

## DIICCSRTE submission to the Senate Education Employment and Workplace Relations Committee Inquiry into the Student Identifier Bill

### Introduction

This submission outlines the Commonwealth's implementation of the unique student identifier (USI) scheme, as mandated by the Council of Australian Governments' (COAGs') *National Partnership Agreement on Skills Reform*, through the development of the legislative and administrative frameworks and the IT system which will underpin the scheme. The Department has undertaken a broad ranging and iterative consultative process with stakeholders during the past two years to identify potential issues associated with implementing the scheme and to design solutions to ameliorate their impact.

The Student Identifier Bill 2013 (the SI Bill) was introduced into the Commonwealth Parliament on 20 March 2013, by the then Parliamentary Secretary the Hon Sharon Bird MP, and subsequently referred to the Committee for inquiry and report.

The principal objective of the SI Bill is to create the unique student identifier (USI) scheme (commencing 1 January 2014) and establish the new independent statutory authority – the Student Identifiers Agency – to administer it. The purpose of the student identifier is threefold:

- to provide students with on-line access to a consolidated transcript of their vocational education and training (VET) attainments;
- to gain better understanding of what nationally recognised training is being undertaken and what qualifications are achieved; and
- to use this information to support a more flexible, transparent and demand-driven VET system in order to assess the quality of educational outcomes nation-wide and more effectively target Australia's skills development needs into the future.

The scheme is an initiative of the Council of Australian Governments (COAG) that has been jointly agreed between the Commonwealth, states and territories under the auspices of the Standing Council for Tertiary Education, Skills and Employment (SCOTESE). The scheme is part of the Australian Government's VET reform agenda to improve the transparency and responsiveness of the VET sector, which broadly seeks to respond to industry concerns regarding perceived regulatory failures, issues of quality and a changing labour and training market.

The Commonwealth shares responsibility for training with the states and territories. Each state or territory manages its own training system. In April 2012, COAG agreed to a set of reforms to the national training system in order to ensure that Australia has the skills base necessary to drive growth forward in a high participation and more productive economy. In part, the reforms are comprised of a revised *National Agreement for Skills and Workforce Development* and a new *National Partnership Agreement on Skills Reform*.

The objective of the *National Partnership Agreement on Skills Reform* is a VET system that delivers a productive and highly skilled workforce which contributes to Australia's economic future, and to enable all working age Australians to develop the skills and qualifications needed to participate effectively in the labour market. VET structural reforms are categorised by national or jurisdictionally flexible implementation. National reforms require jurisdictions to create a more transparent VET sector through:

- enhancing national data collections including better measurement of total VET activity (TVA) for all registered training organisations (RTOs);
- improving timelines for data sharing and reporting;
- finalising the operational, funding, governance and State and Commonwealth legislative arrangements for the implementation of the USI; and

- improving consumer information through development of proposals for release of comparable data on the national My Skills website and on RTOs' own websites, with data to include quality of providers, prices, government support, including subsidies, and labour market information.

Jurisdictions will create a more accessible and equitable training system through the introduction and strengthening of a national entitlement to a government subsidised training place to a minimum of the first Certificate III qualification, which is accessible through any RTO, public or private, that meets state-based criteria for access to the national training entitlement.

The USI is one component of a comprehensive suite of reforms to the VET sector, which form the basis of the *National Partnership Agreement*. Another component is TVA which will enhance the national data collections and provide the data to create student transcripts under the USI scheme. Currently government providers are required to report data on *all* their students whereas private RTOs are only required to report on government-subsidised activity. Partial reporting of VET activity reduces individuals' and employers' abilities to make informed decisions when purchasing training, and limits governments' decision making for policy development and funding arrangements.

The USI is not a stand-alone initiative and the utility of the scheme and of TVA will only be realised in conjunction with the effective implementation of both initiatives and the other components of VET reform under COAG's *National Partnership Agreement*.

