57 of the Bill)

The relevant comments of the Committee are discussed under the heading ‘Key issues and provisions’ in this Bills Digest.

Statement of Compatibility with Human Rights

As required under Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011 (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act.15


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The Government considers that

The Bill is compatible with human rights because it promotes the rights to education and work under Articles 6 and 13 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.16

Parliamentary Joint Committee on Human Rights

In its Sixth Report of 2013, the Parliamentary Joint Standing Committee on Human Rights (Human Rights Committee) examined all Bills introduced in the period 18-21 March 2013, which included this Bill.17

Overall the Committee considered that ‘the bill promotes the right to education and to work and any limitations on those rights are reasonable’. However, the Committee also sought further clarification on:

... the circumstances under which exemptions to the requirement to have a student identified number in order to obtain a VET qualification or VET appointment may be granted.

and

... how the open-ended nature of a number of provisions relating to the purposes for which student identifiers may be collected, used or disclosed is consistent with the right to privacy.18

As with the concerns raised by the Scrutiny of Bills Committee (a number of which address the same issue), the relevant comments of the Human Rights Committee are further referred to under the heading ‘Key issues and provisions’ in this Bills Digest.

Policy position of non-government parties/independents

At the time of writing, non-government parties and independents had not voiced their opinion on the Bill.

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15. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Bill.
18. Ibid., p. 65.

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Position of major interest groups

Ten submissions to the inquiry were made by the 30 April 2013 due date.\(^{19}\)

The NCVER supports the Bill, confirming that they:

\[\ldots\text{will work with the Commonwealth to link the VET training activity held in the National VET Provider Collection with the Student Identifier to produce an authenticated VET transcript.}\(^{20}\)\]

A number of unions have taken an interest in the Bill. The submission from the National Tertiary Education Union (NTEU) notes that privacy will be a key issue, and expresses interest in:

\[\ldots\text{what processes will be in place to ensure confidentiality of this information, and how students will be informed of their rights regarding the collection and storage of their personal information, as well as how to access any appeal mechanisms should they believe a breach of their rights has occurred.}\(^{21}\)\]

The ACTU, the Australian Manufacturing Workers Union and the Australian Education Union also raise privacy issues, as well as a number of concerns about other aspects of the Bill, including:

- why fees are not explicitly excluded in the Bill despite an intention (expressed in the Explanatory Memorandum) that there be no fees applicable\(^{22}\)
- the absence of an objects or purposes clause to rule out data being used for any other purpose (for example to monitor training entitlements)
- unacceptability of ‘implied’ consent to use of the student identifier
- inadequate protection for students relating to the collection, storage and (promised) destruction of data
- inadequate penalties or sanctions for misuse of student identifier data and
- whether the scheme could lead to restrictions on international covenants relating to free education to secondary level or equivalent.

The Office of the Australian Information Commissioner (OAIC) writes that it has provided advice on the development of the student identifier through a memorandum of understanding with the Department. The OAIC recommends some minor amendments to the Bill to ensure that it interacts properly with the Privacy Act 1988.\(^{23}\) It has also recommended (and the Department has agreed) that measures be taken to ensure that individuals receive privacy notices consistent with the

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19. See complete list of submissions at:  
20. Ibid.
21. Ibid.
23. The text of the Privacy Act 1988 can be viewed on the ComLaw website at:  

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Australian Privacy Principles that commence from March 2014. Specifically, the OAIC suggests the addition to the Bill of a provision about requirements for privacy notices.

Financial implications

The unique student identifier was included in the Government’s Mid-Year Economic and Fiscal Outlook (MYEFO) 2012–13.

MYEFO only included the costs of establishing and running the new agency ($2.5 million in 2013–14, $2.0 million in 2014–15 and $2.1 million in 2015–16), while the remainder will be met from within existing budgets.

According to the Explanatory Memorandum, the overall cost of the scheme from 2012–13 to 2015–16 is $21.6 million, of which:

- $6.7 million is to resource the Student Identifier Agency (over three years from 1 July 2013)
- $7.2 million is for a departmental taskforce to oversee implementation and
- $7.7 million is to support information technology and capital requirements.

