

2019

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

HOUSE OF REPRESENTATIVES

**STUDENT IDENTIFIERS AMENDMENT (HIGHER
EDUCATION) BILL 2019**

EXPLANATORY MEMORANDUM

**(Circulated by authority of the Minister for Education,
the Honourable Dan Tehan MP)**

STUDENT IDENTIFIERS AMENDMENT (HIGHER EDUCATION) BILL 2019

OUTLINE

The purpose of the Student Identifiers Amendment (Higher Education) Bill 2019 (the Bill) is to amend the *Student Identifiers Act 2014* (the Act) to enable the extension of the unique student identifier from vocational education and training (VET) to higher education students, and to enable the Student Identifiers Registrar (the Registrar) to assign a student identifier to all higher education students.

The Bill will amend current requirements under the Act to include the higher education sector. Specifically, the Bill will enable the assignment, collection, use, disclosure and verification of student identifiers for higher education students. The Registrar, appointed under Part 4 of the Act, has powers and functions that will expand to include the operation of the student identifier in the higher education sector.

Starting in 2021, new domestic and onshore overseas higher education students can apply for a student identifier. From 1 January 2023, registered higher education providers must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier or an exemption applies.

Part 1 of Schedule 1 to the Bill includes the main amendments that:

- extend the entities that may apply to the Registrar for a student identifier if authorised by the individual, and the entities that can request the Registrar to verify or give a student identifier to the entity;
- extend the Registrar's authorisation to use or disclose a student identifier for research purposes relating to the provision of higher education, and where the research meets the requirements specified by the Education Minister (as defined in the Bill) through a legislative instrument;
- extend Part 2, Division 5 of the Act to authorise specified entities and persons to collect, use or disclose student identifiers for the purposes of the *Higher Education Support Act 2003*, the *Tertiary Education Quality and Standards Agency Act 2011* and the *Education Services for Overseas Students Act 2000*;
- include a power for the Education Minister to give directions to the Registrar, by legislative instrument, about the performance of the Registrar's functions in relation to higher education;
- extend section 45 of the Act to allow for the Secretary of the Education Department (as defined in the Bill) to also make staff available to assist the Registrar;
- require that a registered higher education provider must not confer a regulated higher education award on an individual on or after 1 January 2023 unless the individual has been assigned a student identifier or an exemption applies;
- include a provision that allows the Education Minister to recommend that the Governor-General make regulations with respect to matters relating to higher education.

Part 2 of Schedule 1 to the Bill includes minor contingent amendments to the Act which are subject to the commencement of the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* and the *Student Identifiers Amendment (Enhanced Student Permissions) Act 2019*.

FINANCIAL IMPACT STATEMENT

The Bill implements the Government’s higher education measure from the 2019–20 Federal Budget. The expansion of the student identifier to higher education will cost \$15.5 million over four years from 2019–20 to 2022–23. This will include \$12.7 million over four years to the Department of Employment, Skills, Small and Family Business and the Office of the Student Identifiers Registrar for information technology (IT) system development, IT maintenance and cloud hosting, website development, telephony, and stakeholder engagement. The remaining \$2.9 million over three years from 2019–20 to 2021–22 will fund departmental costs including a Privacy Impact Assessment, IT enhancements, and stakeholder engagement.

	2019–20	2020–21	2021–22	2022–23	Total
Department of Employment, Skills, Small and Family Business	\$1,540,028	\$3,466,410	\$4,265,846	\$3,379,207	\$12,651,491
Department of Education	\$418,453	\$2,015,219	\$436,905		\$2,870,577
Total	\$1,958,481	\$5,481,629	\$4,702,751	\$3,379,207	\$15,522,068

Note: Costs in the above table do not include efficiency dividend or indexation adjustments.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

STUDENT IDENTIFIERS AMENDMENT (HIGHER EDUCATION) BILL 2019

The Student Identifiers Amendment (Higher Education) Bill 2019 (the Bill) 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 Bill

The purpose of the Bill is to amend the *Student Identifiers Act 2014* (the Act) to enable the extension of the unique student identifier from vocational education and training (VET) to higher education students, and to enable the Student Identifiers Registrar (the Registrar) to assign a student identifier to all higher education students.

The Bill will amend current requirements under the Act to include the higher education sector. Specifically, the Bill will enable the assignment, collection, use, disclosure and verification of student identifiers for higher education students. The Registrar, appointed under Part 4 of the Act, has powers and functions that will expand to include the operation of the student identifier in the higher education sector.

Starting in 2021, new domestic and onshore overseas higher education students can apply for a student identifier. From 1 January 2023, registered higher education providers must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier or an exemption applies.

