

22 Education services

All jurisdictions have extensive legislation governing education. Competitive neutrality is also relevant to the education sector. Competitive neutrality principles are applicable to the business activities of government-owned education providers where they compete to earn revenue and profits with private sector providers. As public educational institutions increasingly seek to supplement government funding through commercial activity, issues of competitive neutrality are assuming increased significance.

Legislation review

Education legislation may be categorised as:

- 'general education' Acts that relate to the provision of public and private schooling at primary and secondary levels;
- Acts that establish a system of vocational education and training; and
- Acts that establish the universities of each jurisdiction.

Several jurisdictions have also legislated to regulate the provision of education to overseas students and to regulate specific issues such as the establishment of particular schools. Queensland, South Australia and Tasmania require the registration of teachers in both government and private schools and Victoria requires the licensing and registration of teachers in private schools.

Restrictions on competition

Education legislation predominantly restricts competition via requirements for the registration of private education/training providers and the accreditation of courses.¹ Non-government providers must meet requirements about the nature and content of the instruction offered, ensure students receive education of a satisfactory standard and provide protection for the

¹ In relation to higher education, accreditation has been defined as a process of assessment and review that enables a higher education course or institution to be recognised or certified as meeting appropriate standards (Department of Education, Training and Youth Affairs 2000, p. 4).

safety, health and welfare of students. Non-government providers may also be required to demonstrate their financial viability.

Regulating in the public interest

The principal argument supporting restrictions is that they ensure that education providers meet minimum standards. The achievement of prescribed education standards enables the community in general, and employers in particular, to attach more easily a consistent meaning to various education awards. Consumers of education are also provided with some degree of certainty about the nature of courses. The increasing importance of international student enrolments in Australian educational institutions provides a further argument for maintaining high quality standards.

The requirement that education providers demonstrate a measure of financial viability may be justified as a way of avoiding the significant disruption and potential monetary losses to students that would follow from the forced closure of an educational provider. The need for adequate health, safety, and welfare safeguards for students is self-evident. However, restrictions relating to registration, accreditation and financial viability create a barrier to entry. This barrier may reduce the range of available courses and subjects and allow existing service providers to operate inefficiently. In particular, a reduction in potential competition may reduce the incentive to existing providers to develop innovative courses and modes of delivery.

Review reports have stressed the need to maintain educational standards. Ideally, regulation that is in the public interest should not restrict the market entry of those sellers who clearly meet required educational, student welfare and financial standards. Tables 22.1—22.3 summarise State and Territory governments' progress in reviewing and reforming legislation regulating general education, vocational education and training and universities.

The Council will consider governments' progress with the review and reform of legislation governing the recognition of non-university higher education providers and the accreditation of university courses in 2002. The Council considers that the best outcomes will be achieved by working with the Ministerial Council on Education, Employment, Training and Youth Affairs and jurisdictions to ensure that legislation relevant to these aspects of higher education meets the CPA public benefit tests and complies with the protocols developed by the Ministerial council.

Teachers

When the NCP legislation review program commenced (1996), both Queensland and South Australia required all teachers in government and non-government schools to be registered. Victorian legislation required nongovernment teachers to be registered. It also required teachers with

interstate qualifications taking up a job in government schools to have their qualifications assessed and to undergo a 'good character' check. In 2000 Tasmania passed legislation requiring all government and non-government teachers to be registered (to commence during 2001).

Governments argue that regulation of teachers is generally beneficial in that it ensures teachers have minimum qualifications and a minimum level of competence, and that it prevents persons who are not of good character being employed by schools. Tasmania also argues that registration is important in raising the status of the teaching profession. Table 22.4 summarises jurisdictions' progress in reviewing and reforming legislation regulating teachers.

Table 22.1: Review and reform of legislation regulating general education

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Education Act 1990</i>	Sets conditions for the registration of non-government schools. Prescribes accreditation procedures for registered non-government schools wishing to present candidates for education certificates.	Not included on legislation review schedule.		Council to assess progress in 2002.
Victoria	<i>Education Act 1958</i>	Provides for the registration of non-government schools and endorsement of schools as suitable for overseas students.	Review completed in May 2000.	The Government rejected review recommendations that proposed (1) less restrictive criteria for the registration of non-government schools than those in the original legislation and (2) a differential fee structure for overseas students attending government schools.	Meets CPA obligations (June 2001).
Queensland	<i>Education Capital Assistance Act 1993</i>	Limits the provision of certain funding assistance to schools affiliated with two nominated Capital Assistance Authorities (CAA). Also includes limitations on the type of financial institutions that can receive deposits/investment of capital assistance funds.	A formal review was not undertaken.	The restriction related to affiliation was resolved through an amendment to legislation that requires schools to be listed (but not affiliated) with a group. The issue related to financial institutions subjected to further analysis and determined not to be restrictive.	Meets CPA obligations (June 2001).

