

NATIONAL COMPETITION POLICY LEGISLATION REVIEWS

University of Southern Queensland Act 1998

University of Queensland Act 1998

James Cook University Act 1997

Queensland University of Technology Act 1998

Griffith University Act 1998

Central Queensland University Act 1998

University of the Sunshine Coast Act 1998

PUBLIC BENEFIT TEST REPORT

EDUCATION QUEENSLAND

INDEX

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University of the Sunshine Coast Act 1998

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1.0 EXECUTIVE SUMMARY

The legislation under review consists of:

UNIVERSITY OF SOUTHERN QUEENSLAND ACT 1998,

UNIVERSITY OF QUEENSLAND ACT 1998,

JAMES COOK UNIVERSITY ACT 1997,

QUEENSLAND UNIVERSITY OF TECHNOLOGY ACT 1998,

GRIFFITH UNIVERSITY ACT 1998,

CENTRAL QUEENSLAND UNIVERSITY ACT 1998, and

UNIVERSITY OF THE SUNSHINE COAST ACT 1998.

All these Acts will hereinafter be referred to as the "university Acts".

This review seeks to investigate and report on a potential restriction in each of the "university Acts" on that university's power to apply revenue, in that revenue must be applied solely for university purposes. This potential restriction may be construed as being anti-competitive.

Education Queensland has undertaken a reduced review of the "university Acts" because the impact on competition is low, the sections have a relatively minor impact on the economy and community as a whole, the Acts have relatively minor implications for the Government, community and other stakeholders, community interest in the review is confined to a few distinct groups and the number of affected stakeholders is relatively low.

Issues surrounding the application of the legislation are considered non-controversial.

The specific section of each of the current "university Acts" that has been identified as having a possible anti-competitive impact in that it potentially restricts application of revenue of the universities is *University of Southern Queensland Act 1998 s.53*, *University of Queensland Act 1998 s.49*, *James Cook University Act s.54*, *Queensland University of Technology Act 1998 s.53*, *Griffith University Act 1998 s.58*, *Central Queensland University Act 1998 s.54* and *University of the Sunshine Coast 1998 s.55*.

The universities operate in the market for providing higher education awards and some forms of research and development.

The market in which they operate is considered to be Australia (although a Queensland sub-market exists) because Queensland students can be accepted into higher education courses at any provider in Australia; in Queensland there is national recognition of the qualification awarded because of the legislative control of higher education imposed by higher education legislation in all States and Territories and the Commonwealth; Queensland universities and institutions compete for international full fee paying students with each other and interstate institutions; and students from other States and Territories can be accepted into courses offered by Queensland providers.

Participants in the market are the providers (public and private universities and other institutions empowered to confer higher education awards) and the consumers (students and potential students, and their parents).

There is a significant export services market for Australian universities in the provision of learning opportunities for fee paying overseas students.

The Commonwealth Higher Education Report for the 1999 to 2001 Triennium (p24) showed that, nationally, institutions providing higher education propose to increase the overall number of places for domestic students, deliver more HECS liable undergraduate places, increase places for research students, increase domestic fee-paying student numbers and increase fee-paying overseas student numbers.

There is increasing competition for students from overseas to study at Australian universities. The range of providers and methods of delivery of education is diversifying. Australian providers are establishing off-shore campuses. There are increasing pressures on Australian universities to ensure that their courses and awards are competitive with those offered by overseas institutions.

The composition of the student body will change in response to the need to upgrade workplace skills and the need for lifelong learning. There will be increasing demands for cross-crediting between courses and institutions and portability of awards:

Private income from commercial activity, industry development fees and bequest will become an increasingly important source of revenue.

Government involvement in the higher education sector is justified firstly by the failure of the market in three respects, namely information asymmetry, distortions due to socio-economic factors, and positive externalities, both social and economic.

The recommendations of this review are that the existing section of each of the "university Acts" be retained. There are four reasons for this.

1. The legislation which was identified as potentially anti-competitive in 1996 has all been repealed, and new, less restrictive Acts enacted.
2. The benefits of the "potential" restriction to the community as a whole outweigh the costs.
3. The objectives of the legislation can only be achieved by restricting competition.

