Student Identifiers Bill 2014

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This Bills Digest replaces an earlier version dated 11 April 2014, to provide greater clarity about the response to issues raised by previous inquiries.

It is a revised version of Bills Digest 122, 2012–13, prepared for a previous version of this Bill introduced into the 43rd Parliament.

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Date introduced: 27 March 2014
House: House of Representatives
Portfolio: Industry

Commencement: The formal provisions commence on the day of Royal Assent. Almost all of the remaining provisions commence six months after Royal Assent, or earlier by Proclamation. The only exception is section 53, which is scheduled to come into operation on 1 January 2015.

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/.

Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
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The Bills Digest at a glance

Purpose of the Bill

- This Bill proposes the introduction of a unique student identifier for students undertaking Vocational Education and Training (VET) activities.
- The identifier will allow any student who undertakes nationally recognised VET through an Australian Registered Training Organisation (RTO) to see their complete enrolment and achievement record in a single transcript. It will also allow comprehensive data to be collected on student flows throughout the system and on student outcomes, which will provide a comprehensive basis for research into VET system effectiveness.
- The Bill also creates establishes a Student Identifiers Registrar to administer the identifier scheme.

Key issues

- Previous Committee inquiries into an earlier, virtually identical Bill, raised considerable concerns about the extent to which the Bill protects the privacy of students. It does not appear that these concerns have been addressed in the new Bill.
- Concern has also been expressed about the administrative burden the new identifier will impose on providers and students, particularly in relation to short, low level courses.
- Victoria and Queensland already have their own student identifiers for some students participating in the VET system. It is unclear how these identifiers will be incorporated with the proposed scheme. If this issue remains unaddressed it will leave open the possibility that either students will have two identifiers or that the scheme will not be adopted nationally.
Purpose of the Bill

The purpose of the Student Identifiers Bill 2014 (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 provides for the appointment of a Student Identifiers Registrar (the Registrar) to administer student identifiers.

Structure of the Bill

The Bill has five parts:

• Part 1 contains preliminary provisions including commencement details and definitions
• Part 2 describes how student identifiers will operate 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 Registrar to administer the scheme and makes rules about the Registrar’s functions and operations and
• Part 5 deals with residual matters such as application of the Act.

Each Part commences with a clause describing the Part.

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.1

Although the adoption of a student number spanning all tertiary education is not under consideration, the NCVER continued to raise the benefits of a VET student identifier throughout the 2000s. In December 2009 the Council of Australian Governments (COAG) gave in-principle support, subject to the development of a business case.2

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 2011.3

COAG reiterated its support for the introduction of a unique student identifier in August 2011.4

The final business case was considered and endorsed by COAG’s Standing Council on Tertiary Education, Skills and Employment (SCOTESE), comprising Australian, state and territory ministers, in November 2011.5

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1. L Wheelahan, Bridging the divide: developing the institutional structures that most effectively deliver cross-sectoral education and training, National Centre for Vocational Education Research (NCVER), 2000, p. 46, accessed 31 March 2014.
Department of Education, Employment and Workplace Relations released a Regulation Impact Statement in early 2012 to support COAG’s consideration of the issue.\(^6\)

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.\(^8\)

The Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE) (now the Department of Industry), which was by then responsible for vocational education and training, ran a public consultation process on the unique student identifier from 21 January 2013 to 15 February 2013.\(^9\) The departmental website notes that ‘[i]n response to the issues raised by stakeholders the Student Identifiers Bill 2013 was amended’ but did not describe what these amendments were.\(^10\) Submissions were not made public.

A Bill to implement student identifiers was introduced to the previous Parliament in March 2013, but was not voted on before it lapsed on the dissolution of Parliament.\(^11\) The 2014 Bill contains largely the same provisions as the previous Bill, with the major difference being that it proposes the establishment of a Student Identifiers Registrar rather than an Agency.

**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 5,000 currently registered training organisations (RTOs).\(^12\) This means that students who change providers cannot 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 2015—it is not proposed that the measure operate retrospectively.)

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:

> ... 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.\(^13\)

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\(^9\) 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 (DIISRT) in 2012. DIISRT became the Department of Industry, Innovation, Climate Change, Science, Research and Tertiary Education (DIICCSRTE) in March 2013. The Department subsequently became the Department of Industry in September 2013.


