

## **EXPLANATORY STATEMENT**

### *Student Identifiers Act 2014*

#### *Student Identifiers Amendment (Authorised Collection, Use or Disclosure - Regional University Centres Program) Regulations 2021*

#### **Authority**

Section 57 of the *Student Identifiers Act* (the Act) empowers the Governor-General to make regulations prescribing matters either required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendments to the *Student Identifiers Regulation 2014* (the Principal Regulations) made by this instrument rely on this provision.

#### **Legislative background**

The Act provides for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015, and for higher education students from 6 March 2020. The Act sets out how the identifier will be assigned, collected, used and disclosed and provides for the creation of an authenticated transcript of an individual's record of nationally recognised VET training undertaken or completed after 1 January 2015.

Section 22 of the Act provides that regulations may authorise an entity to collect, use or disclose a student identifier of an individual.

The Principal Regulations provide for the authorisation of the collection, use and disclosure of student identifiers by certain entities, prescribe information that must be contained within an authenticated VET transcript, and prescribe the kinds of conduct for the purposes of subsection 21(f) of the Act.

#### **Purpose and operation**

The *Student Identifiers Amendment (Authorised Collection, Use or Disclosure - Regional University Centres) Regulations 2021* (the Amendment Regulations) amend the Principal Regulations to provide authorisation for the collection, use or disclosure of student identifiers by bodies corporate to whom a grant has been made under the Regional University Centres Program. The Regional University Centres Program is a grants program for the purposes of Part 2-3 of the *Higher Education Support Act 2003* and is specified in subsection 7C.1.1 of the *Other Grants Guidelines (Education) 2012*.

This authorisation applies in addition to the existing authorisations in the Principal Regulations.

The proposed authorisation is required to enable Regional University Centres (RUCs) (which are located in all states and the Northern Territory and provide support and campus-style

facilities for students who are based in regional or remote areas) to collect, use and disclose student identifiers of registered students to the Department of Education, Skills and Employment (DESE) for the purposes of assisting DESE to administer, or to undertake policy development in relation to, the Regional University Centres Program.

The ability to analyse student identifier data relating to RUCs will enable DESE to track long-term student outcomes through existing data management platforms which will be integral to measuring and evaluating the success of the Regional University Centres Program.

Enabling RUCs to collect, use and disclose student identifier data will allow DESE to link student identifier data to existing data management platforms to provide further detailed information, including:

- Student characteristics
- Course/s of study undertaken by students attending a RUC
- Attrition and completion rates for students attending a RUC
- Quality Indicators for Learning and Teaching outcomes of students attending a RUC
- Comparisons in the outcomes of students studying at a RUC relative to other regional/remote students not attending a RUC.

## **Commencement**

The Amendment Regulations will commence the day after they are registered on the Federal Register of Legislation.

## **Consultation**

In scoping viable methods for linking and aggregating student data, the University Statistics Team, Market Analysis and Data Branch, within DESE was consulted about possible methods of linking data collected by RUCs to data currently collected by DESE. In addition, the VET Data Policy and Streamlining Team, VET Information Branch within DESE was consulted on the proposed approach.

The Office of the Student Identifiers Registrar was consulted about prospective approaches to implement the Amendment Regulations.

A number of prominent and representative RUCs, one of which comprises a network of 12 other RUCs, were also notified via email of DESE's intention to amend the *Student Identifiers Regulations 2014* to provide authorisation for RUCs to collect student identifiers and disclose them to the Department. The RUCs were supportive of this approach.

## **Detailed explanation of the *Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Regional University Program) Regulations 2021***

### Section 1 – Name

This section provides that the title of the Amendment Regulations is the *Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Regional University Program) Regulations 2021*.

### Section 2 – Commencement

This section provides for the commencement of the Amendment Regulations as the day after they are registered on the Federal Register of Legislation.

### Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Student Identifiers Act 2014* (the Act).

### Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Amendment Regulations is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to the Amendment Regulations has effect according to its terms.

### Schedule 1 – Amendments

#### **Item 1 – Section 4**

This item inserts the definition of ‘Regional University Centres Program’ in section 4 of the Principal Regulations, being the program specified in subsection 7C.1.1 of the *Other Grants Guidelines (Education) 2012*.

#### **Item 2 – after section 15**

This item inserts new section 15A into the Principal Regulations after existing section 15. Section 15A provides authorisation for bodies corporate to whom a grant has been made under the Regional University Centres Program (referred to as ‘RUCs’) to collect, use or disclose a student identifier of an individual for the purposes of assisting the Department of Education, Skills and Employment (DESE) to administer, or to undertake policy development in relation to, the Regional University Centres Program. Under new section 15A, RUCs can only disclose student identifiers to the Secretary of, or an APS employee in, DESE.

