



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA SUBMISSION TO NSW IPART COMPETITIVE NEUTRALITY REVIEW

12 August 2022

IHEA Submission to NSW IPART Competitive Neutrality Review

12 August 2022

Introduction

This is Independent Higher Education Australia's (IHEA) submission to the New South Wales (NSW) Independent Pricing and Regulatory Tribunal's (IPART) *Review of Competitive Neutrality in NSW*.

IHEA represents the majority of Australia's registered and accredited independent higher education providers.

Our membership includes independent universities and colleges with campuses across Australia. IHEA members educate students in a range of disciplines including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, and social sciences. Our 74 members teach 74 per cent of the students in the independent sector (i.e. more than 120,000 students). Of this, some 40 members have their headquarters in NSW. A list of our full membership is provided in the attachment.

Despite the impact of the COVID-19 global pandemic, education continues to be an important sector for the Australian economy. International education is Australia's largest services export and fourth largest export sector overall.

Today, enrolments at independent providers are increasing at a faster rate than at public universities and our members are recognised as a vital part of Australian higher education.

Growing enrolments reflect the value students place on independent higher education. In government endorsed Quality Indicators for Learning and Teaching (QILT) surveys, students consistently rank independent higher education institutions the highest in the country for teaching quality, learner engagement, skills development, and overall quality.

The recovery in international education is critical to Australia's rebounding from the pandemic. Independent higher education is central to this recovery. Prior to the pandemic, independent higher education's share of the international education industry realised approximately \$2.64 billion. For 2019-20, this would make the independent higher education sector Australia's 21st largest export. As this economic sector recovers, the right settings will rebuild and grow this contribution.

Scope of the Review

IPART has been tasked to do a review of the State's Competitive Neutrality policy. As it states in its issues paper:

Competitive neutrality policy has applied to NSW's state and local government business activities since the late 1990s. The NSW Government last reviewed competitive neutrality policies around 20 years ago. Since this time, the NSW economy has changed significantly.

For example, Government business ownership has become more strategic and focused. The types of activities Governments use to deliver on their policy objectives has broadened, along with greater private sector and not-for-profit involvement in delivering essential services to the community either instead of, or alongside, government.

Our review will consider whether NSW competitive neutrality policies and processes remain fit for purpose and make recommendations for improving the design of the policies and processes that reflect the maturity of government businesses today.

We will seek to understand the views and experiences of private and not-for-profit competitors, as well as government agencies, to assess what is working well and what could be improved. We will also consider the costs and benefits of expanding the scope of government activities to which competitive neutrality principles apply.

Our review will address the following questions:

- are the scope and coverage of the policy appropriate?
- are complaint mechanisms, oversight, accountability, transparency and administration arrangements effective?
- are the current NSW competitive neutrality policies best practice?
- what improvements can be made to the policies and their implementation?
- what are the costs and benefits of expanding the scope of the policies to a broader range of government activities?

Submissions are due by Monday, 15 August 2022.

IPART will publish its draft recommendations in October and complete its review by February 2023. A public hearing will be held later in the year.

IHEA believes it can make some useful observations on competitive neutrality as they relate to the higher education sector.

Competitiveness in the Higher Education Sector

The higher education sector plays a significant role in the Australian economy. Prior to the Covid-19 global pandemic, education was Australia's third largest export. In 2019, higher education earned \$40.3 billion and supported around 250,000 Australian jobs. Independent higher education's share of Australia's international education industry, at the time, realised approximately \$2.64 billion, the equivalent of nation's 21st largest export.

Despite the impacts of the pandemic, higher education continues to be an important sector for the Australian economy. International education is Australia's largest services export and fourth largest export sector overall.

The growth represents an increase of 16 per cent, per annum. Given the constraints of different policy and legislative settings for the independent higher education sector, this growth is significant.

The independent higher education sector is diverse with different missions, scales and course offerings and is comprised of:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University); and
- 130 profit and not-for profit independent higher education providers.

Of these, the majority are:

- Small scale operations with fewer than 500 total student Equivalent full-time student load (EFTSL) enrolled in a higher education qualification;
- Headquartered in NSW or Victoria; and/or
- Multi-sector, that is, registered to also offer vocational education and training (VET) and/or English-language courses (ELICOS).

A number are registered on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) to offer education to international students.

In the current operating environment, the independent higher education sector is sensitive to three key market factors:

- Government policy in relation to access to Commonwealth funding.
- Regulatory barriers.
- International student markets.

