

**PUBLIC BENEFIT TEST
REPORT**

Education (General Provisions) Act 1989

&

Education (General Provisions) Regulation 1998

Education Queensland

EDUCATION QUEENSLAND

PUBLIC BENEFIT TEST REPORT

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EXECUTIVE SUMMARY

This review documents the results of a Public Benefit Test on sections 144 of the *Education (General Provisions) Act 1989* and section 14 of the *Education (General Provisions) Regulation 1998*.

In respect of section 2(2) dealing with restrictions on entry into the market for non-State school education, an analysis of the costs and benefits of the restrictive elements of this section will be undertaken as part of the proposed new legislative arrangements for the approval and accreditation processes for the non-state school sector. Therefore, there will be no cost benefit analysis of this provision and its alternatives in this report.

In respect of section 144 dealing with restrictions on entry into the market for the provision of education in overseas curriculum, it has been decided to support changes to the section in the form of preparation of guidelines for the criteria on which the approval of the Governor in Council would be based.

In respect of section 14 dealing with the power of the Director-General to prohibit the sale of an item or class of items in State school tuckshops, it has been decided to recommend no change.

Education Queensland undertook this review in order to meet various commitments to national agreements, most notably the Competition Principles Agreement (CPA), endorsed under the National Competition Policy arrangements in April 1995. This commits the Queensland Government to review and reform if necessary, by 2000, any legislation that restricts competition.

A review of this Act and Regulation identified some sections as being potentially anti-competitive. Section 144 of the Act and section 14 of the Regulation were subject to review, because section 144 provides for restriction to entry to the market for provision of education in overseas curriculum in Queensland and section 14 provides for the prohibition of items from sale in State school tuckshops.

In relation to section 144, the market in which International Educational Institutions compete is the overall market for providing primary and secondary education to students. There is no restriction on Australian students attending an IEI for instruction and undertaking an overseas curriculum, but overseas students will be the main consumers at an IEI. The geographical scope of the market in which IEI's compete is potentially global, but is limited to Queensland for the purposes of this review of the application of section 144 of the *Education (General Provisions) Act 1989*. Thus, although this review focuses primarily on the Queensland 'sub market', it is important to note that Queensland providers operate within this much wider market for the provision of education and training services to overseas students.

International education and training is a vital Australian export industry, which currently earns \$3.8 billion per annum.

Providers must price on at least a cost recovery basis. Market forces determine prices above this level, and theoretically should act against the possibility of monopoly exploitation. Fees charged by the one existing IEI for tuition in Japanese curriculum are \$21,560 per annum. (The course runs for 3 years.)

Demand is elastic and is influenced by a variety of factors, including price, extent and effectiveness of overseas marketing, quality and reputation of the product and exchange rates, regulation at home and elsewhere, other government policies and political factors at home and abroad.

In supply, to date only one International Educational Institution (IEI) has been approved and is operating in Queensland. The Hills Foundation campus at Jimboomba comprises the "South Queensland Academy" and a non-State school known as the "South Queensland International College". The South Queensland Academy is the part of the campus that offers a Japanese curriculum and it was the South Queensland Academy that was approved legal status as an IEI. In 1999 there was a total of 29 students enrolled at the South Queensland Academy, all overseas students. It caters for students from grades one to twelve. The school caters for boarding students, male and female, from years eight to twelve.

Certain conditions were imposed on the approval of the South Queensland Academy by the Governor in Council. These conditions involved the employment of Australian labour in the construction of the institution, the inspection of the campus by officers of Education Queensland, a program to be submitted to the Minister each year of social, sporting, recreational and cultural activities, a minimum of 40% of the total enrolment of the campus (comprising both the Academy and College) to be Australian students, consistency of the institution's curriculum with that offered in similar institutions in the country of origin; and employment of a stipulated minimum number of Australian persons in administration, services and teaching staff.