The legislative objective of the "university Acts" is to provide for the establishment of public universities. The legislation facilitates the good governance of universities and establishes a regulatory environment for their operations which supports separation from Government in a framework of proper accountability.

No non-legislative alternative to the potentially anti-competitive provisions has been identified.

A legislative alternative is to repeal the provision relating to the application of revenue in each of the "university Acts".

Costs and benefits for stakeholders from the alternative have been identified as:

- for the public universities, benefits may be a broader range of commercial ventures to which they can apply funds, with no perceived costs;

- for other competing providers, neither benefit nor cost;
- for Commonwealth Government, no benefits and the cost of a greater risk of public funds being used inappropriately;
- for Queensland Government, no benefits, but costs in –
 - (a) a risk of public funds being used inappropriately,
 - (b) the perception that it is not fulfilling its responsibility to ensure proper application of public funds, and
 - (c) a risk that the current taxation status of universities as charitable organisations could be affected; and
- for the community in general and consumers, the benefit of possible improved university facilities and reduced costs, and the cost of the risk of public money being used for purposes other than facilitating the research and teaching functions of a university.

It is proposed that this be available for public information upon finalisation.

2.0 TITLES OF THE LEGISLATION

UNIVERSITY OF SOUTHERN QUEENSLAND ACT 1998
UNIVERSITY OF QUEENSLAND ACT 1998
JAMES COOK UNIVERSITY ACT 1997
QUEENSLAND UNIVERSITY OF TECHNOLOGY ACT 1998
GRIFFITH UNIVERSITY ACT 1998
CENTRAL QUEENSLAND UNIVERSITY ACT 1998
UNIVERSITY OF THE SUNSHINE COAST ACT 1998

3.0 OBJECTIVES OF THE LEGISLATION

3.1 Legislative Objectives

The "university Acts" provide for the establishment of public universities. The Acts stipulate the functions and powers that public universities have in carrying out their public purpose. The functions of the universities include the provision of facilities for study and research generally, the provision of courses of study or instruction to meet the needs of the community and the conferring of higher education awards. The legislation facilitates the good governance of universities and establishes a regulatory environment for their operations which supports separation from Government in a framework of proper accountability.

3.2 Social and Economic Factors and Government Priority Outcomes

3.2.1 Social and Economic Factors

Higher education contributes to economic and regional development, employment opportunities and better quality of life in the community.

The benefits of scholarship and research undertaken by universities are returned to the local, State and Australian (and global) communities in numerous ways. Research undertaken by universities provides valuable social benefits. Research and developments in manufacturing and primary processes helps build successful economies.

The nature of modern universities throughout the world is that they require funding beyond the capacity of a fee structure, because they are, to a greater or lesser extent, open to a wide range of students, with backgrounds spanning extremely rich, comfortable, and economically disadvantaged. In most, but by no means all, western based systems of higher education, the primary basis for allocation of university places is on the basis of ability, not wealth, and without discrimination on the grounds of race or religion. Allocation on this basis recognises that an educated community is better able to utilise resources and compete in a global market. Australia's performance in providing higher education over the last fifty years has been creditable, with mechanisms in place to give university student places to the most able, regardless of other circumstances.

3.2.2. Government Priority Outcomes

The Government Priority Outcomes for Queensland are outlined in **Appendix 1**.

The "university Acts", through the operations of the public universities in various parts of Queensland, facilitate six of the Government Priority Outcomes.

1. More jobs for Queenslanders – the universities are significant employers.
2. Skilling Queensland – the universities contribute to the raising of the general education levels of the State, improve workforce skills and encourage innovation and flexibility in education.
3. Safer/supportive communities – the universities promote community vitality that respects diversity.
4. Better Quality of Life – the universities deliver education services that improve people's quality of life.
5. Building Regions – the universities throughout the State contribute to raising the level of educational infrastructure, the expansion of export markets, and to the growth of value-adding industries.
6. Valuing the environment – the universities through research and teaching promote responsible and sustainable development of the State's natural and primary resources.

4.0 BACKGROUND

4.1 NCP FRAMEWORK

In April 1995, the Commonwealth and all State and Territory Governments (Council of Australian Governments – COAG) signed a set of agreements to implement a National Competition Policy (NCP), the objective of which was to develop a more open and integrated Australian market by limiting anti-competitive conduct and removing special advantages/disadvantages previously enjoyed/incurred by Government business activities. These agreements formed a set of legislative and administrative arrangements that set the foundation for NCP.

