Compliance and enforcement strategy

Public document

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Contents

Purpose and context ................................................................................................................................................. 3
Principles of compliance and enforcement ............................................................................................................. 5
Overall approach to compliance and enforcement .................................................................................................. 6
Types of non-compliance under the Act ................................................................................................................... 11
Investigating non-compliance ................................................................................................................................. 14
Regulatory responses to non-compliance .................................................................................................................. 15
Transparency and performance indicators ............................................................................................................... 19
Other helpful resources ............................................................................................................................................. 19
Purpose and context

PURPOSE

This strategy describes the approach of the Student Identifiers Registrar (the Registrar) to monitoring compliance with the Student Identifiers Act 2014 (the Act) and to responding to alleged non-compliance.

For more information about the Registrar’s expectations about the use of the unique student identifier (USI) for training organisations and individuals, please refer to the Training Organisation Requirements and Terms and Conditions webpages on the OSIR website.

BACKGROUND

The Registrar is responsible for administering the USI initiative nationally through the USI Registry System with the assistance of staff in the Office of the Student Identifiers Registrar (OSIR).

The USI Registry System comprises a single consolidated repository of information relevant to the USIs of individual students. Certain entities\(^1\) are given access to the USI Registry System to affirm pre-requisite course work and assess credit transfers for students and may be given permissions by students to amend or update details relevant to the student.

The legislation provides for the creation and administration of authenticated vocational education and training (VET) transcripts, and for the appointment of the Registrar.

The Registrar is responsible for assigning the USIs, preparing authenticated VET transcripts for individual students to verify prior learning and achieved qualifications, and to resolve problems in relation to the use of USIs and access controls. The Registrar decides whether to grant access to the information held on the USI Registry System.

VET students who hold a USI are able to access, view and download their authenticated VET transcripts via the USI Transcript Service. The service also allows certain entities to access authenticated VET transcripts, provided they have been granted permission by the student.

To support the integrity of the USI Registry Scheme, the legislation describes a range of obligations in relation to duplicate USIs and issues of altered VET transcripts. This strategy describes the Registrar’s approach to managing non-compliance with the relevant provisions.

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\(^1\) Registered training organisations, VET admission bodies, registered higher education providers, Tertiary Admission Centres, any other entity (refer section 9 of the Act).
KEY TERMS USED IN THIS STRATEGY

- **Civil penalty order** is a financial penalty imposed by a court for contravening a civil penalty provisions in the Act
- **Department** means the Department of Education, Skills and Employment
- **Infringement notice** is a financial penalty imposed by the Registrar for contravening a civil penalty provisions in the Act
- **Model litigant** refers to the obligation on the Registrar, as an Australian Government body, to act honestly and fairly and in accordance with the model litigant obligations.
- **Non-compliance** is a breach or contravention of the Act
- **Person** includes an entity such as a training organisation, body corporate, an individual or student
- **Regulatory response** means the activities that the Registrar undertakes in response to non-compliance with the Act
- **Education and Training Regulators** include 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).
Principles of compliance and enforcement

The Registrar is guided by the following principles when undertaking compliance and enforcement, exercising regulatory functions and administering the Act. The Principles are:

Effective – The Registrar will target monitoring and enforcement activities to ensure they are effective in order to minimise the risk of the harm, to support confidence in the USI system and ensure the integrity of the USI.

Integrity – The Registrar will demonstrate impartiality, balance and integrity.

Accountability and transparency – The Registrar will explain decisions and make available avenues of complaint or appeal. The Registrar will be transparent in dealings with stakeholders.

Consistency – Outcomes from enforcement activities will be consistent and predictable. The Registrar aims to ensure that similar circumstances, non-compliances and incidents lead to similar enforcement outcomes.

Proportionality – Regulatory responses will be proportionate to the seriousness of the conduct and the resulting or potential harm.

Education – The Registrar will engage in an educative manner with a focus on improving awareness of the requirements and obligations of the USI system.

Regulatory necessity – The Registrar will not burden entities or individuals any more than is reasonably necessary to achieve compliance with the Act and in so doing protect students and the reputation of the education and training sector.

Fairness – In conducting the functions under the Act, the Registrar will ensure fairness to individuals and entities subject to a regulatory response. This involves responding in a timely and professional manner.

Confidentiality – The Registrar will treat information received in accordance with the OSIR’s privacy policy and mandatory privacy requirements.

In monitoring compliance and taking regulatory action the Registrar will prioritise matters likely to cause the most significant harm. For example:

- 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.

The Registrar will prioritise a response to these forms of conduct given the particular harm that each presents to not only affected individuals, the wider community, but also the integrity of the
USI system. While this conduct may be targeted, the Registrar maintains the discretion to respond to conduct and non-compliances that fall outside of the priority conduct from time to time.