Parts of the independent sector has a high reliance on international students relative to the public sector. International students represent a key export market with both the public and independent sector reliant on China and India from which most students are recruited. While current market conditions remain positive, forecasts indicate that student markets will need to diversify in coming years to remain competitive.

Within this external context, characterised by complex and ever-evolving regulatory and legislative requirements, contested student markets, and differentiated educational models, independent providers are often vulnerable to changes in government policy or direction.

There are 10 NSW Public Universities. They are:

- University of Sydney - University of Sydney Act, 1850 (NSW)
- University of NSW – New South Wales University Act, 1949 (NSW)
- University of New England - University of New England Act, 1953 (NSW)
- University of Newcastle - University of Newcastle Act, 1964 (NSW)
- Macquarie University – Macquarie University Act, 1964 (NSW)
- University of Wollongong - University of Wollongong Act, 1972 (NSW)
- University of Technology Sydney - University of Technology, Sydney Act, 1987 (NSW)
- Western Sydney University - University of Western Sydney Act, 1988 (NSW)
- Charles Sturt University – Charles Sturt University Act, 1989 (NSW)
- Southern Cross University – Southern Cross University Act, 1993 (NSW)

A number of higher education providers (and IHEA members) are dual sector (ie both providers in higher education and Vocational education and training - VET). While Technical and Further Education (TAFE) institutions compete against the independent sector this submission is focused on the higher education sector.

The Council of Australian Government's (COAG's) 1995 decision to introduce competitive neutrality was designed "to remove resource allocations distortions arising out of public ownership of significant activities and to improve competitive processes".¹ These distortions occur because the prices charged by public owned enterprises may not reflect production costs which may lead to distortions in production and consumption.²

As the Issues Paper notes on page 10:

"In 1995, the Australian Commonwealth, State and Territory Governments signed the Competition Policy Agreements, which are a set of intergovernmental agreements that form Australia's National Competition Policy. The 3 initial agreements developed in 1995 are the *Competition Principles Agreement*, the *Conduct Code Agreement* and the *Agreement to Implement the National Competition Policy and Related Reforms*. In 2006 a fourth intergovernmental agreement was developed called the Competition and infrastructure reform agreement.

Clause 3 of the *Competition Principles Agreement* sets out broad competitive neutrality principles and gives each government discretion on how to implement them (as long as their actions are consistent with it). This allows room for different interpretation and implementation of the national competitive neutrality principles and resulted in varying competitive neutrality regimes among the states and territories. ...

The NSW Government issued its *Policy Statement on the Application of Competitive Neutrality* in 1996 and updated it in 2002. It outlines NSW's competitive neutrality initiatives, general pricing guidelines, the complaints mechanism, and the competitive disadvantages that can arise from Government ownership."

Referring to NSW Treasury, *Policy Statement on the Application of Competitive Neutrality* (TPP02-01), January 2002; New South Wales Government, the Issues Paper notes that:

¹ Commonwealth Competitive Neutrality Statement, p. 4

² Ibid

“Competitive neutrality principles apply to significant state and local government owned businesses where it is in the public interest to apply them. This means that there are effectively three tests for whether competitive neutrality principles apply:

- is it a Government business activity?
- is it a significant business activity?
- would the application of competitive neutrality principles be in the public interest (i.e. would the benefits outweigh the costs)?” [page 34]

On page 36 of the issues paper, it states:

“The NSW policy defines government businesses generally as organisational units which:

- have some form of public sector ownership
- are engaged in trading goods and/or services
- have a large measure of self-sufficiency and
- are subject to Executive control.

The extent of government control will influence whether or not the activity is part of government for the purpose of the policy. The NSW policy recognises circumstances in which a public sector business is not subject to effective control by the executive Government (e.g. universities).”

On page 60 of the Issues Paper IPART asks the question “Should competitive neutrality policies apply to other government activities?” In doing so it notes that:

“Government ownership of businesses in NSW is less common now than it was when competitive neutrality policies were introduced over 2 decades ago. However, there are other government economic activities which may still impact competition, such as:

- directly supplying social services or programs (e.g. public education or hospital services)
- contracting out service provision to a private operator (e.g. bus, ferry and light rail)
- taking a minority ownership stake in a business (e.g. by selling a majority stake in previously government owned business)
- providing grants, concessional loans, tax advantages or equity stakes to particular private businesses to achieve policy outcomes, such as greater employment innovation or industry development
- obligations that differ between public and private sector businesses (e.g. licenses granted under the Water Industry Competition Act 2006).