One of the agreements signed by the members of COAG in order to facilitate the implementation of NCP was the Competition Principles Agreement (CPA) providing for a review of all legislation containing provisions that could restrict competition within a market. Clause 5(1) of the Competition Agreement states that:

The guiding principle is that legislation (including Acts, enactments, Ordinances or regulation) should not restrict competition unless it can be demonstrated that:

- (a) the benefits of the legislation to the community as a whole outweigh the costs; and*
- (b) the objectives of the legislation can only be achieved by restricting competition.*

The Queensland Government is undertaking this review in order to meet its commitment to review, and reform where necessary, by the year 2000 any legislation that potentially restricts competition.

4.2 HISTORY OF THE LEGISLATION

In 1997 the *James Cook University Act* was passed by Queensland Parliament. This new Act repealed the *James Cook University of North Queensland Act 1970*.

The new Act facilitated the improved management and administration of the university which included providing that the financial powers and affairs of the university be set out in and managed under the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*, rather than under the Acts authorising the establishment and operations of the university. It also provided for amendments to improve the orderly and efficient running of the university.

The Acts establishing the other six public universities were also repealed and new Acts modelled on the *James Cook University Act 1997* were passed in their place.

5.0 RESTRICTIVE PROVISIONS OF THE LEGISLATION

In March 1996 a legislative audit took place to identify any restrictive provisions as outlined in the National Competition Policy with respect to legislation for public universities administered by Education Queensland. The *University of Southern Queensland Act 1989* & *University of Southern Queensland (Investment) Statute*

1993, *University of Queensland Act 1965*, *James Cook University of North Queensland Act 1970*, *Queensland University of Technology Act 1988*, *Griffith University Act 1971*, *Central Queensland University Act 1989*, and *University of the Sunshine Coast University College Act 1994* were identified as containing provisions which potentially restricted competition within the market for the provision of higher education awards and some forms of research and development.

The *Bond University Act 1987*, was not identified for review as there was no provision in the Act similar to those provisions identified in the public university Acts, nor were any other provisions in the *Bond University Act 1987* identified as potentially restricting competition.

The 1996 audit of the Acts identified certain restrictions to be examined by the National Competition Policy review process. These provisions dealt with:

- (a) application of revenue (regardless of source) to specific university purposes;
- (b) external approval requirements (that is, from Government) for borrowing and variation of trusts and gifts; and
- (c) limitation of investment activities.

The Acts and Statute referred to above have now been repealed and replaced by the following legislation:

University of Southern Queensland Act 1998
University of Queensland Act 1998
James Cook University Act 1997
Queensland University of Technology Act 1998
Griffith University Act 1998
Central Queensland University Act 1998, and
University of the Sunshine Coast Act 1998

With respect to the potential restriction outlined in (a) above in respect of the application of revenue, the provision in each of the "university Acts" is modelled on section 54 *James Cook University Act 1997* and states:

- "(1) Subject to the terms of a relevant trust, amounts received by the University from any source are to be applied solely to University purposes.
- (2) To remove any doubt, each of the following purposes is a University purpose-
 - (a) enabling a student or staff member, or former student or staff member, of the University to undertake study or research at the University or elsewhere;
 - (b) the advancement of learning generally;
 - (c) helping a body affiliated or associated with the University."

However "university purposes" are not limited to those purposes specifically set out in sub section (2).

In the new Acts the restrictions relating to external approval requirements for borrowing and variation of Trusts and gifts and limitation on investment activities have been removed.

The table below shows the specific section of each of the current "university Acts" that has been identified as having a possible anti-competitive impact in that it potentially restricts application of revenue by the universities.

Title of Act	Restrictive Provision
<i>University of Southern Queensland Act 1998</i>	Section 53
<i>University of Queensland Act 1998</i>	Section 49
<i>James Cook University Act 1997</i>	Section 54
<i>Queensland University of Technology Act 1998</i>	Section 53
<i>Griffith University Act 1998</i>	Section 58
<i>Central Queensland University Act 1998</i>	Section 54
<i>University of the Sunshine Coast Act 1998</i>	Section 55

Section 54 of the James Cook University of Queensland Act 1997, and its equivalent in the other "university Acts", must be construed and interpreted in the context of the whole Act, particularly in reference to sections defining the powers and functions of the universities.