(continued)

Table 22.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Queensland (continued)	<i>Education (General Provisions) Act 1989 and Regulations</i>		This review is focusing on the issues of the registration of overseas curriculum and the ability to prohibit the sale of certain items from State school tuckshops. Review of proposed new legislation relating to the establishment, registration and accountability of non-State schools will be completed as a separate exercise. The final public benefit test report is being developed.		Council to assess progress in 2002.
	<i>Education (Overseas Students) Act 1996</i>	Requires registration of providers of education to overseas students.	Review completed in January 2000. NCP justification provided for 1999 amendments.	Existing regulatory regime retained in the public interest, as decided at June 2000.	Meets CPA obligations (June 2001).
	<i>Grammar Schools Act 1975</i>	Regulates the establishment of new public grammar schools	Review has been re-opened (the original report was completed in September 1997) and is being done in accordance with revised public benefit test guidelines. The review is close to completion.		Council to assess progress in 2002.
Western Australia	<i>Education Service Providers (Full Fee Overseas Students) Registration Act 1992</i>	Requires registration of providers of education to overseas students.	Review underway.		Council to assess progress in 2002.

(continued)

Table 22.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
South Australia	<i>Education Act 1972 and Regulations</i>	Identifies barriers to market entry and restricts market conduct in areas of teachers and nongovernment schools.	Review completed in July 2000. The review found that restrictions on competition were justified in the public benefit.	Act retained without reform.	Meets CPA obligations (June 2001).
Tasmania	<i>Christ College Act 1926</i>	Provides a possible advantage not given to other schools.		Act is expected to be repealed.	Council to assess progress in 2002.
	<i>Education Act 1994</i>	Requires non-government schools to be registered.	Review completed in December 2000. The review found that restrictions on competition were justified in the public benefit.	Act retained without reform.	Meets CPA obligations (June 2001).
	<i>Education Providers Registration (Overseas Students) Act 1991</i>	Requires registration of providers of education to overseas students.	As above.	As above	As above.
	<i>Hutchins School Act 1911</i>	Provides a possible advantage not given to other schools.		Act is expected to be repealed.	Council to assess progress in 2002.
ACT	<i>Board of Senior Secondary Studies Act 1997</i>	Establishes accreditation procedures for courses.	Review completed 1999.	See below.	Council to assess progress in 2002.

(continued)

Table 22.1 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
ACT (continued)	<i>Education Act 1937</i> <i>Schools Authority Act 1976</i> <i>Public Instruction Act 1880</i> <i>Free Education Act 1906</i>	Requires registration of schools.	Review completed.	The Government is proceeding with new school education legislation taking into account the findings and recommendations of the review.	Council to assess progress in 2002.
	<i>Education Services for Overseas Students (Registration and Regulation of Providers) Act 1994</i>	Requires registration of providers of education to overseas students.	Review has commenced. Act mirrors and complies with Commonwealth legislation which has been reviewed recently.	A regulatory impact statement has been prepared in anticipation of the successful passage of Commonwealth legislation. ACT legislation will then be prepared to comply with the Commonwealth.	Council to assess progress in 2002.
Northern Territory	<i>Education Act</i>	Requires registration of non-government schools.	Not included on legislation review schedule.		Council to assess progress in 2002.

Table 22.2: Review and reform of legislation regulating vocational education and training

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Major restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Vocational Education and Training Accreditation Act 1990</i>	Requires registration of training providers and accreditation of training courses.	Not included in legislation review schedule.		Council to assess progress in 2002.
Victoria	<i>Vocational Education and Training Act 1990</i>	As above.	Review completed in 1998.	Act retains restrictions relating to accreditation, registration of private providers and Ministerial setting of fees as being in the public interest.	Meets CPA obligations (June 2001).
Queensland	<i>Vocational Education, Training and Employment Act 1991</i>	As above.	Minor review was carried out in 1997 on the then proposed new Bills (a Vocational Education and Training Bill and an Institute Bill) to replace this Act. Further minor review undertaken of proposed new legislation, the Training and Employment Bill that replaced the above two Bills. This Bill was considered to impose less restrictions on providers than the 1991 Act that it replaces. It also delivers greater flexibility for employers, registered training bodies and trainees.	The Training and Employment Bill (which implemented a national scheme of training and is less restrictive than the previous Act) was assented to in June 2000.	Meets CPA obligations (June 2001).

