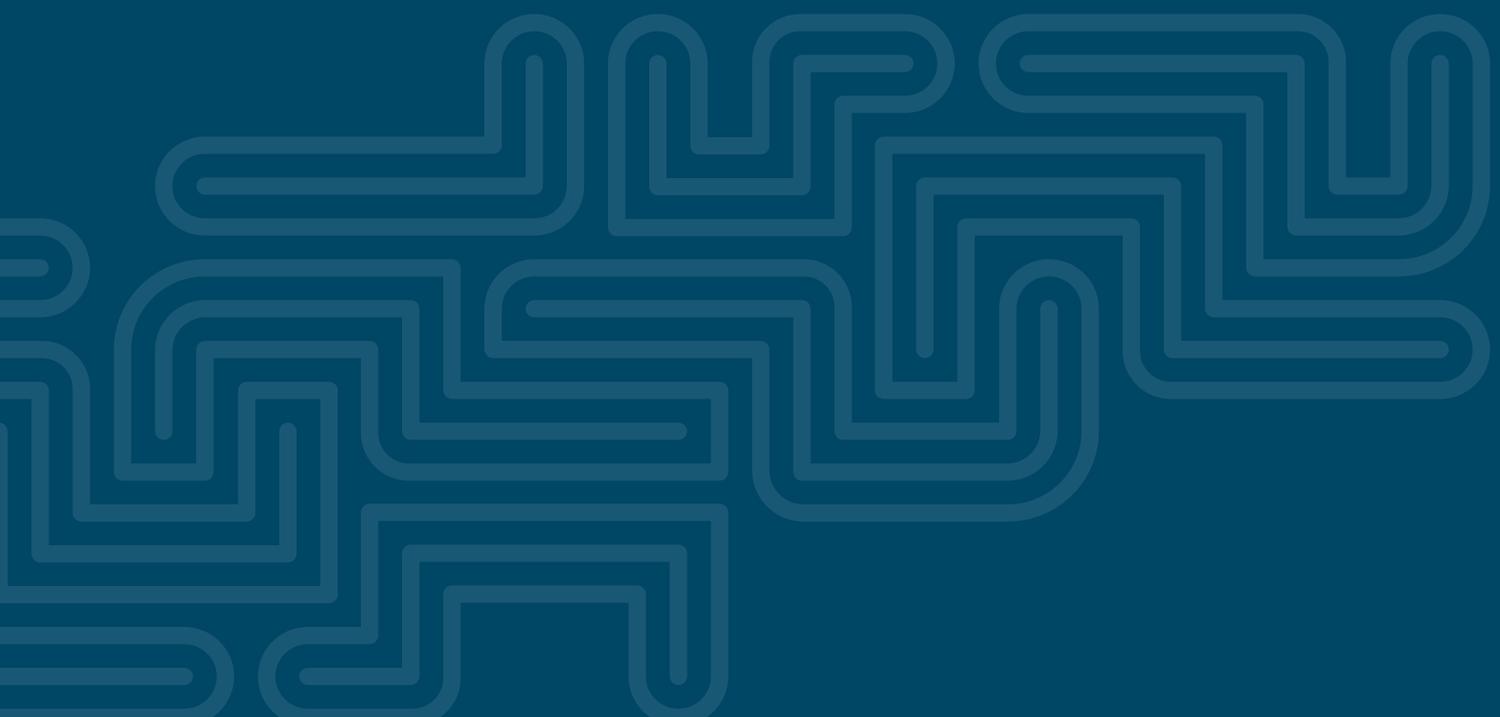




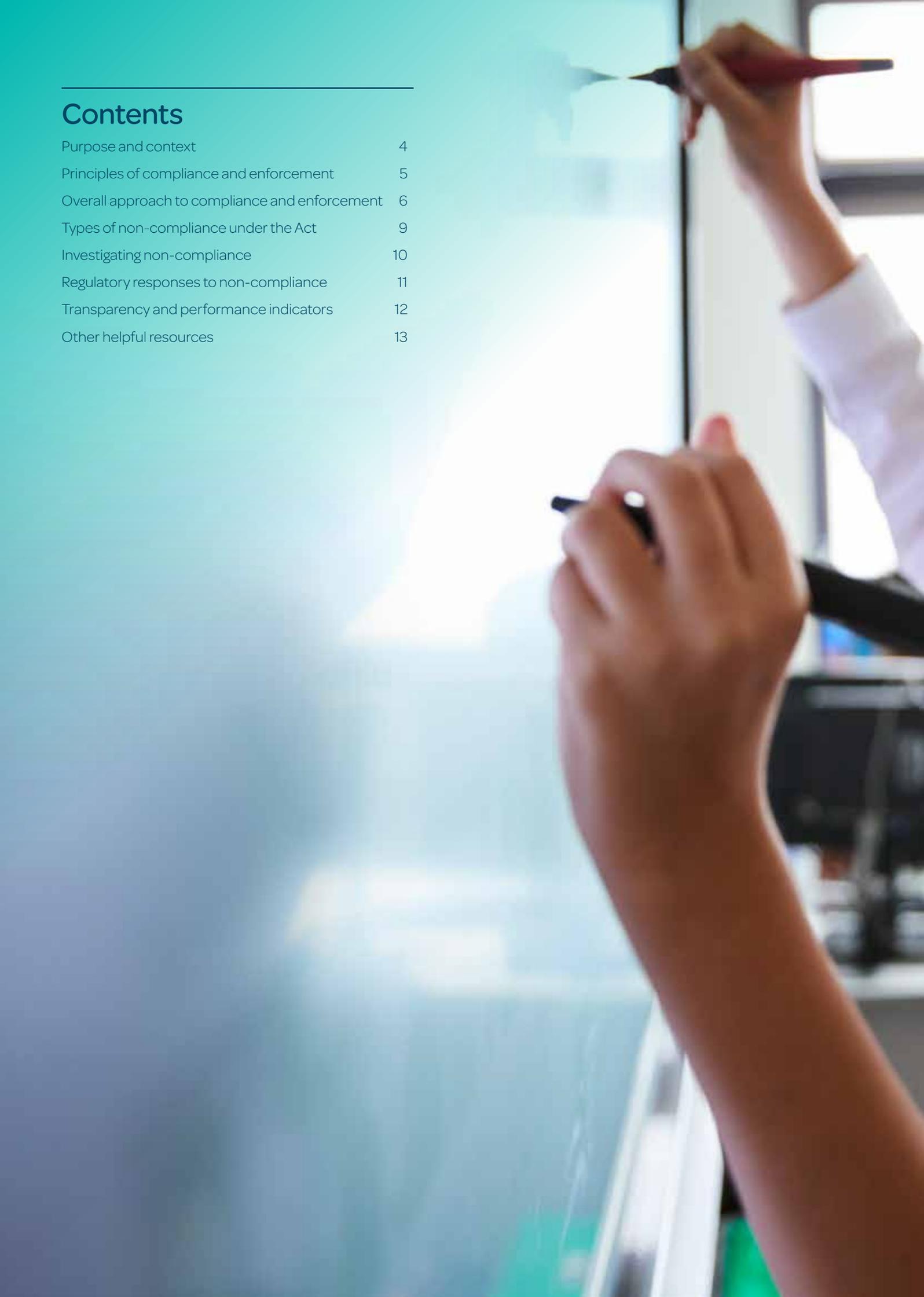
Compliance and Enforcement Strategy

October 2020



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Purpose and context

Purpose

This document explains how we monitor compliance with the Student Identifiers Act 2014 and how we respond to contraventions of the Act or other legislation such as the Privacy Act 1988 or the Criminal Code Act 1995.

The Registrar decides what to investigate and how to respond. However, the Registrar is most likely to take action if an alleged contravention could cause harm or reduce public confidence in the integrity of the USI system. This includes:

- the creation of duplicate USIs for financial gain
- the creation of fake transcripts or extracts which, if relied upon, may lead to a safety issue.

Not sure how to comply?

Education or training providers¹ can visit **Training Organisation Requirements** on our website. Individuals can refer to the **Terms and Conditions** information on our website.

Background

The Registrar administers the national USI initiative through the USI Registry System. The Registrar is assisted by staff in the Office of the Student Identifiers Registrar (OSIR).

The USI Registry System holds information about students currently or previously enrolled in vocational education or training (VET) and higher education.