Part 1 of Schedule 1 to the Bill includes the main amendments that:

- extend the entities that may apply to the Registrar for a student identifier if authorised by the individual and the entities that can request the Registrar to verify or give a student identifier to the entity;
- extend the Registrar's authorisation to use or disclose a student identifier for research purposes relating to the provision of higher education, and where the research meets the requirements specified by the Education Minister (as defined in the Bill) through a legislative instrument;
- extend Part 2, Division 5 of the Act to authorise specified entities and persons to collect, use or disclose student identifiers for the purposes of the *Higher Education Support Act 2003* (HESA), the *Tertiary Education Quality and Standards Agency Act 2011* (TEQSA Act) and the *Education Services for Overseas Students Act 2000* (ESOS Act);
- include a power for the Education Minister to give directions to the Registrar, by legislative instrument, about the performance of the Registrar's functions in relation to higher education;

- extend section 45 of the Act to allow for the Secretary of the Education Department (as defined in the Bill) to also make staff available to assist the Registrar;
- require that a registered higher education provider must not confer a regulated higher education award on an individual on or after 1 January 2023 unless the individual has been assigned a student identifier or an exemption applies;
- include a provision that allows the Education Minister to recommend that the Governor-General make regulations with respect to matters relating to higher education.

Part 2 of Schedule 1 to the Bill includes minor contingent amendments to the Act which are subject to the commencement of the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* and the *Student Identifiers Amendment (Enhanced Student Permissions) Act 2019*.

Analysis of human rights implications

This Bill engages the following rights:

- the right to privacy and reputation – Article 17 of the International Covenant on Civil and Political Rights (ICCPR);
- the right to education – Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to work – Article 6 of the ICESCR

Article 17: Right to privacy and reputation

The Bill engages with Articles 17(1) and 17(2) of the ICCPR, which state that “no one shall be subject to arbitrary or unlawful interference with his privacy...nor to unlawful attacks on his honour and reputation” and that “everyone has the right to the protection of the law against such interference or attacks”.

The right to privacy incorporates the right to informational privacy, including with respect to storing, using and sharing personal information. To be permissible as a matter of international human rights law, interference with privacy must be according to law and not arbitrary. In order not to be arbitrary, the interference must be reasonable and necessary in the particular circumstances, as well as proportionate to the legitimate objectives they seek to achieve.

Part 2, Divisions 5 and 6 of the Act already includes a number of safeguards around the collection, use and disclosure of student identifiers, to ensure that the privacy of individuals is protected. The Bill seeks to add further safeguards to reflect the expansion of the student identifier into the higher education sector.

The Bill authorises specified entities and persons to collect, use or disclose a student identifier for the purposes of higher education or higher education relating to overseas students studying in Australia. The amendments also extend the number of authorised higher education related entities that the Registrar can disclose a student identifier to under the Act. The Bill also provides for the disclosure of a student identifier where the use or disclosure is for the purpose of research relating to the provision of higher education.

The amendments allow for the effective administration of HESA, the TEQSA Act and the ESOS Act, including the functions of the Commissioner of Taxation (i.e. Australian Taxation Office) in managing student debt for the purposes of HESA. An entity authorised under the Act can only use an individual's student identifier to achieve these legitimate objectives.

The Bill provides significant safeguards to protect against arbitrary interferences with privacy. The Bill does not displace the protections provided for personal information under the *Privacy Act 1988* (Privacy Act) or equivalent State and Territory legislation. Therefore, any entity or person that collects, uses or discloses a student identifier will also have to comply with the requirements of relevant privacy legislation. Further, the Act currently provides that the Registrar and any other entity that has a record of student identifiers, must protect those records from misuse or unauthorised access. The Bill also clarifies that any entity authorised to make an application for a student identifier on behalf of an individual must destroy the personal information collected solely for that purpose as soon as practicable after the application is made or it is no longer needed for that purpose. Any contravention of these requirements is taken to be an interference with privacy under the Privacy Act that can be investigated by the Australian Information Commissioner.

The Australian Government Department of Education is also conducting a Privacy Impact Assessment in relation to this proposal to assist with managing, minimising or eliminating any identified privacy impact that the proposal may have on individuals.

The Bill also requires the Education Minister to make a legislative instrument specifying the requirements that the Registrar must consider before using or disclosing a student identifier for research purposes relating to the provision of higher education. This ensures that appropriate limits are placed around the Registrar's power under new subsection 18(3) (refer to item 12), as the Registrar cannot use or disclose a student identifier for research purposes relating to higher education until such a legislative instrument comes into force. The Education Minister will set out robust requirements in the legislative instrument that will ensure appropriate safeguards are in place to protect an individual's student identifier and personal information.

In making the legislative instrument, the Education Minister will take into account community expectations surrounding privacy, and will also consider relevant requirements applicable to the use of student identifiers for research in the VET sector and whether they are applicable for higher education. For example, the Education Minister may consider including the following factors in the legislative instrument that the Registrar should take into account:

- the purpose for which the information was collected;
- the stated purpose for the use or disclosure;
- the scope of the use or disclosure (e.g. duration of research, data parameters, target population, estimated period of data retention);
- weighing the public interest or benefit of the use or disclosure against data protection considerations; and

- whether the individuals to whom personal information relates consented to the proposed disclosure and use of the information and if not, whether it is impracticable to seek consent from the individuals.