\(^12\) Australian Skills Quality Authority (ASQA), *About RTOs*, ASQA website, accessed 31 March 2014.

Committee consideration

**Senate Education, Employment and Workplace Relations Legislation Committee**

The 2013 Bill was referred to the Senate Education, Employment and Workplace Relations Legislation Committee for inquiry (the inquiry).\(^4\) The Committee reported on 19 June 2013 and, while it recommended passage of the Bill, it suggested:

> While the committee notes DIICCSRTE’s reassurance that the wording in clause 22(2) [clause 23(2) in the 2014 Bill] is adequate, it encourages the Department to re-examine the [Privacy] Commissioner’s suggestion to ensure that the provisions will operate as intended.\(^5\)

Subclause 22(1) of the 2013 Bill provided that an action that contravened specified requirements for the collection, use, disclosure or destruction of information was to be regarded as an interference with the privacy of an individual, within the meaning of the Privacy Act 1988.\(^6\) Subclause 22(2) of the 2013 Bill then provided that if the relevant action was the ‘subject of an investigation by’ the Information Commissioner under Part V of the Privacy Act, then the entity that performed that action is taken to be an organisation within the meaning of that Act (if the entity is not already an agency or organisation within the meaning of the Privacy Act).\(^7\) This ensures that the Information Commissioner can treat the entity in the same manner as an organisation covered by the Privacy Act, including by investigating and conciliating complaints made about, and obtaining information and documents from, that entity.

In a submission on the 2013 Bill, the Privacy Commissioner had suggested, that to enable all the powers of Part V of the Privacy Act to be applied to a relevant entity, as was the apparent intention of the Bill, the wording of subclause 22(2) should be amended to refer to the subject ‘of a complaint to’, rather than ‘an investigation by’ the Commissioner.

Responding to the Information Commissioner’s concerns, subclause 23(2) of the current Bill (which is otherwise equivalent to subclause 22(2) of the 2013 Bill) provides for a relevant entity that ‘is the subject of a complaint to, or an investigation by’ the Information Commissioner to be taken to be an organisation under the Privacy Act.

Coalition Senators made additional comments in which they recommended that the Bill be amended in line with the Privacy Commissioner’s recommendations, as well as strengthening other privacy provisions and ensuring that the concerns of the Human Rights and Scrutiny of Bills Committees were adequately addressed. They also recommended amending the Bill to include only Certificate 3 and above level qualifications, in order to limit the administrative burden on providers and students in relation to short, stand-alone qualifications.\(^8\)

The Australian Greens submitted a dissenting report with 11 recommendations for changes, mainly relating to strengthening the privacy provisions. In particular, they considered that, at a minimum, the Bill needed an objects clause articulating details of its purpose, and an effective and accessible regime of offences and penalties for privacy breaches.\(^9\)

**Senate Standing Committee for the Scrutiny of Bills**

In its *Alert Digest No. 5 of 2013* the Senate Standing Committee for the Scrutiny of Bills examined the provisions of the 2013 Bill and raised concerns about:\(^10\)

- protection of individual privacy (in particular clauses 18 and 25 of the 2014 Bill)
- authorisation of collection and use by regulation (clause 22 of the 2014 Bill)

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16. Privacy Act 1988, accessed 10 April 2014. *‘Interferences with privacy’ are detailed at Division 1 of Part III of the Privacy Act.*
17. ‘Organisation’ is defined at section 6C of the Privacy Act. ‘Agency’ is defined at section 6.
• merits review (clause 27 of the 2014 Bill)
• exemptions in the issuing of VET qualifications (clause 53(1) of the Bill) and
• regulation making powers (clause 57 of the Bill).

The Committee sought further information from the former Minister in relation to these concerns. The Minister’s response and the Committees consideration are included in the Seventh Report of 2013. The Committee considered that the additional information provided should be included in the Explanatory Memorandum, but left it to the Senate to determine whether the Minister sufficiently addressed the concerns about privacy.

The current Bill has not yet been considered by the Scrutiny of Bills Committee.

Parliamentary Joint Committee on Human Rights
In its Sixth Report of 2013, the Parliamentary Joint Standing Committee on Human Rights (Human Rights Committee) examined the 2013 Bill (amongst others).

