



Australian Education Union

Submission concerning Competition Policy Review Draft Report

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Submission concerning the Competition Policy

Review Panel Draft Report

Preamble

The Australian Education Union (AEU) welcomes the opportunity to provide a written submission in response to the Draft Report published in September 2014 by the Competition Policy Review Panel.

The AEU is an organisation of employees registered under the provisions of the Fair Work (Registered Organisations) Act 2009. It has approximately 190,000 members employed in government schools and public early childhood work locations, in TAFE and other public institutions of vocational education, in Adult Multicultural or Migrant Education Service centres and in Disability Services centres as teachers, school leaders, and education assistance and support workers.

This response is additional to the submission the AEU made concerning the Issues & Questions raised by the Review Panel's Issues Paper. This response continues to articulate the views of the AEU concerning the findings and recommendation of the Review Panel in relation to the extension of competition principles to the provision of human services, the application of the competitive neutrality principle and various employment-related matters.

A Quick Fact Check

Australia has 6 states and 2 territories. In each there is government, catholic and 'independent' provision of education at pre-school, school and Technical & Further Education levels. In essence, there are at the very least, between 24 and 84 different systems of education. Governments provide substantial funding to them all.

There are just under 18,000 pre-school providers, some 6,661 government schools, 1717 Catholic schools, 1015 independent schools, and some 4700 registered training organisations (including about 62 TAFE colleges or institutes).¹

Australia suffers not from a lack of choice in the provision of education services but from a bewildering confusion of providers. With the high profile failure over recent years of providers in early childhood (ABC Learning), schools (Mowbray College) and in vocational education and training,² the evidence just does not support any need to increase the penetration of competition principles into this sector of the economy.

¹ Commonwealth Department of Education, *National Early Childhood Education and Care Workforce Census*, May 2013, Table 5.1; ABS, *Schools 2013*, Cat 4221; Australian Skills & Qualifications Authority, *Annual Report*, 2013-2014, p19.

² ASQA reports some 18% of applications to register or register as a training provider are rejected and that there has been a 33% increase in sanctions against providers for non-compliance with quality standards. 20% of providers were non-compliant even after being required to rectify deficiencies. ASQA, *Annual Report*, 2013-14, pp24-26.

The application of any public interest test would see a strong case to remove competition as a guiding or organising principle for the provision of education.

Education

Re Draft Recommendation 1

The AEU has serious reservations about those aspects of the proposed revised Competition Principles which promote funding or provision decisions focussed on consumer choice, that require a separation of funder, provider & regulator, that encourage a diversity of providers and stipulate the removal of competitive elements from government public provision and their break-up into smaller business units.

Government schools, for example, are increasingly constructed using public-private partnerships, their cleaning and canteen services contracted out via competitive tendering, their ICT and curriculum materials provided through consumer markets. While aspects, or niche segments, of the teaching program have in the past been delivered through ‘guest teachers’ or other ‘experts’, eg, in drug and alcohol education programs or in civics and citizenship programs, the use of private companies or consultancies to more extensively deliver core aspects of a curriculum, eg, the Yr 9 History or Yr 12 Physics course raises serious issues of conflict of interest and perhaps of fiduciary duty. The relationship of student (and their family) to the teacher and the pre-school, school or TAFE is not one of consumer with the producer/retailer.

The most recent study of the effect of allowing private providers to deliver smaller, independent parts of the curriculum is from New Zealand³ where the perceived marginalisation of Health and Physical Education (HPE) within a crowded curriculum, a lack of trained and competent teachers, and a belief in the efficiency of the private market has led to the delivery of the HPE curriculum, particularly in primary schools, being offered to a growing number of external providers. The study finds that these providers “do not cover a broad spectrum of the HPE curriculum” and that “many of the programmes duplicated teaching of the same few achievement objectives in different sports and activities”.

As for the alleged ‘greater efficiency of the market’, the study notes that “the measure of effectiveness that this research focuses on is the commitment to a programme of teaching and learning that addresses all the achievement objectives combined in the New Zealand Curriculum and that caters for the needs of individual learners.” Apparently the providers of the programme did not view their task as one of educating students but one of encouraging participation in sport. Consequently some curriculum objectives were not ‘taught’.

Diversity of providers is no guarantee of efficiency, effectiveness or quality.

Re Draft Recommendation 2

It appears to the AEU that this recommendation is misconceived.

³ <http://researchcommons.waikato.ac.nz/handle/10289/8812>

There has long been choice in the provision or delivery of educational services between different providers of early childhood education and care, between different providers of school education and between different providers of vocational education and training.