The proposed use of an individual's student identifier is for the purposes of meeting the objectives of the Act and supporting the administration of higher education in a way which is reasonably necessary to meet policy objectives. To the extent the Bill limits the right to privacy, these limitations are justifiable as they are reasonable, necessary and proportionate to achieving the legitimate objectives of the Act, and appropriate safeguards are included in the Bill to protect an individual's privacy.

The Bill is compatible with the right to privacy and reputation.

Article 13: Right to education

The Bill engages the right to education contained in Article 13 of the ICESCR.

In particular, Article 13 states

(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;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education.

There are currently two Government-issued student identifiers in the tertiary education sector: i.e. the student identifier in the VET sector assigned under the Act and the Commonwealth Higher Education Student Support Number (CHESSN) in the higher education sector. The Government intends to provide a single student identifier that will record a student's entire tertiary education journey by de-commissioning the CHESSN and expanding the student identifier to higher education. The expansion of the student identifier will also help policy makers gain a better understanding of student pathways across tertiary education by strengthening the integrity and richness of data available to Government. A more robust evidence base will help inform future policy development and program delivery, and in doing so, further improve the effectiveness and efficiency of the Government's investment in tertiary education.

The Bill may limit the right to education by requiring, on or after 1 January 2023, that all domestic and onshore overseas students have a student identifier before the student can obtain a regulated higher education award (i.e. their qualification). However, there are limited barriers impeding a student from obtaining a student identifier and, in turn, gaining their qualification, as the process for applying for a student identifier is simple, and there is no associated cost for applicants. Existing students will also have ample time between the commencement of the Bill and 1 January 2023 to ensure that they have applied for, and obtained, a student identifier. Further, when necessary, higher education providers, Tertiary Admission Centres and the Australian Government Department of Education may also assist a

student by applying for a student identifier on behalf of the student (with consent from the student).

To the extent the Bill limits the right to education, these limits are justifiable as they are reasonable, necessary and proportionate to achieving the legitimate objectives of the Act.

The Bill is compatible with the right to education.

Article 6: Right to work

The Bill supports Article 6 of the ICESCR. Article 6(1) recognises “the right of everyone to the opportunity to gain his living by work” and that the State “will take appropriate steps to safeguard this right”. Article 6(2) states: “to achieve the full realisation 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.”

Labour market demands are evolving so that it is increasingly important to have a tertiary education qualification in order to obtain work. As the Bill supports the right to education, which includes the right of students studying in Australia to obtain a tertiary education qualification, the Bill also supports the right to work.

The Bill is compatible with the right to work.

Conclusion

The Bill is compatible with human rights because it advances the protection of human rights in the delivery of higher education in Australia. To the extent that it may limit human rights, these limitations are reasonable, necessary and proportionate.

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NOTES ON CLAUSES

Clause 1 - Short title

This clause provides for the Act to be the *Student Identifiers Amendment (Higher Education) Act 2019*.

Clause 2 - Commencement

The table in subclause 2(1) sets out when the Act's provisions will commence. The table provides that:

- Sections 1 to 3, and anything in the Act not elsewhere covered by the table at subclause 2(1), commences the day the Act receives the Royal Assent.
- Schedule 1, Part 1 commences the day after the Act receives the Royal Assent.
- Schedule 1, Part 2, Division 1 provides for amendments to the Act following the commencement of the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* (Tuition Protection Act). Schedule 1, Part 2, Division 1 will commence either immediately after the day the Act receives the Royal Assent or immediately after the commencement of Schedule 1 to the Tuition Protection Act (whichever happens later). However, Schedule 1, Part 2, Division 1 will not commence at all if Schedule 1 to the Tuition Protection Act does not commence.
- Schedule 1, Part 2, Division 2 provides for amendments to the Act following the commencement of the *Student Identifiers Amendment (Enhanced Student Permissions) Act 2019* (Student Permissions Act). Schedule 1, Part 2, Division 2 will commence either immediately after the day the Act receives the Royal Assent or immediately after the commencement of the Student Permissions Act. However, Schedule 1, Part 2, Division 2 will not commence at all if the Student Permissions Act does not commence.

Subclause 2(2) provides that information in column 3 of the table at subclause 2(1) is not part of the Act, and that information may be inserted into column 3, or information in it may be edited, in any published version of the Act.

Clause 3 - Schedules

This clause provides that any legislation that is specified in a schedule is amended or repealed as set out in the applicable items in the schedule and that any other item in a schedule has effect according to its terms.

LIST OF ABBREVIATIONS

Education Department	Australian Government Department of Education
Education Minister	Minister for Education
ESOS Act	<i>Education Services for Overseas Students 2000</i>
HESA	<i>Higher Education Support Act 2003</i>
TEQSA	Tertiary Education Quality and Standards Agency
TEQSA Act	<i>Tertiary Education Quality and Standards Agency Act 2011</i>
the Act	<i>Student Identifiers Act 2014</i>
TPS	Tuition Protection Service
VET	vocational education and training

Schedule 1 Amendments

Summary

The purpose of the Student Identifiers Amendment (Higher Education) Bill 2019 (the Bill) is to amend the *Student Identifiers Act 2014* (the Act) to enable the extension of the student identifier from vocational education and training (VET) to higher education students, and to enable the Student Identifiers Registrar (the Registrar) to assign a student identifier to all higher education students.