There appears to be a discrepancy in the breakdown of the $21.6 million between the Explanatory Memorandum and MYEFO, which allocated more funding to the departmental taskforce and less to capital expenditure:

The measure includes $6.7 million over three years for the establishment and operation of an agency to administer the USI, which is expected to commence operations on 1 July 2013. The measure includes a further $9.5 million over four years for a Departmental taskforce that will manage the implementation of the new agency and $5.4 million over three years for associated capital expenditure.

Key issues and provisions

The main issue concerns the scope of this new measure—as referred to in the ‘Rationale’ and captured under the ‘Concluding comments’ sections of this Bills Digest, the key feature of the Bill is the creation of a VET student identifier which provides students and relevant entities with a single accessible record but which does not span all tertiary education.

Other key elements of the Bill (outlined below) relate to:

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• the establishment of a ‘statutory agency’ to manage this initiative and its governance arrangements and
• the nature of the student identifier scheme and the privacy considerations surrounding its introduction.

Assignment of student identifiers

Division 1 of Part 2 of the Bill describes how student identifiers are assigned. An individual can apply for a student identifier and, in addition a RTO, a VET admission body or another entity may apply on the individual’s behalf (clause 8). Power to assign a student identifier is held by the Chief Executive Officer (CEO) of the Student Identifier Agency (SIA). Provided the CEO is satisfied that the identity of the person is correct and that a student identifier has not already been assigned to them, the CEO must assign one (clause 9).

The CEO has broad powers to resolve problems or disputes by revoking and/or reassigning student identifiers under clause 11. An individual who is unhappy with a decision of the CEO (made under clauses 9 and/or 11 of the Bill) has recourse to the Administrative Appeals Tribunal (clause 12).

Division 2 of Part 2 of the Bill (clauses 13-14) enables the CEO to verify or provide an individual’s student identifier to the individual, an RTO, VET-related body or VET admission body, provided the request meets the requirements of the CEO (subclause 13(2)). If the CEO refuses to comply with the request to verify or give the student identifier, written notice must be given including reasons for the refusal (subclause 14(2)).

Authenticated VET transcripts

Part 3 of the Bill (clauses 25-27) describes the proposed process for giving access to an ‘authenticated VET transcript’, which is defined in clause 4 as:

… a document prepared by the CEO that sets out information:
(a) that relates to the VET undertaken by the individual; and
(b) that is prescribed by the regulations.

Either an individual (clause 25) or a RTO or VET-related body (clause 26) may request an authenticated VET transcript or an extract thereof. An individual can only request their own transcript based on their own student identifier. A RTO or VET-related body may request an individual’s transcript, subject to the access controls set by the individual. Subclause 26(3) provides that the CEO must not give access unless access controls have been set by the individual.

The CEO may refuse to give access to a transcript. Possible grounds for refusal are not listed in the Bill. However, the CEO’s refusal must be in writing and must set out reasons for the decision (subclauses 25(3) and 26(4)).
Comment

As noted above, the Scrutiny of Bills Committee is concerned that there does not appear to be any merits review of a refusal by the CEO under clause 25 of the Bill. The Committee has asked the Minister to further consider including more guidance on the exercise of this discretion.\(^{28}\)

Protection and privacy

The central feature of a student identifier is its ability to identify a unique student and thereby collate an individual’s academic record across a number of different courses, qualifications and training providers. While this is the point of the scheme, it also raises substantial privacy issues.\(^{29}\)

To reduce the likelihood of any negative consequences and comply with the requirements of the Privacy Act, the Bill contains numerous protections afforded to individuals concerning the operation of the student identifier scheme.

Destruction of personal information

Subclause 10(1) of the Bill provides that any personal information collected by a RTO, a VET admission body or other entity for the purpose of applying for a student identifier (under clause 8 of the Bill) must be destroyed as soon as practicable after the application is made or is no longer needed for that purpose (unless the entity is required to keep the information by law – subclause 10(2)).

Protection of records

The CEO must take ‘reasonable steps’ to protect student identifier records from misuse, interference and loss and from unauthorised access, modification and disclosure (subclause 15(1)). The same requirements also apply to any other entity that keeps records of student identifiers (subclause 15(2)).

Circumstances allowing collection, use or disclosure

Clause 16 of the Bill limits the collection, use or disclosure of a student identifier to certain circumstances namely those set out in clauses 17 to 21 (described below). Any other collection, use or disclose would be a breach of this clause and an interference of privacy of the individual for the purposes of the Privacy Act.