The Registrar may adjust the priority conduct from time to time.

**Overall approach to compliance and enforcement**

Compliance with the legislation is essential to ensure the promotion and protection of the interests of students and contributes to the reputation and quality of the education and training sector.

Where an individual or entity is found to be non-compliant with the legislation, the Registrar will take action to ensure the non-compliance is addressed.

**ENCOURAGING VOLUNTARY COMPLIANCE**

The Registrar’s objective is to encourage and facilitate voluntary compliance, where parties are aware of and comply with their relevant obligations. The Registrar fosters a culture of voluntary compliance by:

- providing information to the sector about the proper use of USIs and VET transcripts
- using an educative approach to communicate and cooperate with individuals and entities and to give guidance about legislative requirements (for example, using the website and other written communications as well as telephone discussions and face to face communications (meetings, conferences, information sessions etc.))
- communicating with parties in relation to suspected or alleged non-compliances and (where appropriate) providing opportunities to remedy the non-compliance in the early stages.

**MONITORING COMPLIANCE**

The Registrar monitors compliance with the legislation in a range of ways. This includes through:

- review of internal intelligence and data analysis
- audits to assess proper use and practice
- review of information and intelligence provided by stakeholders
- examination of complaints and tipoffs.

When non-compliance (or suspected or alleged non-compliance) is identified, the Registrar’s objective is to gather relevant information and understand the issues, in order to understand the non-compliance.

Various information seeking activities can be used at different times depending on the circumstances.
EFFECTIVELY AND PROPORTIONATELY RESPONDING TO NON-COMPLIANCE

While the Registrar prefers to engage cooperatively with individuals and entities to resolve non-compliance, the Registrar will pursue regulatory action where it is necessary to ensure the promotion and protection of the USI. The Registrar will not necessarily take action on all occasions or in relation to all non-compliances.

The regulatory response adopted 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 education or guidance about requirements under the Act, providing written confirmation of what has been discussed in relation to the non-compliance, warning letters, providing opportunities to remedy the non-compliance or accepting informal undertakings to take corrective action
- issuing an infringement notice for breaches of certain provisions under the Act
- commencing civil penalty proceedings for breaches of certain provisions under the Act
- referring the matter for consideration of criminal proceedings
- revoking a duplicate USI under the Act or, if dealing with an education or training provider, removing permission to access the USI Registry system.

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

- the seriousness of the harm caused by the non-compliance
- the attitude of the person responsible for the non-compliance and whether they are cooperative or willing to engage in resolving 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 of the response being 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 ensure an effective deterrent against non-compliance (for the non-compliant party and more broadly).
Example
The Registrar receives a complaint from an employer about an individual they've recently interviewed in response to a job advertisement. The individual provided the employer with a VET transcript which, on the face of the document alone, had been altered. The individual has allegedly changed their VET transcript to include a unit of competency relating to hospitality. On verifying the course code, the employer identified that the added codes were likely false. This is the second time that the Registrar has been made aware of this individual for the same conduct. On the earlier 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 since the initial contact to change their behaviour, whether a penalty is the only administrative action that can be taken to curb the behaviour given its their second attempt and the impact the altered VET transcript may have for the sector if the behaviour were to persist. Given that the previous response was not sufficient to deter the individual, the Registrar decides to issue an infringement notice.

Note case studies 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 Act²

![Diagram of graduated approach]

**PROCEDURALLY FAIR**

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

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

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² 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).
COLLABORATIVELY WORKING WITH OTHER REGULATORS AND BODIES

The Registrar will work collaboratively with other regulators and stakeholders in relation to the regulation of the education and training sector under the Act. There are a wide range of bodies that may have a direct interest in action being taken by the Registrar.

Relevant bodies may include:

- the Department
- 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.

Discretion will be used as to when and to whom a referral will be made, and whether the Registrar will coordinate a response with the relevant body, or otherwise refer the matter for the other body to investigate or action. The Registrar will collaborate with other relevant bodies particularly where the actions of the Registrar may have ramifications for those bodies including where they may fund the relevant provider or otherwise have parallel regulatory action on foot. The Registrar may decide to progress a regulatory response even where a referral to another body occurs.

The Registrar will comply with the *Privacy Act 1988* (Privacy Act), the relevant provisions of the Act and the OSIR privacy policy when referring matters and disclosing information to other bodies.
Types of non-compliance under the Act

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

- non-compliance that is taken to be an interference with privacy
- non-compliance in relation to issuing qualifications and awards where a USI has not been assigned
  non-compliance in relation to creating duplicate USIs, altering VET transcripts and representing documents as authenticated VET transcripts.

For each of the different types of non-compliances, different regulatory responses are available to the Registrar.

