

AUSTRALIAN GREENS DISSENTING REPORT

Summary

1.1 The Australian Greens are concerned with certain privacy aspects of the Student Identifiers Bill. We believe the bill does adequately guarantee that individuals' access to education and training will not be restricted. It does not ensure that individuals retain control over their personally linked data, or consent to the secondary uses of their data.

1.2 The Greens propose the following additional recommendations for consideration to address these privacy concerns, which are informed by several of the inquiry's submissions.

Introduction

1.3 The Student Identifiers Bill 2013 provides for the introduction of a national unique student identifier (USI) attached to every student undertaking nationally recognised VET training, so that longitudinal data recording an individual's VET studies over their lifetime may be centrally collated, held and accessed.

1.4 The stated intention for this collection of individual-level data is to:

- enable individuals to access online a consolidated and authenticated transcript of all their own accredited VET attainments, or extracts thereof;
- allow RTOs to access those records, with the individual's permission, to confirm pre-requisite previous VET study and to allow assessment of prior learning for course credits; and
- to provide policy makers and researchers with longitudinal individual-level data of VET enrolments and achievements over a lifetime.

The benefits

1.5 There are some 2.7 million enrolments across the VET sector each year, with 810,000 of those attending multiple providers. Many study with RTOs across state boundaries, and thousands more have completed courses with RTOs that no longer exist, which means their student transcripts may be lost.

1.6 The Australian Greens recognise that introduction of a national USI that guarantees students access to their own centrally held and authenticated transcripts could benefit those hundreds of thousands of students every year who currently cannot be guaranteed ready access to a complete record of all their VET study to prove to employers or providers of further study their attainments.

1.7 The Australian Greens also recognise that comprehensive data from all VET providers is necessary to create a transparent VET system. It is not appropriate that currently only government providers are required to report on all their students while private providers must only report on Commonwealth-funded student enrolments and outcomes.

1.8 Insufficient and incomplete data disallows accurate understanding of trends, problems or successes in the VET sector. Information about student flow and outcomes is required to identify where barriers to student participation and success lie in the system and where further support and investment is needed. Such data is vital in revealing where providers and governments are meeting or failing in performance, and how governments and the sector are answering Australia's looming skills needs.

1.9 The Australian Greens share the concerns of a number of submitters and we list those concerns and recommendations as follows:

Recommendation 1

1.10 The Australian Greens recommend that the Bill include an objects or purpose clause

1.11 The Australian Greens recognise the Explanatory Memorandum and the Minister's Second Reading Speech outline the purpose of the bill, and that the bill outlines specific purposes in which particular entities may collect, use or disclose a USI. However we agree with a number of submissions that the inclusion of an objects or purpose clause that comprehensively lists the purposes of the scheme is necessary.

1.12 The CEO of the Student Identifiers Agency should have legislative clarity to guide the exercise of that position's discretion in a number of areas including the determination of misuse in Clause 15. Clause 13 also allows that students' consent is not explicitly required for the CEO to verify or provide the USI of an individual to certain entities, despite Clause 8 requiring the authorisation of the individual for application of an USI.

1.13 Clause 21 further, authorises the collection, use or disclosure of an individual's USI if the regulations allow it. An objects clause would provide the parameters any such regulations must sit in.

1.14 An objects clause is also necessary to preclude the possibility of the USI being used to restrict an individual's access to government subsidised training under an 'entitlement' model.

1.15 The changing face of the modern workplace demands lifelong learning to meet the continually changing demands and shape of the workplace that is now a fact of the labour market. However the Australian Greens are very cognisant of the push to limit access to free or affordable education and training via an 'entitlement' model which only allows an individual one attempt at skilling up in a government-subsidised place. Any subsequent need to retrain or up-skill demands the individual pay increasingly unaffordable fees or incurring of debt via student loans to pay those fees.

1.16 The limiting of access to education and training that occurs with the shifting of costs to students in a commercialised and funding-contested system is anathema to the Greens. The potential of the USI linked data being used to assess the "entitlement" and limit of an individual's access to further education and training needs to be ameliorated with an objects clause that legislatively confirms the purpose of the bill as asserted in the Explanatory Memorandum and the Minister's Second Reading Speech.

Recommendation 2

1.17 The Australian Greens recommend that the bill be amended to ensure any individual retains control of their USI, and must provide informed and explicit written consent to the provision of their USI and linked records of VET activity.

1.18 Clearly the protection of privacy is a serious concern about this bill, and the individual's control over the collection, use or disclosure of their USI and their data linked to that USI is pivotal to ensuring the bill does not interfere with any human rights to privacy or access to secondary education including technical and vocational secondary education as determined by Article 13(2)(b) of the International Covenant on Economic, Social and Cultural Rights.

1.19 As per our introduction, the Australian Greens acknowledge that the *de-identified* longitudinal data describing an individual's pathway through the VET system is in itself valuable and poses no risk to individual rights as mentioned above.

