

EXPLANATORY STATEMENT

Issued by the authority of the Minister of Education

Student Identifiers Act 2014

Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022

AUTHORITY

Subsection 53A(3) of the *Student Identifiers Act 2014* (the Act) provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1) 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.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument. The amendments to the *Student Identifiers (Higher Education Exemptions) Instrument 2021* made by this instrument rely on this provision.

PURPOSE AND OPERATION

Subsection 53A(1) of the Act 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.

Subsection 53A(3) of the Act provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1).

The *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022* (the Instrument) specifies that the requirement in subsection 53A(1) does not apply in relation to certain types of individuals.

The extension of the student identifiers scheme to higher education is intended to provide the ability to track a student through the higher education and vocational education and training systems to provide insight into the pathways individuals take throughout their education and, ultimately, to employment. Student identifiers have replaced the Commonwealth Higher Education Support Student Number for administering Commonwealth assistance, including the Higher Education Loan Program to which international offshore students are not entitled. These students are required to be exempted from applying for a student identifier under this Instrument as it is currently not possible to provide non-Australian citizens residing outside of Australia with a student identifier, as non-citizens are required to provide an Australian visa as proof of identity.

A large number of international students who are studying offshore, or remotely, towards an Australian higher education degree cannot easily obtain a student identifier under the current system and will be affected by the requirement in subsection 53A(1), coming into effect 1 January 2023, unless otherwise exempted.

REGULATORY IMPACT

The regulatory impact of this Instrument on external stakeholders, including providers and students, is positive. It will reduce the significant administrative burden that would be created by a requirement to obtain student identifiers for a class of individuals for whom the system was not designed to support.

The Office of Best Practice Regulation has been consulted, considers that the proposal will have no regulatory impact, and notes that, currently, around 100 international students will benefit from the proposal. As such, the preparation of a Regulation Impact Statement (RIS) is not required (OBPR ID: OBPR22-03229).

COMMENCEMENT

The Instrument takes effect from the day after the Instrument is registered on the Federal Register of Legislation.

CONSULTATION

The Department of Education is implementing this exemption in response to feedback from higher education providers and peak provider bodies, who have identified that non-Australian citizens residing outside of Australia are not able to receive a student identifier, and this is an issue for their students, and their student management processes and systems. There is strong support from the higher education sector regarding the proposed exemption.

The Department of Education has consulted with the Student Identifiers Registrar and the Office of the Student Identifiers Registrar in the preparation of this Instrument, and has taken their feedback into consideration. The Student Identifiers Registrar is supportive of the exemptions set out in the Instrument.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

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

Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022

The *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022* (the Instrument) 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 Legislative Instrument

Subsection 53A(1) of the *Student Identifiers Act 2014* (the Act) 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.

Subsection 53A(3) of the Act provides that the Education Minister may, by legislative instrument, provide exemptions to the requirement in subsection 53A(1).

The Instrument specifies that the requirement in subsection 53A(1) of the Act does not apply in relation to certain types of individuals.

The extension of the student identifiers scheme to higher education is intended to provide the ability to track a student through the higher education and vocational education and training systems to provide insight into the pathways individuals take throughout their education and, ultimately, to employment. The student identifier scheme has also been expanded to replace the Commonwealth Higher Education Support Student Number for administering Commonwealth assistance, including the Higher Education Loan Program to which international offshore students are not entitled. These students are required to be exempted under this Instrument as it is currently not possible to provide non-Australian citizens residing outside of Australia with a student identifier, as non-citizens are required to provide an Australian visa as proof of identity. A large number of international students who are studying offshore, or remotely, towards an Australian higher education degree cannot easily obtain a student identifier under the current system and will be affected by the requirement in subsection 53A(1), coming into effect 1 January 2023, unless otherwise exempted.

Human rights implications

Right to education

The Instrument supports the right to education, under Article 13 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR). Paragraph 13(2)(c) of the ICESCR provides that 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.

The Instrument provides that certain types of individuals are exempt from the requirement to have a student identifier to be conferred a regulated higher education award. Individuals who are not Australian citizens or visa holders who have entered Australia on that visa, and do not reside in Australia are not able to apply for and receive a student identifier. As such, the Instrument makes clear that those individuals do not need to have a student identifier to be conferred a regulated higher education award.

As such, this Instrument supports the right to education as it removes barriers for individuals to be conferred a higher education award. It does so by ensuring that individuals who are not able to receive a student identifier are not prevented from being conferred a higher education award because of the operation of subsection 53A(1) of the Act.

Conclusion

The Instrument is compatible with human rights because it supports the right to education.

Minister for Education, the Hon Jason Clare MP

STUDENT IDENTIFIERS (HIGHER EDUCATION EXEMPTIONS) AMENDMENT (EDUCATION MINISTER EXEMPTIONS) 2022

EXPLANATION OF PROVISIONS

Section 1: Name

1. This provision specifies the name of the instrument as the *Student Identifiers (Higher Education Exemptions) Amendment (Education Minister Exemptions) 2022* (the Instrument).

Section 2: Commencement

2. This provision provides that the Instrument commences the day after the Instrument is registered on the Federal Register of Legislation.

Section 3: Authority

3. This provision explains that the Instrument is made under section 53A of the *Student Identifiers Act 2014* (the Act).

Section 4: Schedule

4. This is a technical provision that explains that the instrument that is specified in the Schedule to this Instrument is amended as set out in the items in the Schedule concerned.

Schedule 1 – Amendments

Student Identifiers (Higher Education Exemptions) Instrument 2021

Item 1: Section 4

5. This item inserts a new definition into section 4 of the *Student Identifiers (Higher Education Exemptions) Instrument 2021* (the Principal Instrument) to provide that ‘visa holder’ has the same meaning as in subsection 5(1) of the *Migration Act 1958*.

Item 2: After section 5

6. Item 2 inserts a new section 6 into the Principal Instrument setting out what types of individuals are exempt from the requirement to have a student identifier to be conferred a higher education award (as set out in subsection 53A(1) of the Act).

7. Section 6 provides that certain individuals are exempt from subsection 53A(1) of the Act, being individuals:
- who are not:
 - Australian citizens, or
 - visa holders that have validly entered Australia on their visas, and
 - are not residing in Australia at the time of the conferral of the higher education award, and
 - have either:
 - completed outside of Australia all the requirements to be conferred the regulated higher education award; or
 - completed all the requirements to be conferred the regulated higher education award, before 1 January 2023.
8. Currently an individual needs to be an Australian citizen or visa holder (that has validly entered Australia on that visa), and reside in Australia, to be assigned a student identifier under the Act. Therefore, students who have never validly entered Australia on a visa, and have not completed any of the requirements to be conferred the regulated higher education award in Australia, will not be able to receive a student identifier and should be exempt from the requirement to have a student identifier to be conferred a higher education award. Section 6 provides that these students are exempt from the requirement to have a student identifier in order to be conferred a higher education award.
9. Prior to 1 January 2023, these students were not required to obtain a student identifier. They may not be aware that they are required to obtain a student identifier from 1 January 2023 until after they have left Australia, at which point it would no longer be possible for them to do so. These students should not be denied the conferral of their degree based on a requirement that they may have been unaware of and that they may no longer be able to comply with.

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