**NON-COMPLIANCE TAKEN TO BE AN INTERFERENCE WITH PRIVACY**

Certain provisions under the Act are deemed to be interferences with an individual’s privacy under the Privacy Act. Alleged or suspected non-compliance with these provisions are referred to the OAIC for investigation under the Privacy Act. These provisions include where:

- an entity that is authorised to make an application for a USI fails to destroy the personal information collected for the purpose of the application (unless required to retain the information by law) (refer section 11 of the Act)
- an entity that keeps a record of a USI fails to take reasonable steps to protect the record from misuse, interference, loss, unauthorised access, modification or disclosure (refer section 16 of the Act)
- an entity collects, uses or discloses the USI of an individual where it is not authorised to do so by the Act (refer section 17 of the Act).

The Registrar may still respond to identified non-compliances. In most cases, breaches of these provisions are handled through education and seeking informal undertakings from the entity to take corrective action, but regulatory responses may be escalated depending on the seriousness of the non-compliance. As noted above, matters may also be referred to the OAIC for action.
**NON-COMPLIANCE IN RELATION TO ISSUING QUALIFICATIONS AND AWARDS WHERE A USI HAS NOT BEEN ASSIGNED**

In order to ensure the USI regime is accurately maintained, that the regime captures the training history of individuals, and maximum participation in the USI system, training and higher education organisations are required to ensure qualifications and awards are issued to students with USIs. While exemptions can apply, the legislation does not permit:

- a registered training organisation to issue a VET qualification or a VET statement of attainment (within the meaning of the Act) to an individual who has not been assigned a USI (refer section 53 of the Act)
- a registered higher education provider to confer a regulated higher education award on an individual who has not been assigned a USI (refer section 53A of the Act).

The Registrar may take a range of administrative actions to understand these issues including contacting the provider and providing guidance or education in relation to the requirements under the Act. The Registrar may also engage with the relevant Education and Training Regulator to coordinate any response.

**NON-COMPLIANCE IN RELATION TO DUPLICATE USIs, ALTERING VET TRANSCRIPTS AND REPRESENTING DOCUMENTS AS AUTHENTICATED VET TRANSCRIPTS**

The Act is also designed to deter those who seek to apply for multiple USIs, alter authenticated VET transcripts (or extracts) or represents that a document is an authenticated VET transcript (or extract) when it is not. Conduct of this nature is included in a civil penalty regime inserted into the Act in May 2020 and includes civil penalty provisions for the following conduct:

- an individual has been assigned a USI (which has not been revoked) and has either applied for another USI or authorised an entity such as a training organisation to make an application for another USI (refer subsection 29B(1) of the Act).[^3]
- an individual has been assigned a USI (which has not been revoked) and a person applies for a USI on behalf of an individual and that person has not been authorised to make that application by the individual (refer subsection 29B(2) of the Act).
- a person (other than the Registrar) alters an authenticated VET transcript or an extract from such a transcript (refer subsection 29C(1) of the Act). This includes conduct such as adding courses or qualifications into the authenticated VET transcript that an individual has not studied so that it appears the individual has completed those courses or gained a qualification.

[^3]: Section 53, Student Identifiers Act 2014.

[^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.
• a person (other than the Registrar) makes a document purporting to be an authenticated VET transcript or an extract from such a transcript (refer subsection 29C(2) of the Act).

The Registrar may manage the non-compliance through administrative actions or through enforcing the civil penalty provisions, either by way of an infringement notice, by seeking a civil penalty order and/or in serious cases, referring the matter for criminal proceedings.

In addition, the Registrar may also contact relevant bodies about the conduct and collaboratively determine the most appropriate regulatory response as part of a coordinated effort.
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.
  - Complainants can raise concerns or provide information by contacting the Registrar via the OSIR website, or via email or phone.
  - Complainants may provide information anonymously or leave their details so that they can be contacted for any further information.
- Non-compliances 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 administrative steps including by:

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

ENGAGING WITH THE ALLEGED

In most cases the Registrar will contact the person alleged to have been non-compliant with the Act. Depending on the circumstances of the conduct, the Registrar may consider one of following communications:

- a phone discussion
- a letter that sets out the concerns of the Registrar and which seeks further information from the person in order for the Registrar to determine the most appropriate regulatory response (Request for information letter)
- a letter that sets out the conduct that the Registrar is confident amounts to a non-compliance which directs the person to stop the conduct (Warning letter)
- a letter that puts the person on notice of the fact that the Registrar is aware of their conduct, that certain regulatory action may be taken if they do not stop the conduct (for example, an infringement notice) and provides them with an opportunity to reply (Show cause letter).