Overall the Committee considered that ‘the [B]ill 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 [sic] 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.

The Committee considered the former Minister’s response to its concerns in its First Report of the 44th Parliament. The Committee remained concerned that certain aspects of the privacy provisions had not been sufficiently addressed:

The response does not explain how the application of a lower standard (‘reasonably necessary’) in section 20 of the bill (clause 21 of the 2014 Bill) is compatible with the right to privacy which requires limitations to be ‘necessary’.

... The committee reiterates its concerns that the open-ended provision in section 21 [clause 22 of the 2014 Bill] that further permitted purposes for the collection, use or disclosure of the student identifier may be authorised by the regulations is in contrast with the argument in the statement of compatibility and explanatory statement that there are tight controls on the use of student identifiers.

The current Bill has not yet been considered by the Human Rights Committee.

Policy position of non-government parties/independents
As the former Labor Government introduced a virtually identical Bill, presumably the Labor Party will support this initiative.

The Greens recommended that the 2013 Bill not be passed without amendment in their dissenting report from the Senate inquiry, and the 2014 Bill does not appear to have adopted any of their recommended changes, apart from altering the wording for subclause 23(2) (see discussion under ‘Committee consideration’ above). It therefore appears likely that the Greens would oppose the Bill.

22. Ibid., p. 360.
24. Ibid., p. 65.
26. Ibid., p. 204.
27. Ibid., p. 205.
Position of major interest groups

Fifteen submissions were made to the former Senate inquiry.28

The NCVER supported the 2013 Bill, confirming that it:

... 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.29

Bluedog training, a VET provider, raised concerns about the administrative impact of obtaining identifiers for students who undertake very short ‘stand-alone’ courses such as the Responsible Service of Alcohol certificate or the General Construction Induction course (the ‘white card’).30 These courses can be as short as a half day and are typically undertaken onsite or online, rather than at the premises of the provider. They do not link with other training options and are also often a pre-employment requirement. Therefore it is expected that many of the students undertaking these courses will not have previously obtained an identifier, and the course is often scheduled on the first day of employment, so there is limited time to organise for them to obtain one in advance of training.

A number of unions took an interest in the 2013 Bill. The submission from the National Tertiary Education Union (NTEU) noted that privacy would be a key issue, and expressed interest in:

... 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.31

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

• why fees were not explicitly excluded in the Bill despite an intention (expressed in the Explanatory Memorandum) that there be no fees applicable32
• 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.33

The Northern Territory Department of Education and Children’s Services expressed some concern that Indigenous students from remote and very remote areas may have difficulty providing the evidence required to be issued a student identifier and this may inhibit their access to VET courses. The Department suggested

28. See complete list of submissions at the Senate Education, Employment and Workplace Relations Committee Student Identifiers Bill 2013 homepage.
consideration be given to recognising alternative forms of identity documents such as letters from community leaders or councils.\textsuperscript{34}

The Office of the Australian Information Commissioner (OAIC) wrote that it had provided advice on the development of the student identifier through a memorandum of understanding with the Department. The OAIC recommended some minor amendments to the Bill to ensure that it interacted properly with the Privacy Act 1988. It also recommended (and the Department agreed) that measures be taken to ensure that individuals receive privacy notices consistent with the Australian Privacy Principles that commenced in March 2014.\textsuperscript{35} Specifically, the OAIC suggested the addition to the Bill of a provision about requirements for privacy notices.

While neither the 2013 or 2014 Bills specifically include a provision concerning privacy notices, in its submission to the 2013 inquiry, the DIICCSRTE said that individuals would be informed through a privacy notice as to how, to whom and for what purpose their USI may be disclosed. In addition, a privacy notice template would be provided to all RTOs and VET admissions bodies for use on enrolment forms.\textsuperscript{37}

Submissions by the Police Federation and the Victoria Police raised concerns about the risks to privacy, and hence security, of police officers having to provide identity documents to undertake VET courses, and then having their information stored by an external agency.\textsuperscript{38} In particular, it was considered this may pose a threat to those working undercover or in similarly sensitive areas.

A subsequent newspaper article suggested these concerns had been addressed, but there is no specific provision in the Bill on this issue.\textsuperscript{39} It may be that it is envisaged this will be addressed through legislative instruments granting exemptions.