NSW competitive neutrality policies currently do not apply to these government activities. However, we have been asked to consider the benefits and costs of expanding the scope of competitive neutrality policies to a broader range of activities where government and other service providers operate in the same market.

We are exploring what a level playing field looks like today and how NSW competitive neutrality policies can achieve it. This may require competitive neutrality policies to cover other government activities, including non-business activities. For example, if government decisions, such as market design and regulation, were competitively neutral, competitive neutrality policies could allow emerging and innovative businesses to enter markets. They could provide more opportunities for non-government businesses and help enable a dynamic economy that meets the needs of our future. However, this would need to be balanced against an increased burden on government to comply with broader competitive neutrality principles, as well as any assessment that the differences are justified for risk, public interest or other grounds.”

Competitive Neutrality principles do apply to public universities in as much as they undertake other, non-educational type activities. Indeed, they have internal policies that acknowledge this.

To the core activities of these institutions, however, IHEA’s position is that IPART should seriously turn its attention to bringing public universities’ educational activities under the wider umbrella of competition principles.

Issues of Anti-Competitive Behaviour or Arrangements

Recently IHEA announced a policy recommending a National Tertiary Sector Reform Strategy that will structurally reform Australian tertiary education.

While a streamlined national tertiary system will need to meet a range of interests, IHEA proposes that components for urgent consideration of a National Tertiary Sector Reform Strategy include:

- A single student loan scheme across the tertiary sector with equitable settings for all students.
- Course funding models with accessibility based on quality not provider type that support workplace skills, industry demand, lifelong learning, and creative disciplines.
- Research funding models that are accessible to independent providers and public universities and recognise, commercialisation, scientific endeavour, and academic excellence across all disciplines.
- That recognise the varying Flexibility in funding models demands of state and regional economies.
- Greater unification of the higher education, vocational training, and skills sectors.
- A single tertiary sector regulator.

This submission outlines a short list of issues for IPART's consideration:

- The Covid-19 context.
- HELP Loan Equity - Permanent abolition of the FEE-HELP loan fee.
- Rectifying the competitive advantage conferred on public universities through CRICOS regulation.
- Put Open Universities Australia (OUA) on a fully regulated basis.
- Prevent potential predatory pricing by public universities.
- Rectifying the distortions in resource allocation that arise from regulatory and cost recovery models.

The COVID-19 Context

COVID-19 has and will continue to dramatically change the Australian – and global – higher education sector. Some key changes include:

- On-campus delivery has been significantly interrupted.
- Offshore recruitment pipelines have been disrupted.
- Online delivery has been increased markedly.
- Offshore trans-national education models are being developed rapidly and existing models re-engineered.
- Domestic economic disruption has triggered demand for re-training (well-known counter-cyclic effect).

Over the next 2-3 years, we expect to see:

- Much more online delivery.
- More short course activity.
- Options to accelerate delivery of full qualifications.
- Potentially more transnational education (e.g. with three or four years at an offshore campus plus one year in Australia) and offshore study hub models.
- Some course consolidation.
- Price-based competition for on-shore international students.

In this context, competitive neutrality will be even more important than ever.

Issue 1: HELP Loan Equity - Permanent Abolition of the FEE-HELP Loan Fee

The FEE-HELP loan fee of 20 per cent is discriminatory fee on education and training for independent sector students that is not imposed on students attending public and private universities. IHEA's independently commissioned economic impact analysis of the FEE-HELP loan fee determined that it raises \$6.2 million per annum in general revenue but shackles independent sector students with \$100 million more debt than their course costs. Independent sector students are the only HELP recipients required to loan 120 per cent of their tuition costs to pursue their educational and career goal. The Australian government needs to urgently remove unfair taxes on tertiary students.

Issue 2: Rectify the Competitive Advantage Conferred on Public Universities through CRICOS Regulation

Many Independent higher education providers rely on the international student market for economic survival. The Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS) scheme determines their growth options and business viability, yet Independent higher education providers face a competitive disadvantage because of assessment processes that fast-track university-related applications and grant larger capacity and leeway.