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Table 22.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Major restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Vocational Education and Training Act 1996</i>	As above.	Review completed in 1999, concluding that the restrictions on competition are minimal and that public benefits arising from the restrictions outweigh the costs.	Act retained without reform.	Meets CPA obligations (June 2001).
South Australia	<i>Vocational Education, Employment and Training Act 1994</i>	As above.	Review completed in April 2000, concluding that public benefits of restrictions outweigh costs.	Act retained without reform	Meets CPA obligations (June 2001).
Tasmania	<i>Vocational Education and Training Act 1994</i>	As above.	Review completed. Review issued a draft regulatory impact study in July 2000. Supported restrictions except for provisions governing vocational placement agreements which it recommended replacing with an administrative arrangement. The Government is considering the review's recommendations.		Council to assess progress in 2002.
ACT	<i>Vocational Education and Training Act 1995</i>	As above.	Intra-departmental review concluded that public benefit of restrictions outweighs costs.	A regulatory impact statement has been prepared in anticipation of the successful passage of Commonwealth legislation. ACT legislation will then be prepared to comply with the Commonwealth.	Council to assess progress in 2002.

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Table 22.2 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Major restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Northern Territory	<i>Northern Territory Employment and Training Authority Act</i>	As above.	Not included in legislation review schedule.		Council to assess progress in 2002.

Table 22.3: Review and reform of legislation regulating universities

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Major restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
New South Wales	<i>Higher Education Act 1988</i>	Provides for the approval of courses of study as advanced education courses.	Not included in legislation review program.		Council to assess progress in 2002.
Victoria	<i>Tertiary Education Act 1993</i>	Requires courses to be accredited.	Review completed in 1998. Restrictions relating to accreditation retained in the public interest.		Council to assess progress in 2002.
Queensland	Various Acts establishing Universities in Queensland.		Separate and similar Acts modelled on the <i>James Cook University of North Queensland Act 1997</i> were passed under gatekeeping arrangements in 1997-98 for each Queensland university. The review is close to completion.		Council to assess progress in 2002.
	<i>Higher Education (General Provisions) Act 1989</i>	Establishes accreditation procedures for universities that wish to establish in Queensland.	Public benefit test plan has been expanded into a draft report in recognition of the accreditation provisions being nationally uniform. The review is close to completion.		Council to assess progress in 2002.

(continued)

Table 22.3 continued

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Major restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Western Australia	<i>Curtin University of Technology Act 1966</i> <i>Edith Cowan University Act 1984</i> <i>Murdoch University Act 1973</i> <i>University of Notre Dame Australia Act 1989</i> <i>University of Western Australia Act 1911</i>	Provisions governing the investment of funds varied between universities.	Review completed in 1998, concluding that most restrictions were minor and in the public interest and that investment provisions for Edith Cowan should be aligned with other universities.	Review recommendations endorsed by Government.	Council to assess progress in 2002.
	<i>University Colleges Act 1926</i>	Contains restrictions on access to university lands, controls on the use of land and provisions to transfer vested land to freehold land.	Review completed in 1998. Restrictions assessed as being in the public interest.	Act retained without reform.	Meets CPA obligations (June 2001).
Tasmania	<i>Universities Registration Act 1995</i>	Requires institutions wanting to operate as universities to be registered and enables conditions to be imposed on their conduct.	Minor review completed. Restrictions relating to the registration and accreditation of private universities to be retained in the public interest.		Council to assess progress in 2002.
ACT	<i>Canberra Institute of Technology Act 1987</i>	Provides an exemption from ACT taxes and charges. Cabinet decided that the ACT Revenue Office would review the institute's taxation liability in the second half of 1998.	Review completed in 1999. Act assessed as not restricting competition.		Meets CPA obligations (June 2001).
	<i>University of Canberra Act 1989</i>	Act assessed as not restricting competition.	Review not required.		Meets CPA obligations (June 2001).

