

**AUSTRALIAN COUNCIL FOR PRIVATE  
EDUCATION AND TRAINING**

**SUBMISSION TO PRODUCTIVITY COMMISSION  
ON “DRAFT REPORT ON REVIEW OF  
NATIONAL COMPETITION POLICY REFORMS”**

**PREPARED TO INFORM THE  
COUNCIL OF AUSTRALIAN GOVERNMENTS’ REVIEW  
OF NATIONAL COMPETITION POLICY**

**DECEMBER 2004**

**ACPET**

1. ACPET was established in 1992 as the national industry body to represent the interests of private providers of post-compulsory education and training in discussions with Commonwealth, State and Territory Governments and their agencies.
2. ACPET is a not for profit company established under the Corporations Act. It is administered by a Board, elected by the membership that operates in accordance with the requirements of the Australian Securities and Investments Commission. The Registered Office of ACPET is Suite 12, Level 14, 323-327 Pitt Street, Sydney NSW Australia, with State offices in Melbourne, Brisbane and Adelaide.
3. ACPET is the largest body representing the private education sector in Australia with approximately 700 members delivering higher education, vocational education and training and English language (ELICOS) programs. The private post-compulsory education and training sector generates a gross turnover well in excess of \$1billion. ACPET members alone account for \$629m annual turnover (2003/04).
4. The number of students being trained by private providers has increased from 23,000 in 1995 to more than 200,000 in 2004 – an increase of more than 700%. ACPET members employ some 15,000 teaching and administrative staff nationwide. More than 70% of the international education market in VET is delivered by the private sector.
5. Private providers of post-compulsory education and training have, over the past decade, become an increasingly important sector in the delivery of accredited education and training relevant to the needs of industry and the community. In addition to the delivery of courses across a wide range of disciplines, particularly business, information technology, nursing and alternative medicine areas, private providers are also strongly represented in the economically significant market of delivery to overseas students. Private providers deliver almost the full range of nationally accredited AQF qualifications, from apprenticeships and traineeships to professional doctorates. ACPET members adopt and maintain practices, which ensure high professional standards in general management and the marketing and delivery of higher education services which safeguard the interests and welfare of students, clients and the public.
6. Members ensure the highest possible standards in the selection of staff and the planning and delivery of higher education and training programs. Teaching staff are suitably qualified and have relevant academic and industry experience. They maintain a learning environment that is conducive to the success of students/clients and ensure adequate facilities and the use of methods and materials appropriate to the requirements and levels at which programs are offered. Delivery is monitored and assured to ensure effective delivery and ongoing relevance. Providers operate in a highly regulated and quality assured environment delivering courses within a framework of national standards.

## INTRODUCTION

7. The relationship between productivity growth and higher living standards has been acknowledged<sup>1</sup>. ACPET welcomes the Commission's recognition that –
  - 'human capital development (including skill formation through education and training)',<sup>2</sup> is one of the vital components of Australia's productivity; and
  - "Clearly, Australia must have an education and training system of high quality if its workforce is to have the skills necessary to sustain our place in an increasingly competitive global environment. There is also a strong link between educational achievement and workforce participation. Hence, a world class education system will help to offset the impacts of population ageing on labour supply, as well as enhancing workforce productivity and the capacity for innovation"<sup>3</sup>
8. In terms of sectoral share of GDP of the Australian economy, the total education sector (primary, secondary and tertiary) has 4.3% compared with health and community services at 5.8%. However, to date both these sectors have had the same exposure to National Competition Policy reforms.<sup>4</sup>
9. Given the important recognized contributions that reform leading to a world class education system could make to the Australian economy (including the Commission's conclusion that gains from reform in education and training are potentially large)<sup>5</sup>, ACPET considers it unfortunate that the Commission has formed the preliminary view that the need for CoAG involvement in education and training is less urgent as compared to the health sector. In particular, the conclusion that "... a major focus on education and training could potentially detract from the attention that CoAG should give to health"<sup>6</sup>.
10. Clearly enough the Commission has recognised that competition based reforms in the provision of education and training services (and health services) have been introduced and coincided with implementation of National Competition Policy. These reforms are not formally a part of National Competition Policy (albeit sharing the same underlying rationale).<sup>7</sup>
11. ACPET believes that the factors influencing the Commission's decision to ensure that health sector reform is formally a part of an ongoing national competition policy reform program are factors which should influence the Commission to recommend to CoAG that education and training sector reform formally be a part of an ongoing national competition policy reform program. That could be the case whether or not the issues are actively pursued through CoAG or other level. In particular ACPET believes that education and training sector reform is well suited to be a part of:
  - a broadly based reform program;
  - a reform framework which embodies agreed principles;