6.0 NATURE OF THE MARKET

The universities operate in the market for providing higher education awards and some forms of research and development.

6.1 THE MARKET FOR HIGHER EDUCATION AWARDS

The market providers of higher education awards in Queensland are:

- public universities,
- private universities,
- non-university providers and
- foreign universities and institutions approved by the Minister for Education to operate in Queensland.

For the purposes of this review, the market for higher education awards is defined as the market for the supply and attainment of specific knowledge gained by undertaking a course of study that results in the conferring of a higher education award in Australia. The characteristics of specific knowledge and general abilities are reflected in the type and level of award conferred. Higher education awards have nationally and internationally recognised meaning, and confer significant benefits in Australia and overseas.

Market Dimension

The geographical dimension of the market is considered to be Australia for four reasons (although clearly a Queensland sub-market exists):

- Queensland students can be accepted into university or higher education courses at any public or private university or non-university provider of higher education in Australia;
- in Queensland, there is national recognition of the qualification awarded upon completion of a course leading to a higher education award due to the legislative control of higher education imposed by the higher education legislation in all States and Territories and the Commonwealth;

- Queensland universities and institutions offering higher education compete for international full fee paying students with each other and interstate institutions; and
- students from other States and Territories can be accepted into courses offered by Queensland providers.

Market Participants

Participants in the market include students and potential students and institutions providing higher education awards, including public and private universities and non-university institutions.

The providers and consumers of higher education and higher education awards in Queensland are summarised at Table 1.

Table 1

Type of Institution	Number in Queensland	Number of enrolled higher education students <small>*Figures are based on 1998 enrolments</small>
Public universities	7	123 294
Private universities	2	5 122
Approved non-university providers	11	2 009

There are currently seven public universities operating in Queensland. They are the University of Queensland, Queensland University of Technology, James Cook University, University of Southern Queensland, Griffith University, University of Central Queensland and University of the Sunshine Coast.

There are two private universities. They are Bond University and the Australian Catholic University. There is a proposal for the establishment of a third private university in Cairns, and this proposal has the in principal support of State Government, although a specific application has yet to be assessed.

In Queensland there are eleven non-university providers that have been accredited to offer courses leading to a higher education award.

There are six overseas institutions approved by the Minister for Education to offer courses in higher education and advertise their courses in Queensland.

The public universities operate throughout Queensland and have established campuses in many centres throughout regional Queensland. There are no non-university providers of higher education awards operating campuses outside the Brisbane metropolitan area.

The market for higher education in Queensland is dominated by the public universities. The private market in higher education is limited not only in Queensland but throughout Australia. The high level of initial investment required to develop credible higher education courses, and provide adequate arrangements for their

delivery, makes private provision of higher education a marginal activity commercially, unless the private provider has access to significant commercial backing. Private providers do not have access to Commonwealth Government subsidy/funding, nor is HECS-based funding available to students undertaking courses offered by private providers. Students attending courses delivered by private providers, however, are eligible for Austudy payments.

Commonwealth recurrent funding for operating grants for the public university sector in 1999 is over \$4.9 billion. Funding for other programs (including capital, equity, and research programs) brings this total to just under \$5.6 billion. Total income for the Australian public university sector from all sources is estimated to have been over \$8.6 billion in 1999.

The per annum recurrent cost (excluding capital and research infrastructure) of providing higher education in the public university sector in Australia in 1999 per equivalent full-time student (EFTSU) is approximately \$11 900.

Queensland's share of the operating grants for the public university sector in 1999 is \$900 000 million. Queensland public universities attracted \$11 200 per EFSTU for a higher education place in 1999.

There is no systemic data collection which would enable the precise value of the domestic private higher education market in Australia or Queensland to be calculated. However, based on the number of students enrolled in courses offered by private providers of higher education, the value of the market is estimated to be \$15-18 million.

