

SUBMISSION TO THE COMPETITION POLICY REVIEW

The Harper Review

June 2014

About COPHE

The Council of Private Higher Education (COPHE) is a peak body representing higher education institutions that are not public universities. The membership is diverse and includes private universities and institutions operating from more than 80 campus locations across Australia. Members vary in student enrolments from under a hundred to a few thousand and include not-for profit and for-profit operations. Courses offered range from pathway diplomas, where non university operation underpin the backbone of the critical international student market in our public universities, through bachelor and master's degrees, often linked to professions and employment and on to research degrees , including PhDs.

Many COPHE members have been delivering higher education since the 19th century and we would observe that many parts of public universities had their origins in private institutions. As noted in the Bradley Review, the public/private divide is no longer sensible.

What is most relevant to this submission and what makes the Review so timely are the extensive reforms proposed for higher education in the recent Commonwealth Budget as they address most of the very significant competition issues we face in the sector.

The proposed reforms are very welcome.

This paper explores the current issues and highlights in text boxes (such as this) where we consider the higher education Budget reform measures are highly relevant to competition policy.

The Budget effectively addresses the equity, choice and diversity arguments that COPHE has advocated for a decade.

The Higher Education Context

This submission has been prepared at a time of rapid change in global higher education markets, and follows significant changes in the regulation and funding of Australian higher education. Nearly one million Australians are now enrolled in higher education, which represents massive growth from around 39,000 enrolled in 1939. Private higher education has grown from about 2.3% of students in 2000 to about 8.6% in 2012. Education, with higher education leading, has grown to be our largest export industry, after minerals, in recent years and is our largest services export.

We have seen the Bradley Review, which led to the demand driven system where student funding follows student choice, rather than places in different programs at different institutions being allocated by the Commonwealth.

A new national quality regulator, the Tertiary Education Quality and Standards Agency (TEQSA), commenced operation in January 2012, to register and accredit universities and non-university providers of higher education in accordance with standards determined by the Higher Education Standards Panel (HESP).

In establishing TEQSA consideration was given to a referral of powers from States and Territories. As a number of jurisdictions did not relinquish their powers, the Commonwealth used its powers under the *Corporations Act* for authority to regulate higher education. The *Corporations Act* applies to all trading corporations including universities and private providers.

The recent Kemp and Norton review affirmed the demand driven system and proposed that funding be extended to all TEQSA accredited providers.

The key budget reforms that relate to competition policy are

- **deregulating public university fees**
- **support of undergraduate students with Commonwealth Supported Places (CSPs) irrespective of their choice of institution provided it is TEQSA accredited**
- **changes to the Higher Education Loans Program (HELP) with removal of the 25 per cent FEE-HELP administration fee**
- **consistency in the policy treatment for higher education sub-degree programs. These are widely recognized as effective in developing pathways into higher education**

Our submission is organised around the consolidated list of questions in Appendix A of the *Issues Paper* issued on 14 April 2014, and includes suggested recommendations.

Q1. COMPETITION POLICY

WHAT SHOULD BE THE PRIORITIES FOR A COMPETITION POLICY REFORM AGENDA TO ENSURE THAT EFFICIENT BUSINESSES, LARGE OR SMALL, CAN COMPETE EFFECTIVELY AND DRIVE GROWTH IN PRODUCTIVITY AND LIVING STANDARDS?

There are good reasons why higher education should be a major priority for this review of competition policy:

- Higher education received almost no attention in the previous Hilmer review and subsequent competition policy reforms.
- Student participation and commonwealth subsidies to higher education have continued to grow.
- The sector is now well placed to benefit from removal of government-induced barriers to competition. The demand driven system that followed the Bradley review has given universities experience of competition for students. We now have a national regulator TEQSA which applies equally to both public and private providers.

The market has become thicker with more private providers entering the market, ranging from universities (such as Bond, Notre Dame and Torrens), preparatory colleges associated with Universities (including many operated by the listed provider Navitas Ltd or Study Group), church-related colleges which have broadened their offerings to include undergraduate and postgraduate degrees in subjects including education, nursing and business (such as Avondale College of Higher Education, Wesley Institute).

There are also providers serving various professions such as law and accounting and industry sectors such as tourism.

- There appear to be substantial monopoly rents earned and inefficiencies in existing public universities. Evidence is the cost data assembled for DEWR in 2011 by Deloitte Access Economics.