- a program incorporating independent and transparent review and assessment processes; and
  - a program providing financial incentives for jurisdictions to follow through with agreed reforms.
12. Indeed, one of the crucial aspects of concern in the health sector (and potential reform) is shortages in some key workforce areas (eg nursing) which will undoubtedly have education and training implications.

## **COMPETITION AND THE HIGHER EDUCATION SECTOR**

13. Analysis and debate about the need for greater competition in the higher education sector can be illustrated by the following comments from [Prof] David D Curtis entitled “ *Competition Policy and the Future of Higher Education Institutions in Australia*”<sup>8</sup> (2000) Curtis notes –
- “Demand for higher education has grown substantially in Australia, as it has elsewhere. If Australia is to develop as an advanced knowledge-based economy, it will need greater numbers of better educated citizens. This suggests that attention must be focused on increasing retention to the end of year 12 and on encouraging greater numbers of people to undertake post-secondary education. Much of the projected increase in participation in higher education will be associated with increases among lifelong learners. These people have been a growing proportion of higher education enrolments, and they have some unique characteristics compared with recent school leavers. Many are in full time employment and have family responsibilities. These learners must fit their study around those commitments and meeting the needs of this growing proportion of learners represents a challenge for established universities. The challenge will include organizational, pedagogical, and technical dimensions.”
  - “Competition does occur in other sectors of education. In school education, there are many private schools and they compete with each other and with state schools. All receive some public funding although state schools are much more dependent upon this source of funds than are private schools. In the Vocational Education and Training (VET) sector, a deliberate marketisation policy has been pursued and private providers compete with public institutions (TAFE colleges) for public funding. Phillips noted the inconsistency between the VET and higher education sectors. If the view that competition policy should be universally and uniformly applied, then the question is not whether it will be applied to the higher education sector, but when and how.

There are difficulties with marketisation and market failures are known. Asymmetry of information between providers and clients is a case of markets failure. This is a well known feature of higher education provision, acknowledged by West, and has been well described by James, Baldwin & McInnes. Marginson has also discussed the limitations of market reform in higher education, in part attributable to a lack of accessible information, but due also to the positional nature of competition for places that do exist. However, the possibility of market failure has been acknowledged by those who have advocated marketisation, eg by West, and proposals to counter market failure have been proposed.”

- “It seems clear that there is considerable potential for the application of National Competition Policy in the higher education sector. Analysis of the Hilmer Report, of the West Review, and of the Minister’s cabinet submission, all suggest support for increased competition and some support for the entry of private providers into the sector. It seems unlikely that much public funding would be available for the lifelong learning market, and therefore these students would become direct clients of institutional providers and a market would thus be established. A recent proposal put to OECD Labour Ministers again raised vouchers as an equitable means of enabling access to higher education while controlling costs. The next Global Agreement on Tariffs and Trade (GATT) round is scheduled to focus on services, including education, and this will further promote international competition and the need for alternative funding practices.”

14. Recent Federal Government policies have attempted to open the higher education sector to some level of competition. These include the recognition of a two year degree qualification, the associate degree, the new FEE-Help Student Loan Scheme and the National Priorities Scheme which directs funded higher education places to private providers. However, much more could be done to level the playing field for private providers.
15. For example, a private higher education institution delivering places for which the Federal Government provides a course contribution must be listed as a higher education institution on the Australian Qualifications Framework Register, be subject to audit by the Australian Universities Quality Agency, and meet additional quality assurance and reporting requirements as specified by the Government. These conditions also apply to institutions whose students will have access to FEE-Help.
16. There is the potential inherent in these conditions for duplication of resources and effort by private providers in compliance. The potential for duplication (and potential for double jeopardy) arises from the fact that non-university higher

education providers are subject to rigorous accreditation and approval regimes operated by state and territory jurisdictions.