Export Market

Nationally, higher education has emerged as a major export earner. In 1997, 10% (62 974) of all higher education students in Australia were overseas students. Until 1990 most overseas students studying in Australia were subsidised. This is no longer the case, and a full fee paying overseas student market has developed and grown strongly in recent years. Education is now Australia's fifth largest source of service export income, generating an estimated \$3.2 billion – up from \$2.3 billion in 1995. The Commonwealth Government has provided funding of \$21 million over the next four years for international marketing and other activities to promote overseas Australian education and training services. In 2000 the State Government will provide a small contribution to promote Queensland in the education export market.

Market Trends

The Commonwealth Higher Education Report for the 1999 to 2001 Triennium (p24) showed that, nationally, between 1997 and 2001, institutions providing higher education propose to:

- increase the overall number of places for domestic students by over 11 800 in 2001 compared to 1997;
- deliver 3 523 or 0.9% more HECS liable undergraduate places in 2001 than in 1997;
- increase places for research students by over 4 000 equivalent full time student units, or 18%;
- increase domestic fee-paying students by more than 15 000 or 92%; and

- increase fee-paying overseas students from 60 550 in 1997 to 89 850 in 2001 – an increase of 48%.

The report also identifies the following market trends.

- There is increasing competition for domestic students from overseas universities and international consortia.
- The range of providers and methods of delivery of education is diversifying, eg: virtual delivery and industry training partnerships.
- Australian providers are establishing offshore campuses under a variety of arrangements to increase their competitive edge for overseas students.
- There are increasing pressures on Australian universities to ensure that their courses and awards are competitive with those offered by overseas institutions.

The composition of the student body will change in response to the need to upgrade workplace skills and the need for lifelong learning. These needs will also contribute to blurring the traditional boundaries between post-compulsory school education, vocational education and training, and higher education, and those between private and public institutions. There will be increasing demands for cross-crediting between courses and institutions and portability of awards.

Private income from commercial activity, industry development fees and bequest will become an increasingly important source of revenue.

Market Failure

Government involvement in the higher education sector is justified firstly by the failure of the market in three respects, namely:

1. information asymmetry,
2. distortions due to socio-economic factors, and
3. externalities,

and secondly on the further ground of a need for accountability and standards given the significant amounts of public funding allocated by the Government to the higher education sector.

▪ Information Asymmetry

Education is an experience good. It may not be possible for a consumer to determine the quality of an education course without directly experiencing it. While consumers may obtain information about courses from the providers or other students, the information is nonetheless asymmetrical.

The extent of the market failure with respect to the provision of information differs for domestic and overseas students. Overseas students will potentially experience increased difficulties in obtaining information about institutions and courses. They have less opportunity to obtain information through informal networks. The costs incurred by an overseas student in undertaking a higher education course in Australia will be greater than the costs faced by domestic students. Those domestic students from indigenous or low socio-economic background or rural areas are also more significantly affected by imperfect information.

- Social and Economic Distortions

The higher education market is distorted not only by asymmetric information but also by social and economic factors that operate outside the market, and in many cases before the market comes into play. Consumer options may be shaped by factors beyond their control and some factors come into play before the question of consumer choice arises.

Studies by the Australian Council for Educational Research show that student decisions on whether to participate in higher education or not reflect differences in family and community attitudes to the relevance of education. The effects of these influences are often apparent prior to the conclusion of secondary schooling or eligibility for university entry. According to University of Melbourne studies, rural and isolated students are under-represented in higher education by 40 percent in comparison to the representation of students from urban areas, and since school completion rates are lower in rural areas, many rural students do not reach the point at which it is meaningful to speak of potential barriers to higher education.

- Externalities

Education generates positive externalities in a society and consequently Government intervention in the higher education sector is justified. The positive externalities are both social and economic. Higher education contributes to economic and regional development, employment opportunities and better quality of life in the community through public health and safety.

- Accountability for funding and standards

Successive Australian Governments have acknowledged that higher education performs a range of valuable economic and social functions. To capture the benefits provided to society and maximise participation, the Commonwealth Government funds higher education institutions. This funding enables most Australian students to undertake higher education at a subsidised price.

Commonwealth Government funding also seeks to address equity issues so that all Australians can have access to higher education. Government focus has been on participation rates by women, indigenous people, those from lower socio-economic groups and those from regional and isolated areas.