#### ***Rationale for the SI scheme***

Currently, there is no single repository of information for students in the VET sector that maps their enrolment and achievement records across their lifetime. Students have little control over their VET data and have no ability to find, collate and authenticate all of their educational attainments into a single portable record. It is estimated that there are approximately 2.7 million enrolments in the VET system each year and that 30 per cent of students use multiple providers, when a student needs to provide evidence of their achievements in order to enroll in a new qualification, show an employer or to seek credit transfer, they need to contact multiple providers to get multiple transcripts. This can prove difficult if for example, a training provider has changed its name; ceased trading or records are otherwise unrecoverable.

Similarly for RTOs, being unable to access consolidated individual enrolment and achievement information at the time a student is enrolling in order to affirm pre-requisite course work and assess credit transfer can be problematic.

Importantly, the introduction of the USI and TVA will enable government policy makers and researchers to access *de-identified* enrolment and achievement data at the individual student level in order to understand the pathways students take, assess the progress of disadvantaged students and better support the management of government student subsidy programs, while also improving the VET sector's transparency and responsiveness.

*'Improving data collections for all education sectors is of critical importance to Australia. A national student identifier could track students as they progress through education and training and would further support a seamless schooling, VET and higher education experience for students. It would also provide valuable data to facilitate a VET system that is more responsive and flexible.'*<sup>1</sup>

In order for the scheme to provide any meaningful data and to ensure that all VET students benefit, regardless of where they undertake their training within Australia, the USI scheme and TVA need to be nationally implemented. In order to maintain the integrity of the data and to ensure its utility, the scheme needs to encompass as much of the VET sector as possible. This is critical for achieving the

---

<sup>1</sup> COAG Communique 2009

objective of creating a more transparent VET sector as agreed by jurisdictions under the *National Partnership Agreement*.

### ***How will the student identifier work?***

A unique student identifier will be provided free of charge upon application to all learners undertaking nationally recognised training as of 1 January 2014, pending the passage of the legislation. The scheme is *not* retrospective. Re-enrolling students will be able to apply for an identifier from mid-October 2013.

Students who have completed their training but not yet been issued with their statement of attainment or qualification will need to apply for a USI.

The student identifier will be a unique and randomly generated alpha-numeric code which will be issued to students who undertake nationally recognised training in the VET sector from 1 January 2014. Once assigned, students will use their USI each time they enrol in a nationally recognised VET course. RTOs will affix student identifiers to training records sent to the National Centre for Vocational Education and Research (NCVER) where they will be stored. Because records of publicly funded training are currently stored at the NCVER without a student identifier, they are not able to be linked to an individual over their lifetime. The purpose of the student identifier is to provide a linking key into the NCVER database to enable that data to be accessed and used in different ways.

For example the student identifier will give students a single on-line access point for all of their VET records from 2014 onwards. This will give students greater control over their VET records and will make it easier to access information for course enrolment, to establish credit transfer and to show employers when going for a job interview.

For RTOs, the new initiative will provide, *with the student's permission*, an electronic record of student achievement, potentially assisting with streamlining credit transfer and assessing pre-requisites.

De-identified information will give governments a much clearer picture of how many students are in the VET system, for what length of time, and the pathways students take through the system. The initiative may also assist governments to manage their existing student entitlement programs.

With an estimated 2.7 million enrolments in the VET system each year, collecting and analysing information is essential in ensuring that the VET system can respond to students' preferences and to the skills needs of industry and the economy. The new initiative will provide an important foundation for understanding and improving VET performance and for better meeting students' needs.

### ***What is the design concept?***

The design of the scheme separates personal information from education and training data. The first part of the design allocates each student a USI upon application to the Student Identifier Agency. The second part of the design allows students to access a consolidated record (regardless of how many RTOs they have attended) of their attainment and achievement data (their units of competency and their qualifications).

The key structural feature of the design of the national scheme separates student information from education and training data, thereby quarantining identifying information, which mitigates potential privacy risks that would arise if the information and data were stored together.

## ***Development of the USI scheme***

In December 2009, COAG asked for a business case to be prepared for the introduction of a national unique student identifier for the VET sector, which would be able to record all nationally accredited training undertaken and the resulting qualifications learners achieved, over their lifetime.

A preparatory business case was considered by COAG in February 2011, which resulted in COAG requesting a final business case be prepared for its consideration based on five design principles which encompassed the student identifier being:

- a national, coherent initiative;
- a student-centred approach;
- the first phase of implementation commencing in the VET sector with a cross-sectoral framework also developed for the whole education and training system;
- student identifying information quarantined and stored separately from education and training activity; and
- the accommodation of existing identifiers (e.g. in Victoria and Queensland) within the system.