The Registrar is responsible for assigning USIs, preparing authenticated VET transcripts, enabling students to set access controls and resolving problems in the assignment of USIs.

VET students with a USI can access, view and download their authenticated VET transcript via the USI Transcript Service. Students can give third parties online access to their transcript.

- The Act makes it an offence to knowingly create more than one USI, alter or falsify a transcript. Doing this could also result in a conviction under the Criminal Code Act.

Key terms used in this strategy

Civil penalty order



A financial penalty imposed by a court for contravening a civil penalty provision in the Act

Non-compliance



A breach or contravention of the Act

Department



The Department of Education, Skills and Employment

Person



An entity such as a training organisation, body corporate, an individual or student

Infringement



A financial penalty imposed by the Registrar for contravening a civil penalty provision in the Act

Regulatory response



The activities that the Registrar undertakes in response to non-compliance with the Act

Model litigant



The obligation on the Registrar, as an Australian Government body, to act honestly and fairly and in accordance with the obligation to act as a model litigant under the Legal Services Directions 2017

Education Training Regulators



The Australian Skills Quality Authority (ASQA), Tertiary Education Quality and Standards Agency (TEQSA), the Victorian Registration and Qualifications Authority (VRQA), and the Training Accreditation Council (TAC) (Western Australia).

¹ Education or training providers include: registered training organisations and higher education providers

Principles of compliance and enforcement

These principles guide how the Registrar behaves:

Effective  <p>The Registrar seeks to minimise the risk of harm, support confidence in the USI system and ensure the integrity of the USI.</p>	Education  <p>The Registrar ensures that all users of the USI system know their rights and responsibilities.</p>
Integrity  <p>The Registrar demonstrates impartiality, balance and integrity.</p>	Regulatory necessity  <p>The Registrar does not expect parties to do anything more than is reasonably necessary to comply with the Student Identifiers Act and protect students and the reputation of the education and training sector.</p>
Accountability & transparency  <p>The Registrar explains decisions and provide avenues of complaint or appeal.</p>	Fairness  <p>The Registrar respects an individual's legal rights to privacy.</p>
Consistency  <p>Similar circumstances attract the same response.</p>	Confidentiality  <p>The Registrar respects an individual's legal rights to privacy.</p>
Proportionality  <p>The regulatory responses reflects the seriousness of the conduct and the actual or potential harm.</p>	





Overall approach to compliance and enforcement

Compliance with the Act is essential to protect students and the reputation and quality of the education and training sector.

If an individual or entity is not complying with the Act, the Registrar may take action.

Encouraging voluntary compliance

The Registrar's preference is to educate parties on their obligations and how to comply. The Registrar encourages voluntary compliance by:

- publishing information about the proper use of USIs and authenticated VET transcripts
- informing individuals and entities on legislative requirements through our website, telephone discussions and face to face communications

- communicating with parties suspected to be non-compliant and (where appropriate) providing opportunities to address this in the early stages through education, guidance and other administrative steps

Monitoring compliance

The Registrar monitors compliance with the Act by:

- internal intelligence and data analysis to assess proper use and practice
- information and intelligence provided by stakeholders including education or training providers and individuals²
- examination of complaints and tipoffs

² Note that sections 20 and 21 of the Student Identifiers Act 2014 specify the circumstances in which entities may collect, use and disclose a USI where it is reasonably necessary for the entity to take appropriate action in relation to the matter (for example, to undertake an internal investigation or refer the matter to law enforcement bodies).



Effectively and proportionately responding to non-compliance

When suspected non-compliance is identified, the Registrar will gather information to verify if non-compliance has occurred and if so, why?

The regulatory response decided by the Registrar will depend on the non-compliance and the information available, and may include one or more of the following:

- administrative action, such as:
 - informal (non-coercive) discussions
 - providing guidance about requirements under the Act
 - written confirmation of what has been discussed in relation to the non-compliance
 - warning letters
 - providing opportunities to address the non-compliance
 - accepting informal undertakings to take corrective action
- issuing an infringement notice
- commencing civil penalty proceedings
- referring the matter for consideration of criminal proceedings
- revoking a duplicate USI or, if dealing with an education or training provider, changing permissions to the USI Registry System.