The Commonwealth Government has a responsibility to taxpayers to ensure accountability for the funds (in the sum of approximately \$5.6 billion p.a.) that are directed into higher education, and both State and Commonwealth Governments have a responsibility to ensure that funds are used efficiently and effectively, and that the reputation, quality and integrity of higher education are maintained.

6.2 THE MARKET FOR RESEARCH

Universities contribute to research in a wide range of disciplines including medicine, health and science. Universities compete with other public and private organisations for public and private sector funding to undertake research.

Australian universities are major national participants in research and development, as well as playing a significant role as the primary source of trained researchers and specialised technical and professional personnel¹.

Australia's expenditure on research and development totalled \$8.7 billion in 1996-1997. Public sector expenditure comprised 51% of this total, 47% invested by the private sector and 2% by the private non-profit sector². The Australian academic research environment is now more competitive in terms of access to government funding and increasingly dependent on funding from non-government sources³.

The level of expenditure on research and development within the business sector has increased steadily from 1988-89, with a strong increase of 10% in 1994 – 1995, to just under \$3.5 billion. Australian business research and development investment is predominantly concentrated in the manufacturing sector.

Universities contribute a major share to the total research and development effort in Australia. In 1994-95 the higher education sector accounted for 27% of Australia's research and development activity, making it the second largest performer outside the business sector. The higher education sector is also a particularly significant player in basic research, performing 55% of it.

In 1996, total expenditure on research in Australia's publicly funded universities was \$2.3 billion (88.1% of this amount being provided by the Commonwealth). Universities, during 1996, expended 59.1% of their research funding on basic research, 24.7% on applied research and 6.2 % on experimental research.

• Market Failure

Externalities

Research and development in various disciplines generate positive social and economic externalities in society, and consequently Government intervention may be justified. Research and development contribute in various areas to increased social and regional development, increased public health and safety, increased employment and better quality of life for the community.

Accountability for Funding

To capture the benefits provided to society by research and development, the Commonwealth Government provides funds to universities to conduct various types of research. This funding recognises the universities' valuable contribution in this area.

¹ *University and Industry Research Partnerships in Australia*, Department of Education, Training and Youth Affairs 1999.

² *Higher Education Report for the 1999-2001 Triennium*, Department of Education Training and Youth Affairs at p115.

³ Ibid

At the same time, the Government has a responsibility to taxpayers to ensure accountability for the funds provided to public universities for research and development purposes, to ensure that they are used efficiently and effectively, and that a high quality and reputable standard of research and development is maintained by the universities.

7.0 EFFECT OF THE LEGISLATION ON THE MARKET

Each of the "university Acts" contains a potential restriction on the university's power to apply revenue in that revenue must be applied solely for university purposes. This potential restriction may be construed as being anti-competitive in that it potentially restricts the purpose for which revenue can be applied, thereby affecting the ability of public universities to compete in the markets for providing higher education awards and some forms of research. "University purposes" must be construed in the context of the purposes for which a university is established and for which it operates.

The general powers and functions of a university are set out in each of the "university Acts". Provisions in each Act are modelled on those in section 5 and 6 of the *James Cook University Act 1997*.

Section 5 of the *James Cook University Act 1997* provides:

"The University functions are-

- (a) to provide education at University standard; and*
- (b) to provide facilities for study and research generally and, in particular, in subjects of special importance to people in the tropics; and*
- (c) to encourage study and research generally and, in particular, in subjects of special importance to the people of the tropics; and*
- (d) to provide courses of study and instruction to meet the needs of the community;*
- (e) to confer higher education awards;*
- (f) to exploit commercially, for the University's benefit, a facility or resource of the University, including, for example, study, research or knowledge, or practical application of study, research or knowledge, belonging to the University, whether alone or with someone else; and*
- (g) to perform other functions given to the University under this or another Act.*

Section 6.(1) The University has all the powers of an individual, and may, for example-

- (a) enter into contracts; and*
- (b) acquire, hold, dispose of, and deal with property; and*
- (c) appoint agents and attorneys; and*
- (d) engage consultants; and*
- (e) fix charges, and other terms, for services and other facilities it supplies; and*
- (f) do anything else necessary or convenient to be done for, or in connection with its functions."*