The Nous Group (Nous) was commissioned to undertake stakeholder consultation for the business case. Nous interviewed 30 key stakeholders across jurisdictions and additionally, received 848 responses to a survey of NSW VET students. These consultations found strong support for the scheme among students, policy makers and peak bodies, with RTOs and regulators expressing mixed views regarding lead in times to manage system changes, compliance and potential cost increases.

Students showed overwhelming support for the USI and being able to access an on-line record of all their training, with over 90 % of students agreeing that a student identifier was a good idea.

The final business case – reflecting the five design principles – was considered by COAG in early 2012 and agreed, following on from a COAG Consultation Regulation Impact Statement (RIS) in December 2011 and a decision COAG RIS in March 2012.

## **The Commonwealth's implementation of the USI scheme**

Under the *National Partnership Agreement on Skills Reform*, the Commonwealth's role is to lead the implementation of the USI scheme. The Department has achieved this by establishing four cross-jurisdictional working groups and an external reference group to provide advice on the development and implementation of the scheme. The four cross-jurisdictional working groups have jointly designed the scheme and how it would operate. The groups are: legislation and governance; IT; data management; and communications. The external reference group (ERG) is comprised of the following peak bodies:

- the Industry Skills Councils Collective;
- Adult Learning Australia;
- TAFE Directors Australia;
- Enterprise Registered Training Organisation Australia;
- Australian Skills Quality Authority (ASQA, the national VET regulator);
- Australian Council for Private Education and Training;
- Community Colleges Australia;
- Victorian Registration Qualifications Authority (VRQA, the Victorian regulator);
- National VET Equity Advisory Council;
- Australasian Curriculum, Assessment and Certification Authorities: VET in Schools subgroup;
- National Skills Standards Council;
- Training Accreditation Council (the WA VET regulator);

- National Centre for Vocational Education Research; and
- Student representatives.

The ERG was first constituted in April 2012 to provide views and advice on the implementation of the USI in order to ensure the successful implementation of the scheme.

### **Issues raised by stakeholders**

Engagement with stakeholders has been on-going. Adopting a consultative manner and working early to address stakeholder concerns has enabled the design of the SI Bill to be as comprehensive as possible.

The principal issues raised by stakeholders can be summarised as follows:

- information and privacy concerns relating to the collection, use and disclosure of the USI;
- the potential use of the USI to restrict access to student entitlements; and
- the potential vulnerability of students undertaking training with a policing or national security focus.

These issues were also raised during the various targeted and public consultation processes, through feedback at ERG and through discussions with the Office of the Australian Information Commissioner (OAIC), the privacy commissioners in Queensland, NSW and Victoria and the three VET Regulators: ASQA, VRQA and the Training Accreditation Council of Western Australia.

### ***Consultation on the legislative basis for the scheme***

Commonwealth, state and territory training ministers agreed in January 2013 for a public consultation process to commence which included consideration of the proposed legislative package that will give effect to the student identifier scheme. The package included:

- **Draft Student Identifier Bill 2013** which was prepared by the Commonwealth Office of Parliamentary Counsel (OPC) and considered by each of the states and territories;
- **Draft Student Identifier Regulation 2013**; and
- **Proposed changes to the Standards for Registered Training Organisations** under the *National Vocational Education and Training Regulator Act 2011* and the Australian Quality Training Framework.

All state and territory jurisdictions provided input into the drafting process.

The Department also prepared and released a comprehensive **overview paper** which outlined the background, rationale and legislative underpinnings of the USI scheme and its implementation and on-going management through the establishment of the independent student identifier agency. The functions, powers and obligations of the agency and the role of the Chief Executive Officer were also outlined. Importantly, the paper explained the ways in which identifying personal information will be protected through adherence to the Australian Privacy Principles, the interaction with the *Privacy Act 1988* (the *Privacy Act*) and the nature of the confidentiality scheme established by the SI Bill. Additionally, the paper summarised the application process for making USIs and stepped out the design and development of the IT system underpinning the scheme.