In the overall market for providing preschool, primary and secondary education in Queensland in 1999 there were 424 non-State schools (one of which is the South Queensland International College) and 1,296 State schools providing preschool, primary and secondary education. A total of approximately 636 860 full-time students (in preschool, primary, secondary, special and school of distance education) were enrolled in these schools in 1999

No substitute products are available in Queensland in respect of education in overseas curriculum as all institutions that wish to offer an overseas curriculum or something that purports to be an overseas curriculum must be approved under section 144 of the *Education (General Provisions) Act 1989*

Substitutes for education and training for overseas students delivered by Queensland registered providers include education and training that is delivered by providers in other Australian States, education and training that is delivered by providers in the individual's home country and education and training that is delivered by providers in other countries.

There are no substitute products for education and training of overseas students delivered *within* Queensland, as the *Education (Overseas Act) 1996* requires that all providers of education and training services to overseas students be registered.

Therefore International Educational Institutions compete with all other registered providers for enrolments of overseas students.

In respect of non-overseas students substitute products of primary and secondary education are available from all other State and non-State schools in Queensland (and potentially Australia).

The market for providing education to overseas students is regulated via a system of registration of course providers and courses, both at the Commonwealth and State levels

Proponents of IEI's may also be subject to any State and Commonwealth legislation concerning planning and construction of the institution and foreign investment and ownership.

The market for providing education to students (including the sub-market for providing education to overseas students) is characterised by information asymmetry. Providers supply most of the information available to consumers about the product and therefore lack of information from neutral parties may lead to a lack of reliable information as a prospective student will have little opportunity to verify a provider's information and claims about the product.

Few students will buy education products more than once, and so they will not have the benefit of hindsight when making a purchasing decision.

In the matter of externalities, the positive ones generated by education are both social and economic. In order to capture those positive externalities, the Government (State and Commonwealth) subsidises and funds education.

Section 144(7) of the *Education (General Provisions) Act 1989* allows, subject to an appropriation by the Parliament for the purpose, a regulation may be made with respect to the payment of allowances to persons enrolled in an International Educational Institution.

The market in which section 14 of the Regulation operates is the market for the supply of goods, predominantly foodstuffs and beverages to State school students during the required hours of attendance.

Tuckshops form part of the market for food, along with delicatessens, fast or take-away food outlets, convenience stores, supermarkets and the like. They may also compete with providers of certain non-food items, such as stationers and newsagents.

In theory, apart from the restriction made possible by section 14, a tuckshop is not subject to any restriction on what it may sell other than those imposed upon those other outlets. In practice, as the section 14 restriction has never been exercised tuckshops are not affected at all by the operation of section 14. The operators of individual tuckshops decide what will or will not be sold from amongst those items which it may legally offer for sale: no outlet, for example, may sell liquor to a minor.

Further, the principal of a school may decide that students will not be permitted to bring into, or have at, the school certain items because they are potentially dangerous to the students or to school property, or are likely to encourage misbehaviour

Thus, although the restriction contemplated by section 14 has never been exercised, in practice a restriction similar in effect to that in section 14 is commonly exercised by the operators of the tuckshops themselves.

Students and staff are not obliged to use the tuckshop to make purchases on school days, but may bring to school from other sources goods that are also available at the tuckshop. In deciding between alternative outlets, however, consumers may be

swayed by the convenience of the tuckshop over its competitors

Apart from section 14, the Queensland Government may subject the operation of tuckshops to the same restrictions imposed upon other outlets of the types with which tuckshops compete, that is, restrictions concerning licences and what may be legally offered for sale, and legislation concerning industrial relations, workplace health and safety and other matters applicable to businesses of those kinds.

Section 54(2) of the *Education (General Provisions) Regulation 1989* allows the Director-General to order closure of a tuckshop being conducted by a P&C or principal, so that amendment or repeal of section 14 could lead to more drastic behaviour to achieve the ends currently attainable by the provisions of section 14.

While it is difficult to make precise statements about the market relationship of other retail outlets and tuckshops, it is obvious that invoking the power of prohibition provided by section 14 would benefit other outlets which may attract staff, students and parents when selling goods a tuckshop does not offer, although, with the exception of that imposed by section 14, these outlets are still subject to the same legal restrictions as State school tuckshops.

Some tuckshops are presently operated by private concerns. It is likely that private operators are motivated more by profit than by the desire to assist members of the staff or students of the State school. If, in the future, more tuckshops are run privately, it is possible that they will sell items that are desirable to their customers, but not necessarily ideal for consumption or use by students. There are conflicting forces at work in relation to the likelihood of more schools contracting out the tuckshop operation to catering contractors.