**Financial implications**

The unique student identifier was included in the Government’s *Mid-Year Economic and Fiscal Outlook* (MYEFO) 2012–13.\textsuperscript{40}

According to the Explanatory Memorandum for the 2013 Bill, the overall cost of the scheme from 2012–13 to 2015–16 was to be $21.6 million, of which:

- $6.7 million was to resource the proposed Student Identifier Agency (over three years from 1 July 2013)
- $7.2 million was for a departmental taskforce to oversee implementation and
- $7.7 million was to support information technology and capital requirements.\textsuperscript{41}

These costs have now been revised slightly, as the cost of establishing the Registrar is budgeted to be slightly lower than the previously proposed Agency. This means the total cost is now estimated to be $20.8 million over the period 2012–13 to 2016–17, financed from an existing allocation for VET within the Department of Industry.\textsuperscript{42} Interestingly, the majority of the cost ($15.8 million) is in the first two years, 2012–13 and 2013–14, and hence has presumably already been expended.


\textsuperscript{35} Information on the privacy law reforms can be accessed at: Office of the Australian Information Commissioner (OAIC), ‘Privacy law reform’, OAIC website, accessed 10 April 2014.


\textsuperscript{39} ‘Student spies not like us’, *The Adelaide Advertiser*, 17 June 2013, p. 9, accessed 7 April 2014.

\textsuperscript{40} W Swan and P Wong, *Mid-year economic and fiscal outlook 2012–13*, op. cit., p. 257.


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.43

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 International Covenant on Economic, Social and Cultural Rights (ICESCR) and protects the right to privacy under Article 17 of the International Covenant on Civil and Political Rights (ICCPR). It considers any potential limitations to these rights are reasonable, necessary and proportionate in achieving the Bill’s legitimate policy objectives.44

As noted above, the Human Rights Committee expressed some concerns about the 2013 Bill, which had identical privacy provisions to this Bill.

Key issues and provisions

The main issue concerns the scope of this new measure. 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 major elements of the Bill (outlined below) relate to:

• the nature of the student identifier scheme and the privacy considerations surrounding its introduction and
• the establishment of a Registrar to manage this initiative and related governance arrangements.

Assignment of student identifiers

Division 2 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 9). Power to assign a student identifier is held by the Registrar. Provided the Registrar is satisfied that the identity of the person is correct and that a student identifier has not already been assigned to them, the Registrar must assign one (clause 10).

The Registrar has broad powers to resolve problems or disputes by revoking and/or assigning new student identifiers under clause 12. An individual who is unhappy with a decision of the Registrar (made under clauses 10 and/or 12 of the Bill) has recourse to the Administrative Appeals Tribunal (clause 13).

Division 3 of Part 2 of the Bill (clauses 14-15) enables the Registrar 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 Registrar (subclause 14(2)). If the Registrar refuses to comply with the request to verify or give the student identifier, written notice must be given, including reasons for the refusal (subclause 15(2)).

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.45

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.

43. The Statement of Compatibility with Human Rights can be found at page 4 of the Explanatory Memorandum to the Bill.
45. The Scrutiny of Bills Committee noted that the 2013 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’. 
Destruction of personal information

Subclause 11(1) of the Bill provides that any personal information collected by an RTO, a VET admission body or other entity for the purpose of applying for a student identifier (under clause 9 of the Bill) must be destroyed as soon as practicable after the application is made or the information is no longer needed for that purpose (unless the entity is required to keep the information by law – subclause 11(2)).

Protection of records

The Registrar must take ‘reasonable steps’ to protect student identifier records from misuse, interference and loss and from unauthorised access, modification and disclosure (subclause 16(1)). The same requirements also apply to any other entity that keeps records of student identifiers (subclause 16(2)).

Circumstances allowing collection, use or disclosure

Clause 17 of the Bill limits the collection, use or disclosure of a student identifier to certain circumstances namely those set out in clauses 18 to 22 (described below). Any other collection, use or disclose would be a breach of this clause and an interference with the privacy of the individual for the purposes of the Privacy Act (subclause 23(1)).

Under subclause 18(1) of the Bill the Registrar 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 student identifier for the purposes of research related to education or training, or research required by the Ministerial Council (subclause 18(2)).

An individual must consent to the collection, use or disclosure of a student identifier by an entity, however consent may be implied (subclause 19(1)).

