

ACTU Submission

ACTU Submission to the Senate Education, Employment and Workplace Relations
Legislation Committee Inquiry into the *Student Identifiers Bill 2013*



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Introduction

1. The Australian Council of Trade Unions (ACTU) welcomes the opportunity to make a submission to the Senate Education, Employment and Workplace Relations Legislation Committee's Inquiry into the *Student Identifiers Bill 2013* (the Bill).
2. Subject to our comments below, the ACTU supports the passage of the Bill, which provides for the establishment of a national unique student identifier (USI) scheme for students undertaking nationally-recognised training in the Vocational Education and Training (VET) sector. We congratulate the federal and state and territory governments for working cooperatively, through the Council of Australian Governments process, towards the introduction of such a national scheme.
3. The ACTU believes the introduction of a national USI system, if carefully and appropriately designed and implemented, has the potential to be a positive reform which can assist in the task of ensuring Australia has a high quality VET system that is responsive to the needs of students, workers, industry and the community.
4. The ACTU recognises that the VET system continues to face significant problems with respect to inadequate and incomplete data, which in turns limits the capacity of policy-makers, regulators and industry to gain an accurate picture of VET training and outcomes across the country. Through facilitating the collection of data on trends in enrolments and completions of VET courses, we believe the national USI scheme can assist in the effective forecasting of skill needs to ensure that training effort, including financial investment, is expended in a way that meets future workforce development need.
5. The ACTU notes that the introduction of the USI scheme has the potential to benefit students, training organisations and public policy makers.
6. At present, students are unable to obtain a complete record of their VET enrolment and qualifications from a single source. Compiling such data can be time-consuming and difficult. This is considered a particularly valuable function for the estimated 700,000 VET students each year who attend courses with multiple providers, for those students who have studied at RTOs across state jurisdictions and those students who have attended courses with RTOs that are no longer operating.

7. For training organisations, access to an authenticated electronic record of a student's achievement (with the individual's permission) should make it easier for these organisations to confirm appropriate pre-requisites, and to assess credit transfer and recognised prior learning.
8. The introduction of USIs also has the potential to significantly enhance public policy making, through enhancing the quantity and quality of information available to researchers and public policy makers. De-identified data compiled through the USI system may provide insight into, for example, what VET-training is being undertaken, what qualifications are being achieved, completion rates and student pathways through the VET system. It has the potential to assist in identifying emerging issues and trends in the VET sector, including gaps in training in particular skills that may be in demand by industry.
9. On the basis of this more accurate picture of VET participation and outcomes, public policy makers are in a better position to design and implement evidence-based reforms that ensure that Australia has a strong, high quality VET system that is responsive to the needs of industry, the economy and the Australian community.
10. While the ACTU supports a national USI system for the purposes listed above (paras [6] – [9]), we believe there is scope to improve the *Student Identifiers Bill 2013*. We outline the content of these proposed improvements below.
11. Before proceeding, it is important to note that in making this submission, the ACTU has drawn a clear distinction between the establishment of a national USI scheme for the purposes identified in our submission above at paras [6] – [9], and any potential use of such a scheme for purposes not expressly identified in the Bill or Explanatory Memorandum. While we support the former, we would have serious concerns with any proposed use of the national USI scheme as a means through which to potentially restrict an individual's access to government subsidised training on the basis that the individual had already completed a VET qualification (a feature of so-called 'entitlement' models of VET funding).

General comments

12. The ACTU believes, as currently drafted, the Bill lacks sufficient detail on several key aspects of the USI scheme. In some cases, detail is produced only in the Minister's Second Reading Speech and/or the Explanatory Memorandum, whereas it should more appropriately also be included in the Bill itself.
13. An important example of this shortcoming is the absence of a purpose or objects clause within the Bill. We believe it is appropriate and desirable for the establishment and ongoing functioning of the scheme that the Bill contains such a clause that exhaustively lists the purposes for which the national USI scheme is to be established. This is particularly important given that a number of provisions in the Bill grant significant discretion to the Chief Executive Officer (CEO) of the Student Identifiers Agency with respect to the ongoing operation of the scheme. Without adequate legislative guidance as to the purposes of the USI, for example, it will be difficult if not impossible for the CEO of the Agency to determine what constitutes misuse of a student identifier for the purposes of clause 15 of the Bill.
14. Our second and related general comment is that the Bill appears to provide for a degree of access to – and use of – a student's USI that is inconsistent with a fundamental principle underpinning the scheme (as articulated in the Minister's Second Reading Speech and the Explanatory Memorandum): that is, that the student identifier is to be controlled by the individual to which it was assigned. This concern is taken up with respect to specific provisions within the Bill below.