For example, research prepared for IHEA has identified that:

- Public universities may generally have much greater success in seeking approval of courses to be listed on CRICOS and larger capacities.
- There are indications that the Tertiary Education Quality and Standards Agency (TEQSA) responds to public universities' applications for increased capacity quickly.
- Indications are that the Department of Home Affairs processes visa requests for university students more rapidly.
- Private providers with smaller student allocations experience slower turnaround times for TEQSA assessments and difficulties with streamlined visas. They also face extensive demands from TEQSA to furnish more evidence.

Issue 3: Put Open Universities Australia on a Fully Regulated Basis

Open Universities Australia (OUA) operates very much like other higher education providers. It offers courses and single non-award subjects to students, and it can charge for single subjects or courses depending on the student's residency status. OUA is owned by seven public universities: Griffith University, Curtin University, Macquarie University, Monash University, RMIT University, Swinburne University of Technology, and University of South Australia. Evidently, Macquarie University is a NSW institution.

OUA was initially set-up with funding from the federal government and currently allows registered Australian universities to access the platform. Non-University Higher Education Providers (NUHEPs) are excluded from listing their eligible courses on OUA.³

There is, however, an important aspect of OUA that sets it apart from other higher education providers. That is, it does not appear on the Tertiary Education Quality and Standards Agency (TEQSA) National Register. It is our understanding that it is not directly regulated by TEQSA. It therefore does not have the direct administrative cost burden that TEQSA registered institutions have.

OUA has an unfair administrative cost advantage:

- It has its self-described "open door policy" and can offer subjects categorized as "open enrolment subjects",⁴ that have minimal entry requirements and would appear to operate beyond the TEQSA regulated system. Completion of these "pre-requisite" subjects is then used to admit students to degree courses. This approach, without any audit, may potentially stretch the rules, with single subjects being aggregated deep into courses prior to formal admission at a participating university. It is our understanding that such a subject also operates in full-fee mode, even at undergraduate level, thereby potentially stepping around the *Higher Education Support Act (2003)* (HESA) requirements.
- It is unclear whether Commonwealth Supported Places (CSP) allocations (see next section for explanation) are made directly to OUA, though its website implies that, stating that CSP students have ten years to complete their degrees "through us"⁵. The Commonwealth reports OUA separately in terms of student enrolments and study load.

Issue 4: Prevent Potential Predatory Pricing by Public Universities

By way of background, in the higher education sector the Commonwealth Grants Scheme (CGS) funds full time equivalent domestic students or Commonwealth Supported Places (CSPs) according to allocations to each public university (or more formerly universities listed on Table A of the *Higher Education Support Act 2003* - HESA). Since 2017, this has been capped by a formula announced by the Commonwealth Government. Students pay additional fees

³ We note that one IHEA member, Bond University, does have access to OUA.

⁴ See www.open.edu.au

⁵ *ibid*

on top of these amounts. It must be accepted that the (heavily taxpayer subsidised) prices charged to students at public universities are outside the scope of this review.

We note, however, that IHEA continues to support funding equity and calls for access to CSP in national priority fields of study. It was a recommendation of the 2008 *Bradley Review of Australian Higher Education* that access to funded places be extended across the sector following the establishment of the Tertiary Education Quality and Standards Agency (TEQSA). Access to funded places for all registered providers will deliver equity for all students. Skills and workforce shortages however have identified an urgent need to train students in fields of national priority. IHEA proposes that all students should have an equal opportunity to be supported through a funded place (CSP) where enrolling in recognised national priority fields of study, regardless of their institution category. IHEA proposes that the HESA be amended to provide eligibility for CSPs.

A closely related issue is access to the National Priorities and Industry Linkage Fund (NPILF) introduced under the Job Ready Package. NPILF allocates block grants to HESA Table A universities only (based on CSP Equivalent Full Time Student Load) to support enhanced engagement with universities and industry.

A further issue is access to disability funding. Currently disability funding is only available to Table A university providers. The National Centre for Student Equity in Higher Education (at Curtin University) released a report⁶ in February 2022 which recommended the following: “That the Australian Government conduct a holistic review of the participation of students with disability to ensure that higher education is free from discrimination, aligned with the requirements of the Disability Discrimination Act (1992) (DDA) and Disability Standards for Education (2005) (DSE), and consistent with Australia’s commitment to the Convention on the Rights of Persons with Disabilities (CRPD). This review should include reference to the adequacy of financing to support these policy objectives”.