Further evidence is provided by the contracting-out of teaching programs by Swinburne University to a private provider which was able to apparently deliver quality teaching at approximately 20% less than the cost of in-house delivery, with the private provider still making a profit. It is unclear how much of this is due to the (debateable) greater research and community engagement performance of Swinburne and how much is due to inefficiencies flowing from Swinburne's management practices (including adherence to work practices in a union negotiated enterprise agreement) and rents extracted by university managers and other employees (in the form of higher salaries and benefits, etc).

The ability of private providers to enrol students, despite lack of access to government subsidies for their students, additional loan imposts in administration fees plus the infrastructure provided by government to universities gives the sense of monopoly rents and inefficiency and ineffectiveness in the public universities.

- A very large quantum of resources in contemporary Australian universities is currently wasted through rent-seeking behaviour as a result of the heavy, often unpredictable, and malleable government involvement in the sector. Much of the time of senior management of our universities is currently devoted to trying to guess and influence government policy, game the various government funding schemes and obtain special deals for their institution. This senior management focus is supported by large administrative staffs and expensive information systems. A study by University of Queensland economist Professor Paul Frijters estimated that only approximately 28% of funds allocated by the Commonwealth to higher education reach frontline staff to teach students and carry out research.
- The economic literature on innovation suggests that most productivity improvements and product innovation comes through the entry of new firms. This has been the case in higher education. For instance the now-dominant research university model (at least as far as Australia is concerned) was introduced into the United States by German trained or influenced university leaders who founded new institutions such as Johns Hopkins University and followed by more established Universities such as Harvard. Mass undergraduate higher education was introduced into the United States by new land grant colleges such as the University of Michigan or Ohio State University.

- More recently the University of Phoenix pioneered low-cost professionally-focused on-line degrees, and consortia such as Coursera have led the massive open online course (MOOC) revolution.

Note, that as well as involving new entrants and expansion of the range of institutional types, much of these quality enhancing and cost reducing innovations were introduced by non-government providers.

Australian universities lack a similar diversity and current Higher Education Standards, which are due for review, constrain the expansion in types.

- Higher education is a key sector for the Australian economy because improvements in the quality of education or increases in its accessibility create large spill-over benefits for other industries which employ graduates. Education is recognised around the world as being crucial for future competitiveness and national living standards.
- The successful international student market in Australian higher education, a relatively recent development and a great achievement noted world-wide, where 25% of students in our universities are internationals, is strong evidence of competition driving positive outcomes.

There have been provisions that have given universities advantages over non-university providers such as delays in approval of streamlined visa processing however this has been addressed by the current government.

As the Budget proposals indicate, competition is the most efficient tool for restraining university fee increases, delivering better outcomes for students and maintaining quality in a deregulated environment, noting the need both for competition at the prestige end of the market and for the capacity of others who will be encouraged to innovate and address niche areas.

Q2. REGULATORY IMPEDIMENTS TO COMPETITION

Are there unwarranted regulatory impediments to competition in any sector in Australia that should be removed or altered?

and

Q3. GOVERNMENT-PROVIDED GOODS AND SERVICES AND COMPETITIVE NEUTRALITY

Are government-provided goods and services delivered in a manner conducive to competition, while meeting other policy objectives?

Is there a need for further competition-related reform in infrastructure sectors with a history of heavy government involvement?

Does competitive neutrality policy function effectively, and does it apply to the appropriate government business activities?

and

Q4. POTENTIAL REFORMS IN OTHER SECTORS

Would there be a net public benefit in encouraging greater competition and choice in sectors with substantial government participation (including education, health and disability care and support)?

Equity | Choice | Diversity

1. Restrictions on Commonwealth Student Support

Currently, Government grants for undergraduate education are restricted to students at public universities, with special inclusion for some students in teaching and nursing at a few providers. Under the Higher Education Support Act 2003 (HESA) a student choosing to enrol with a university is able to access what are commonly called HECS places. HECS places combine an element of government grants under the Commonwealth Grant Scheme (CGS) and an income contingent student loan (HECS HELP) for the balance of tuition fees paid which are paid to the universities by the Commonwealth. The Act allows the university the discretion to increase the recommended student contribution to tuition by up to 25%. In practice almost all universities have done so.