17. Private providers remain concerned that some public universities (and TAFE institutions) apply taxpayer-funded resources in an unfair manner to the education of overseas students and other private fee paying students and, in addition, these resources are applied to general consulting activities.
18. ACPET has similar concerns about the setting-up of “private arms” wholly owned by public universities competing for full-fee paying students both domestically and internationally using public infrastructure. It would appear that considerable intellectual property, staff expertise, time and resources devoted to these organizations do not appear in public universities’ accounts. Again public funds are diverted to creating an unfair competitive advantage.

## **COMPETITION IN THE VET SECTOR**

19. Competition in the VET sector is supposedly achieved through User Choice, whereby public funding supports the decision of employers and employees to choose a registered training organisation, whether public or private. The Productivity Commission, on p.xxxv of the Draft Discussion Paper states that ‘it would appear that many of the policies required to move forward in VET are already in place, including those directed at enhancing competition within the sector.’ However, despite all States and Territories agreeing to the principles of User Choice, its implementation has been inconsistent across the country. The decision on User Choice and contestability for government funded training, taken by all Ministers in 1997, has been progressively whittled away both in terms of closed markets on a State basis – or closure to existing providers only – and in the fact that the pool of funding available has reduced. Indeed, from tentative early days, its implementation now appears to have stalled, with some State/Territory agencies freezing the bucket of funds available under User Choice.
20. ACPET is seeking a universally consistent and fair policy approach to User-Choice to support individuals and employers. ACPET supports the position of the Australian Chamber of Commerce and Industry (ACCI) with respect to Competition Policy and vocational education and training as outlined on pages 31-36 in its submission to the Productivity Commission on this Review.
21. ACPET draws attention to an example of unfair competition in Victoria with respect to access to the Skill Up Program. Skill Up is the Victorian Government rapid response program to retain workers who are retrenched as a result of major industry downturn or workplace closure. The training is designed to help retrench workers upgrade their skills or develop new skills so they can re-enter the workforce as quickly as possible. Allocations of Skill Up funding are made directly to TAFE institutions. Advice to ACPET is that private providers are

eligible to participate in the Skill Up program but only in collaboration with public TAFE institutions.

22. In a recent example, an ACPET member was approached by a company to provide its employees with training under the Skill Up Program. This member was advised by the Victorian Department of Education and Training to apply to a TAFE institution – a direct competitor – “to offer their specialist services”. Under this arrangement, employers are denied choice. They cannot access preferred training for employees through a private provider.
23. ACPET’s preliminary view is that the distribution of government funding available to private providers should not be in the control and at the discretion of public TAFE institutions, ie competitors. There is a clear risk of a conflict of interest, a lack of transparency, and the potential for an improper exercise of discretion in this method of funding distribution.

### **COMPETITION IN THE ENGLISH LANGUAGE (ELICOS) SECTOR**

23. ACPET refers to the Education Queensland International (EQI) policy on enrolment of international students in ELICOS and government schools. While international students would be able to apply for a place in Queensland State Schools having completed ELICOS studies at any registered provider offering a ‘Secondary School Preparation Program’, ACPET is concerned the EQI will not continue the practice of making ‘package’ or joint Confirmation of Enrolment (CoE) offers with private providers.
24. In the past, EQI supported packages/joint CoEs for private ELICOS studies and schools at time of visa application. Any policy that cannot incorporate this is exclusionary and disadvantageous to private providers. This has direct implications for the type of visa (student or tourist) that students from different countries may apply for.
25. ACPET believes that the effect of the refusal of EQI to issue a joint Confirmation of Enrolment means that it is engaging in the practice of exclusive dealing because it is preventing its competitors from providing a high school preparation service to students from certain countries.
26. This example, as well as discriminating against private providers, demonstrates the need for national coordination of action to ensure fair competition.