The Bill will amend current requirements under the Act to include the higher education sector. Specifically, the Bill will enable the assignment, collection, use, disclosure and verification of student identifiers for higher education students. The Registrar, appointed under Part 4 of the Act, has powers and functions that will expand to include the operation of the student identifier in the higher education sector.

Starting in 2021, new domestic and onshore overseas higher education students can apply for a student identifier. From 1 January 2023, registered higher education providers must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier or an exemption applies.

Part 1 of Schedule 1 to the Bill includes the main amendments to the Act. Part 2 of Schedule 1 to the Bill includes minor contingent amendments to the Act.

Detailed explanation

Part 1 – Main amendments

***Student Identifiers Act 2014* (the Act)**

Item 1 – Title

Item 1 amends the title of the Act to reflect the extension of the Act to higher education.

Items 2, 3 and 5 – Sections 3 and 8

Item 2 amends the simplified outline of the Act at section 3 to reflect that a registered higher education provider must not confer a regulated higher education award on an individual after 2022 unless the individual has been assigned a student identifier.

Items 3 and 5 amend the simplified outlines at sections 3 and 8 of the Act to clarify that an individual, organisation, body or person involved with VET or higher

education may request that the Registrar verify that an identifier is the individual's student identifier, or give the individual's student identifier.

Item 4 – Subsection 4(1)

Item 4 inserts new definitions in section 4 of the Act associated with the extension of the Act to the higher education sector.

This includes a new definition of 'Education Department' which means the Department administered by the 'Education Minister'. 'Education Minister' means the Minister who administers the TEQSA Act. Currently, the Australian Government Department of Education is the relevant department.

Item 6 – After paragraph 9(2)(b)

Item 6 inserts paragraphs 9(2)(ba) and 9(2)(bb) after paragraph 9(2)(b) of the Act to provide that a registered higher education provider and a Tertiary Admission Centre may apply to the Registrar for a student identifier to be assigned to an individual if authorised by the individual to make an application under section 9 of the Act.

'Registered higher education provider' and 'Tertiary Admission Centre' have the same meaning as in the TEQSA Act (new definitions inserted by item 4).

Items 7, 8 and 9 – Section 11

Items 7 to 9 amend section 11 of the Act to ensure that any 'entity' that is authorised by an individual to make an application under section 9 (which would include a registered training organisation, VET admission body, registered higher education provider or Tertiary Admission Centre) is required to destroy personal information collected for the purposes of making an application, in accordance with section 11 of the Act.

Item 10 – After paragraph 12(2)(b)

Item 10 inserts new paragraph 12(2)(ba) after paragraph 12(2)(b) of the Act to provide that the Registrar must give written notice of the Registrar's decision under subsection 12(1) of the Act to the Secretary of, or an APS employee in, the Education Department.

Item 11 – At the end of subsection 14(1)

Item 11 inserts new paragraphs (e) to (q) at the end of subsection 14(1) of the Act. This amendment allows any of the entities or persons listed at paragraphs (e) to (q) to make a request to the Registrar to verify that an identifier is the student identifier of an individual, or to give the entity or person the student identifier of an individual.

For example, a registered higher education provider or Tertiary Admission Centre may need to verify or obtain the student identifier of an individual for the purposes of supporting student enrolment, graduation and student administration functions.

The Secretary of the Education Department, an APS employee in the Education Department or a person who performs services for or on behalf of the

Commonwealth for the purposes of HESA may need to verify or obtain the student identifier of an individual for the purposes of administering HESA. For example, the Education Department may need to verify or obtain an individual's student identifier to support student enquiries regarding Commonwealth assistance under HESA.

A TEQSA Commissioner, Chief Executive Officer of TEQSA, member of staff of TEQSA or a person who performs services for or on behalf of the Commonwealth for the purposes of the TEQSA Act may need to verify or obtain the identifier of an individual for the purposes of administering the TEQSA Act. For example, TEQSA may need to verify or obtain a student identifier for the purposes of performing their regulatory activities across the higher education sector under the TEQSA Act.

The TPS Director, an ESOS agency for a provider or registered provider, a TPS officer or an authorised officer of the ESOS agency for a registered provider may need to verify or obtain the student identifier of an individual for the purposes of administering the ESOS Act (which relates to overseas students studying in Australia). These entities are defined in the ESOS Act (new definitions inserted by item 4). For example, an ESOS agency may need to verify or obtain a student identifier for the purposes of supporting an onshore overseas student who is enrolling at an Australian higher education provider to ensure a seamless induction process.

Item 12 – At the end of section 18

Item 12 amends section 18 to add new subsections 18(3) and 18(4).