In determining the appropriate response to non-compliance, the Registrar will consider such factors as:

- the seriousness of the harm
- the willingness of the offender to engage in addressing the non-compliance
- whether the non-compliance was intentional, reckless, negligent or a mistake
- whether there is a history of prior non-compliance
- the duration of the conduct
- the likelihood the response will be effective in returning the person to compliance as quickly as possible
- the effect on the conduct of others in the sector
- the impact of the non-compliance on community confidence
- whether there are any circumstances that may mitigate or aggravate the matter
- the time that has passed since the issues were identified and whether the conduct is continuing despite the Registrar engaging with the person
- whether it is in the public interest to take such action in the circumstances
- the regulatory priorities of the Registrar at the time including any priority conduct
- the impact it may cause to the reputation of the sector
- whether the matter is better addressed by another relevant body
- the most appropriate response to deter future non-compliance

Example

Information is received from an employer about an individual they've recently interviewed in response to a job advertisement. The individual provided a VET transcript which looked to be altered. On verifying the course code, the employer identified that an added code was likely false.

This is the second time that the Registrar has been made aware of this individual for the same conduct.

On the first occasion, the Registrar took administrative action, discussing the concerns with the individual and providing them with written education material about the use of authenticated VET transcripts.

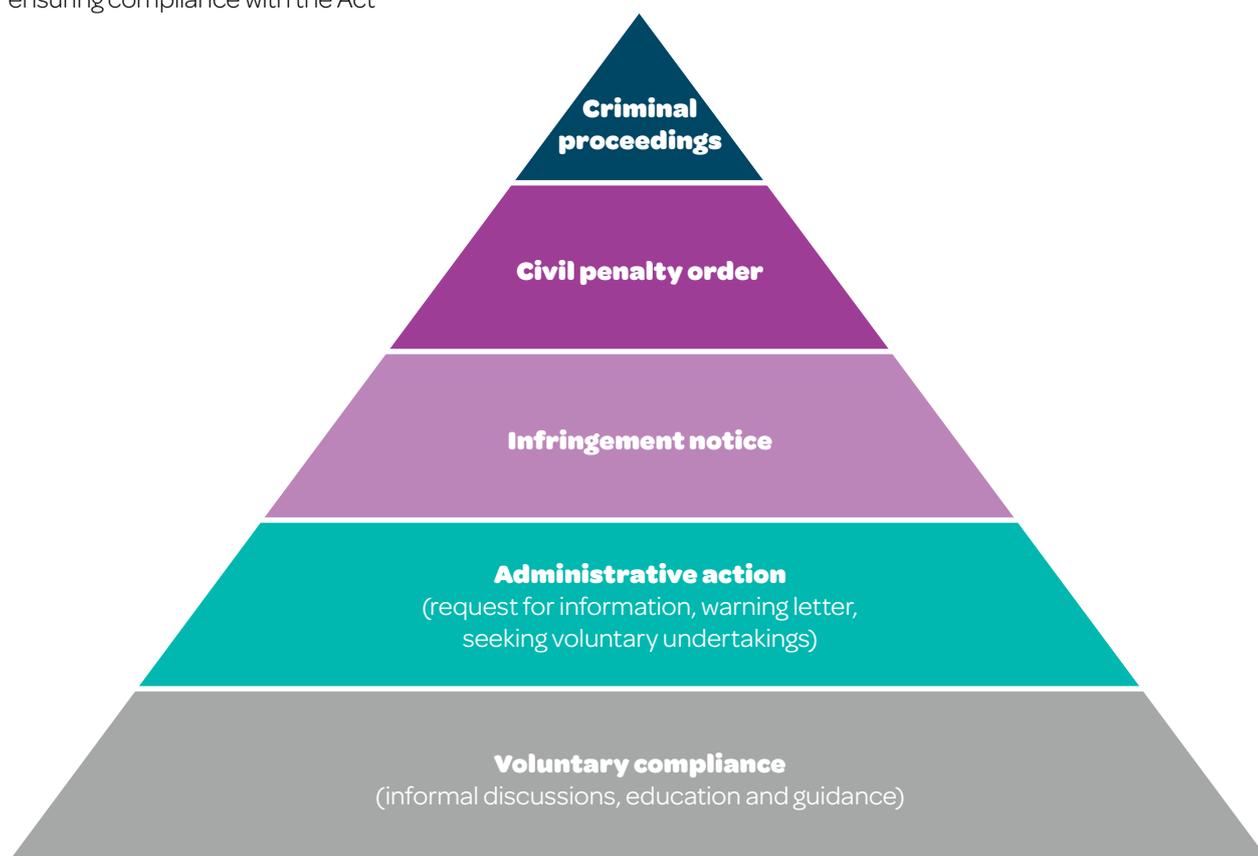
In this scenario, relevant considerations include:

- what actions the individual has taken to change their behaviour
- whether a penalty is the only action that can be taken to stop the behaviour the impact the conduct may have for the sector if the behaviour continues. Given that the previous response was not enough to stop the individual, the Registrar decides to issue an infringement notice.

Note: examples are provided for illustrative purposes only and are not indicative of how the Registrar will deal with individual cases.

The diagram below illustrates the graduation and escalation of actions to achieve compliance.

Figure: The Registrar's graduated approach to ensuring compliance with the Act³



³ The pyramid is based on the enforcement model developed by Ian Ayres and John Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate*, Oxford University Press, 1992, p.35 (as described in the ANAO Better Practice Guide to Administering Regulation).

Procedurally fair

Any actions or decisions will be in line with the principles of administrative law decision-making. For example:

- procedural fairness will be given to people affected by decisions of the Registrar
- the Registrar will exercise discretionary powers and at all times act without bias
- the Registrar will be open minded in the consideration of evidence informing regulatory decisions
- the Registrar will provide clear reasons for any decisions made.

Collaboratively working with other regulators and bodies

The Registrar may work with other regulators and stakeholders when assessing non-compliance with the Act. There are a range of bodies that may have a direct interest in action being taken by the Registrar such as:

- the Department (fraud investigation team)
- State funding bodies (e.g. where a registered training organisation may be receiving funding from the State government)
- Education and Training Regulators
- the Office of the Australian Information Commissioner (OAIC)
- the police (state and federal)
- Education or training providers

Discretion will be used as to when and if a referral will be made. This may include:

- coordinating a joint response when the non-compliance covers joint organisations
- referring the matter to another agency to investigate
- progressing with our own investigation into non-compliance
- collaborating when our actions may have ramifications on another agency's investigation

The Registrar will comply with the Privacy Act as well as the relevant provisions of the Student Identifiers Act and our privacy policy when referring matters and disclosing information to other bodies.

Types of non-compliance under the Act

There are three types of non-compliance under the Act:

- not meeting privacy requirements
- issuing qualifications and awards to a student without a USI
- creating duplicate USIs, altering a VET transcript or creating a fake VET transcript.

Different regulatory responses apply to each type of non-compliance.

Non-compliance with privacy requirements

Some provisions of the Privacy Act apply to USI's:

- if an individual authorises an entity to apply for a USI on their behalf, the entity must destroy the personal information unless another law requires the entity to keep the information (see section 11 of the Student Identifiers Act)
- an entity that keeps a record of a USI must take reasonable steps to protect the record from misuse, interference, loss, unauthorised access, modification or disclosure (see section 16 of the Student Identifiers Act)
- an entity must not collect, use or disclose an individual's USI unless authorised to do so by the Student Identifiers Act (refer section 17 of the Student Identifiers Act).

The Registrar may respond to breaches of sections 11, 16 or 17 by educating or seeking informal undertakings to take corrective action. Breaches of these sections of the Act may also be dealt with by the Information Commissioner as an interference with an individual's privacy under the Privacy Act.

If the non-compliance is likely to have caused serious harm, the Registrar must refer the matter to the Information Commissioner.

Issuing qualifications and awards where a USI has not been assigned

Under section 53 of the Act, a registered training organisation must not issue a VET qualification or statement of attainment to an individual without a USI or exemption from the Registrar.

Under section 53A of the Act, from 2023, a registered higher education provider must not confer a regulated higher education award on an individual without a USI or an exemption from the Registrar.

The Registrar may take administrative action to enforce these provisions such as contacting the provider and providing guidance. The Registrar may also engage with the relevant Education and Training Regulator to determine an appropriate response.