Table 22.4: Review and reform of legislation regulating teachers

<i>Jurisdiction</i>	<i>Legislation</i>	<i>Key restrictions</i>	<i>Review activity</i>	<i>Reform activity</i>	<i>Assessment</i>
Victoria	<i>Education Act 1958</i> (parts 3 Registration of teachers in non-government schools, and 3A Standards Council of the Teaching Profession)	Licensing, registration, entry requirements (qualifications/teacher training, good character including not having been guilty of a sexual offence), the reservation of practice (all subjects except instrumental music, choral music, voice production and religion), disciplinary processes	Review completed May 2000. Review involved consultation with the Association of Independent Schools in Victoria and the Catholic Education Office. Review recommended retaining the existing system of teacher registration for teachers in non-government schools.	Government accepted the review recommendation.	Meets CPA obligations (June 2001).
Queensland	<i>Education (Teacher Registration) Act 1988</i> <i>Board of Teacher Registration By-laws 1989</i>	Licensing, registration (primary and secondary school teaching staff, including private schools), entry requirements (qualifications, experience, good character), reservation of practice, disciplinary processes	Department completed review in May 2000. Review recommended retaining existing legislation (including qualification requirements, registration fees and processes in the election of registered teachers to positions on the Board of Teacher Registration).	Government endorsed review recommendations in October 2000.	Meets CPA obligations (June 2001).
South Australia	<i>Education Act 1972</i>	Registration, entry requirements (qualification, experience, fit and proper person), reservation of practice, disciplinary processes	Review completed in 2000. Review involved public consultation. No reform recommended.	Government endorsed review recommendation of no reform to legislation.	Meets CPA obligations (June 2001).
Tasmania	<i>Teachers Registration Act 2000</i>	Licensing, registration, entry requirements (teacher training and one year's experience or sufficient education and experience in the opinion of the Board, and good character – Board to take into account any conviction and behaviour of the applicant or any other matter), reservation of practice (teaching in government and non-government schools), disciplinary processes	Not for review.	New legislation assessed under gatekeeper provisions. Regulatory impact statement has been prepared. The Act is expected to commence during 2001.	Meets CPA obligations (June 2001).

Competitive neutrality

All jurisdictions except Queensland apply competitive neutrality principles to the business activities of their TAFE institutions. Queensland has completed the public benefit test of a review to determine whether the full fee-for-service activities and competitive tendering processes within its TAFE system should be declared significant business activities for the purpose of applying competitive neutrality principles. It is expected that the review committee report will be considered by the Queensland Government shortly.

In 1999, the Council of Australian Governments (CoAG) Committee on Regulatory Reform examined whether a cross-jurisdictional approach would be appropriate for the application of competitive neutrality to the higher education sector. The Committee on Regulatory Reform considered that, given the majority of university business activities are local and regional in operation and impact on private sector businesses, there would be few occasions when issues would have a cross jurisdictional impact and that these could be dealt with on a case-by-case basis.

In 2000, the Committee on Regulatory Reform referred the matter of the application of competitive neutrality principles to universities' business activities to the Australian Vice Chancellors' Committee (AVCC). The AVCC advised the Committee on Regulatory Reform that universities have continued to work individually to ensure they comply with competitive neutrality principles. The AVCC further advised that this has been done by drawing on available material such as State-based guidelines.

For businesses not subject to Executive control (which include university businesses), CoAG has stated that assessment of a government's compliance with competitive neutrality requirements should have regard to a 'best endeavours' approach. Under this approach, the relevant government must, at a minimum, provide a transparent statement of competitive neutrality obligations to the entity concerned. Jurisdictions' annual reporting indicates that they are working with universities to assist their compliance with competitive neutrality principles in accordance with the CoAG suggested approach.

Competitive neutrality complaints concerning the business activities of education institutions have been made in two jurisdictions. In the period 1996-99, Victoria investigated seven complaints concerning the commercial activities of TAFE institutions and universities, upholding two. In 1999, South Australia upheld one of two complaints concerning the nonapplication of competitive neutrality to courses conducted by the Department of Education, Training and Employment. The complaints mechanisms' investigations of the complaints that were not upheld found either that the business that was the subject of the complaint was not required to apply competitive neutrality principles, or that competitive neutrality principles had been correctly applied.