The overall effect of the introduction of GST cannot be determined and possible changes in the relationship between State school tuckshop Crown Land status and legislation regarding food handling could result in P&C groups deciding that running a school tuckshop is too complicated. Such a change in current arrangements by the Queensland Department of Health could result in tuckshops not being regarded as Crown property in the interpretation of any such amended or new legislation. This could have far-reaching impacts on the future market structure.

Another possible future change in market structure is the use of co-operative purchasing power by groups of school tuckshops. While this trend is currently concentrated in the south-east of Queensland, and in non-State schools, 77 State school tuckshops have membership of such a group, and enquiries have been received from many of the more remote areas of the State.

Such use of an intermediary purchasing agent could be affected by GST, as the primary purchaser would not have "government entity" status, and the input tax element would be further complicated.

Any of these changes may attract more consumers to school tuckshops than to other outlets, to the detriment of other outlets.

Section 14, by providing the Director-General with the power to prohibit a State school tuckshop from selling "an item or class of item" constitutes market failure as a conduct restriction.

The general legislative objective underlying section 144 of the Act is to allow for the

orderly establishment and maintenance of institutions intending to offer overseas curriculum by providing for some standard which must be met before such a school can start to operate or receive state funding.

The main social objective of the legislation allowing for the establishment and conduct of institutions providing overseas curricula is diversity of choice available in education. This adds to the richness of the community and contributes to its advancement.

The legislative objective of section 14 of the Regulation is to protect the consumers (predominantly students) from harmful or dangerous goods, and inherent in that is the social objective of allaying concerns regarding the welfare of consumers if restrictions could not be imposed on the range and quality of State school tuckshop items offered for sale.

Two alternatives to the current regulatory arrangements have been identified in relation to section 144 of the Act, one non-legislative (repeal) and one legislative (amendment by specifying the criteria for approval).

An identified non-legislative alternative to section 14 of the Regulation is repeal it, thus creating a free market.

No legislative alternatives to section 14 have been identified.

In relation to section 144 of the Act, benefits identified for the stakeholders from repeal are:

- for students, possible increased curriculum choice, and lower fees (in IEI's and other schools);
- for the existing IEI, nil;
- for proponents of new IEI's, possible lower operational costs and greater profits;
- for other providers, nil; and
- for Queensland Government, increase in student population could lead to increased consumption of goods and services, and hence of revenue.

Costs of repeal are:

- for students, possible lower quality facilities and instruction, and possible loss of status of Queensland qualifications in students' countries of origin;
- for the existing IEI, loss of the sector's reputation, and loss of fees;
- for proponents of other IEI's, loss of enrolment if there were any reduction of the sector's reputation, leading to questionable viability;
- for other providers (schools) diminution of Queensland's educational reputation; and
- for Queensland Government, loss of reputation of the sector, leading to diminished enrolment, causing loss of revenue.

In relation to section 144 of the Act, benefits identified for the stakeholders from amendment are:

- for students, possible greater variety in curriculum, and lower fees;
- for the existing IEI, nil;
- for proponents of new IEI's, possible safeguards for venture capital arising from greater certainty of approval requirements and possible lower application costs;

- for other providers, nil; and
- for Queensland Government, possible increase in revenue arising from increased overseas student population.

Costs of amendment are:

- for students, proponents of new IEI's and Queensland Government, nil; and
- for the existing IEI and other providers, possible loss of enrolment.

In relation to section 14 of the Regulation, benefits identified from repeal are:

- for students, a possible extension of range of goods for sale;
- for teachers, possible reduction of travel time and costs if wider range of goods available on campus;
- parents, nil;
- for tuckshops, possible increase in profits;
- for Queensland Government, lower administration costs; and
- for other outlets, nil.

Costs of repeal are:

- for students, possibly less nutritious items for sale;
- for teachers, nil;
- for parents, possible increased need for volunteer labour and possible greater demands for money from children;
- for tuckshops, nil;
- for Queensland Government, possible increases in administration costs for advisory and supervisory functions if administrative functions were spread over more departments; and
- for other outlets, possible lower turnover and hence lower profits.