Subsection 18(2) of the Act deals with the Registrar's power to use or disclose a student identifier of an individual for the purposes of research that relates (directly or indirectly) to education or training or that requires the use of student identifiers or information about education or training and meets the requirements specified by the Ministerial Council. The Ministerial Council has specified requirements through the National VET Data Policy. The Ministerial Council is defined in section 4 of the Act as either 'a body established by the Council of Australian Governments to deal with training and skills' or 'otherwise – a body prescribed by the regulations'. The Ministerial Council does not deal with higher education matters, therefore the National VET Data Policy is not relevant to the use and disclosure of identifiers that relate to the provision of higher education.

New subsection 18(3) authorises the Registrar to use or disclose a student identifier of an individual if the use or disclosure is for the purposes of research that a) relates (directly or indirectly) to the provision of higher education and b) meets the requirements specified in a legislative instrument made by the Education Minister under new subsection 18(4).

Under new subsection 18(4), the Education Minister must by legislative instrument, specify requirements for the purposes of new paragraph 18(3)(b). This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the Parliamentary disallowance process. The disallowance process provides Parliamentary oversight and scrutiny over any legislative instrument made by the Education Minister.

The legislative instrument will provide appropriate safeguards and parameters around the Registrar's use and disclosure of student identifiers for higher education research purposes. For example, the Education Minister may specify the factors the Registrar should take into account in assessing whether it is appropriate to disclose student identifiers to particular persons for research purposes. In making the instrument, the Education Minister will take into account community expectations surrounding privacy, and will also consider relevant requirements in the National VET Data Policy and whether they are applicable for higher education. For example, the Education Minister may consider including the following factors in the legislative instrument that the Registrar must take into account when considering requests under new subsection 18(3):

- the purpose for which the information was collected;
- the stated purpose for the use or disclosure;
- the scope of the use or disclosure (e.g. duration of research, data parameters, target population, estimated period of data retention);
- weighing the public interest or benefit of the use or disclosure against data protection considerations; and
- whether the individuals to whom personal information relates consented to the proposed disclosure and use of the information and if not, whether it is impracticable to seek consent from the individuals.

It is expected that the Education Minister will consult the Minister responsible for administering the Act in making any instrument under new subsection 18(4).

The Registrar cannot use or disclose identifiers under new subsection 18(3) unless the Education Minister has made a legislative instrument under new subsection 18(4). The legislative instrument will provide safeguards for students to ensure the use and disclosure of their student identifiers for research purposes does not unnecessarily or unreasonably limit their right to privacy.

Item 13 – After section 18A

Item 13 inserts new sections 18B and 18C after section 18A of the Act. New section 18B authorises the collection, use or disclosure of a student identifier for the purposes of higher education. New section 18C authorises the collection, use or disclosure of a student identifier for the purposes of higher education relating to overseas students studying in Australia.

HESA

New subsection 18B(1) authorises persons listed at new subsection 18B(2) to collect, use or disclose a student identifier of an individual if the collection, use or disclosure is reasonably necessary for the purposes of performing functions or exercising powers in relation to HESA or any instrument made under HESA.

The Commonwealth Higher Education Student Support Number (CHESSN) is currently used as a personal identification number for students accessing Commonwealth assistance under HESA. The CHESSN will be decommissioned and gradually replaced by student identifiers assigned under the Act. As the student identifier will be used to administer a person's Commonwealth assistance under HESA (like the CHESSN) there may be a need for the persons listed at new

subsection 18B(2) to collect, use or disclose the student identifier for HESA purposes. This includes the Secretary of the Education Department, an APS employee in the Education Department, a person who performs services for or on behalf of the Commonwealth in connection with the performance of functions or the exercise of powers under HESA, and the Commissioner of Taxation.

TEQSA Act

New subsection 18B(3) authorises persons listed at new subsection 18B(4) to collect, use or disclose a student identifier of an individual if the collection, use or disclosure is reasonably necessary for the purposes of performing functions or exercising powers in relation to the TEQSA Act or any instrument made under that Act. This includes a TEQSA Commissioner, the Chief Executive Officer of TEQSA, a member of the staff of TEQSA or a person who performs services for or on behalf of the Commonwealth in connection with the performance of functions, or the exercise of powers under the TEQSA Act. For example, TEQSA may collect, use or disclose a student identifier for the purposes of performing their regulatory activities across the higher education sector under the TEQSA Act.

In addition, new subsection 18B(5) provides that a registered higher education provider is also authorised to collect, use or disclose a student identifier if the collection, use or disclosure is reasonably necessary in connection with the operation of HESA or the TEQSA Act and any instrument made under those Acts. For example, a registered higher education provider may need to provide the student identifier of an individual to the Education Department where a student has made an application for Commonwealth assistance under HESA.

ESOS Act

New subsection 18C(1) authorises the entities and persons listed at new subsection 18C(2) to collect, use or disclose a student identifier of an individual if the collection, use or disclosure is reasonably necessary for the purposes of performing functions or exercising powers in relation to the ESOS Act or any instrument made under that Act. This includes the Secretary of the Department administered by the Minister administering the ESOS Act, the TPS Director, a TPS officer, an ESOS agency or an authorised officer of the ESOS agency for a registered provider. These terms are defined in the ESOS Act.