Under subclause 17(1) of the Bill the CEO is authorised to collect, use or disclose an individual’s student identifier for the purposes of carrying out the duties of that role. This includes use of the

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29. The Scrutiny of Bills Committee noted that the Bill may impact on the privacy interests of persons in a number of ways. However, the Committee left the general questions as to whether ‘the limitations on privacy are reasonable for achieving the bill’s policy objectives to the Senate as a whole’.

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student identifier for the purposes of research related to education or training, or research required by the Standing Council\(^{30}\) (subclause 17(2)).

An individual must consent to the collection, use or disclosure of a student identifier, by an entity however consent may be implied (subclause 18(1)).

**Clauses 19 and 20** of the Bill authorise an entity to collect, use or disclose an individual’s student identifier to appropriately respond to a reasonable suspicion of unlawful activity or if necessary for law enforcement purposes (within the meaning of the *Privacy Act*). The list of purposes includes (for example) the prevention of criminal offences or the protection of public revenue.

Under **clause 21** of the Bill if the regulations authorise an entity to collect, use or disclose a student identifier then the entity is able to do so.

**Division 5** of Part 2 of the Bill contains further provisions relating to its interaction with the *Privacy Act*. In particular, **clause 22** extends the application of the *Privacy Act* by providing that if an entity breaches clauses 10, 15 or 16 of the Bill then the breach is taken to be an interference with the privacy of the individual which may be subject to investigation by the Information Commissioner under Part V of the *Privacy Act*.

**Comment**

As noted above, both the Scrutiny of Bills and Human Rights Committees have raised concerns about privacy (and other) issues.

In relation to **clause 17** and also **clause 24** of the Bill, the Senate Scrutiny of Bills Committee has raised concerns that ‘protocols relied on to adequately protect privacy interests’ in relation to research related use and disclosure ‘will not be subject to parliamentary scrutiny’. The Committee has requested a ‘more detailed explanation from the Minister as to why this approach is considered necessary and appropriate’ and has suggested that the Information Commissioner play a role in the development and review of protocols under clause 23 of the Bill if protocols are not scrutinised by the Parliament.\(^{31}\)

In relation to clause 21 of the Bill, the Scrutiny of Bills Committee notes that page 48 of the Explanatory Memorandum to the Bill lists the circumstances to be dealt with by regulation. However, the Committee is still concerned that matters that may infringe on a person’s privacy are included in regulations and not in primary legislation. As regulations are disallowable instruments the Committee ‘leaves the appropriateness of the overall approach to the Senate as a whole’.\(^{32}\)

In relation to clauses 20 and 21 of the Bill, the Human Rights Committee

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\(^{30}\) The Standing Council is defined as the Council of Australian Governments (COAG) Standing Council on Tertiary Education, Skills and Employment (SCOTSE), or other body prescribed by the regulations (clause 4 of the Bill).


\(^{32}\) Ibid., pp. 99–100.
Student Identifier Agency

Part 4 of the Bill deals with the establishment of the Agency (Division 1), the position of CEO (Division 2), staff and consultants (Division 3), the special account (Division 5) and the annual report (Division 6).

Separate agency

The Student Identifier Agency (SIA) is to be a standalone organisation rather than a division of the Department. 34

In the late 1990’s, following a review of governance arrangements for Commonwealth bodies 35, the Howard Government reduced the number of standalone government bodies. Guidance from the Department of Finance and Deregulation still advises that:

A new function, activity or power should be conferred on an existing department (or another existing body) unless there is a persuasive case to form a new body. 36

In this instance, given the discrete role and responsibilities in relation to private information that the SIA will have—the creation of a new body with a separate identity appears to be justified.