Consultation took the form of distribution for general comment to all interested stakeholders of an Issues Paper identifying possible alternatives to the existing regime, together with an invitation to make a written submission. A public notice was also placed in *The Courier Mail* (February 28, 1998) and *Education Views* (March 6, 1998) advising that the review was in progress and inviting submissions from interested parties.

2.0 LEGISLATION TO BE REVIEWED

Education (General Provisions) Act 1989

Education (General Provisions) Regulation 1998

3.0 BACKGROUND

The Queensland Government is undertaking this legislative review to meet its commitment under the Competition Principles Agreement (CPA). Members of the Council of Australian Governments endorsed the CPA under the National Competition Policy arrangements in April 1995. This agreement commits the Queensland Government, by the year 2000, to review and reform where necessary any legislation that restricts competition.

Clause 5(1) of the Competition Principles 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 restriction to the community as a whole outweigh the costs;*
- and*
- (b) the objectives of the legislation can only be achieved by restricting competition.*

A review of the *Education (General Provisions) Act 1989* and *Education (General Provisions) Regulation 1989* in 1996 identified a number of sections as being potentially anti-competitive.

4.0 IDENTIFICATION OF CURRENT RESTRICTIONS

Section 144 of the *Education (General Provisions) Act 1989* provides that a person must not establish or conduct an International Educational Institution (that is an institution, facility, school, college or other place in Queensland that offers or proposes to offer an overseas curriculum i.e. curriculum that is or is a variation of the whole or part of the primary or secondary curriculum of a foreign country) without the approval of the Governor in Council. The section also provides that the Governor in Council may impose conditions on the approval for an International Educational Institution. Further, the section gives the Minister power to have an institution inspected in whatever way and at whatever time the Minister considers appropriate.

Section 144 may provide a barrier to entry to the market for the provision of instruction in overseas curricula in Queensland and restrictions on the conduct of business in that market.

Section 14 (formerly section 18A) of the *Education (General Provisions) Regulation 1999* states:

“Tuckshops - prohibited items

14.(1) The chief executive may, by notice in the Education Office Gazette, prohibit an item, or class of item, from being sold in a tuckshop.

(2) In deciding whether to prohibit an item or class of item, the chief executive must have regard to the safety and wellbeing of students.

(3) A school's principal or association must not sell a prohibited item, or an item of a prohibited class, in the school's tuckshop.

(4) In this section—

“prohibit” means prohibit under subsection (1).

“sell” includes offer for sale.

“tuckshop” means a tuckshop in a school operated by the school's principal or association.

The “association” referred to is the Parents and Citizens' Association (“P&C”) of the school.

Section 14 of the Regulation gives the Director-General of Education a power to prohibit the sale of any item, or class of item, in a school tuckshop. The

restriction may be exercised only in respect of **State school** tuckshops. Any reference to a tuckshop in this document in relation to legislation is to a State school tuckshop only.

Section 10 of the *Education (General Provisions) Act 1989* states:-

"10(1) The Minister is authorised to produce and sell educational materials and sell services and to enter into an agreement with any person for those purposes and it is declared always has had those powers.

(2) Nothing in subsection (1) shall be construed as conferring authority on the Minister to prescribe the use of any material or service produced pursuant to this section other than in a State educational institution."

"Materials" includes documents.

"Services" means any performance of functions, doing of work, work done, or other activities, or whatever is necessary to provide assistance and advice.

Section 10 gives the Minister power to:-

- (i) produce educational materials;
- (ii) sell educational materials (which may or may not have been produced by the Minister); and
- (iii) sell educational services.

Arguably section 10(2) may at first instance be interpreted as conferring on the Minister the power to prescribe materials and services for use in State schools. The enactment of *Education (Senior Secondary Schools Studies) Act 1998 (Qld)* ("the P-12 Act") and the *Education (School Curriculum P-10) Act 1996 (Qld)* ("the P-10 Act"), however, evidences a clear legislative intent to divorce the syllabus and curriculum development of the Senior Secondary School Studies Board and the Queensland School Curriculum Council from the Minister and his department, so that the role of the Minister is now one of strategic policy oversight. Whatever the intended operation of section 10(2), the enactment of the present specific and comprehensive statutory regime has had the effect of rendering any prescriptive power otiose or ineffectual. There is no field in which any possible power to prescribe materials in section 10(2) can operate. The legal consequences of the subsequent impacting legislation outlined above now render further consideration of this section for compliance with National Competition Policy purposes unnecessary. **Therefore the section has no anticompetitive effect on the market.**

4.1 Section 2(2)

Current Arrangements

Section 2(2) of the *Education (General Provisions) Act 1989* was originally identified as being potentially anti-competitive and thus in need of review under National Competition Policy.