The ESOS Act establishes legislative requirements and standards for the quality assurance of education and training institutions offering courses to overseas students who are in Australia on a student visa, and also provides tuition fee protection for these students. Currently, overseas students studying in Australia with an Australian registered training organisation in the VET sector are already required to have a student identifier under the Act. The Bill will extend the requirement to overseas students studying in Australia in the higher education sector (e.g. universities) to also have a student identifier. Therefore, all overseas students studying in Australia in the tertiary education sector (i.e. the VET and higher education sector) will be required to have a student identifier under the Act. The entities listed at new subsection 18C(2) may be required to collect, use or disclose a student identifier of an individual for the purposes of performing functions or exercising powers in relation to the ESOS Act. For example, these entities may need to collect, use or disclose a student identifier to assist with monitoring and

compliance activities, or the validation of records and transcripts in the event of the closure of a registered provider under the ESOS Act.

In addition, new subsection 18C(3) provides that a registered higher education provider is authorised to collect, use or disclose a student identifier if the collection, use or disclosure is reasonably necessary in connection with the operation of the ESOS Act or any instrument made under that Act. For example, a registered higher education provider may use a student identifier for the purposes of supporting an onshore overseas student who is enrolling at an Australian higher education provider to ensure a seamless induction process.

Item 14 – At the end of section 25

Item 14 adds new subsections 25(3) and 25(4) at the end of section 25 of the Act. Section 25 deals with the use or disclosure of personal information authorised for the purposes of the *Privacy Act 1988*. New subsection 25(3) provides that the Registrar is authorised for the purposes of the *Privacy Act 1988* to use or disclose personal information about an individual for research purposes that relates (directly or indirectly) to the provision of higher education and meets the requirements specified by the Education Minister through a legislative instrument made under new subsection 25(4).

Under new subsection 25(4), the Education Minister must by legislative instrument specify requirements for the purposes of new paragraph 25(3)(b). This instrument is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to the Parliamentary disallowance process. The disallowance process provides Parliamentary oversight and scrutiny of any legislative instrument made by the Education Minister.

Similar to the amendment at item 12, the legislative instrument will provide appropriate safeguards and parameters around the Registrar's use and disclosure of personal information for higher education research purposes. For example, the Education Minister may specify the factors the Registrar should take into account in assessing whether it is appropriate to disclose personal information to particular persons for research purposes. In making the instrument, the Education Minister will take into account community expectations surrounding privacy, and will also consider relevant requirements in the National VET Data Policy and whether they are applicable to higher education. For example, the Education Minister may consider including the following factors in the legislative instrument that the Registrar must take into account when considering the use or disclosure of personal information under new subsection 25(3):

- the purpose for which the information was collected;
- the stated purpose for the use or disclosure;
- the scope of the use or disclosure (e.g. duration of research, data parameters, target population, estimated period of data retention);
- weighing the public interest or benefit of the use or disclosure against data protection considerations; and
- whether the individuals to whom personal information relates consented to the proposed disclosure and use of the information and if not, whether it is impracticable to seek consent from the individuals.

It is expected that the Education Minister will consult the Minister responsible for administering the Act in making any instrument under this section.

The Registrar cannot use or disclose personal information under new subsection 25(3) unless the Education Minister has made a legislative instrument under new subsection 25(4). The legislative instrument will provide safeguards for students to ensure the use and disclosure of their personal information for research purposes does not unnecessarily or unreasonably limit their right to privacy.

Items 15 and 16 – Section 30

Item 15 updates the simplified outline at section 30 of the Act to refer to the amendment made through item 18, that staff from the Education Department may also be made available to assist the Registrar.

Item 16 updates the simplified outline at section 30 of the Act to clarify that the Registrar will also be required to report annually to the Education Minister.

Item 17 – At the end of Subdivision A of Division 2 of Part 4

Item 17 inserts new section 33A in the Act which largely mirrors existing section 33. New subsection 33A(1) provides that the Education Minister may, by legislative instrument, give written directions to the Registrar about the performance of the Registrar's functions in relation to higher education. New subsection 33A(2) provides that the Registrar must comply with a direction made by the Education Minister under subsection 33A(1).

The note under new subsection 33A(1) clarifies that the direction is not subject to disallowance or sunseting under the *Legislation Act 2003*. The *Legislation (Exemptions and Other Matters) Regulation 2015* (Exemption Regulation) provides that an instrument that is a direction by a Minister to any person or body is a kind of instrument that section 42 of the *Legislation Act 2003* (disallowance of legislative instruments) does not apply to (see item 2 of the table at section 9 of the Exemption Regulation). An instrument that is a direction by a Minister to any person or body is also a class of instrument that is not subject to sunseting (see item 3 of the table at section 11 of the Exemption Regulation).

