



## **Australian Education Union**

### **Submission to the Competition Policy Review**

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### ***Preamble***

The Australian Education Union (AEU) welcomes the opportunity to provide a written submission in response to the Issues Paper (IP) published in April 2014 by the Competitive Policy Review Panel, established by the Commonwealth Minister for Small Business in March 2014 following announcement of the policy review by the Prime Minister and Commonwealth Minister for Small Business in December 2013.

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 to the Issues Paper, confines itself to those elements dealing with the application or possible further application of Competition Policy in the area of government service provision (Chapters 3 and 4) and to the current operation of Competition Laws concerning primarily with Secondary Boycotts and the statutory exemptions, exceptions and defences (Chapter 5).

The Panel has noted that workplace relations is not within the scope of the Review. However Chapter 5 of the Issues Paper contains questions on the operation of secondary boycott laws and statutory exemptions, exceptions and defences which may go to the operation of the workplace relations system. Should the Panel determine that it intends to make observations and/or recommendations about the workplace relations system, then the AEU requests that it be provided with the intended observations and recommendations and have the opportunity to provide comment prior to any final submission to government.

### ***Response to Issues Paper***

#### **Ch 3 – Government-provided Goods and Services and Competitive Neutrality**

Key question:

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

The Issues Paper, notes that one of the express principles and policy priorities that limit or guide the scope of the Review Panel's inquiry is, '*Government should not be a substitute for the private sector where markets are, or can function effectively or where contestability can be realised.*' [ IP, p51, item 1.3]

The AEU also notes that Term of Reference 5 states *‘The Review Panel should also examine whether government business activities and services providers serve the public interest **and** promote competition and productivity, including consideration of separating government funding of services from service provision, privatisation, corporatisation, price regulation that improves price signals in non-competitive segments, and competitive neutrality policy.*’[IP, p53, item 5]

This is slightly different to the way the Review Panel has interpreted the particular Term ‘... *serve the public interest **by** promoting competition and productivity ...*’[IP, ch3, p17]

In the view of the AEU this is particularly unfortunate. While it may be opportune to review Competition Policy after nearly two decades of its operation, it would have been better for that review to be evidenced-based rather engineered on the untested assumption or basis that the public interest is best served in all circumstances through increased use of the private sector and of market mechanisms, including competition policy and principles.

While the application of competition policy may well have been effective in driving innovation and increased productivity in some areas of the economy, it should not be an assumption that it will or can do so in others. In particular it should not be taken as an article of faith that it is appropriate for competition policy to be extended into the operation of all sections of economic and social policy.

The AEU details below some examples and evidence of the inappropriateness of and/or failure in the operation of competition policy in the area of government funding/provision of education services.

## ***Education Generally***

The AEU’s experience is in the area of government provision of early childhood education and care, school education and technical, further and vocational education.

In summary that experience indicates that:

- there should not be a separation between funder and provider of service delivery;
- there should be no privatisation or corporatisation;
- competitive neutrality policy has been disastrous where it has been introduced (primarily in VET);
- open, competitive markets do not and cannot work effectively in the provision of education; and
- to the extent that competition has been introduced into education delivery in early childhood, school or VET, its consequences have either been disastrous or counter-productive to public policy objectives.

Even a cursory glance across the literature and evidence yields the following conclusions:

- Costs to the consumer (whether student, family or industry) only ever increase;
- discontinuation of courses and closure of campuses close causes personal, familial, community and social dislocation and increased social costs;
- issues of access and equity arise for families of pre-school age children, for students in regional, rural & remote localities, from Indigenous, other culturally and linguistically diverse backgrounds, from lower socio economic backgrounds and for those seeking further education or training or re-entering, or being made redundant from, the workforce;
- there is increased segmentation or social stratification in provision of education within or between areas and social groupings of higher and lower socio-economic status; and
- the Australian community increasingly is risking not producing the appropriately educated and skilled citizenry and work force needed for informed participation in the civil society of the 21<sup>st</sup> century.

For an analytical study, review of the evidence in relation to school education both nationally and internationally and a conclusion concerning the failed operation of market mechanisms, the Review Panel is referred to Jensen, B., Weidemann, B., and Farmer, J., 2013, *The Myth of Markets in Education*, Grattan Institute.

These authors find, interestingly in relation to both government and private provision of school education, that:

*The structure of school education and the failures in the market are too great ... (competition) is just not a viable way of increasing the performance of school systems.*  
(p35)

## ***Competitive Neutrality***

Questions:

- Does competitive neutrality policy function effectively, and does it apply to the appropriate government business activities?
- Has the method of implementing competitive neutrality principles improved competition and productivity?
- What are the disadvantages that private businesses face when competing with government business activities?
- Could the mechanism for dealing with competitive neutrality complaints be improved?