Section 2(2) provides:

"(2) A school, not being a State school, that provides, in the opinion of the Minister, facilities for and instruction in preschool, primary, secondary or special education in accordance with guidelines approved by the Governor in Council, is a non-State school, for that type of education, for the purposes of this Act."

In 1999 the *Education and Other Legislation Amendment Act 1999* was assented to and commenced operation on 1 January 2000. This amending Act inserted a new section (section 2A) in the *Education (General Provisions) Act 1989* dealing with approval of non-State schools by the Minister. Section 2A provides:

"2A. (1) This section applies if the Minister is to make a decision under 2(2) for a school.

(2) Before the Minister may make the decision, the Minister must be satisfied the school has been granted, and complied with, a planning approval under the planning guidelines for the type of education to be provided by the school.

(3) However, subsection (2) does not apply if-

- a. the school is a non-State school for primary education and the Minister is to make a decision about whether the school provides facilities for, and instruction in, preschool education; or*
- a. the Minister is to make a decision about whether the school provides facilities for, and instruction in, special education.*

(4) A decision by the Minister under section 2(2) that results in a school being a non-State school for a type of education is subject to any continuing conditions about facilities or instruction imposed, under the planning guidelines, on the planning approval granted in relation to the school for the type of education."

Section 134A was also inserted into the *Education (General Provisions) Act* which gives the Minister the power to issue the planning guidelines referred to in section 2A.

The Webb Review

In response to several changes in the environment in which non-State schools operate and matters leading on from an unresolved review in 1993, the Minister for Education determined after consultation with non-State school authorities to commission a further review of accreditation and accountability arrangements for non-State schools, known as the Webb Review. The review committee has presented its report of Government and the implementation of reforms is currently under consideration. The extent of the proposed reforms has not yet been finalised by government. It is anticipated that legislative changes will be made.

Given the impending legislative changes that are to be made to this section as a result of the Webb Review, and the cost/benefit analysis of restrictions on competition that will occur as part of that legislative process, no analysis of the existing restriction and possible alternatives will be undertaken in this report.

5.0 LEGISLATIVE, SOCIAL AND ECONOMIC OBJECTIVES AND GOVERNMENT PRIORITY OUTCOMES – section 144 Education (General Provisions) Act 1989 section 14 Education (General Provisions) Regulation 1989

5.1 Legislative Objectives

In 1989 a new scheme of Acts relating to education was introduced: one of these Acts was the *Education (General Provisions) Act 1989*. This provides a framework for the responsibilities of the Minister for and Director-General of Education in Queensland. No one overall underlying legislative objective of the *Education (General Provisions) Act 1989* can be identified, although the purposes of the Act could be summarised as providing predominantly for the establishment and effective operation and governance of State schools and other State education institutions and also allowing a mechanism for establishment and conduct of non-State schools. Section 144 of the Act and 14 of the Regulation operate to facilitate achievement of these purposes.

The power in section 144 of the *Education (General Provisions) Act 1989* was included to allow for the orderly establishment and maintenance of institutions intending to offer overseas curriculum.

The general legislative objective underlying section 144 and other provisions relating to non-State schools is summarised in a statement in the second reading speech introducing the Bill. In the speech it was noted that provisions dealing with schools other than State schools were included in the Act *"to ensure that **adequate standards and controls** are placed upon schools in the delivery of educational services in Queensland, provision is made for the inspection, where the public interest so dictates, of non-State schools and other institutions where instruction is performed"*. Further it was noted that, *"it is a right of the community to have **some standard** which must be met before a school starts to operate or is funded"*.