New section 33A does not include the requirement that, before giving the direction, the Education Minister must consult the Ministerial Council (like existing subsection 33(3) of the Act). This is because the Ministerial Council does not deal with higher education matters and therefore it is not appropriate for the Education Minister to consult the Ministerial Council before making a direction. However, it is expected that the Education Minister will consult the Minister responsible for administering the Act in making any direction.

Item 18 – At the end of section 45

Item 18 adds a reference to the 'Secretary of the Education Department' at section 45 of the Act. This allows the Secretary of the Education Department to also make staff available to assist the Registrar.

Item 19 – Subsection 51(2)

Item 19 amends subsection 51(2) of the Act to include the requirement that the Registrar must also give a copy of the annual report to the Education Minister. Reference to ‘Commonwealth Minister’ in the Act presently refers to the Minister for Employment, Skills, Small and Family Business as the Minister responsible for administering the Act.

Item 20 – Section 52

Item 20 amends the simplified outline at section 52 of the Act to clarify that a registered higher education provider must not confer a regulated higher education award on an individual after 2022 unless the individual has been assigned a student identifier, and to clarify that the Education Minister and the Registrar can give exemptions to this requirement.

Item 21 – After section 53

Item 21 inserts new section 53A relating to the conferral of regulated higher education awards. New subsection 53A(1) provides that a registered higher education provider must not confer a regulated higher education award on an individual unless the individual has been assigned a student identifier. A regulated higher education award is defined in the TEQSA Act.

The application provision at item 23 of the Bill provides that this amendment applies in relation to the conferral of a regulated higher education award on an individual on or after 1 January 2023, whether the individual commenced the course of study leading to the award before, on or after that day. Therefore, the requirement to have a student identifier will only affect students being conferred a regulated higher education award from 1 January 2023.

The purpose of this amendment is to ensure that all higher education students are required to have a student identifier under the Act unless an exemption applies. With the decommissioning of the CHESN for higher education students and the introduction of the student identifier, this amendment will assist with transitioning students from having two identifiers to one, which will improve the administrative process for students and providers, and encourage students to continuously engage with their learning and contribute to the lifelong learning eco-system.

Exemptions given by Education Minister

New subsections 53A(2) and 53A(3) provide for exemptions given by the Education Minister. The Education Minister may, by legislative instrument, specify a conferral to which the new requirement under new subsection 53A(1) does not apply by reference to the following classes of matters:

- the registered higher education provider doing the conferring;
- the regulated higher education award being conferred;
- the individual on whom the regulated higher education award is being conferred.

It is necessary to provide for limited classes of exemptions to maintain the integrity of the Act and ensure consistency with the existing requirements for the issuing of VET qualifications under section 53 of the Act. The note under new subsection 53A(3) refers to subsection 13(3) of the *Legislation Act 2003* which refers to specification of legislative instruments by class.

It is preferable to provide exemptions by a legislative instrument rather than specifying the exemptions in the primary legislation to enable flexibility regarding the exemptions made by the Education Minister. Further, the legislative instrument is also subject to the Parliamentary disallowance process which provides Parliamentary scrutiny and oversight of any exemptions made by the Minister.

These exemption provisions reflect the existing exemption provision at subsection 53(3) of the Act with the exception of the requirement to obtain the agreement of the Ministerial Council before making an instrument (subsection 53(4)). As noted above, the Ministerial Council does not deal with higher education matters, therefore it would not be appropriate to consult the Ministerial Council in granting an exemption under new subsection 53A(3). However, it is expected that the Education Minister will consult the Minister responsible for administering the Act in making any instrument under this section.

Exemptions given by Registrar

An individual may apply to the Registrar to make a determination that the requirement under new subsection 53A(1) does not apply (new subsection 53A(5)).

The request by the individual must be in the manner and form approved by the Registrar and include any information required by the Registrar (new subsection 53A(5)). If an individual makes a request, the Registrar must make, or refuse to make the determination (new subsection 53A(6)). The determination made by the Registrar under proposed subsection 53A(6) is not a legislative instrument (new subsection 53A(10)).

The decision by the Registrar under new subsection 53A(6) to refuse to make a determination to exempt an individual from the requirement under new subsection 53A(1) is not subject to internal or external merits review. The Education Minister, may by legislative instrument, determine matters (new subsection 53A(9)) that the Registrar must have regard to when making a decision (new subsection 53A(7)).

If the Registrar makes a determination under subsection 53A(6), subsection 53A(1) will not apply to the individual (new subsection 53A(4)). The Registrar must notify the individual of the Registrar's decision on the request (new subsection 53A(8)). If the Registrar refuses to make a determination, the notice must include reasons for the refusal (new subsection 53A(8)).

If the Registrar assigns a student identifier to an individual and immediately before this, a determination by the Registrar under subsection 53A(6) is in force, the determination under subsection 53A(6) is taken to be revoked (new subsection 53A(11)).

New subsection 53A(12) clarifies that the matters covered by new subsections 53A(3) and 53A(9) may be included in the same instrument.