Duplicate USIs, altering vet transcripts and falsely representing documents as authenticated vet transcripts

It is an offence to knowingly apply for multiple USIs, alter authenticated VET transcripts (or extracts) or represent that a document is an authenticated VET transcript (or extract) when it is not.

Civil penalty provisions were introduced into the Act in May 2020. Penalties may apply where:

- an individual has been assigned a USI (which has not been revoked) and either applies for another USI or authorises an entity to make an application for another USI (subsection 29B[1]).⁴
- a person (including an entity) applies for a USI on behalf of an individual but was not authorised by the individual to make the application by the individual (subsection 29B[2]).
- a person alters an authenticated VET transcript or a transcript extract (subsection 29C[1]). This includes adding courses or qualifications into the transcript that an individual has not studied.
- a person makes a fake document purporting to be an authenticated VET transcript or an extract from such a transcript (subsection 29C[2]).

The Registrar can respond to the above conduct with administrative actions or enforcing civil penalties, either by an infringement notice or by seeking a civil penalty order. The Registrar may contact or join with other regulatory or enforcement bodies to determine the most appropriate response. In serious cases, the Registrar may refer the matter for criminal proceedings.

Investigating non-compliance

Gathering information

The Registrar may receive information about potential non-compliances from several sources.

- information may be given to the Registrar based on a complaint or information provided by a range of persons including students, education and training providers and employers querying a USI or the integrity of a transcript.
- non-compliance may be identified by the Registrar through monitoring activities.
- information may be referred to the Registrar by another regulator or body (e.g. OAIC or an Education and Training Regulator).

The Registrar may seek out further information to help assess the non-compliance through:

- informally requesting information from the complainant or body that has notified the Registrar
- verifying information with other bodies (e.g. another regulator or a training organisation)
- informally contacting the person who is alleged to be non-compliant to explain the concerns of the Registrar and seek resolution.

Engagement

In most cases the Registrar will contact the person alleged to have been non-compliant. The Registrar may communicate using:



a phone discussion



a letter setting out the Registrar's concerns and seeking further information to determine the appropriate regulatory response (Request for information letter)



a letter setting out the identified conduct and directing the person to stop the conduct (Warning letter)



a letter advising the Registrar is aware of the conduct, and that if the conduct continues, regulatory action may be taken (for example, an infringement notice). This letter provides the person with an opportunity to reply (Show cause letter)

The Registrar may also invite the relevant person to a meeting to discuss the non-compliance.

⁴ Note that where an individual has applied for or authorised someone else to apply for a second USI and the Registrar has commenced civil penalty proceedings on the basis of non-compliance with subsection 29B(1) of the Act, an individual has the opportunity to contest the civil penalty order on the basis that the non-compliance was a result of mistake of fact.

Regulatory responses to non-compliance

Administrative actions

Most non-compliance may be addressed through administrative action including:

- raising the Registrar's concerns with the person
- seeking their agreement to voluntarily address the non-compliance
- seeking their agreement to comply with the legislation into the future
- changing permissions to the USI Registry System
- providing education or guidance including:
 - verbal advice on the requirements under the Act
 - directing the person to information available online
 - written educational materials.

Revoking a USI

The Registrar has the power to revoke a USI⁵ in circumstances such as:

- mistaken second applications
- multiple USIs intentionally created.

The Registrar will provide written notice of the decision to revoke a USI to:

- the individual
- their relevant education or training provider
- the Department, and
- any other entity that the Registrar considers appropriate in the circumstances (e.g. the individual's employer).

Where the Registrar decides to revoke a USI, the decision can be reviewed by an application to the Administrative Appeals Tribunal.⁶

Infringement notices

Infringement notices enable the Registrar to respond quickly to less serious non-compliance.

The Registrar may issue an infringement notice in response to non-compliance with one or more of the civil penalty provisions where the Registrar considers that the matter may be addressed without commencing civil proceedings.

The following matters will be taken into consideration when determining whether an infringement notice is the preferable method of addressing a non-compliance:

- whether administrative action is sufficient to address the non-compliance
- what, if any, action was taken following the Registrar bringing the alleged non-compliance to the person's attention
- whether an infringement notice is proportionate to the seriousness of the non-compliance
- whether the non-compliance was intentional or formed a pattern of non-compliance
- whether the infringement notice is likely to serve as a deterrent to future non-compliance
- whether it is viable to bring the matter before a court if the infringement notice is not paid.