In fact even for government or public provision of education, consumers have long been able to exercise choice between different government schools. Where choice has not been possible – for example in remote Aboriginal communities, in regional areas or where absence of commercial prospect renders market entry unviable – it is because of market failure. Conditions for government provision ‘naturally’ exist.

References to the literature on use of choice in school education were supplied in the earlier AEU submission on the Review Panel’s Issues Paper.

It is also important to realise that government provision of public education is not an exercise of business administration or the conduct and management of an enterprise but an undertaking of a public good or service in the public and national interest. Public education services are not business enterprises and competition within or between them should be tightly circumscribed.

Governments should not withdraw from public provision of education and leave the field to private providers privileging individual or private benefit and self interest of providers and consumers above the public interest. Governments must continue to provide and to fund such public services.

Independence of regulatory oversight functions may be somewhat different. Governments at both state and federal level have long established independent statutory authorities to perform regulatory functions. These can range from an ACCC to oversight competition and consumer law, the Victorian Registration and Qualifications Authority to register & monitor state based providers (both public and private) of education and training, the Australian Children’s Education and Care Quality Authority to provide national registers of service providers in early childhood education and care or the Australian Skills and Quality Authority to accredit and regulate authorities, providers and qualifications in vocational education

However, the capacity to regulate for quality or to protect the interests of consumers using such artefacts of the markets as the separation of funder, provider and regulator functions is fraught. Governments inevitably establish, appoint, fund and resource the regulators and so inevitably direct the nature of the outcomes from the exercise of such regulatory functions.

Consumer choice in human services

The Review Panel devotes a considerable section on education when dealing with the issue of “Limits to Consumer Choice in Human Services” (p 151-5). Here, despite acknowledging the evidence that choice has increased social segregation, the Panel expresses its own conclusion that this is because certain types of families are better able to use the ‘choice system’. It suggests it is necessary to more adequately ensure that every family understands the choice system and can use it.

This is a staggering expression of an ‘evidence-free’ opinion masquerading as a finding. Though accepting that choice increases social segregation, the Panel Review advocates further use of choice!

The Panel Review does refer to evidence from Sweden's education system, including the emergence of a number of innovative school models from the independent sector: "There has also been evidence that schools perform better in areas where parents are given more choice of schools" (p 151-2). The source for the Panel's view is a 2008 study by Nick Cowen, published by the UK centre, Civitas (Institute for the Study of Civil Society). Civitas runs a network of Saturday schools, and so has at the very least a vested financial interest in promoting "more choice of schools" for parents. That aside, it is now six years since that study was published, and a much greater body of evidence now exists in relation to the Swedish school choice model.

Sweden has pioneered the so-called "free schools" movement which began, like US charter schools, as privately operated, government-funded independent schools. For-profit operators then entered the market, giving free schools their distinctive character. The spread of school choice throughout Sweden has indeed produced social segregation in schooling, as noted by the Review. More worryingly - and this is ignored by the Review - there has been a drastic decline in Sweden's PISA results. "The Economist" commented after the publication of the PISA 2009 results: "The triennial study by the OECD, a think-tank, measures the reading, maths and science proficiency of 15-year-olds. In the first study, in 2000, Swedish pupils performed a lot better than those in most other countries. But even as the country's schools inspired imitators elsewhere, their results have deteriorated. In 2009 Sweden's overall score fell below the OECD average. Other rankings show a similar trend."⁴

The decline has continued. The 2012 PISA results show Sweden's results falling abruptly across all three measures of reading, maths and science - with the country recording the largest drop in maths performance over 10 years.

To compound matters, free schools run by for-profit operators have run into problems and left students stranded. JB Education, owned by a Danish private equity firm Axcel, had to close after suffering financial losses, leaving 10,000 students without schools.⁵ Similar problems have followed the entry of Swedish free schools to the UK. In 2011, newspaper headlines announced "Breckland Middle School will be saved by becoming a Free School". It was taken over by Swedish company IES which was then taken over by US-based private equity fund TA Associates. In 2014, concern about "poor standards of education" resulted in the school being placed under special measures by OFSTED, the UK school inspectorate. The OFSTED report was damning, noting that "Too many students fail to make sufficient progress", "Teaching is inadequate...for example, in English, the standard of students' work has declined since they started at the school", "Too many students have experienced frequent changes of teacher...", and "Governors have not ensured that the school meets requirements to keep children safe".⁶

⁴ <http://www.economist.com/news/europe/21588959-swedish-pupils-have-fallen-behind-their-international-peers-fixing-swedens-schools>

⁵ <http://www.tes.co.uk/article.aspx?storycode=6341728>

⁶ The OFSTED report can be accessed here: <http://www.ofsted.gov.uk/inspection-reports/find-inspection-report/provider/ELS/138250>

The Australian public should be able to expect a government established review panel to present evidence in a dispassionate manner. Business failure of providers, increased social segregation and decline in student performance outcomes are the result of the application of competition principles and user choice mechanisms in provision of education services. These are not desirable outcomes and the Panel should acknowledge this.