### **COMPETITION IN THE INTERNATIONAL EDUCATION MARKET**

27. In the overseas market, there is a glaring disparity between the requirements placed on providers in the public and private sectors. Under Section 22 of the *Education Services for Overseas Students Act (ESOS) 2000* registered providers are required to belong to a tuition assurance scheme (TAS), unless exempted by

- regulation. Sections 24 of the Act requires non-exempt providers to also contribute to the ESOS National Assurance Fund, which was established under Part 5 of this legislation.
28. Unfairly, public providers are exempt from making contributions under both of these Sections. On this basis, the Fund is unfair, redundant and a massive impost on private providers. It should be abolished.
  29. ACPET is also concerned about the application of taxpayer-funded resources by public providers in the education of international students, as referred to in paragraphs 17 and 18. Operations of public providers should be independently reviewed to ensure that there is no cross-subsidisation of services to international students.

## LEGISLATION REVIEW PROGRAM

30. The Commission has recognized that education services (and health services) are examples of services that have traditionally been provided through administered market arrangements where governments determine what and how much to produce (through specific budget allocations). However, the Commission notes that these administered market arrangements can fail to provide ‘strong incentives for efficiency, to respond to changes in consumer needs and facilitate innovation’.<sup>9</sup>
31. The NCC had identified ‘education services’ as one of the priority legislation review areas in 2003. In its assessment for 2003 the NCC listed in its “suspension pool” legislation which had not been reviewed in compliance with National Competition Policy obligations. The list includes –
  - “education service providers” and “Universities” in the Western Australia ‘suspension pool’<sup>10</sup>
  - “Vocational education and training” in the Tasmania suspension pool<sup>11</sup>
  - “education and schools” in the ACT suspension pool<sup>12</sup>
  - “higher education” in the NT suspension pool.
32. ACPET supports the Productivity Commission’s draft proposals under 9.4 to improve the effectiveness of the legislation review process, in particular bringing forward second-round reviews; giving greater emphasis to independent reviews; providing for adequate public consultation; and, requiring governments to make review reports public.<sup>13</sup>
33. The *ESOS Act 2000* is an example of legislation implemented after the review process had occurred that needs to be looked at through the lens of Competitive Neutrality principles by an effective independent body.



## COMPETITIVE NEUTRALITY

34. The NCC reported in its 2003 NCP Assessment that – “In June 2003, the [Western Australia] Government endorsed the recommendations of the competitive neutrality review of TAFE colleges. The Government proposes to ensure that TAFE ancillary services are not provided to the public at subsidised prices. However, the Government has decided that competitive neutrality will not apply to WestOne and TAFE International and certain activities of other TAFE colleges.”<sup>14</sup>
35. ACPET notes, that the NCC has itself suggested that in a few areas application of Competitive Neutrality has not been fully effective. For example, “Competitive Neutrality principles do not apply to business units/activities of public enterprises, such as general consulting undertaken by universities” and “in the case of [competitive neutrality] requirements to universities, a more formalised approach may prove necessary **to create momentum for change.**” (emphasis added)<sup>15</sup>
36. Professor Guthrie has recently submitted a report to DEST on the further development of the National Protocols for Higher Education Approval Processes. At page 25 of his report, Professor Guthrie makes the observation ‘ Some *non self-accrediting HE providers argued that, under this Protocol, they were subject to a much greater level of scrutiny than universities for which CRICOS registration was more or less automatic*’.
37. While Professor Guthrie made no further comment on this claim, it does again raise the concerns private providers have about the favourable treatment extended to universities for CRICOS registration which *prima facie* amounts to an unfair competitive advantage.
38. ACPET believes it is important for Australian Education International to be aware of its view that the report is deficient in its consideration of National Protocol 5. Several states accord special favourable treatment to universities in CRICOS recommendations. This is unacceptable and ACPET believes AEI has a responsibility to make approval of CRICOS recommendation conditional on adherence to National Competition Policy. ACPET suggests that AEI examine all CRICOS recommendations to ensure that states and territories accord fair and equitable treatment in CRICOS applications and that all recommendations are consistent with the requirements of National Competition Policy. This is another important example of the need for robust application of competitive neutrality principles.