As part of this process, the Department also released the Executive Summary of the *Privacy Impact Assessment* (discussed below).

As part of the public consultation process on the SI Bill, information sessions were held nationally in each of the State and Territory capital cities during January-February 2013. The States and Territories invited approximately 6000 stakeholders, with approximately 740 participants attending

including students, RTOs and peak bodies. Thirty-one (31) written submissions on the legislative package were received.

The ways in which the Department has worked with stakeholders to respond to the issues raised throughout the development of the scheme and the SI Bill is outlined below.

### **Information and privacy concerns relating to the collection, use and disclosure of the USI**

The Department has engaged with the Office of the Australian Information Commissioner (OAIC) and the offices of the privacy commissioners in Queensland, NSW and Victoria regarding designing and implementing the USI scheme.

Extensive consultations have been undertaken with the OAIC in relation to developing the privacy aspects of the SI Bill. The OAIC has indicated that the approach to privacy protection adopted in the SI Bill is welcome and reflects the principles in the *Privacy Act* in terms of both protecting the student identifier and protecting records, which reflect the security and access principles in the Act.

The Department entered into a Memorandum of Understanding (MOU) with the OAIC on 30 October 2012 to ensure the design and implementation of the USI scheme is informed by the provision of expert and timely advice on the privacy implications and that the independent regulatory privacy oversight of the scheme is supported. The MOU continues until 30 June 2015.

Significant effort has gone into safeguarding the privacy of individuals. The SI Bill provides a comprehensive framework for the collection, use and disclosure of data which will protect individuals' privacy.

The privacy framework is intended to complement and work in conjunction with existing state, territory and Commonwealth privacy provisions which will continue to operate.

As indicated above, the **key structural feature of the design of the national scheme separates student information from education and training data**, thereby quarantining identifying information, which mitigates potential privacy risks that would arise if the information and data were stored together.

The principal features of the privacy protections in the SI Bill are outlined at [Attachment A](#) and summarised below:

- **A Confidentiality Scheme**: which provides that the USI must not be collected, used or disclosed by an entity if they are not the individual, or the collection, use or disclosure is not authorised in the SI Bill or the Regulations.
- **Retention and Storage of Information**: the retention and storage of any personal information collected solely for the purpose of applying for a USI cannot be retained unless required by law.
- **Individual Control**: The principle underpinning the scheme is that individuals have control over their identifier and can determine who can have access to the personal and educational records associated with it. The system is specifically being designed and built to incorporate these important safeguards.
- **Independent Assessment**: The privacy risks of the scheme have been assessed independently. The outcome of that assessment is that there is a range of sensible privacy-positive design elements, to be supported by legislative provisions, which have the effect of either eliminating or mitigating actual or potential privacy risks.
- **Regulatory Oversight**: the SI Bill does not override the existing regulatory provisions of Commonwealth and/or state and territory privacy legislation. Clause 22 establishes that contraventions of clause 10 (dealing with destruction of records), clause 15 (dealing with

protection of the student identifier from misuse interference and loss), and clause 16 (dealing with unauthorised collection or disclosure of the student identifier), are to be taken to be an interference with the privacy of the individual for the purposes of the *Privacy Act* and subject to the provisions of that Act.

Additional information relating to the discretionary powers of the CEO to issue and verify a USI, sanctions and implied consent is at Attachment A.

### **Privacy Impact Assessment**

A Privacy Impact Assessment (PIA) of the scheme was undertaken by Minter Ellison in early 2012. Its recommendations informed the development of the legislative framework and the IT system to support the scheme.

A second PIA was completed by Minter Ellison in October 2012 to assess the privacy positives and risks of the development of the scheme to that point. This PIA included a detailed consideration of the draft SI Bill. It found that a range of sensible privacy-positive design elements have been adopted in developing the student identifier system, which have eliminated or mitigated actual or potential privacy risks. It concluded that none of the identified risks present an unacceptable privacy impact, or require mitigation measures that would significantly delay the implementation of the scheme.

The Executive Summary was released at the same time as the legislative package to provide a broader context for the creation of the scheme and to provide additional information regarding how national privacy provisions have been reflected in the draft legislation and incorporated into the IT build of the student identifier system.