Clauses 20 and 21 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 22 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 6 of Part 2 of the Bill contains further provisions relating to its interaction with the Privacy Act. In particular, clause 23 extends the application of the Privacy Act by providing that if an entity breaches clauses 11, 16 or 17 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 previously raised concerns about privacy issues.

In relation to clauses 18 and 25 of the Bill, the Senate Scrutiny of Bills Committee 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 requested a ‘more detailed explanation from the Minister as to why this approach is considered necessary and appropriate’ and suggested that the Information Commissioner play a role in the development and review of protocols under clause 24 of the Bill if protocols are not scrutinised by the Parliament. At the request of the Committee the additional information provided to it has been included in the Explanatory Memorandum (see pages 45 and 46), however as noted above, the Committee left it to the Senate to determine whether this sufficiently addressed the privacy concerns.

In relation to clause 22 of the Bill, the Scrutiny of Bills Committee noted that page 48 of the Explanatory Memorandum to the 2013 Bill listed the circumstances to be dealt with by regulation. However, the Committee was still concerned that matters that may infringe on a person’s privacy were to be included in regulations and

46. The Ministerial Council is defined as the Council of Australian Governments (COAG) body dealing with training and skills if one exists, or otherwise, a body prescribed by the regulations (clause 4 of the Bill).

47. Scrutiny of Bills Committee, Alert Digest No. 5 of 2013, op. cit., p. 89.
not in primary legislation. As regulations are disallowable instruments the Committee left ‘the appropriateness of the overall approach to the Senate as a whole’. 48

As noted earlier, the Human Rights Committee raised concerns in relation to clauses 21 and 22 of the Bill with the Minister, and did not consider these concerns were adequately addressed by the Minister’s response.

**Authenticated VET transcripts**

Part 3 of the Bill (clauses 27-29) describes the proposed process for giving access to an ‘authenticated VET transcript’, which is defined in clause 4 as:

> … 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.

Either an individual (clause 27) or a RTO or VET-related body (clause 28) 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 28(3)** provides that the Registrar must not give access unless access controls have been set by the individual.

The Registrar may refuse to give access to a transcript. Possible grounds for refusal are not listed in the Bill. However, the Registrar’s refusal must be in writing and must set out reasons for the decision (subclauses 27(3) and 28(4)).

**Comment**

As noted above, the Scrutiny of Bills Committee previously expressed concern that there does not appear to be any merits review of a refusal by the Registrar under clause 27 of the Bill. The Committee asked the Minister to further consider including more guidance on the exercise of this discretion, but this does not appear to have been incorporated into the new Bill. 49 As requested by the Committee, additional information has been provided at page 52 of the Explanatory Memorandum.

**Student Identifier Registrar**

Part 4 of the Bill deals with the establishment and appointment of the Registrar (Division 2), staff and consultants to support the work of the Registrar (Division 3), the creation and operations of a special account (Division 4) and the requirement for an annual report (Division 5).

**Registrar**

The 2013 Bill proposed the establishment of a Student Identifier Agency to be a stand-alone organisation rather than a division of the responsible Department. The current Bill instead proposes the creation of a Registrar only, who is appointed under the same provisions as were previously proposed for the Chief Executive Officer of the Agency. Staff to support the Registrar will be provided by the department.

It is unclear whether this change is for financial reasons or to adhere to the advice of the Department of Finance 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. 50

The rationale previously presented for creating a separate agency was that its role in relation to private information justified it having a separate identity from the department.

**Functions and operations**

The functions of the Registrar are set out in clause 32 of the Bill.
The Registrar is to be appointed by the Minister for a period of up to five years at a time (clause 35 of the Bill), after consultation with the Ministerial Council (subclause 34(2)). Clause 33 states that the Registrar operates under the direction of the Minister, again, following consultation with the Ministerial Council (subclause 33(3)). The Registrar’s remuneration will be determined by the Remuneration Tribunal subject to the Remuneration Tribunal Act 1973 (subclause 37(1)).

The Registrar may engage consultants to assist in the performance of his or her functions (clause 47).

It is proposed that the Registrar will commence operations in July 2014, with the scheme fully functional from 1 January 2015.