## IMPROVEMENTS IN NCP PROCESSES

39. The lack of transparency in legislation reviews and the subsequent monitoring process is of significant concern for ACPET. As a national organisation, ACPET

has had very little to no involvement in any sort of legislative review impacting on the education and training sector.

40. ACPET is currently trying to obtain material to better understand the circumstances of the various NCP compliance breaches and rationale for the Competitive Neutrality exemption given by the W.A. Government to some key TAFE activities. ACPET shares the concerns expressed by others in respect of the need for review reports and decisions regarding the application of Competitive Neutrality to be made public.
41. ACPET suggests governments could pursue audits of Competitive Neutrality decisions or allow for review processes of such decisions. Similarly, to the extent that some legislative reviews were undertaken without fully transparent or independent processes a formal opportunity to review those matters (especially in the light of relevant changes) should be provided.

## CONCLUSION

42. Education and training plays a vital role in Australian human capital development (which links to productivity growth). Provision of educational and training services also has the crucial potential to contribute more to Australia's export base. In the light of these current opportunities ACPET submits that the Commission's suggestion that 'put simply, what seems to be needed is effective implementation of agreed reforms, not a major new reform framework and agenda'<sup>16</sup>, significantly understates the value from and need for effective implementation of reforms in this sector. Given the conclusions reached by the Commission as to why National Competition Policy has been successful in achieving micro-economic reform in Australia and the lessons to be learnt from implementation of National Competition Policy reforms so far, ACPET considers it unfortunate that the Commission has not made firm recommendations to ensure that essential and effective reform of the education sector is achieved.
43. With respect to the VET sector, ACPET argues that because there is a national training framework and there is a national training agenda, there needs to be national coordination of a review of competition policy reforms, rather than these issues being tackled on a jurisdiction-by-jurisdiction basis.
44. ACPET submits that the Commission should recommend to CoAG that if satisfactory progress of recent reforms has not been achieved within a specified period (of say 18 months) CoAG should immediately consider putting reform of education and training services on the same basis currently recommended for health care reform. At least that will provide some measure of certainty that CoAG regards reform of the education and training sector as worthy of co-ordinated reform on a national priority basis at the highest levels. ACPET believes that such a message from CoAG will assist significantly in effective implementation of some of the current reforms. Without such a message ACPET

considers it likely that progress of reforms will continue to be unsatisfactory (the example of VET reform is a case in point).

45. ACPET submits that the Productivity Commission should include the following proposal in its report to the Australian Government to inform the CoAG considerations:

- CoAG should instruct the Productivity Commission to commence an inquiry into the progress and effectiveness of competition reforms in the education and training sector twelve months hence. The inquiry should report to CoAG within six months and its terms of reference should include consultations with all stakeholders.

ACPET  
December, 2004

#### Endnotes

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<sup>1</sup> See submission by National Competition Council to Productivity Commission, June 2004 (Submission no. ) at page 7.

<sup>2</sup> Productivity Commission 2004, Review of National Competition Policy Reforms, Discussion Draft, Canberra, October at p 40

<sup>3</sup> Ibid at p xxx iv

<sup>4</sup> See, NCC submission to PC (Submission No. ) at page 30

<sup>5</sup> See note no. 2 above at pxxxiv

<sup>6</sup> See note no. 2 above at p xxxv and pp 275 - 276

<sup>7</sup> Draft Discussion Report at page 13

<sup>8</sup> School of Education, The Flinders University of South Australia. Accessed via website <http://www.aare.edu.au/00pap/cur00137.htm> on 29 October, 2004

<sup>9</sup> Draft Discussion Report at page 10

<sup>10</sup> See National Competition Council 2003 Assessment of Governments progress in implementing the National Competition Policy and related reforms: Vol one – Overview of the NCP and related reforms, Austinfo, Canberra at page xii

<sup>11</sup> Ibid at page xiviii

<sup>12</sup> Ibid at page 1i

<sup>13</sup> Draft Discussion Report at pp 231-233

<sup>14</sup> National Competition Council 2003 Assessment at page 2.6

<sup>15</sup> See Draft Discussion Report pp 227 and 319

<sup>16</sup> See Draft Discussion Report p275