Status

The Explanatory Memorandum to the Bill states that the Agency will be a statutory authority 37 (subclause 46(2) of the Bill refers to it as a Statutory Agency 38). However, rather than a Commonwealth authority under the Commonwealth Authorities and Companies Act 1997, it will be a prescribed agency under the Financial Management and Accountability Act 1997 (FMA Act). 39

34. The Department is the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE).
37. Explanatory Memorandum, Student Identifiers Bill 2013, op. cit., p. 3.
38. A Statutory Agency is a statutory authority identified in an Act as a ‘statutory agency’ for the purposes of the Public Service Act 1999. ‘A statutory authority that is identified, in its enabling legislation, as constituting a “Statutory Agency” (for the purposes of the Public Service Act) will also usually be prescribed under the FMA Act’. Department of Finance and Administration, Governance arrangements for Australian Government bodies: financial management reference material no. 2, op. cit., pp. 4 and 5 respectively.
39. Ibid.
Agency is to have an executive but no board, and will be financially and legally part of the Commonwealth.\(^{40}\)

The Student Identify Agency would appear to be a ‘prescribed agency’ under the FMA Act and a ‘statutory agency’ under the Public Service Act 1999.\(^{41}\)

**Functions**

The functions of the CEO (and by extension, the Agency) are set out in clause 33 of the Bill.

**CEO, staff and location**

The CEO is to be appointed by the Minister for a period of up to five years (clause 36 of the Bill), after consultation with the Standing Council (clause 35). Clause 34 states that the CEO operates under the direction of the Minister, again, following consultation with the Standing Council (subclause 34(4)).\(^{42}\) The CEO’s remuneration will be determined by the Remuneration Tribunal subject to the Remuneration Tribunal Act 1973 (subclause 38(1)).\(^{43}\)

It is expected that the Agency will employ 12-15 staff\(^{44}\), who must be public servants (subclause 46(1)).\(^{45}\) The CEO may engage consultants to assist in the performance of the Agency’s functions (clause 48).

It is likely that the Agency will be located in Canberra\(^{46}\), although no announcement has been made.

**Commencing operations**

It is proposed that the Student Identifier Agency will commence operations on 1 July 2013, with student identifiers allocated to students from 1 January 2014.\(^{47}\)

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\(^{40}\) Australian Government, Department of Finance and Deregulation website, *Governance arrangements for Australian Government bodies, op. cit.* The note to clause 29 of the Bill states that ‘The Agency does not have a legal identity separate from the Commonwealth.’


\(^{42}\) The note to subclause 34(1) of the Bill states that ‘section 42 (disallowance) and Part 6 (sunsetting) of the Legislative Instruments Act 2003 do not apply to the directions (see sections 44 and 54 of that Act). This is further explained at pages 55–56 of the Explanatory Memorandum to the Bill. Summary information on delegated legislation and disallowance can be found at Appendix 1 to this Bills Digest.


\(^{44}\) Based on advice emailed to the author by a Departmental officer.


\(^{46}\) Based on advice emailed to the author by a Departmental officer.

\(^{47}\) Explanatory Memorandum, Student Identifiers Bill 2013, op. cit., pp. 2–3.

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Special account

Clause 49 of the Bill establishes a Student Identifiers Special Account in accordance with the FMA Act. The account is credited with amounts allocated by the Standing Council as well as any interest, gifts or other amounts received by the Commonwealth in connection with the performance of the CEO’s functions (paragraphs 50(a)-(d)).

Funds in the Special Account must be used for paying the costs incurred in the discharge of the CEO’s functions (paragraph 51(a)), as well as paying remuneration and allowances to persons (paragraph 51(b)).

Annual report

As with other agencies established under the FMA Act, the CEO will be required to submit an annual report on the operations of the Agency (clause 52 of the Bill). The annual report is to be tabled in Parliament and a copy given to the Standing Council (subclause 52(2)).

Other provisions

Part 5 of the Bill deals with other matters including the issue of VET qualifications. Subclause 53(1) prohibits a RTO from issuing a VET qualification or statement of attainment to an individual unless the individual has a student identifier. There is an exception to this rule but it necessitates the involvement of the Commonwealth Minister and the agreement of the Standing Council and must be made by way of legislative instrument (subclauses 53(2) to (4)).

Comment

As noted above under the heading ‘Committee consideration’ both the Human Rights Committee and the Scrutiny of Bills Committee have commented on clause 53 of the Bill.