The area where competition policy principles have been most applied in the provision of education is in the vocational education sector. In the area of government or public provision, this is TAFE. Here its application has been inappropriate and the outcomes close to catastrophic.

Throughout the first (1995-2005) and second (2005 – to date) phases implementation of National Competition Policy and their incorporation into a National Reform Agenda overseen by the Council of Australian Governments (COAG) and its Reform Council (CRC), governments at federal and state/territory level have increasingly used funding mechanisms to drive the penetration of competition principles. This was achieved through both legislative means, eg, the Commonwealth's *Skilling Australia's Workforce Act 2005* and multi-lateral government agreements such as the National Agreement on Skills and Workforce Development (2009-2012 & 2012-2017) and the National Partnership Agreement on Skills Reform (2012-2017).

These mechanisms have required:

- separation of the funding and provider functions of government;
- opening access to government funding to both public and private providers on an open or equal or 'contestable' basis; and
- transferring greater proportions of the cost of provision from the public purse to the private capacity of students and their families. This latter mechanism is augmented by the provision of income contingent loan schemes.

The effects of these policies are overwhelmingly evident. They have been documented in recent times in submissions to the Commonwealth Parliament's House of Representatives' inquiries in 2013 and 2014 as well as the Senate inquiry in 2013 into the role of technical and further education. The AEU submission to those inquiries evidenced job losses of at least 2,400 and the closure of many campuses and courses.

The effects of these policies are also reflected in the statistical databases established for national data collections by the National Centre for Vocational Education Research (NCVER). These effects include:

- a decline in the number of students enrolled (and so also in the hours of training delivered) in publically funded VET Courses (NCVER, Students & Courses 2013 – Preliminary Data), and
- a decline in trade and non-trade training commencements which in 2014 are near or below levels a decade earlier (NCVER, Apprentices & Trainees, 2014 March Quarter – Early Trend Estimates).

The Senate inquiry report was tabled in the Commonwealth Parliament in May 2014. Its majority view noted that while the introduction of private providers into the sector could in theory be supported, TAFE however provided an integral service to the community and should not have to compete in all areas. It stressed that the proliferation of the number of private providers was concerning to all stakeholders and that the regulatory body as well as all stakeholders had concerns with the quality of training and the integrity of the qualifications achieved. Amongst other things it recommended a move back to a 'managed' as distinct from an 'open, competitive' market (Senate Education & Employment Reference Committee Report, *Technical & Further Education in Australia*, May 2014, ch 4, paragraphs 4.17-4.20 & Recommendation 5).

The AEU would go further and urge the Review Panel to note the failure of competition policy in this sector and to recommend that government abandon the use of market mechanisms to deliver educational services.

## Ch 4 – Potential Reforms in Other Sectors

Key question:

- 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)?

Question:

- Can more competitive outcomes in the human services sector enhance both Australia's productivity and the quality of human services delivered to Australian citizens?

Questions:

- Will more competition among providers serve the interests of consumers of health, education and other services?
- What issues arise when government agencies, private businesses and not-for-profit organisations simultaneously seek to provide human services?

Questions:

- Can competition be increased in other markets currently served by government-operated providers?
- Is current policy conducive to competition with government-operated services?

The encouragement of greater competition amongst providers of education has not and cannot result in net public benefits.

In school education, competition between providers in the sense of competing for student enrolments or competing for increased allocations of funds whether from public or private sources is an inefficient mechanism which results in 'winners and losers' when the public policy objective and the net public benefit is determined by improvement in student outcomes and in the quality of school and system performance.

The OECD has warned that competition between schools can have a negative effect on equality of outcomes. In *Equity and Quality in Education – Supporting Disadvantaged Students and Schools* (February 2012), the OECD states:

*“School choice advocates often argue that the introduction of market mechanisms in education allows equal access to high quality schooling for all...However evidence does not support these perceptions, as choice and associated market mechanisms can enhance segregation”* (p. 64).

The OECD has also published a major analytical review of the research evidence concerning the introduction of market mechanisms, including competition, in countries across the world over the last 2-3 decades. One of the report's many conclusions was:

*“There is little evidence that the introduction of market mechanisms in education is more effective in reaching the “hard core of education” than other policies are.”*

It is highly significant that the ‘hard core’ was defined as improvement in student outcomes.

(Waslander, S., C. Pater and M. van der Weide (2010), “Markets in Education: An Analytical Review of Empirical Research on Market Mechanisms in Education”, *OECD Education Working Papers*, No. 52, OECD Publishing, p68.  
<http://dx.doi.org/10.1787/5km4pskmkr27-en>)

In the Australian context, the competitive approach – or the competition model – simply neglects the purposes or goals of Australian schooling. These have been agreed and enunciated by successive governments at all levels and political persuasions: in the 1989 Hobart Declaration, the 1999 Adelaide Declaration and most recently in the 2008 Melbourne Declaration on Education Goals for Young Australians.