1.20 We also recognise that RTOs are already required to collect and submit to AVETMISS student information collected from the student at the time of enrolment. This information includes age and sex, and cultural, disability and geographic information, as well as where, what and outcomes of study.

1.21 Further we support an individual having the ability to access their own complete or extracted VET transcripts by use of their USI, which effectively is the key linking their identify to their records.

1.22 That the USI will be held with the Agency, while individual de-identified training records will be held separately on a NCVER database, is to be commended. Further the requirement that an individual must consent before the collection, use or disclosure of their USI and linked data is commended.

1.23 However there are a number of clauses that effectively remove the individual's consent, rendering the cornerstone protection non-existent.

1.24 The Australian Greens support the AEU recommendation that the implied consent of an individual as described in Clause 18 be removed and replaced with "express and informed consent". The use of implied consent is a nonsense, and at odds with the asserted intention that individuals will always retain control of their USI.

1.25 Clauses 13 and 21 also allow an entity to collect, use and disclose a USI if the regulations authorise so, and without explicit consent or even knowledge of the individual. These clauses should mirror a requirement for explicit consent from the individual if the data is to be linked to the individual's USI, and effectively revealing that person's own identity and linked VET records.

1.26 As already discussed, the lack of an object clause further removes any guidelines that might otherwise provide clarity and thus accountability as to the purposes to which the USI may be collected, used or disclosed.

1.27 The Australian Greens note that lack of explicit consent by the individual would only remove the identification of the individual and that the de-personalised data would still be available as an important resource to government and researchers.

Recommendation 3: That the bill be amended to include a range of penalty provisions enforceable through the Federal Court for contravention of the Bill's provisions.

1.28 As mentioned above, the Australian Greens accept that any breaches of the bill's provisions constitute breaches of the Privacy Act with its civil penalty provisions.

1.29 However we also accept the AEU's contention that the Criminal Offences in other legislation require too high a threshold to establish all the elements of an alleged crime; that investigations under Privacy Act are largely based on complaints being pursued by the affected individual; and that enforcement must be pursued separately through Federal Court action.

Recommendation 3

1.30 The Australian Greens recommend that an explicit definition of "misuse" be included in the bill

1.31 The Australian Greens understand that privacy provisions in the bill complement and mirror existing federal, state and territory privacy legislation, and accept that the breaches of the bill's provisions constitute breaches of the *Privacy Act 1988* with its civil penalty provisions.

1.32 However Clause 15, while determining the CEO of the Student Identifier Agency and other entity must take reasonable steps to protect a USI from misuse, among other things, does not provide clarity as to what exactly constitutes "misuse".

1.33 The insertion of an objects clause would go some way to providing that guidance, however a definition of 'misuse' is required to provide clarity.

Recommendation 4

1.34 The Australian Greens recommend that the bill be amended to require an RTO, VET admission body or other entity to provide a privacy notice to a student when the entity applies for a USI on the student's behalf.

1.35 The Australian Greens support this recommendation which is made by the Australian Privacy Commissioner in the OAIC submission to this inquiry.

1.36 While the Student Identifier Agency is an "agency" under the Privacy Act and therefore obliged to provide a privacy notice to an individual who applies for a USI directly from the Agency, some entities that may apply for a USI on a student's behalf may not be covered by the Privacy Act or state/territory privacy provisions.

1.37 It is noted that the Department will be providing RTOs and other entities with a template privacy notice, and that a privacy notice will appear on screen when an individual initially logs on to the online USI system.

1.38 However, the Australian Greens agree with the Privacy Commissioner's submission that only a legislative requirement for provision of a privacy notice to

students will guarantee this will occur, and that “best privacy practice would be to include a provision about privacy notices” in the bill.

Recommendation 5

1.39 The Australian Greens recommend that Clause 22(2) be amended using the wording advised by the Privacy Commissioner.

1.40 The Committee encourages the Department to re-examine the wording in Clause 22(2) to ensure the correct interaction between the Privacy Act and this bill and that the Privacy Commissioner is legally allowed jurisdiction to investigate complaints.

1.41 Whilst the Department has responded to the Privacy Commissioner’s submission by stating its satisfaction that the wording will achieve the required interaction between the two pieces of legislation, the Australian Greens agree with the Committee’s observation that the Privacy Commissioner is well placed to provide a more expert advice in this field of law.

1.42 The Australian Greens thus recommend Clause 22(2) be amended as suggested by the Privacy Commissioner, which will ensure that the Commissioner’s jurisdiction over an entity to be investigated is triggered by a *complaint* to the Commissioner, and exists prior to the commencement of any investigation. As advised by the Australian Privacy Commissioner’s submission, this then enables all the Commissioner’s powers under Part V of the Privacy Act.