The Registrar also has the discretion to invite the relevant person to a meeting to discuss the non-compliance.
Regulatory responses to non-compliance

ADMINISTRATIVE ACTIONS

Most non-compliance may be addressed through administrative action – by raising the Registrar’s concerns with the person, by seeking their agreement to voluntarily address the non-compliance and/or comply with the legislation into the future and providing education. Education may include providing verbal guidance on the requirements under the Act, directing the person to information provided online or sending written educational material and resources to them.

In addition, the Registrar may change permissions or access to USI registry accounts and notify impacted individuals and advise them of issues in relation to their USI and suggested actions (e.g. resetting passwords).

Where action is proposed to be taken by the Registrar to stop or suspend access to the USI registry accounts, the Registrar will, as a matter of course, ensure that procedural fairness is afforded to those impacted.

REVOCATION OF USI

The Registrar has the power to revoke USIs where there are problems in relation to the assignment of a USI. Such problems might include mistaken second applications or multiple USIs intentionally created. The Registrar will provide written notice of the decision 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 makes a decision to revoke a USI, this decision can be reviewed by an application to the Administrative Appeals Tribunal.

INFRINGEMENT NOTICES

Infringement notices widen the options available to the Registrar to respond to non-compliance. They are a cost effective way to deal with less serious non-compliance than civil proceedings and criminal prosecutions through a court. They also enable the Registrar to respond quickly to non-compliance and can act as a deterrent to ongoing non-compliance and also to other individuals or persons.

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5 Section 12, Student Identifiers Act 2014.
6 Section 13, Student Identifiers Act 2014.
The Registrar may issue an infringement notice where there is a reasonable belief that there has been non-compliance with one or more of the civil penalty provisions but 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 resolve 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 breaches or non-compliance
- whether the infringement notice is likely to serve as a deterrent to future non-compliance
- whether the matter would be viable to bring before a court if the infringement notice is not paid.

Examples of circumstances where the Registrar is more likely to consider the use of an infringement notice include:

- where the non-compliance is relatively minor or less serious
- where there have been isolated or non-systemic instances of non-compliance
- where there is a high volume of relatively minor non-compliances
- where a penalty must be imposed immediately to be effective
- where there have been lower levels of harm or detriment caused by the non-compliance
- where the facts are not in dispute or where the Registrar considers the circumstances giving rise to the allegations 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 $2,520 for an individual and $12,600 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

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Note that under section 82(5) *Regulatory Powers (Standard Provisions) Act 2014* (Cth), 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).
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.

**Example**

The Registrar may identify that an individual has falsified their VET transcript for their own benefit on two occasions. On the first occasion, the matter may have been dealt with by way of further education and an initial letter. Given that there has been a second occasion, this may be an example of where the Registrar, given the considerations above, would be more likely to issue an infringement notice without further engagement.

In contrast, where an education or training provider is creating duplicate records for financial gain for the purposes of collecting subsidies from the Commonwealth government or where an RTO is generating multiple fake VET transcripts in relation to courses that, if not addressed, may cause safety concerns, then the Registrar is likely to respond differently and may escalate to a civil and/or criminal proceeding given the significance and systemic type of conduct. This does not however mean that the Registrar will issue proceedings in all cases involving an organisation. Depending on the nature of the conduct, the Registrar may consider that an infringement notice may yet be a proportionate response given the circumstances, for example, the size and small operations of the organisation.

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

**CIVIL PENALTY ORDERS**

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

The Registrar will not seek a civil penalty order for all non-compliances with the civil penalty provisions in the Act. Seeking a civil penalty order is a regulatory response that is reserved for a higher threshold of conduct.

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. For example, if by virtue of a fraudulent transcript someone is hired in a role that they are not qualified for and therefore exposes the public to harm
• it is proportionate to the seriousness of the non-compliance
• there have been systemic instances of 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. the issue of 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 ($63,000)
• for a natural person, the amount listed in the civil penalty provision being 60 penalty units ($12,600).

Note that multiple contraventions may apply.

CRIMINAL PROCEEDINGS

Where the Registrar decides that conduct of non-compliance warrants a stronger regulatory response the Registrar may consider remedies available under Commonwealth legislation including the *Criminal Code Act 1995*. 

The Registrar has the discretion to refer matters to or engage with relevant bodies such as the Department, the Commonwealth Department of Public Prosecutions (DPP) and others, in relation to initiating and pursuing criminal proceedings.

Such decisions will be made on a case-by-case basis where the conduct is so serious and where a civil penalty order is not available or would be inadequate to address the conduct.

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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.

For further information, refer to the Regulatory Performance Framework guidelines, the annual reports for the OSIR (appendix to the Department of Education, Skills and Employment) and the OSIR website.

Other helpful resources

Student Identifiers Act 2014
Student Identifiers Regulation 2014
Student Identifiers (VET Admission Bodies) Instrument 2015
USI website