A third PIA is currently underway and due to report at the end of June 2013. The aim of this PIA is to:

- assess the privacy impacts arising from the implementation of the USI scheme;
- evaluate whether the IT system supporting the USI is consistent with the legislation; and
- propose mitigation strategies to alleviate identified impacts.

### **The potential use of the USI to restrict access to student entitlements**

Under the *National Partnership Agreement on Skills Reform*, the Commonwealth, States and Territories have agreed to implement a more accessible and equitable training system. One of the ways in which this will be implemented is through the introduction and strengthening of a national entitlement to a government subsidised training place to a minimum of the first Certificate III qualification, which is accessible through any RTO, public or private, that meets state-based criteria for access to the national training entitlement. Details of this are available in the *National Partnership Agreement*.

Specifically, neither the SI Bill nor the draft Regulation authorise NCVER to disclose identified information for the purpose of establishing an entitlement to a training subsidy without the student's consent. The requirements to be set by SCOTESE for the disclosure by the Agency CEO of the USI and related personal information as provided for, respectively, in s 17(2) and 24(2) relate to research purposes and **not** to the administration of a VET entitlement scheme.

An important element of the scheme is the principle that the USI account is student controlled. The only way that bodies which provide funding for training will be able to obtain information, either from the NCVER or the student identifier agency for the purposes of establishing an individual's entitlement to a training place will be with the consent of the student.

It is also important to note that State and Territory governments currently require students to provide information about their previous educational attainment in order to access subsidised

training. The introduction of the USI will have no impact on the eligibility for access to funding. The USI scheme will simply make the process of administering entitlement schemes easier for both students and governments.

#### The potential vulnerability of students undertaking training with a policing or national security focus

The key issues for enterprise RTOs with a national security or policing focus are whether the reporting of specific training being undertaken by an individual under TVA may impact on Australia's national security.

Similarly, the police have concerns about criminal access to training records of police members in respect of the "not for public access" components of the Public Safety Training Package, especially in respect of sensitive training such as that associated with undercover policing or witness protection. Similar concerns also exist for other agencies such as the Australian Customs and Border Protection Service and other similar agencies.

As a consequence of these issues, the question arises – if these organisations are unable to report training of this nature, what is the necessity and value of obtaining a USI in relation to these students.

The national security categories encompass where collecting data about the training:

- would conflict with defence or national security legislation; and/or
- could jeopardise the security or safety of defence, border protection, customs, national security or police personnel.

Following the public consultation process and on-going discussions with stakeholders, the draft SI Bill was amended, with the agreement of the States and Territories, to incorporate flexibility in order to provide for narrow exemptions from the mandatory nature of the scheme in certain circumstances.

It is envisaged that the scope of the exemption will be limited, will respect objectives in other legislation including regulatory requirements on RTOs and other regulatory imperatives, and be consistent with the overall principle of the USI which is to be universal so that students can access a full record of their VET training achieved after 1 January 2014.

As articulated in the Explanatory Memorandum, it has proven necessary to provide for limited exemptions in relation to the USI scheme on matters having national security or policing implications.



## **Student Identifiers Bill 2013, draft Student Identifiers Regulation 2013 and Amendments to the Standards and AQTF**

This attachment provides additional information on:

- the SI Bill;
- the draft SI Regulation; and
- the proposed amendments to the National Standards for RTOs, the VET Regulator and AQTF.

### **Student Identifiers Bill 2013**

The SI Bill creates the student identifier scheme and provides for the establishment of the student identifier agency, to administer the scheme. The SI Bill also provides for the role and functions of the CEO and establishes a confidentiality scheme governing the collection, use and disclosure of student identifiers. The SI Bill also provides for narrow exemptions from the mandatory nature of the scheme in certain circumstances. More information on these elements of the SI Bill is provided below.