The principle of competitive neutrality

In its earlier submission the AEU referred to the deleterious effects the application of competitive neutrality principles had had upon the TAFE sector. The Review Panel has acknowledged that view. Nevertheless the view of the Panel is that “the principle of competitive neutrality is a key mechanism for strengthening competition in sectors where government is a major provider of services” (p. 175). What is the desirability of competition, in the view of the Panel? Throughout the Review there are numerous generalised statements on competition. This is typical: “Competition is desirable not for its own sake, but because in most circumstances it improves the welfare of Australians by increasing choice, diversity and efficiency in the supply of goods and services” (p. 248).

If the Panel is not to make a profound mistake and be rightly accused of ignoring the evidence, it must, consistent with its own views and the evidence, specify at least some of the circumstances where competition has not ‘improved the welfare of Australians by increasing choice, diversity and efficiency in the supply of goods and services.’

A case note of TAFE throughout Australia since it was made subject to contestable funding would illustrate the decline in choice, diversity and efficiency in the VET sector.

In South Australia, on November 1, 2012, the state government separated TAFESA from the department which had responsibility for it, made it an independent statutory authority under a board largely comprising representatives of the business community and, most importantly, imposed competitive tendering arrangements.

Since then, TAFESA campuses have closed and been sold to private businesses, popular courses have been dropped – often in low SES areas – and caps on enrolments have seen potential students unable to enter courses or having to enrol with private RTOs –not out of choice, but out of necessity. Fees have risen. Staff numbers are projected to drastically fall.

Requiring greater commercial returns on government investment on capital and costing the provision of community service obligations create mechanisms for a funder/purchaser of service delivery to demand lower costs. Inevitably the quality of provision declines.

Professional licensing and standards

The Review notes that professional licensing and standards raise the contradiction between promoting “important public policy aims such as quality, safety and consumer protection” (p. 97) and impeding “the ability of service providers to respond to consumer demand” (p. 99). Furthermore, the Panel view is that it is “important to remove unnecessary restrictions on service provision – particularly barriers to entry...” (p. 100).

Education service delivery is a specific area where that the concept of “consumer demand” must not outweigh the need for strong regulatory barriers to the entry of untrained and unqualified persons into the teaching profession. There currently is the development of alternate pathways to fast-track underqualified entrants to the school teaching classroom, eg, the Teach for Australia program and the development of policy options for no longer requiring school principals to be qualified educators but to be business administrators or managers.

Such developments will only accelerate the decline in educational standards and are not in the public interest.

Democratic Rights and Economic Matters

Secondary boycotts

The Review Panel asserts there is not a sufficient case for changes to the secondary boycott provisions of the CCA (p242). This simply ignores the evidence, established by expert committee that the current provisions are inconsistent with Australia’s obligations under ILO Convention 87 in relation to the freedom of association and protection of the right to organise. This evidence was cited in both the AEU and the ACTU earlier submissions concerning the Issues Paper. Such evidence does establish a sufficient case to broaden the exemptions.

Trading restrictions in industrial agreements

A number of State and Territory branches of the AEU have had, currently have or seek to have clauses in their industrial agreements that restrict the use of contract teachers, of ‘outsourcing’ provision and require commitment by the employer to a timetable and/or quota for conversion from contract to permanent employment.

The Panel does not refer specifically to public service providers, but makes a broad comment to the effect that: “The Panel favours competition over restrictions and believes that businesses should generally be free to supply goods and services, including contract labour, if they choose” (p246).

The discussion of this occurs in the context of a perceived conflict between provisions of the Fair Work Act which enable approval of industrial agreements which can require an employer to only engage or deal with contract labour on terms and conditions no less favourable to its own employees and sections 45E & EA of the CCA which prohibits restrictions on the ability of an employer to acquire goods or services from another person.

The Panel, extraordinarily, suggests that there be a further court challenge to the Fair Work Act provisions and also for government to change the legislation if necessary. The Panel effectively is actively seeking to further privilege business owners over business employees in the bargaining processes for the conduct of their industrial affairs.

To the AEU this suggestion appears to be partisan advocacy on the part of the Panel. Given the panel recognises that employment relations & practices are the province of a different statutory and regulatory regime – and not part of its remit, the suggestion should be removed from any final findings and recommendations.