Recommendation 6

1.43 The Australian Greens recommend that exemptions to provisions of the bill applying to police personnel undertaking training as part of their policing qualifications be clarified and concerns expressed by Victoria Police and Police Federation of Australia be answered.

1.44 The Australian Greens recognise the concerns that provisions of this bill, where they apply to training undertaken by police officers as part of their duties may pose a risk to the privacy and security of serving police officers or those undertaking training within the context of national security.

1.45 Whilst the Department states the bill incorporates flexibility to provide for narrow exemptions from the mandatory nature of the scheme in certain circumstances, the Australian Greens request clarity in this regard.

Recommendation 7

1.46 The Australian Greens recommend that the bill be amended to explicitly state that no fees will be charged to individuals by any entity

1.47 Whilst the intention is that application for the USI or accessing of transcripts by the individual will not incur costs, the Australian Greens agree with submitters’ recommendation that the bill explicitly state no fees will be charged to individuals by any entity acting with the express consent of that individual within the framework of the bill.

Recommendation 8

1.48 The Australian Greens recommend that clarification be sought as to the realtime uploading of student transcripts by RTOS.

1.49 AVETMISS direct data submission are required to be uploaded by 31 March for the previous year's data. This suggests that students who complete their qualifications at the end of a 12 month period would not see their qualifications appear in the new verified system for at least 12 months. This would defeat some of the purpose of the system to have real-time transcripts available to individuals.

1.50 The Australian Greens seek clarification about the realtime uploading and accessibility of student transcripts.

Recommendation 9

1.51 The Australian Greens recommend that the bill not be debated until the Minister publishes responses to requests for clarification by the Senate Standing Committee for the Scrutiny of Bills and by the Parliamentary Joint Committee on Human Rights, as noted by this Committee.

1.52 The Australian Greens agree with the Committee's wish that the clarification sought by the Senate Standing Committee for the Scrutiny of Bills and by the Parliamentary Joint Committee on Human Rights about a number of clauses should be answered prior to the passage of the bill.

1.53 We recognise both Committees support the bill, notwithstanding the request for clarification, however the Australian Greens recommend that this clarification *must* be provided *prior* to the Senate debating this bill.

1.54 The Senate Standing Committee for the Scrutiny of Bills has requested of the Minister advice about Clauses 21, 25, 53 and 57, the details of which are listed in the Majority Report.

1.55 As also noted in the Majority report, the Parliamentary Joint Committee on Human Rights has sought clarification about how the provisions relating to the collection, use and disclosure of USIs are consistent with the right to privacy. It has also asked about the circumstances in which exemptions to the requirement for a USI are permitted under the bill.

1.56 The Greens look forward to the Minister providing that clarification so that the bill may be debated.

Recommendation 10

1.57 The Australian Greens recommend that the requirement the authenticated VET transcript include the source of funding for the unit, module or course studied by the individual be removed.

1.58 The Australian Greens see no reason why a VET transcript should include the source of funding for any subjects or courses studied by an individual. Whilst the flow and outcomes of government funded and subsidised student places is important information, we see no reason why it should be coupled to an individual's personal

identification or transcript and seek advice about alternative methods of analysing and assessing the efficacy and transparency of publically funded VET.

1.59 The inclusion of such information otherwise suggests an intention by government to limit an individual's access to VET via an entitlement framework, which is not a stated aim of this bill in any of the legislative package, and which the Greens strongly reject.

Recommendation 11

1.60 The Australian Greens recommend that Clause 53 be amended to provide clarity that the operative date for the scheme starts on 1 January 2014, and that students may be issued a VET qualification or a Statement of Attainment without a USI up until that date.

1.61 Both AEU and ACTU point out that Clause 53, which requires that an individual must obtain a USI before they can be issued with a VET qualification or a Statement of Attainment, is inconsistent with the clear intention that requirements of the scheme do not commence until 1 January 2014.

1.62 Clause 53 must be amended to concur with the starting date, and clarify that providers must still provide qualifications or transcripts for students who completed their training prior to 1 January 2014.

Conclusion

1.63 As discussed in our Introduction, the Australian Greens recognise the benefit this bill could potentially have for students in readily accessing their own collated and verified transcripts; and to ensure quality data that will increase transparency and responsiveness of governments and VET providers to the requirements of students and needs of industry.

1.64 However this bill, as it currently stands, does not provide the guarantees needed to ensure that individuals' access to education and training will not be restricted.

1.65 It does not ensure the individual retains control over their personally linked data; and it does not clearly prohibit secondary or extraneous uses of the USI-linked data unless always expressly and knowingly consented by the individual.

1.66 The bill at a minimum needs an object clause articulating details of its purpose; an effective and *accessible* regime of offences and penalties that do not rely on the individual's ability to make a complaint; and the guarantee that the concerns mentioned above are addressed.

Senator Lee Rhiannon