⁵ Section 12, Student Identifiers Act 2014.

⁶ Section 13, Student Identifiers Act 2014.

The Registrar is more likely to consider the use of an infringement notice when:

- the non-compliance is relatively minor or less serious
- there have been isolated or non-systemic instances of non-compliance
- a penalty must be imposed immediately to be effective
- there is little harm caused by the non-compliance
- the facts are not in dispute or the circumstances are not controversial.

Infringement notices may be issued against an individual or organisation and can be issued within 12 months from the day on which the non-compliance is alleged to have taken place.

The maximum fine that a person can be required to pay by way of an infringement notice for each contravention of a civil penalty provision is 1/5th of the maximum penalty units ⁷ that a court can order under the Act. This equates to a maximum penalty of \$2,664 for an individual and \$13,3208 for a corporation per contravention. An individual or organisation may be liable for more than one contravention.

The infringement notice must be paid within 28 days of issuing and is to be paid in accordance with the instructions on the infringement notice. The infringement notice will also include information about the circumstances in which there may be extensions for the due date for payment and opportunities for withdrawal of the notice.

If there is no payment within the 28 days (or following the grant of an extension), the Registrar may commence civil penalty proceedings.

Examples

An individual has falsified their VET transcript twice. On the first occasion, the matter was dealt with by an education letter. The Registrar decides to issue an infringement notice in response to the second conduct.

An education or training provider is creating duplicate USIs for financial gain. The Registrar may decide to take civil proceedings in response.

An education or training provider is generating multiple fake VET transcripts. The fake transcripts create a safety risk because the individuals do not have the qualifications claimed on the transcript. The Registrar may decide to take civil and/or criminal proceedings in response.

Note: examples are provided for illustrative purposes only and are not indicative of how the Registrar will deal with individual cases.

⁷ Note that the value of a penalty unit set out under section 4AA of the *Crimes Act 1914* is subject to indexation and may increase from time to time. As at 1 July 2020, a penalty unit is equivalent to \$222.

⁸ Note that under section 82(5) of the *Regulatory Powers Act*, body corporates are liable for a maximum of 5 times the penalty units set out in the Act (such that a court could impose a civil penalty order of 300 penalty units).

Civil penalty orders

A civil penalty provision can be enforced by obtaining an order from a court for a person to pay a financial penalty to the Commonwealth. The Registrar will commence court proceedings in accordance with the model litigant obligations, and any relevant court rules and procedures.

In considering whether to seek a civil penalty, the Registrar will take into account whether:

- the contravention poses a serious risk to the safety, health and wellbeing of the public
- it is proportionate to the seriousness of the non-compliance
- the Registrar has previously taken action against the person for similar non-compliance
- the non-compliance has occurred over an extended period of time
- the person has, as a consequence of the non-compliance, obtained a financial or other advantage, to the detriment of others
- alternative actions would not provide adequate deterrence or effectively address the non-compliance (e.g. where an infringement notice is not sufficient deterrence).

The maximum penalty that the court can order for a single contravention is:

- if the person is a body corporate, 300 penalty units (\$66,600)
- for a natural person, the amount listed in the civil penalty provision being 60 penalty units (\$13,320).⁹

Note that multiple contraventions may apply.

Criminal proceedings

The Registrar may consider taking action under the Criminal Code Act. This may happen because the conduct is very serious or where a civil penalty order is not available or would be inadequate to address the conduct. The Registrar may engage with the Department, the Commonwealth Department of Public Prosecutions and others to pursue criminal proceedings.

Transparency and performance indicators

As a statutory officer, the Registrar is subject to various reporting and accountability arrangements and is committed to transparency.

Reports will be published on both the administration of the Registrar's functions and de-identified information about the outcomes of monitoring and enforcement including any lessons to be learned, past monitoring activities and priorities for the coming year.

Other helpful resources

- Student Identifiers Act 2014
- Student Identifiers Regulation 2014
- Student Identifiers (VET Admission Bodies) Instrument 2015
- Regulatory Powers (Standard Provisions) Act 2014
- USI website

⁹ Section 82(5), *Regulatory Powers (Standard Provisions) Act 2014*.