Recommendation: Reinforce the competition in higher education markets through the extension of student funding to non-government providers as announced in the Budget.

2. Differential Government Student Support

Currently, undergraduate students at non-government institutions can access an income contingent loan scheme called FEE-HELP but are charged a 25% FEE-HELP administration fee. This runs counter to competition principles.

Recommendation: Reinforce competition in higher education markets through consistent treatment of all students as announced in the Budget.

3. Competitive Neutrality

There can be no competitive neutrality as public universities benefit from the use of approximately \$40 billion of accumulated assets, mostly provided out of the public purse. In order to maintain a level playing field the subsidies to students of public universities should comprise a cash component and an appropriate competitive neutrality levy applied to the university. There is a precedent for such an asset charge in the Commonwealth Department of Finance cost-benefit analysis manual, and asset charges are included in the accounts of other public sector organisations in recent years.

As previously argued, the total subsidies should be the same for all providers, so the cash subsidy to students of providers without these accumulated assets should be higher, reflecting that student income must also cover infrastructure. There is also an argument for funding providers that teach less able students, leading to more effective outcomes, at a higher level because of the greater student support needed.

As previously argued, any funding of research and community engagement should be on the basis of outcomes, not an assumption that public universities do these things and private providers do not.

We further note a characteristic of universities that do not, in their accounts, report revenue from student tuition as Commonwealth funding yet the curiosity that the universities label any support for students enrolling in non-university institutions as funding.

In the Budget measures, with parameters that are still being explored, funding students at non-university providers may be at a lower rate than universities, on the basis that universities are required to undertake research and non-university providers do not. Research activity is, in practice, related to the nature of academic work rather than institutional requirements.

This confuses student support and institutional funding, where extensive cross subsidy, that is not transparent to students, occurs within public universities. If a proportion of institutional funding is for research and community engagement then this should be allocated for outcomes, not on the basis of incumbency and a characteristic of a type of provider in the Standards that may or may not be evident.

Recommendation: As announced in the Budget, reinforce the importance of the abolition of the discriminatory undergraduate FEE HELP administration charge. Suggest that any new discriminatory support arrangements would violate competitive neutrality, as well as being inconsistent with the logic of extending student choice to all providers approved by TEQSA as to do otherwise will ultimately be harmful to the sector.

The following section relates to support for research and research training in higher education.

The extensive higher education reforms in the budget necessarily focus on students, teaching and coursework. Further work is needed in the future to address competition and efficiency issues in research.

4. Research Training - PhD Student Funding

Currently funded PhD places under the Research Training Scheme are restricted to public universities, with special arrangements for a few institutions.

This distorts student choice. For instance if a student is considering a PhD in theology then funding of approximately \$60,000 would follow the student if he/she enrolls in a public university such as Charles Sturt University (which along with other newer universities acting similarly) has had affiliation arrangements with several theological colleges in recent years.

Essentially, this has gained funding for their research student load but we note that no funding would follow if the student enrolls at non-university institutions such as the Australian College of Theology (an originally Anglican but now multi-denominational theological consortium with a distinguished scholarly reputation going back to the 19th century). In a further quirk, if the student enrolled at the University of Divinity (previously Melbourne College of Divinity – founded by an Act of the Victorian Parliament in 1910) he/she would receive support. If these distortions mean the student enrolls at an institution which is not her first choice because of the support available then this reduces the quality and efficiency of our university system.

On the assumption that the PhD student market is currently fairly saturated, the funding distortion merely reallocates students between institutions and does not affect the total number of students doing a PhD, and hence does not save the Commonwealth money. COPHE estimates that total additional PhD enrolments may only increase by 150-250 over several years.

Recommendation: PhD funding to be linked to through the Research Training Scheme to accreditation of an institution's PhD program by TEQSA, with no further discrimination between accredited institutions. Since the Research Training Scheme awards funding on a formula based on historical PhD completions there needs to be a transitional arrangement to compensate for the past distortion and put the newly eligible institutions on the same footing as others.

5. Research Funding

Currently research funding is restricted to public universities, with ad hoc exceptions for specialised colleges and museums.

The institution's capacity to host research, both in terms of infrastructure and demonstrable research strength in the area needs to be the criteria. Currently non-university providers seeking accreditation to offer research degrees or seeking university accreditation where research is required are disadvantaged. It could be argued that new entrants should be advantaged because of their past exclusion so as to create a level playing field in research funding, and thus maximise the return on the government's investment in research.