Special account
Clause 48 of the Bill establishes a Student Identifiers Special Account in accordance with the Financial Management and Accountability Act 1997 (FMA Act). The account is credited with amounts allocated by the Ministerial Council as well as any interest, gifts or other amounts received by the Commonwealth in connection with the performance of the Registrar’s functions (paragraphs 49(a)-(d)).

Funds in the Special Account must be used for paying the costs incurred in the discharge of the Registrar’s functions (paragraph 50(a)), as well as paying remuneration and allowances to persons (paragraph 50(b)).

Annual report
As with other agencies established under the FMA Act, the Registrar will be required to submit an annual report on the operations of the Registrar (clause 51 of the Bill). The annual report is to be tabled in Parliament and a copy given to the Ministerial Council (subclause 51(2)).

Other provisions
Part 5 of the Bill deals with other matters including the issue of VET qualifications. Subclause 53(1) prohibits an RTO from issuing a VET qualification or statement of attainment to an individual unless the individual has a student identifier. There is provision to set out exceptions to this rule but it necessitates the involvement of the Commonwealth Minister and the agreement of the Ministerial Council and must be made by way of legislative instrument (subclauses 53(3) and (4)).

Comment
Both the Human Rights Committee and the Scrutiny of Bills Committee have previously 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 rights to work under Article 6 of ICESCR and to education under Article 13 of the ICESCR, until these details or the criteria for establishing them are set out.

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 sought a fuller explanation from the Minister.

The Minister responded that as a result of concerns raised by police forces and organisations (as mentioned above), and by the Department of Defence in relation to national security, about demographic and qualifications information being held by NCVER, it was agreed that there would need to be provision for specific providers or categories of students to be exempted from the requirements of the proposed scheme. It was also anticipated that some providers may not be ready to implement the scheme in time and therefore may need an exemption for a period of time. In view of the specific nature of the likely exemptions, and that in some cases they may be

51. The note to subclause 33(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 page 55 of the Explanatory Memorandum to the Bill.
56. Senate Joint Committee for the Scrutiny of Bills, Alert Digest No. 5 of 2013, op. cit., p. 91.
time limited, it was considered more appropriate that these exemptions be provided by legislative instrument rather than in the Bill.\(^{57}\)

The Committee requested that key information from this response be included in the Explanatory Memorandum.\(^{58}\) Additional information has been included at page 61 of the Explanatory Memorandum for the current Bill on the rationale for exemptions to be made through legislative instruments rather than through the primary legislation.

**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 Ministerial Council (subclause 57(2)).

**Comment**

The Scrutiny of Bills Committee 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 asked the Minister to provide specific and detailed information about the proposed operation of this provision.\(^{59}\)

The Minister’s response noted that the VET sector is not governed by Commonwealth legislation in all states and that consistent standards are maintained through the Australian Quality Training Framework (AQTF) which is governed by the Ministerial Council. Regulations made under clause 57 may refer to AQTF standards. In the absence of subclause 57(3), subsection 14(2) of the Legislative Instruments Act 2003 (Cth) would prohibit the regulation referring to, or incorporating, the AQTF as it is amended.\(^{60}\)

The Committee requested this information be included in the Explanatory Memorandum.\(^{61}\) The Explanatory Memorandum for the current Bill includes this information on page 64.

**Other issues**

**Integration with NCVER**

The Registrar will only store information about an individual’s identity and contact details; an individual’s VET activity records will be stored by the NCVER.\(^{62}\) 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 practice.

**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).\(^{63}\) This is a number assigned to school students or VET students until they reach 25 years of age and it is used to track an individual’s progress through the Victorian education and training system and

- Queensland uses a Learner Unique Identifier (LUI).\(^{64}\) 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

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58. Ibid., p. 367.
59. Ibid., p. 92.
60. Ibid., p. 368.
61. Ibid., p. 369.
62. Explanatory Memorandum, Student Identifiers Bill 2013, op. cit., p. 3.
63. Victorian Government, ‘*Victorian student number: information for providers and their students*’, Victorian Curriculum and Assessment Authority website, accessed 7 April 2014.
64. Queensland Government, ‘*QCE registration and learning accounts*’, Queensland Studies Authority website, accessed 7 April 2014.
the time of writing it was not clear how the states and territories would accommodate a national student identifier.

**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 Registrar 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 2013 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.
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