#### **The Student Identifier Agency**

The SI Bill provides for a new independent statutory authority – the Student Identifier Agency which will comprise a Chief Executive Officer (CEO) and approximately 12 to 15 staff. The functions of the agency will include:

- Assign student identifiers: A primary function of the CEO will be to assign an identifier to an individual. An individual may apply directly to the agency. Alternatively, an RTO, a VET admissions body or another entity may apply on the individual's behalf but only where they are authorised by the individual to do so.
- Resolve any problems in relation to the assignment of student identifiers: This could include revoking one or more identifiers where duplicate numbers have been incorrectly issued.
- Verifying and assigning student identifiers to authorised persons/entities: This will allow the individual, an RTO, a VET related body or a VET admissions body that has been authorised by the individual to request the CEO to verify that an identifier is correct. Verification of the student identifier is vital to the integrity of the scheme as it ensures that correct educational information can be stored with a student's identifier allowing an accurate transcript to be produced.
- Providing authenticated VET transcripts to authorised persons/entities: An authenticated VET transcript is a document that an individual with a student identifier will be able to generate that sets out their VET achievements and qualifications. The form of the transcript is prescribed by Regulations. Individuals will have password protected access to the student identifier system to generate either a complete authenticated transcript of their VET attainments, or an extract which can include just those elements they need to disclose or which are relevant. Individuals may also authorise RTOs to access their complete authenticated transcript direct from the agency, for example, where this is needed for enrolment or similar purposes. Alternatively, where the individual does not authorise the RTO to access their complete record, the individual is able to generate a printable pdf file of an extract from the individual's records which can then be provided to the RTO as evidence of attainment.

#### **The Chief Executive Officer**

The CEO will have powers that are comparable to other CEOs of independent statutory authorities and will be appointed under the terms and conditions broadly comparable to similar positions in other independent Commonwealth statutory authorities.

The CEO must prepare and give the Commonwealth Minister a report on the operations of the CEO and the agency for presentation to the Federal Parliament at the end of each financial year. The CEO must give a copy of the report to the Standing Council at the same time as the report is presented to the Parliament.

The Commonwealth Minister, following consultation with the Standing Council, will be empowered to appoint the agency's CEO and give directions to the CEO. The Minister may also terminate the appointment of the CEO in certain circumstances and is required to notify the Standing Council of this decision.

The operation of the new agency will be substantially underpinned by comprehensive and secure IT systems that comply with the existing national privacy provisions and the Australian privacy principles which will commence in March 2014.

### **Overview of the SI Bill's Information and Privacy provisions**

The Bill provides for:

A Confidentiality Scheme: Division 4 of Part 2 of the SI Bill establishes a confidentiality scheme which provides that the student identifier must not be collected, used or disclosed by an entity if they are not the individual, and the collection, use or disclosure is not authorised in the Bill or Regulations.

The use and disclosure rules in the SI Bill and the draft Regulations provide for RTOs, the three VET Regulators and government training authorities to collect, use and disclose the student identifier to carry out their legitimate business and to realise the benefits of the introduction of the identifier. In addition, the Bill authorises the CEO of the student identifier agency to collect, use or disclose an identifier of an individual if it is necessary for the performance of their functions.

Specific provision has been made for the use and disclosure of an identifier for the purposes of research. The CEO is able to authorise such use and disclosure only where the research is related directly or indirectly to education and training, or that requires the use of identifiers for information and training; and that meets the requirements specified by the Standing Council. In practice, this will mean that each research proposal will need to be assessed by an ethics committee, against a set of protocols to be developed and agreed by the Standing Council.

Access to an individual's historical training record through the student identifier agency is with the permission of that individual – in accordance with the access controls they set in the student identifier system.

Retention and Storage of Information: The legislation will ensure that any personal information collected solely for the purpose of applying for the student cannot be retained. Clause 10 of the SI Bill enables an RTO, a VET admissions Body or other entity who is authorised by the individual to make an application for a student identifier may collect personal information about the individual for the purposes of making the application, must destroy any personal information collected solely for the purpose as soon as practicable after the application is made. This means for example, that details of the identification documentation submitted will not be kept by the agency or any other entity that may have assisted the student in the application process.

The USI IT system will store information such as the first and last names of the individual, their date of birth and the student identifier. Training records will be held separately on the database of the NCVER with the student identifier serving as a linking key between the two data sets. The information can be brought together when a request is made through the IT system for an authenticated transcript or an extract of an individual's attainment.

