

Student Identifiers Bill 2013

Portfolio: Education

Introduced: House of Representatives, 20 May 2013

Status: Lapsed at end of 43rd Parliament

PJCHR comments: Sixth Report of 2013, tabled 15 May 2013

Response dated: 24 June 2013

Information sought by the committee

3.45 The committee sought clarification of:

- the circumstances under which exemptions to the requirement to have a student identifier number in order to obtain a VET qualification or VET appointment may be granted; and
- whether the open-ended nature of a number of provisions relating to the purposes for which student identifiers may be collected, used or disclosed was consistent with the right to privacy.

3.46 The former Minister's response is attached.

Committee's response

3.47 The committee thanks the former Minister for his response.

3.48 The committee notes that this bill lapsed at the end of the 43rd Parliament. Nevertheless, the committee considers that it is worth drawing the Minister's attention to the committee's following comments, in the event that the bill is reintroduced in the same terms.

Circumstances under which exemptions may be granted

3.49 The response explains that the criteria for exemptions will not be set out in regulations. However, the Standing Committee on Tertiary Education, Skills and Employment will play an oversight role with regard to the exemption arrangements for the implementation of the student identifier scheme. The response outlines a series of limited exemptions to which the Standing Committee has agreed, pending passage of the bill.

3.50 In light of the information provided, the committee is satisfied that this aspect of the bill is unlikely to give rise to any significant human rights concerns.

Use and disclosure of student identifiers

3.51 The committee had previously noted that the collection, use and disclosure of student identifiers engages and limits the right to privacy in article 17 of the International Covenant on Civil and Political Rights. As such, the measures must be demonstrably aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

Broad range of purposes

3.52 The committee was concerned at the broad range of purposes under section 20 for which a student identifier may be collected, used or disclosed, including for 'the prevention, detection, investigation or remedying of misconduct of a serious nature'.

3.53 The response, however, does not provide any clarification as to the necessity for these purposes. Instead, the response reiterates the assertions made in the statement of compatibility that the provisions are compatible with the right to privacy because they are aimed at the 'legitimate policy objective of improving the accessibility of VET and the promotion of free education' and 'do not constitute an arbitrary interference with an individual's right to privacy'.

'Reasonably necessary'

3.54 The committee also noted that it only had to be shown that the relevant entity considered that it was 'reasonably necessary' for student identifiers to be collected, used or disclosed for the law enforcement purposes under section 20 of the bill. The committee noted that the standard of 'reasonably necessary' appeared less demanding than the usual international human rights law requirement of demonstrating that a limitation on a right was 'necessary'.

3.55 In contrast, section 19 of the bill permits a relevant entity to collect, use or disclose student identifiers only if it is *necessary* for a permitted purpose.

3.56 The response does not explain how the application of a lower standard ('reasonably necessary') in section 20 of the bill is compatible with the right to privacy which requires limitations to be 'necessary'.

3.57 The committee does not consider that the permissibility of the purposes set out in section 20, particularly when combined with the ostensibly lower standard of 'reasonably necessary', has, without further information, been demonstrated to be consistent with the right to privacy in article 17 of the ICCPR.

Regulations

3.58 Section 21 of the bill provides that the collection, use and disclosure of student identifiers may also extend to 'conduct prescribed by the regulations', with no specification of any relevant criteria. The committee had noted that this meant that its human rights compatibility could only be finally assessed once specific regulations are adopted.

3.59 The response explains that the proposed regulations had been released for public comment and did not receive any substantive feedback on the use and disclosure rules. The response also notes that the regulations will require the agreement of the Standing Council before they may be made and are disallowable legislative instruments.

3.60 The committee reiterates its concerns that the open-ended provision in section 21 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. In human rights terms the provision does not satisfy the 'quality of law' test, as it is not formulated with specific precision to enable a person to know when their privacy may be limited.

3.61 While the committee accepts that this may be remedied by the promulgation of regulations setting out purposes consistent with the right to privacy, it considers that it is highly desirable that the relevant purposes and criteria be included in primary legislation.



Hon Sharon Bird MP
Minister for Higher Education and Skills

Mr Harry Jenkins MP
Chair
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Dear Mr Jenkins

You wrote on behalf of the Parliamentary Joint Committee on Human Rights to the Minister for Tertiary Education, Skills, Science and Research, the Hon Craig Emerson MP, in relation to the Student Identifiers Bill 2013 (the SI Bill). Minister Emerson has asked me to respond given my responsibility for the SI Bill. I apologise for the delay in responding.

In the Parliamentary Joint Committee on Human Rights ('the Committee'), *Sixth Report of 2013: Bills introduced 18-21 March 2013*, it is noted that the Committee considers that the Bill promotes the rights to education and to work and any limitations on those rights are reasonable (paragraph **1.241**).

