STUDENT IDENTIFIERS AMENDMENT (ENHANCED STUDENT PERMISSIONS) BILL 2019

ADDENDUM TO THE EXPLANATORY MEMORANDUM

(Circulated by authority of the Minister for Employment, Skills, Small and Family Business, Senator the Honourable Michaelia Cash)
This Addendum responds to concerns raised by the Senate Standing Committee for the Scrutiny of Bills in Scrutiny Digest No. 10, dated 5 December 2019, and Scrutiny Digest No. 1, dated 5 February 2020.

Schedule 1 – Amendments

*Student Identifiers Act 2014*

*Items 14 and 15 – section 53*

After the second full paragraph on page 11 (beginning with the words: ‘The Commonwealth Minister will continue’ ...), insert:

The amendments proposed by the Bill do not significantly alter existing arrangements under section 53 of the Act. Rather, the amendments clarify that there is an express power and process to seek an exemption and to clarify the Registrar's powers to grant an exemption. That is, the amendments to section 53 of the Act clarify the procedural aspects of seeking and granting an exemption. As is the case for the current law, the amendments will require the Student Identifiers Registrar, before granting an exemption, to have regard to any matters set out in a legislative instrument made by the Commonwealth Minister.

Prior to the amendments in the Bill, section 53 of the Act relevantly provides that a RTO must not issue VET qualification or VET statement of attainment to an individual if the individual has not been assigned a student identifier, unless an "issue" applies. Currently, the Commonwealth Minister has the power to, with the agreement of the Ministerial Council, make a legislative instrument that specifies such "issues". The effect of the existing provision is to allow the legislative instrument to outline cases where an exemption to the requirement to hold a student identifier applies.

An exemption decision simply dictates whether an RTO can issue a VET qualification or VET statement of attainment where the student does not have a student identifier.

The Act is a relatively new piece of legislation and its application to individuals' circumstances is evolving. Including the matters in a legislative instrument that the Student Identifiers Registrar is required to take into account when granting an exemption, ensures the student identifier regime continues to be able to adapt to the changing circumstances of students. This is important, since new and genuine reasons may emerge, justifying a student's exemption from the requirement to be issued a student identifier. The legislative instrument making power gives the Commonwealth Minister the flexibility to be able to respond to those new circumstances in a manner
that is beneficial for students, while ensuring the ongoing integrity of the student identifiers regime.

The making of legislative instruments by the Commonwealth Minister under the Act must be agreed to by the Ministerial Council as well as undergoing Parliamentary scrutiny.

Section 53 of the Act operates primarily as a restriction imposed on RTOs in respect of when they can and cannot issue a VET qualification or VET statement of attainment. Importantly, the ultimate determinative issue from an RTO's or student's point of view is whether or not the qualification or statement of attainment can be issued.

If a student seeking an exemption to the requirement to hold a student identifier is not granted an exemption, rather than seeking costly and potentially protracted review through the Administrative Appeals Tribunal (AAT) in relation to the exemption decision alone, the student will be able to achieve their objective of receiving their qualification or statement of attainment by progressing through the simple process of applying for a student identifier. In this context, an exemption from the requirement to hold a student identifier is simply a procedural step along the way to an ultimate outcome of receiving a qualification or statement of attainment.

After the third full paragraph on page 11 (beginning with the words: ‘Exclusion of merits reviews...’), insert:

It is important to ensure the limited resources of the AAT are reserved for matters where genuine issues that turn on merits are in dispute. It is anticipated the matters that will be included in the legislative instrument will be matters that will not lend themselves to factual dispute. Judicial review, including under the Administrative Decisions (Judicial Review) Act 1977, will remain available to students or affected RTOs where the exemption decision has been made involving an error of law.

A merits review process would be disproportionate to the nature of the decision and the instances of exemption requests. The number of individuals seeking an exemption in the VET sector under the Act is negligible in comparison to the number of student identifiers issued by the Student Identifier Registrar. Making decisions of the Student Identifiers Registrar subject to merits review would not be an efficient use of Commonwealth resources, as the cost of administering a merits review process would be greatly disproportionate to the number of individuals requesting an exemption. Further, external merits review at AAT may delay the outcome of the request for an individual by a number of years, thereby delaying their award conferral and impacting their prospects of obtaining meaningful employment and greater career aspirations.

As the Student Identifiers Registrar is obliged to make decisions based on fair and accountable reasoning, the decision to deny or allow an exemption would
be carefully considered and denied only on appropriate grounds. As such, it would be time-consuming and costly to engage in de novo review of these decisions, and not highly beneficial or protective for the individuals requesting an exemption.

The student identifiers regime is a product and system designed with the benefits to students considered at every stage of the application process, to support their personal choices and help Australians maintain their lifelong learning in order to pursue a meaningful and purposeful career.