Individual Control: The principle underpinning the scheme is that individuals have control over their identifier and can determine who can have access to the personal and educational records

associated with it. The system is specifically being designed and built to incorporate these important safeguards.

Independent Assessment: The privacy risks of the scheme have been assessed independently. The outcome of that assessment is that there is a range of sensible privacy-positive design elements, to be supported by legislative provisions, which have the effect of either eliminating or mitigating actual or potential privacy risks.

Regulatory Oversight: As indicated above, the SI Bill does not override the existing regulatory provisions of Commonwealth and/or state and territory privacy legislation. Breaches of privacy could be dealt with in either the Commonwealth or state or territory jurisdiction. It is expected that existing consultative and coordination arrangements between Commonwealth and state and territory jurisdictions will ensure duplicate privacy investigations are minimised.

Clause 22 of the SI Bill also establishes that contraventions of clause 10 (dealing with destruction of records), clause 15 (dealing with protection of the student identifier from misuse interference and loss), and clause 16 (dealing with unauthorised collection or disclosure of the student identifier), are to be taken to be an interference with the privacy of the individual for the purposes of the *Privacy Act* and subject to the provisions of that Act.

The SI Bill also establishes additional functions for the Information Commissioner to investigate possible interferences with the privacy of the individual under clause 22 (above) and to conduct assessments of whether the CEO is maintaining or handling student identifiers in accordance with the requirements of the legislation.

#### ***Privacy issues raised during stakeholder consultations***

##### *Interference with the privacy of an individual*

As outlined above, clause 22 establishes that if an act contravenes clauses 10, 15 and 16 of the Bill then it is deemed to be an interference with privacy for the purposes of the *Privacy Act*. Subclause 22(2)(a) provides that such a contravention is the subject of an investigation by the Information Commissioner under Part V of the *Privacy Act*. In our view, it is sufficient to use the words ‘an investigation by’ the Information Commissioner as an individual may make a complaint to the Information Commissioner once there is an act or practice that may be an interference with privacy (s 36(1)) of the *Privacy Act*) and once a complaint is made then the Privacy Commissioner can investigate it (s 40(1)).

##### *Discretionary powers of the CEO to issue/verify USI*

A key design principle of the scheme is to safeguard the integrity of the information in the USI system by preventing the issuing of multiple identifiers to an individual. Clause 13 of the SI Bill enables specified entities to apply to be given an individual’s identifier. The purpose of this clause (as noted in the Explanatory Memorandum on page 44) is to cross-check an identifier with the CEO of the student identifier agency in order to verify that the identifier is properly assigned to the right individual. The discretionary power to issue a USI is designed to ensure the integrity of the USI system. Where an individual (or an RTO on their behalf) applies for a USI and the USI system determines that the individual in question already has a USI, then the existing USI is given. This prevents an individual from being issued with multiple USIs which in turn will ensure the veracity of the information in the USI system.

##### *Is an additional obligation on the CEO required to ensure that entities have adequate protections in place, prior to providing them with an individual’s identifier?*

It would be impractical for the CEO to be held responsible for the internal administrative arrangements of either RTOs or VET related bodies, such as State and Territory government agencies. The SI Bill places the onus on VET sector entities to have adequate protections in place.

Failure by these entities to take reasonable steps to protect the USI is taken to be interference under the *Privacy Act*.

As part of their initial and continuing registration, RTOs are required under the national standards to store the USI securely. Breaches of RTO Standards can be investigated by the relevant VET Regulator.

*Why are there no sanctions for privacy breaches under the SI Bill?*

The SI Bill contains no sanctions or penalties, because contraventions of the Bill's provisions safeguarding the USI are a breach of the *Privacy Act 1988*. Under reforms to that Act due to commence on 12 March 2014, the maximum penalty amount for a serious or repeated interference with the privacy of an individual will be \$340,000 for individuals and \$1.7 million for entities.