However, I understand that the Committee is seeking clarification on the following matters:

- of the circumstances under which exemptions to the requirement to have a student identifier number in order to obtain a VET qualification or VET [statement of attainment] may be granted (**1.242**); and
- as to 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 (**1.243**).

Circumstances under which exemptions may be granted

Clause 53 of the SI Bill provides that, unless the registered training organisation, the relevant qualification or statement of attainment or the relevant individual are exempted by the Commonwealth Minister, a registered training organisation must not issue either a VET qualification or a VET statement of attainment to an individual who has not been assigned a student identifier. The Committee notes that the Bill does not provide details of the circumstances in which an exemption may be granted. The

Committee goes on to say that it is not able to make a final assessment of compatibility until these details are provided by the relevant legislative instrument or until the criteria for the making of such legislative instruments are set out either in the bill or regulations.

It is not proposed to set out criteria for the making of exemptions in regulations. However, it may be of interest to the Committee that, since the introduction of the SI Bill into Parliament, the Standing Council on Tertiary Education, Skills and Employment (the Standing Council) has met and considered a range of exemption arrangements for the implementation of the student identifier scheme. As you would be aware, Standing Council agreement is required prior to the Commonwealth Minister making a legislative instrument to provide an exemption under Clause 53 of the SI Bill.

Pending passage of the SI Bill, the Standing Council has agreed to the Commonwealth Minister making the following exemptions under Clause 53(3):

- Registered Training Organisations which have advised their regulator that they need additional time in which to ready their systems and processes to meet the requirement (note that this exemption is time-limited to 12-months);
- VET qualifications and VET statements of attainment where the reporting of that training would have implications for national security and the safety of defence, police, national security and border protection personnel; and
- VET qualifications and VET statements of attainment where that training is delivered in order to deliver vital emergency, fire, first-aid, rescue or like services to the Australian community where the Registered Training Organisation considers its ability to deliver such services would be adversely affected by the requirement to collect and submit the required data.

These exemption arrangements have been developed in consultation with stakeholders across the VET sector, ensuring that the impacts of the new initiative are mitigated where possible, allowing regulatory certainty for both RTOs and regulators, while not undermining the benefits sought from the initiative.

To minimise the impact of these exemptions on students, Registered Training Organisations will be required to ensure that where an exemption applies, it will inform the student prior to either the completion of the enrolment or commencement of training (whichever occurs first) that the results of the training will not be accessible through the Student Identifiers Agency and will not appear on any Student Identifiers Agency prepared Authenticated VET Transcript. Of course, in such circumstances, a student could still obtain a transcript from the relevant Registered Training Organisation.

Additionally, while the Standing Council has not agreed any specific exemptions for individuals (as foreshadowed under Clause 35(3)(c)), it is worth noting that this will be available as a category of exemption for students who object to having a student identifier. To my knowledge there have been no requests for such an exemption to date.

Consistency between the provisions relating to the use and disclosure of the student identifier and the right to privacy

As noted in the Explanatory Memorandum, the SI Bill may engage the right to privacy under Article 17 of the International Covenant on Civil and Political Rights, as the SI Bill authorises the collection, use and disclosure of student identifiers.

The use and disclosure rules regarding student identifiers are set out in the SI Bill. Inter alia, the Bill provides authorisation for the collection, use and disclosure of the student identifier by:

- an entity that has the consent of the individual who is assigned that student identifier; and
- Chief Executive Officer (CEO) of the Student Identifiers Agency who may:
 - collect, use and disclose of student identifiers for the purpose of performing their functions as set out in the SI Bill; and
 - use and disclose student identifiers for the purposes of research activities that relate to education and training and which comply with the protocols established by the Standing Council.

I note that the CEO is also bound by the *Privacy Act 1988* (Cth).

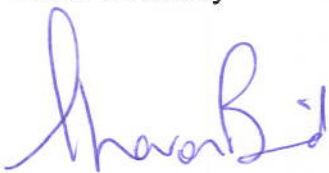
The Bill also authorises the collection, use and disclosure of the student identifier in accordance with the regulations. I note that during the public consultation process held in January and February this year, both the proposed Student Identifier Bill and the proposed Student Identifiers Regulation were released for public comment. No substantive feedback on the use and disclosure rules was received either through the written submissions process or through the face-to-face information sessions held in each capital city.

As provided for under Clause 57 of the SI Bill, the regulations themselves require the agreement of the Standing Council before they may be made. In addition, the regulations are disallowable instruments.

As noted in the Explanatory Memorandum, to the extent that the authorisations for the collection, use and disclosure of student identifiers impact on the right to privacy, this is for the legitimate policy objective of improving the accessibility of VET and the promotion of free education. The authorisations do not constitute an arbitrary interference with an individual's right to privacy.

I trust that this information is of assistance to the Committee.

Yours sincerely



SHARON BIRD
24 JUNE 2013