Nonetheless beyond these larger issues, IHEA notes that postgraduate courses are generally much more expensive to offer than in public universities, with a more intensive learning experience, more senior staffing, smaller classes, and often more extensive research requirements. There is concern that public universities may not be adequately calculating the true cost base of these courses.

Recent short course activity, especially in the undergraduate certificate arena, may also provide examples of anti-competitive pricing. At the very least, these issues should be examined from a competitive neutrality point of view.

Issue 5: Rectify the Distortions in Resource Allocation that Arise from Regulatory and Cost Recovery Models

As largely non-self-accrediting providers, the independent sector has more exposure to regulatory processes, especially because nearly half of independent higher education providers are dual sector institutions subject to regulation by both the Australian Quality Skills Authority (ASQA) and Tertiary Education Quality and Standards Agency (TEQSA).

Costs should be apportioned on an equitable basis considering the commercial advantages public universities enjoy:

- Government funding for research is mostly available only to universities.
- Regulation of the university licensing model is light compared to independent higher education providers.
- Universities mostly receive land granted by the State.

Universities with full self-accrediting authority are subject to far fewer regulatory processes than non-self-accrediting independent higher education providers. Ensuring clear and simple rules for progressing through the Higher Education Support Act (2003) (HESA) categories (e.g. University College and University) therefore becomes important.

Conclusion

An educated society with a skilled workforce underpins innovation, opportunity, and economic growth. Australia’s world class higher education sector will drive the success of our national economy into the future. Current challenges

⁶ Tim Pitman, Katie Ellis, Matt Brett, Elizabeth Knight, Darlene McLenna, “Calculating the Costs of supporting people with disability in Australian Higher Education”, National Centre for Student Equity in Higher Education (2022).

like skills and workforce shortages, infrastructure demands, technology, and scientific advancements to address climate change and the social needs of a just and fair society require an educated workforce and community. Australia's independent higher education sector is central to the success of Australian tertiary education.

Obviously, overwhelmingly the regulation of the Higher Education sector is conducted at the federal level.

However, many of the independent sector businesses operate and are headquartered in NSW and face severe competition from NSW public universities.

IHEA proposes that the NSW Government ensures that competitive neutrality principles, as a matter of fairness and economic efficiency, apply to public universities.

ATTACHMENT

IHEA MEMBERSHIP LIST

Academies Australasia Polytechnic

Academy of Information Technology

Adelaide Central School of Art

Adelaide College of Divinity

AIBI Higher Education

Alphacrucis University College

Australasian College of Health and Wellness

Australian College of Christian Studies

Australian College of Nursing

Australian College of Physical Education

Australian College of the Arts (COLLARTS)

Australian College of Theology

Australian Institute of Business

Australian Institute of Business and Management

Australian Institute of Management

Australian Institute of Music

Avondale University

BBI The Australian Institute of Theological Education

Bond University

Campion College

Christian Heritage College

Eastern College Australia

Education Centre of Australia

 Asia Pacific International College

 Higher Education Leadership Institute

Endeavour College of Natural Health

EQUALS International

Excelsia College

Governance Institute of Australia

HEPCo (The Tax Institute Higher Education)

Holmes Institute

Institute of Health and Management

Institute of Internal Auditors Australia

International College of Hotel Management

International College of Management, Sydney

Kaplan Business School

Torrens Global Education Services

 Think: Colleges

 Torrens University

LCI Melbourne

Le Cordon Bleu

Leaders Institute

Lyons College

Macleay College

Marcus Oldham College

Montessori World Educational Institute

Moore Theological College

Morling College

National Institute of Organisation Dynamics Australia

Navitas

 Australian College of Applied Professions

 College of Business and Technology

 Educational Enterprises Australia

 Melbourne Institute of Business and Technology

 Navitas Bundoora

 Queensland Institute of Business and Technology

 SAE Institute

 South Australian Institute of Business and Technology

 Sydney Institute of Business and Technology

 Perth Institute of Business and Technology

 Western Sydney University International College

Perth Bible College

Photography Studies College

Polytechnic Institute Australia

SP Jain School of Global Management

Sydney College of Divinity

Sydney Institute of Higher Education

Tabor College Adelaide

The College of Law

The MIECAT Institute

Universal Business School Sydney

University of Divinity

UoW College

Wentworth Institute of Higher Education



**Independent Higher
Education Australia**
Suite 612, Level 6
198 Harbour Esplanade,
Docklands, VIC 3008

T. +61 3 9642 5212
ihea.edu.au
ABN 23 472 698 119