Specific comments

Application fee

15. The ACTU supports the principle that an applicant should not be charged a fee for applying to the Student Identifiers Agency for a student identifier. To require otherwise could constitute an unfair and unjustifiable restriction on the capacity of students to participate in the VET system as, under clause 53 of the Bill, obtaining a VET qualification or statement of attainment will now only be possible where a student has a student identifier. We note that the intention that the Agency not charge a fee is noted on page 42 of the Explanatory Memorandum. We suggest that the requirement that an applicant for a USI not be charged a fee be made explicit in the Bill itself.

Privacy and confidentiality

16. The ACTU recognises that strong safeguards on the collection, use and disclosure of an individual's student identifier and the information attached to it are critical to ensuring the system is effective and enjoys widespread support among stakeholders.
17. We support the fundamental principle underpinning the student identifier scheme that the student identifier is to be controlled by the individual to which it was assigned. This principle is articulated in Clause 18 of the Bill. We support the measures within the Bill that seek to ensure that student identifiers cannot be collected, used or disclosed without the individual's authorisation except in certain prescribed circumstances.
18. We welcome those provisions within the Bill that clarify that, for the avoidance of doubt, the confidentiality scheme provided for in the Bill is intended to complement and work in conjunction with existing privacy legislation in the Commonwealth and state and territory jurisdictions.
19. As currently drafted, however, we believe the Bill contains several clauses which constitute unjustifiably wide exceptions to, and derogations from, the fundamental principle that individuals should have control over their student identifier. These include:
 - Clause 13, which provides that a RTO or VET-related body can request to verify or be given the student identifier of an individual without that individual's consent;
 - Clause 18, which provides that an individual may consent 'impliedly' to the collection, use or disclosure of his or her student's identifier;
 - Clause 21, which states that regulations may authorise the collection, use or disclosure of a student identifier, without providing any guidance or parameters as to the appropriate use of this regulation-making power.
20. The ACTU suggests that the above-mentioned clauses be carefully reviewed so as to ensure that any exceptions to the general principle that the collection, use or disclosure of a student's identifier only occur with that individual's consent are clear, justifiable on public policy grounds, and drafted as narrowly as practicable. We suggest that the possibility of consenting impliedly for the purposes of clause 18 be removed altogether.

Civil penalties

21. The ACTU notes that similar student identification schemes operating at the state level - such as that established through the *Education and Training Reform Act 2006* (Vic) - provide for civil penalties in the case of misuse of student identifiers. The ACTU supports the proposition that consideration be given to the inclusion of a clause in the Bill stipulating that breaches of the statute constitute civil penalty provisions.

Mandatory requirement for a USI

22. The ACTU recognises that a national scheme of student identifiers will only operate effectively if having a student identifier is a mandatory requirement for students who obtain a VET qualification or statement of attainment after the legislation commences operation. However the effect of clause 53 as currently drafted appears to impose a requirement upon an individual to obtain a USI even if they only wish to obtain a copy of a qualification or statement of attainment from an RTO relating to training they completed decades ago (as opposed to an individual completing a qualification or statement of attainment on a date subsequent to the passage of the Bill). We question whether this is the intent of the clause and, if so, the rationale for such retrospective operation. We further note that, as currently drafted, the clause appears inconsistent with the statement made by the Parliamentary Secretary for Higher Education and Skills in her Second Reading Speech for the Bill, that 'student identifiers will be mandatory for students undertaking VET courses *once the scheme commences*' (emphasis added).¹ It would also appear inconsistent with the information provided on the relevant Commonwealth Department's webpage, which provides that 'From 1 January 2014, every new and existing VET student must have a USI'.²

¹ House of Representatives, *Student Identifiers Bill 2013 – Second Reading Speech*, Wednesday 20 March 2013, 2744.

² <http://innovation.gov.au/Skills/National/UniqueStudentIdentifierForVET/Pages/default.aspx> (accessed 29 April 2013).



level 6 365 queen street
melbourne victoria 3000
t 03 9664 7333
f 03 9600 0050
w actu.org.au

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