*Why does the requirement to destroy information collected solely for the purposes of the USI application only apply to this information?*

It is not appropriate for the SI Bill to seek to limit the use of information collected for purposes unrelated to the USI scheme. Protection of such information, to the extent that it may be personal information, is afforded through the existing provisions in the *Privacy Act*. It is not appropriate for the SI Bill to mandate that RTOs destroy information collected for their own administration and student enrolment systems, for example, particularly when RTOs are required to comply with other legislation such as the *National Vocational and Educational Training Regulator Act 2011*, which regulates their operation

*Why does the SI Bill rely on a student's implied and express consent to the collection, use and disclosure of their identifier?*

The reference to implied consent in clause 18 acknowledges the fact that it is not practical or possible to obtain the express consent of the individual every time the USI is collected, used or disclosed. For example, when the USI becomes a compulsory field of AVETMISS, RTOs will be required, as a condition of their registration, to include it in the students' data for the purpose of their regular contribution to the National VET Data collection. The reporting may occur after the student has left the RTO.

*Provision of privacy notices*

An individual can apply directly to the Agency for a USI. At the point of applying for a USI, individuals will be informed via a privacy notice of how and to whom the USI may be disclosed and for what purposes (in accordance with the obligations under the Australian Privacy Principles (APPs)). It will also be possible for an RTO or VET admissions body to apply for a student identifier on behalf of a student provided they have that student's permission. A privacy notice will be provided to all RTOs and VET admissions bodies for use on their enrolment forms.

In addition, APP 5 requires an organisation (in this case the Agency) to notify the individual of certain matters at or before the time of the collection, or, if that is not practicable, as soon as possible after the collection. As the application will not be made directly by the student, the Agency will provide the privacy notice to the individual when it issues the USI which would satisfy the requirement to provide it as soon as possible after the collection.

## **Other issue raised during consultations**

*Objects or purpose clause*

While the Bill itself does not include an object or purpose clause, the Outline to the Explanatory Memorandum sets out the issues that the USI scheme is designed to address and provides clarity around the purposes of the Bill including: why the USI scheme is needed; establishing a confidentiality scheme to protect the collection, use and disclosure of USIs; and the establishment of the Agency and the role of the CEO.

### **Draft Student Identifiers Regulation 2013**

While the SI Bill establishes a confidentiality scheme, the draft Regulation provides the specific rules for the collection, use and disclosure of the student identifier by RTOs, government training authorities, the three VET Regulators, researchers and the NCVER. The rules provide for these entities to carry out any new functions in relation to the scheme as well as any existing functions which will require the collection, use and disclosure of the student identifier after 1 January 2014.

The draft Regulations also set out the information to be included in an authenticated VET transcript and provide for the individual to create an extract of their transcript for specific purposes.

*Why are there no parameters on the regulation making power in clause 21 of the SI Bill which allows for regulations to be made to authorise collection, use or disclosure of a USI?*

Clause 21 enables the collection, use and disclosure of the USI as authorised in regulations. Regulations may only be made by the Minister after consultation with the agreement of the Standing Council. The authorisations provided for in the regulations are intended to enable entities in the VET sector to go about their day to day operations and fulfil their statutory responsibilities following the introduction of the USI scheme by enabling the collection, use and disclose the USI in specific circumstances. Such circumstances are set out in the Privacy Notice.

### **Amendments to the Standards and the AQTF**

RTOs will be required to support the introduction of the student identifier through the inclusion of additional requirements to the Standards for RTOs under the *National Vocational Education and Training Regulator Act 2011* and the Australian Quality Training Framework (AQTF). These additional requirements agreed to by the National Skills Standards Council, provide that an RTO must:

- not issue a VET qualification or a VET Statement of Attainment to an individual unless that individual has previously provided their student identifier to that RTO, which reflects the mandatory nature of the student identifier as set out in Clause 53 of the SI Bill;
- validate a student identifier that is given to them by a student, with the agency. This is to ensure the data collected from RTOs about the training they have delivered to an individual is correct so that the authenticated transcripts created from that data into the future are also correct;
- ensure the security of a student identifier and related personal information. This is to protect the privacy of individuals concerned; and
- confirm that it will recognise an authenticated transcript issued by the new agency as a true record of educational attainment. This is to ensure that the transcripts issued by the agency can be relied upon by RTOs in the same way as they would rely on a transcript issued by another RTO.

The VET Regulators have been consulted on, and are supportive of, the additional four requirements articulated in the Standards and reflected in the AQTF.