When the potentially restrictive provision is construed in the context of the legislation as a whole it is evident that "university purposes" are extremely wide. Each university

can do "anything necessary or convenient to be done for, or in connection with its functions. The functions of a university, as outlined in section 5 and corresponding sections in the other "university Acts", can be widely construed. Therefore the provisions dealing with the application of revenue do not appear to impose such a limit on the application of revenue by public universities that would cause a material restriction on competition in the market. The main competitors of public universities are the private universities, the non-university providers of accredited higher education courses, international universities and private research and development institutions. Consequently it is questionable that this provision has any anti-competitive impact.

It is beyond the scope of this review to analyse the restrictions on application of revenue that may operate on competitors.

8.0 ALTERNATIVES TO EXISTING LEGISLATION

8.1 Non-legislative alternatives

No viable non-legislative alternatives can be identified.

8.2 Legislative alternatives

(i) Repeal the provision relating to the application of revenue in each of the "university Acts" as outlined in the table at **section 4.0** of this Report.

8.2.1 Ability to Achieve Policy Objectives

The legislative objective of facilitating the good governance of universities in operating for their public purpose might be eroded if the section of the legislation dealing with the application of revenue were repealed. Further, the objectives relating to the proper management and administration of the university and accountability for public funding would probably be affected if the provision relating to the application of revenue were removed.

The *Financial Administration and Audit Act 1977* (the FAAA) and the *Statutory Bodies Financial Arrangements Act 1982* (the SBFAA) deal with the financial powers of statutory bodies and operate to regulate the financial and investment activities of the public universities. The regulation of public universities' activities under the FAAA ensures that operations of the universities are carried out efficiently, effectively and economically. Section 7 of the SBFAA limits the exercise of financial powers of public universities to those necessary or convenient for the performance of their functions under the "university Acts". Therefore, if the potentially restrictive section were repealed from the "university Acts", the universities, as statutory bodies would be subject to the provisions of the SBFAA which would have a similar effect to section 54 of the *James Cook University Act 1997*.

8.2.2 Benefits

Universities might be able to apply revenue to wider purposes to create wealth.

8.2.3 Costs

Costs to the community and the Government (Commonwealth and State) may result:

1. if public money is used other than to facilitate the functions and purposes of a university; OR
2. if universities were restricted to applying revenue as provided in the SBFAA.

There may also be possible adverse tax consequences for the universities if the application of revenue is not used for university purposes only.

*(The major impacts of the alternative proposed to the existing restrictive provision are summarised in **Appendix 2, Major Impacts Table**, and have been assessed by a cost benefit analysis in comparison with current market structure. The costs of the alternative outweigh any benefit, and the alternative cannot achieve the legislative objectives.)*

9.0 INTERSTATE ARRANGEMENTS

A similar provision with respect to Application of Revenue in the "university Acts" occurs at section 36(3) of the *Edith Cowan University Act 1984*.

In Western Australia a number of university establishment Acts has been identified for review under the National Competition Agreement. These Acts include the *Edith Cowan University Act 1984*, *Curtin University of Technology Act 1966*, *Murdoch University Act 1973*, *University of Notre Dame Australia Act 1989* and *University of Western Australia Act 1911*.

The review of the Western Australia "university Acts" focuses on competitive neutrality/market power issues. The *Edith Cowan University Act 1984* has now been amended for equity reasons, and its financial arrangements have been brought into line with those of the other universities.

(Other changes are anticipated in Western Australia, in relation to accreditation of courses and awards, in relation to national agreements separate from competition issues.)

No other State has identified legislation pertaining to individual universities for review for National Competition Policy purposes.

10.0 KEY AFFECTED GROUPS

Education Queensland has identified the stakeholders below as an assemblage who may be affected by a change in the regulatory environment. These key groups include:

- University of Southern Queensland
- University of Queensland
- James Cook University
- Queensland University of Technology
- Griffith University

- Central Queensland University
- University of the Sunshine Coast
- Queensland State Government
- Commonwealth Government
- students and potential students.

11.0 NATURE OF ASSESSMENT

Education Queensland has undertaken a reduced review of the "university Acts" for the following reasons.