**Item 3 - Amendments made by the***Error! Use the Home tab to apply ShortT to the text that you want to appear here.*

This item specifies that paragraph 15A(2)(b), as inserted by the Amendment Regulations, applies in relation to student identifiers collected before, on or after the commencement of the Amendment Regulations.

## **Statement of Compatibility with Human Rights**

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

*Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Regional University Program) Regulations 2021*

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

### **Overview of the Legislative Instrument**

The *Student Identifiers Amendment (Authorised Collection, Use or Disclosure – Regional University Program) Regulations 2021* (the Amendment Regulations) amend the *Student Identifiers Regulation 2014* (the Principal Regulations) to provide authorisation for the collection, use or disclosure of student identifiers by bodies corporate to whom a grant has been made under the Regional University Centres Program. The Regional University Centres Program is a grants program for the purposes of Part 2-3 of the *Higher Education Support Act 2003* and is specified in subsection 7C.1.1 of the *Other Grants Guidelines (Education) 2012*.

This authorisation applies in addition to the existing authorisations in the Principal Regulations.

The proposed authorisation is required to enable Regional University Centres (RUCs) (which are located in all states and the Northern Territory and provide support and campus-style facilities for students who are based in regional or remote areas) to collect, use and disclose student identifiers of registered students to the Department of Education, Skills and Employment (DESE) for the purposes of assisting DESE to administer, or to undertake policy development in relation to, the Regional University Centres Program.

The ability to analyse student identifier data relating to RUCs will enable DESE to track long-term student outcomes through existing data management platforms which will be integral to measuring and evaluating the success of the Regional University Centres Program.

Enabling RUCs to collect, use and disclose student identifier data will allow DESE to link student identifier data to existing data management platforms to provide further detailed information, including:

- Student characteristics
- Course/s of study undertaken by students attending a RUC
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## **Human rights implications**

### Right to privacy

The Amendment Regulations engage the right to privacy, under Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR), which provides that no one shall be subjected to arbitrary or unlawful interference with their privacy, family, home or correspondence, nor to unlawful attacks on their honour and reputation and that everyone has the right to the protection of the law against such interference or attacks.

For the interference with privacy not to be ‘arbitrary’, any interference with privacy must be in accordance with the provisions, aims and objectives of the ICCPR and should be reasonable in the particular circumstances. Reasonableness, in this context, incorporates notions of proportionality to the end sought and necessity in the circumstances.

The right to privacy can be permissibly limited in order to achieve a legitimate objective and where the limitations are lawful and not arbitrary. Authorised disclosure of personal information invokes the exception in Australian Privacy Principle (APP) 6.2(b) in Schedule 1 to the *Privacy Act 1988* (the Privacy Act), which permits the disclosure of an individual’s personal information for a secondary purpose where the disclosure is authorised by law. The Privacy Act regulates the collection, use, storage and collection of personal information. Information received from RUCs will be dealt with strictly in accordance with these statutory requirements.

The Amendment Regulations may limit the privacy of an individual as it authorises bodies corporate to collect and use student identifiers and disclose student identifiers to the Secretary of, or an APS employee in, DESE.

The legitimate objective for the authorisation is to assist DESE in administering, or undertaking policy development in relation to, the Regional University Centres Program.

The proposed authorisation is required to enable RUCs to collect, use and disclose student identifiers of registered students to DESE for the purposes of assisting DESE to administer, or to undertake policy development in relation to, the Regional University Centres Program.

Enabling RUCs to collect, use and disclose student identifier data will allow DESE to link student identifier data to existing information management platforms to provide further detailed information, including student characteristics and attrition rates as well as track long term student outcomes which will be integral to measuring and evaluating the success of the Regional University Centres Program.

The Amendment Regulations provides safeguards and accountability mechanisms to protect against arbitrary interferences with privacy. The bodies corporate are only permitted to collect, use or disclose student identifiers for the purposes of assisting DESE to administer, or undertake policy development in relation to, the Regional University Centres Program. The Amendment Regulations also only permits bodies corporate to disclose student identifiers to the Secretary of, or an APS employee in, DESE. The Amendment Regulations does not displace the protections provided for personal information under the Privacy Act or equivalent State and Territory legislation. Therefore, bodies corporate that collect, use or disclose a student identifier will also have to comply with the requirements of relevant privacy legislation.

The Amendment Regulations are compatible with the right to privacy as the limitations to the right of privacy are reasonable, necessary and proportionate to achieving a legitimate objective and ensures that appropriate safeguards and limitations apply to bodies corporate that collect, use and disclose student identifiers.

### **Conclusion**

The Amendment Regulations are compatible with human rights because to the extent that the measures may limit human rights, these limitations are reasonable, necessary and proportionate.

**Alan Tudge**  
**Minister for Education and Youth**