Recommendation: Support of research to be made available on a competitive basis to all higher education institutions which can demonstrate they have appropriate capacity.

6. Restriction of Specific Purpose Government Grants to Incumbent Providers

There is a restriction on access for schemes for supporting indigenous participation, for teaching and learning grants, for special needs students etc.

Recommendation: All higher education grant programs should be opened to all TEQSA approved providers with demonstrated capacity.

7. Cartel Nature of Peak Associations in Higher Education

Some bodies representing universities such as the Australian Business Deans Council (ABDC) often claim to represent the sector while restricting membership to a subset of the sector. For instance when Alphacrucis College recently had business degrees accredited by TEQSA it applied and was refused membership of the ABDC on the grounds that the body was just for universities. COPHE has also experienced the university libraries group that collects all PhD theses refusal of the inclusion of PhD's completed outside universities.

This may appear trivial however much anti-competitive behaviour affects outcomes because the advice of such bodies is often sought exclusively by government organisations when going through the consultation phase on change.

We have noted improvement in some areas, such as access to the UAC admissions process, which is owned by public universities, (and its equivalent around Australia) which is used by most prospective school leavers.

8. University Compacts

These compacts and associated funding agreements negotiated between individual universities and the government lack transparency and are therefore grievously anti-competitive.

Would the government seek to negotiate compacts with new non-government entrants to the higher education industry if they are extending support to their students? Aside from the inappropriateness of the government negotiating compacts between competitors, these agreements greatly increase the losses through rent seeking and special deals which plague the sector. A clear, consistent and publicly accessible set of rules for all providers would enhance competition and bring public benefits.

Recommendation: Compacts should cease and transitional provisions introduced to phase out existing compacts.

9. Accreditation Standards and Procedures

The higher education regulator TEQSA, and the standards setting body the Higher Education Standards Panel, were established in a way where public universities have had undue influence and expect special treatment. In Australia, universities are self-accrediting and escape much of the regulatory oversight in the quality of teaching and learning, however almost all appointments are people whose experience is universities.

The way the incumbent public universities, which follow a single higher education model, operate in the absence of other models, with the outcome, their approach, their way of doing things, becomes the norm.

There have been very good and capable people appointed to the regulatory bodies; nevertheless when nearly all are appointed from the public university sector it is akin to having senior executives of Ansett and Qantas advising on the future of the two airline policy, or Telstra executives advising on appropriate arrangements for new entrants to the telecommunications sector when it was opened to competition.

As a result, the regulatory processes and methods favour universities. Costs of accreditation are a significant burden for non-university institutions.

Though it is recognized that it must protect the integrity of the higher education sector, and appropriate quality barriers must be in place, TEQSA devotes a disproportionate amount of its regulatory attention to non-government providers despite economic incentive arguments and actual practice suggesting that the regulatory risk is greater in the lower-end public universities (Oslington 2102, 2013b). These add up to a large anti-competitive effect.

Recommendation: TEQSA procedures and fees should be reviewed to ensure they do not disadvantage new entrants to or non-self-accrediting institutions in the higher education market.

Q5. COMPETITION LAWS

Are the current competition laws working effectively to promote competitive markets, given increasing globalisation, changing market and social structures, and technological change?

What is required is the application of competitive neutrality in higher education. As covered already, the extensive reforms in the Budget will address most of the competition issues in higher education insofar as coursework is concerned.

10. Facilitating Competitiveness of Australian Providers in Global Education Markets

The restrictions on university title put Australian non-university providers at a disadvantage when competing with providers in the US, India, China and many other countries where institutions similar to Australian colleges are called universities.

Recommendation: The higher education provider standards and associated restrictions on the use of university as discussed above also contribute to the competitive disadvantage that Australian non-university providers face in global markets.

Q6. ADMINISTRATION OF COMPETITION POLICY

Are competition-related institutions functioning effectively and promoting efficient outcomes for consumers and the maximum scope for industry participation?

11. Competition Regulator Capacity

It seems that competition regulators lack expertise in the complex area of higher education and lack experience in applying competition law in this area.

Recommendation: Regulators to be encouraged and funded to increase their capacity to enforce competition law in higher education.

COPHE Appreciate the opportunity to make this submission.

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