- The impact on competition is low: it has been determined that the identified sections of the legislation do not significantly impact on competition in the markets for higher education awards and some forms of research and development.
- The sections have a relatively minor impact on the economy and community as a whole.
- The Acts have relatively minor geographical, social and political implications for the Government, community and other stakeholders.
- Community interest in the review is confined to distinct groups and the number of affected stakeholders is relatively low.
- Issues surrounding the application of the legislation are considered non-controversial.

12.0 ASSESSMENT PROCESS

This review has been conducted in accordance with the Public Benefit Test Guidelines developed for Queensland Government by Queensland Treasury.

Education Queensland's assessment process was that of a **reduced review** of the potentially restrictive provision in the "university Acts". The Legal Advisory Unit within the Executive and Legal Services Branch of Education Queensland is specifically responsible for conducting the review, with liaison throughout the process with Queensland Treasury.

13.0 CONSULTATION

It is proposed that the report be released for public information upon finalisation.

14.0 CONCLUSION

For the reasons that follow it is recommended that the existing section of the "university Acts" be retained.

The benefits of the "potential" restriction to the community as a whole outweigh the costs. The potentially restrictive provision in the legislation does not significantly impact, if at all, on competition in the market and is not considered onerous.

The objectives of the legislation can only be achieved by restricting competition.

It should be noted that given the operation of the *Statutory Bodies Financial Arrangements Act 1982* and the *Financial Administration and Audit Act 1977*, which are not subject to NCP review, any repeal of the Application of Revenue provision of the "university Acts" is likely to have limited practical effect.

APPENDIX 1

Government Priority Outcomes

- More Jobs for Queenslanders
 - *Target a rate of 5% unemployment in 5 years*
 - *Assist business and industry to create secure and sustainable jobs*
 - *Develop a fair and efficient Industrial Relations System*
- Building Regions
 - *Increase Statewide development so that Queensland's regions prosper*
 - *Raise general education infrastructure to support Statewide development*
 - *Expand export markets and encourage value- adding industries*
- Skilling Queensland
 - *Improve workforce skills for current and future needs*
 - *Raise general education levels, focusing on whole of life skills*
 - *Encourage innovation and flexibility in industry and Government to strengthen Queensland's position in the information age*
- Safer/supportive Communities
 - *Address the social and economic causes of crime through targeted, coordination and consultative initiatives*
 - *Promote individual, family and community vitality that respects diversity*
 - *Work with Aboriginal and Torres Strait Islander people to find practical ways to progress reconciliation and improve well being and quality of life*
- Better Quality of Life
 - *Deliver education, health and family services that improve people's quality of life*
 - *Develop community facilities and provide community services that promote full and equitable participation by all Queenslanders*
- Valuing the Environment
 - *Ensure the richness of our environment can be enjoyed by current and future generations*
 - *Promote responsible and sustainable development of the State's natural and primary resources*
- Strong Leadership
 - *Lead by example through high standards of accountability, consultation and ethics*
 - *Manage Queensland's finances to maintain a State budget surplus, low debt status and AAA credit rating*
 - *Encourage active and informed citizenship*

APPENDIX 2

Costs/Benefits of Alternative Options

Legislative Alternative 1 Repeal the provision relating to the application of revenue in each of the "university Acts".

Stakeholder	Benefits	Costs
Public universities: <ul style="list-style-type: none"> • USQ • UQ • JCU • QUT • GU • CQU • USC 	- There may be broader and more types of commercial ventures to which universities can apply revenue. This may in turn increase revenue and competitiveness.	NIL
Other competitors – including private Universities and non-university providers	NIL	NIL
Commonwealth Government	NIL	- There could be greater risk that public funds may be used inappropriately.
State Government	NIL	<ul style="list-style-type: none"> - There could be a risk that public funds may be used inappropriately. - Government may be perceived as not fulfilling its responsibility to ensure public funding is applied to proper purposes. - There may be risk that current taxation status of universities as charitable organisations may be affected.
Community in general and Consumers	- If there is an increase in revenue, it may lead to improved university facilities and/or reduced costs to consumers.	- There could be a risk that public money will be used for purposes other than to facilitate the functions of a university