These goals are:

- 1) that Australian schooling promotes equity and excellence; and
- 2) that all young Australians become:
  - successful learners;
  - confident and creative individuals; and
  - active and informed citizens.

The Melbourne Declaration commits all Australian Education Ministers to achieving the highest possible levels of collaboration with government, Catholic and independent school sectors and across and between all levels of government with the engagement of all stakeholders in the education of young Australians.

While it may be the untested assumption of some popular economic theories that more competition between schools will enhance the quality of education offered to the community, the AEU is not alone in its assessment of the evidence that excellent outcomes in education is not conditional upon a competitive educational environment.

In its *PISA 2009 Results: Executive Summary*, the OECD concludes:

*“...countries that create a more competitive environment in which many schools compete for students do not systematically produce better results” (p. 15).*

In its analysis of the PISA 2012 results, the OECD Report, *What Makes Schools Successful: Resources, Policies & Practices* (Vol 4, p17) notes further:

*“High-performing countries and economies tend to allocate resources more equitably across socio-economically advantaged and disadvantaged schools.*

*That said, PISA results show that in many school systems, resources are not allocated equitably: On average across OECD countries, while disadvantaged schools tend to have smaller classes, they tend to be more likely to suffer from teacher shortages, and shortages or inadequacy of educational materials and physical infrastructures than advantaged schools.”*

In analysing Australia's schooling performance across the three major international student test programmes (PISA, TIMSS & PIRLS), the Australian Council for Educational Research infers that countries' policies which increase the gap between advantaged and disadvantaged students correlate with poorer or declining results and targeting resources to lift the performance of disadvantaged students would improve performance generally. It concludes:

*"Clearly, it is possible to achieve excellence and equity in a school system"*

(See ACER, *Snapshots: Global Assessment/Local Impact*, Issue 2 Nov 2013, p3.)

Extending the operation of competition policies more generally into the area of government service provision cannot guarantee more equitable distribution of resources. And more importantly the operation of competitive markets does not allow for the targeting more resources to those areas where they are needed most.

In light of the evidence, including from the influential OECD studies to which we have referred, the AEU would particularly caution the Competition Policy Review Panel against recommending the introduction of 'for profit' models of schooling or for recommending increased use of corporate sponsorship in public pre-school, school or TAFE.

Such models operate on a fundamental principle whether at common law or in statute that the primary obligation of the directors of corporations is to serve the best interests of the shareholder.

In the Australian context, this is antithetical to the fundamental principle, again under common law and in most relevant principal statutes operating in the provision of education that the primary obligation of the provider is to serve the best interests of the student.

It is in this context that the principles and language of competition policy appear as particularly inappropriate - as inappropriate as the radical views of the Treasurer Joe Hockey, who in his June 11 2014 speech at the Sydney Institute declared that "It is not the job of government to pursue equality...".

Indeed the AEU asserts it is the public policy objective and the responsibility of government to pursue equity and excellence in education by providing funding to public education to achieve high quality outcomes for all.

## **Chapter 5 – Competition Laws**

Question:

- Do the provisions of the CCA on secondary boycotts operate effectively, and do they work to further the objectives of the CCA?

Question:

- Do the statutory exemptions, exceptions and defences, including liner shipping, operate effectively, and do they work to further the objectives of the CCA?



As noted earlier, the Review Panel has observed that the operation of the workplace relations system lies outside the scope of its Terms of Reference.

### ***Secondary Boycotts***

The provisions of the Competition and Consumer Act, 2010 continue to maintain general prohibitions on the capacity to undertake secondary boycott and ‘sympathy strike’ or ‘protest action’ activities.

There is a narrow general permitted area of activity and exemptions, exceptions etc contained in ss45DD(1),(2) & (3) and s51(2) where the dominant purpose of the activity concerns, generally, employment terms and condition of employees or environmental or consumer protection.

The AEU urges that there be no diminution in the provisions the CCA currently accords to environmental and consumer protection.

However, the Act contains no general protection for Unions legitimately and legally engaged in for the furtherance of the Objects for which they are established.

The Act, as indeed its predecessor, therefore continues to breach Australia’s international obligations as a signatory to International Labour Organisation (ILO) Convention (No 87) on Freedom of Association and Protection of the Right to Organise.

The 2012 Report of the ILO Committee of Experts on the Application of Conventions and Recommendations (Report 3, Part 1A, pp58-59) notes this continued breach and recommends that Australia bring the CCA fully into line with the Convention. The February 2014 Report of the same Committee (Report 3, Part 1A, p53) reiterated this conclusion.

The AEU consequently recommends that the Review Panel should take account of these ILO Reports and recommend that the protections and exemptions for Union rights to organise freely be broadened in the CCA consistently with the ILO’s observations and with Australia’s obligations under the Convention 87.