The Human Rights Committee expressed concern that, because the details of the circumstances in which an exemption may be granted are to be provided by way of legislative instrument, the Committee is not able to assess the Bill’s compatibility with the human right to work under article 6 of ICESCR, until these details or the criteria for establishing them are set out.48

The Scrutiny of Bills Committee commented on the delegation of legislative power. The Committee raised concerns about the lack of detailed explanation for the exemptions and questioned why they were not included in the primary legislation. As a result the Committee has sought a fuller explanation from the Minister.49

49. Senate Standing Committee for the Scrutiny of Bills, Alert Digest No. 5 of 2013, op. cit., p. 91.

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Regulation making power

The regulation making power of the Bill as outlined under clause 57 does not allow regulations to be made in the absence of agreement by the Standing Council (subclause 57(2)).

Comment

The Scrutiny of Bills Committee has also sought the advice of the Minister as to why it is necessary (under subclause 57(3) of the Bill to include the power to make regulations that apply, adopt or incorporate a matter contained in an instrument or other writing as in force from time to time. The Committee has asked the Minister to provide specific and detailed information about the proposed operation of this provision.\(^5\)

Other issues

Integration with NCVER

The Agency will only store information about an individual’s identity and contact details; an individual’s VET activity records will be stored by the NCVER.\(^5\) Therefore the process of producing an authenticated VET transcript will involve cooperation between these two bodies. The Bill does not describe how this will work in practise.

Existing student identifier schemes

Some Australian states already use student numbers to track education achievement. For example:

- Victoria has introduced a Victorian Student Number (VSN).\(^5\) This is a number assigned to school students or VET students until they reach 25 years of age and used to track an individual’s progress through the Victorian education and training system and
- Queensland uses a Learner Unique Identifier (LUI).\(^5\) This is a number assigned to students, usually while they are at school, for the purpose of recording when a student has undertaken enough education or training to achieve a Queensland Certificate of Education (or equivalent).

While these systems are effective, they differ in scope from the student identifier scheme proposed in the Bill in that they do not cover all students who enrol in VET, irrespective of age. The issue is whether state and national student identifiers will coexist and, if so, what additional administration and/or confusion this would create. At the time of writing it was not clear how the states and territories would accommodate a national student identifier.

\(^5\) Ibid., p. 92.
\(^5\) Explanatory Memorandum, Student Identifiers Bill 2013, op. cit., p. 3.
Concluding comments

The Bill represents a substantial change to the VET system in that it introduces a new scheme for the handling of student records, and creates a new organisation to administer the scheme. The government will need to monitor the roll out of the student identifier to assess its usefulness to students, employers and training providers as well as any burden it places on these stakeholders.

The key issue for students will be whether their personal information and training history is adequately protected by the controls provided in the Bill. Committees asked to scrutinise the Bill have raised this issue as well as other issues of concern.

The key issue for the scheme itself is a federal VET system that has, in recent years, fallen short of full and unanimous participation from the states and territories. The student identifier has the potential to deliver a better service to VET clients and much more intelligent and useful data about student pathways. But an outcome where there is one more student identifier system—rather than one only—would be less than ideal.
Appendix 1: Delegated Legislation and Disallowance

Legislative Instruments

The Legislative Instruments Act 2003 (Cth) (LI Act) defines ‘legislative instrument’ as ‘an instrument in writing that is of a legislative character’ that ‘is or was made in the exercise of a power delegated by the Parliament’. 54 An instrument has a legislative character if it determines or alters the content of the law rather than applying the law in a particular case; and if it directly or indirectly affects a privilege or interest, imposes an obligation, or creates, varies or removes an obligation or right. 55

Delegated legislation is required to be laid before each House, thereby becoming subject to parliamentary scrutiny and to the Parliament’s ultimate power of veto. Under section 38 of the LI Act, legislative instruments must be tabled in each House within six sitting days following registration on the Federal Register of Legislative Instruments, even in cases where the instrument is not disallowable. Unless laid before each House within this time limit, a legislative instrument ceases to have effect. 56

Disallowance

Section 42 of the LI Act allows for the disallowance of legislative instruments by Parliament.

A legislative instrument can be subject to disallowance if either a Senator or Member of the House of Representatives moves a motion of disallowance within 15 sitting days of the day that the legislative instrument is tabled. The motion to disallow must be resolved or withdrawn within a further 15 sitting days of the day that the notice of motion is given. However, it should be noted that if there is no notice of motion to disallow a legislative instrument, then there is no debate about its contents.

Legislative instruments that are not subject to disallowance are described under section 44 of the LI Act. Subsection 44(1) of the LI 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.

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55. LI Act, subsection 5(2).