

# EXPLANATORY STATEMENT

## *Student Identifiers (Exemptions) Amendment Instrument 2016*

### **Summary**

The *Student Identifiers (Exemptions) Instrument 2014* (the Principal Instrument) is made by the Assistant Minister for Vocational Education and Skills (the Minister) under subsection 53(3) of the *Student Identifiers Act 2014* (the Act).

The purpose of the *Student Identifiers (Exemptions) Amendment Instrument 2016* (Amendment Instrument) is to extend the duration of the exemption contained in subsection 6(4) of the Principal Instrument.

### **Background**

The Act and the *Student Identifiers Regulation 2014* (the Regulation) provide for the introduction of a student identifier for individuals undertaking nationally recognised vocational education and training (VET) from 1 January 2015. The Act and Regulation set out how the student 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 training undertaken or completed after 1 January 2015.

- On 16 December 2014, the Commonwealth Minister made the Principal Instrument pursuant to subsection 53(3) of the Act. Subsection 4(1) of the Act defines 'Commonwealth Minister' as the Minister administering the Act.
- Subsection 53(1) of the Act specifies that a registered training organisation must not issue a VET qualification or a VET statement of attainment to an individual unless the individual has been assigned a student identifier. Subsection 53(2) of the Act specifies that subsection 53(1) does not apply to an issue specified by the Minister under subsection 53(3).
- Subsection 6(4) of the Principal Instrument contains an exemption to this requirement that allows registered training organisations who deliver VET courses that last one day or less, to issue a VET qualification or VET statement of attainment to individuals who are unable to obtain a student identifier before the completion of the VET course. This exemption is limited in duration and was due to expire on 1 January 2016.
- Registered training organisations caught by the exemption requested that the exemption be extended. The *Student Identifiers (Exemptions) Amendment Instrument 2015 (No. 2)* extended this exemption for a year to 1 January 2017.
- The Amendment Instrument will extend the duration of the exemption in subsection 6(4) for a further year to 1 January 2018.

### **Authority**

Subsection 53(3) of the Act provides that the Commonwealth Minister may, by legislative instrument, specify an issue to which subsection 53(1) does not apply.

Subsection 33(3) of the *Acts Interpretation Act 1901* provides that 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.

## **Consultation**

Subsection 53(4) of the Act requires the Minister to obtain the agreement of the Ministerial Council (currently the Industry and Skills Council) to the making of an instrument under subsection 53(3). Agreement of the Industry and Skills Council to the Amendment Instrument was obtained on 9 December 2016.

No additional consultation was undertaken as the Amendment Instrument is minor and machinery in nature and does not substantially alter existing arrangements; rather it extends the current arrangements for a further year.

## **Explanation of provisions**

### **Section 1 – Name of instrument**

Section 1 sets out the name of the instrument which is the *Student Identifiers (Exemptions) Amendment Instrument 2016*.

### **Section 2 – Commencement**

Section 2 is the commencement provision which provides that the instrument commences on the day after it is registered on the Federal Register of Legislation.

### **Section 3 - Authority**

Section 3 provides that the authority to make the Amendment Instrument comes from subsection 53(3) of the *Student Identifiers Act 2014*.

### **Section 4 – Amendment**

Section 4 provides that the Amendment Instrument amends the Principal Instrument as set out in Schedule 1.

## **SCHEDULE 1**

### **Item 1**

Item 1 of Schedule 1 provides for reference to “2017” to be replaced with reference to “2018” in Part 2, subsection 6(4) of the Principal Instrument. This will extend the duration of the exemption in this subsection for a further year from January 2017 to January 2018.

## Statement of Compatibility with Human Rights

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

### *Student Identifiers (Exemptions) Amendment Instrument 2016*

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 purpose of the instrument is to amend the *Student Identifiers (Exemptions) Instrument 2014 (F2014L01754)* which provides exemptions for registered training organisations to issue VET qualifications or VET statements of attainment to individuals without a student identifier.

The instrument extends the duration of the exemption contained in subsection 6(4) of the *Student Identifiers (Exemptions) Instrument 2014* for a further year, by replacing the word ‘2017’ with the word ‘2018’ in that subsection.

#### **Human rights implications**

The Bill engages the following Human Rights:

- The Right to Education – Article 13 of the *International Covenant on Economic, Social and Cultural Rights 1966 (ICESCR)*
- The Right to Work – Article 6 of the ICESCR

#### *Right to Education*

The instrument engages the right to education contained in Article 13 of the ICESCR. In particular paragraph 13(2)(b) of the ICESCR provides:

*‘b. Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education’*

Subsection 53(1) of the *Student Identifiers Act 2014* (the Act) provides that a registered training organisation must not issue a VET qualification or VET statement of attainment to an individual who has not been assigned a student identifier. Subsection 53(1) may limit an individual’s right to education by prohibiting a registered training organisation from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier. To the extent a registered training organisation is prohibited from issuing a VET qualification or a VET statement of attainment, this will not initially limit the right to education as this will not inhibit individuals from accessing vocational education and training.

However, for those individuals who do not obtain a student identifier (which is expected to be very few) and are not covered by an exemption, access to education may be limited if their ability to undertake further training is dependent on the individual providing a VET qualification or a VET statement of attainment for a prerequisite course.

In extending the exemption for certain individuals, from the requirement in subsection 53(1) of the Act, the instrument allows certain individuals to continue to access VET qualifications and VET statements of attainment without a student identifier. Therefore, the instrument promotes the right to education by reducing the scope of the possible limitation found under subsection 53(1) of the Act.

### *Right to Work*

The instrument engages the right to work contained in Article 6 of the ICESCR. The right to work *‘includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.’*

In particular, paragraph 6(2) of the ICESCR states:

*‘2. The steps to be taken by a State Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.’*

In the same way that subsection 53(1) of the Act may limit an individual’s right to education, subsection 53(1) may also limit an individual’s right to work. Where formal recognition is a prerequisite to work, the prohibition on registered training organisations from issuing a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier and are not covered by an exemption, may limit the right to work.

As described above, the instrument extends the ability for certain individuals to access VET qualifications and VET statements of attainment. Therefore, the instrument promotes the right to work by reducing the scope of the possible limitation found under subsection 53(1) of the Act.

### **Conclusion**

This instrument is compatible with human rights.

**The Hon Karen Andrews MP**  
**Assistant Minister for Vocational Education and Skills**