Exclusion of merits review for decisions made by the Registrar under new subsection 53A(6) is justifiable in order to meet the legitimate policy objectives in the Act to ensure that all students in the VET and higher education sectors have a single Government identifier to use throughout their tertiary education journey. Following the decommissioning of the CHESSN, higher education students will be required to have a student identifier. The assignment of a single student identifier to each student in the higher education sector is essential to the effective administration and operation of HESA. The student identifier will assist students with obtaining Commonwealth assistance and the management of debts under HESA.

Currently, 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 Registrar each year. The inclusion of merits review would not be an efficient use of Commonwealth resources where 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 the Administrative Appeals Tribunal may delay the outcome of the request for an individual, which may impact an individual's ability to be conferred a higher education award.

Item 22 – After subsection 57(2)

Section 57 provides for regulations made under the Act. Item 22 inserts new subsection 57(2A) which clarifies that subsection 57(2) of the Act (requirement to obtain the agreement of the Ministerial Council to the making of the regulations) does not apply in relation to the making of particular regulations if the Education Minister:

- is satisfied that the regulations are in respect of matters relating to higher education; and
- recommends to the Governor-General the making of the regulations.

It is expected that the Education Minister will consult the Minister responsible for administering the Act in the course of making any recommendation to the Governor-General to make any regulations under the Act.

Item 23 – Application provision

Item 23 is an application provision regarding the insertion of new section 53A (see item 21) to explain that this amendment will only apply in relation to the conferring of a regulated higher education award on an individual on or after 1 January 2023, irrespective of whether the individual commenced the course of study leading to the award before, on or after 1 January 2023.

This application provision ensures that from 1 January 2023, students graduating from a regulated higher education award will be required to have a student identifier.

Part 2 – Contingent amendments

Division 1 – First contingency

Student Identifiers Act 2014

The amendments to the Act at items 24 to 27 of the Bill are contingent on the commencement of the *Education Legislation Amendment (Tuition Protection and Other Measures) Act 2019* (Tuition Protection Act). The Tuition Protection Act will implement a tuition protection model for students participating in the VET Student Loans program and for higher education students accessing FEE-HELP or HECS-HELP assistance at a private education provider or TAFE. The Tuition Protection Act will amend the *VET Students Loans Act 2016* and HESA to provide for the administration of each sector by a relevant Tuition Protection Director with specific functions.

Item 24 – Subsection 4(1)

Item 24 inserts two new definitions in the Act, ‘HELP Tuition Protection Director’ and ‘VSL Tuition Protection Director’. Following the commencement of the Tuition Protection Act, the definition of HELP Tuition Protection Director will be inserted in HESA and the definition of VSL Tuition Protection Director will be inserted in the *VET Student Loans Act 2016* to establish these two new roles.

Item 25 – After paragraph 14(1)(n)

Item 25 inserts new paragraphs 14(1)(na) and 14(1)(nb) after paragraph 14(1)(n) of the Act to include the VSL Tuition Protection Director and HELP Tuition Protection Director as entities that may request the Registrar to verify or give a student identifier. Following the implementation of the tuition protection model through the Tuition Protection Act, the VSL Tuition Protection Director and HELP Tuition Protection Director may need to verify or obtain an identifier in their administration of their functions under the *VET Student Loans Act 2016* and HESA.

Item 26 – Section 18A

Item 26 inserts reference to the ‘VSL Tuition Protection Director’ at section 18A of the Act to allow the VSL Tuition Protection Director to collect, use or disclose a student identifier for the administration of VET student loans. Following the commencement of the Tuition Protection Act, the VSL Tuition Protection Director may perform functions or exercise powers in relation to the *VET Student Loans Act 2016* which may require the collection, use or disclosure of a student identifier.

Item 27 – After paragraph 18B(2)(b)

Item 27 inserts new paragraph 18B(2)(ba) after paragraph 18B(2)(b) to include the ‘HELP Tuition Protection Director’ as a person that may collect, use or disclose a student identifier for the purposes of HESA or any instrument made under HESA. Following the commencement of the Tuition Protection Act, the HELP Tuition Protection Director may perform functions or exercise powers in relation to HESA which may require the collection, use or disclosure of a student identifier.

Division 2 – Second contingency

Student Identifiers Act 2014

The amendments to the Act at items 28 and 29 are contingent on the commencement of the *Student Identifiers Amendment (Enhanced Student Permissions) Act 2019* (Student Permissions Act). The Student Permissions Act amends the Act, including the introduction of civil penalty provisions which are enforceable through civil penalty proceedings or issuing infringement notices.

Items 28 and 29 – Paragraphs 29E(4)(a) and (b)

Paragraphs 29E(4)(a) and (b) of the Act will be inserted through the Student Permissions Act. Items 28 and 29 amend proposed paragraphs 29E(4)(a) and (b) to include reference to the 'Education Department'. These amendments will extend the Registrar's new delegation power with respect to the Registrar's proposed powers and functions under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* to SES and APS employees (at the Executive Level 2 or equivalent) in the Education Department. Following the extension of the Act to higher education students made through this Bill, the Registrar may need to delegate this power to relevant SES or APS employees in the Education Department as required.