Section 14 was included in the *Education (General Provisions) Regulation 1989* in response to concerns regarding the welfare of consumers (predominantly students) if restrictions were not able to be imposed on the range and quality of tuckshop items offered for sale.

As it stands, section 14 of the Regulation was clearly enacted in order to meet a social objective that may not have been otherwise available, namely a health protection for school students. The inclusion of the term "or class of item" means that, for instance, the sale of all soft drinks could be prohibited. It should also be noted that it could be used to prohibit the sale of undesirable non-food items.

5.2 Social and Economic Benefits and Government Priority Outcomes

The major social benefit facilitated by the legislation allowing for the establishment and conduct of institutions providing overseas curricula is diversity. International Educational Institutions add to the diversity of choice available in education. Diversity in education adds to the richness of the community and contributes to its advancement. Allowing for institutions of this kind to be established furthers the diversity within Australia's multicultural society. Diversity in education is supported in the United Nations Covenant on Economic, Social and Cultural Rights. Article 13 of the Covenant provides *"that individual nations must have respect for the liberty of parents, to choose for their children schools other than those established by public authorities, which conform to such minimum standards as may be laid down or approved by the State and to ensure the religious and moral education of their*

children in conformity with their own convictions".

The legislation, by providing for conditional approval of IEI's, allows the Government to address social and economic community concerns in respect of the establishment and conduct of IEI's. For example, as reflected in the conditions imposed on the only existing and approved school under section 144, conditions are designed to capture the economic benefits for the community flowing from construction of the institutions, i.e. by stipulating the employment of Australian labour in the construction project.

Section 144, by allowing for the establishment of IEI's and through the operation and activities of International Educational Institutions, contributes to the provision of education of overseas students. There are social and economic benefits associated with the provision of education to overseas students. Overseas students contribute directly to the economy through payments for rent and accommodation, food, transport, recreation and social expenses.

Section 144, by allowing for the establishment of IEI's and through the operation and activities of IEI's, facilitates the following Government Priority Outcomes:

1. More Jobs for Queenslanders – Section 144 by allowing for the Government to impose conditions on the establishment of the IEI, was responsible for only Queensland labour being used in its construction and the employment of Queensland teachers (keeping in mind anti-discriminatory legislation).
1. Skilling Queensland – IEI's by providing education contribute to raising the general education level of Queensland.
1. Safer and More Supportive Communities – The fact that IEI's can offer an overseas curriculum and English curriculum helps facilitate interaction between students from different cultures, religions and backgrounds. This interaction encourages respect for diversity in perspective, religion and culture thereby contributing to the development of more respectful and tolerant communities.

6.0 HISTORY OF LEGISLATION

Section 14 of the *Education (General Provisions) Regulation 1998* has existed in its current form since 30 July 1996 (although it was renumbered in 1999). Prior to that date, its predecessor, section 54(3) of the Regulation, provided the Director-General with the power to prescribe what items could be sold in a tuckshop.

This subsection was amended and relocated in 1996 to reflect more accurately department policy and its association with P&C activities. Despite the true meaning of section 54(3), since August 1965 the Director-General had actually approved items that were not to be sold in school tuckshops.

In practice, the Director-General used section 54(3) sparingly, in 1965 and again in 1966, and has never exercised his power under section 14. However, if exercised, this decision would result in the outright prohibition of the sale of the particular item or class of item in any State school tuckshop.

Section 144 was originally enacted as section 75 of the *Education (General Provisions) Act 1989*. In 1993 section 75 was omitted and a section very nearly

identical to the existing section 144 was inserted. The only subsequent amendment to the section after this in 1994 involved putting in place pecuniary penalties for (i) establishing or conducting an IEI without approval of the Governor in Council and (ii) not complying with the conditions of approval of an IEI.

7.0 ANALYSIS OF CURRENT RESTRICTIVE STATE

7.1 Tuckshops – Section 14 of the Regulation

Section 54(1) of the *Education (General Provisions) Regulation 1989* provides that a P&C may conduct a tuckshop, which is not being conducted by the principal of the school and where it is likely to “*facilitate, assist or be of advantage*” to members of the staff in their professional duties or to students ... in the course of their studies”. This section also provides that the Director-General may at any time order closure of a tuckshop.

There are 1,294 State schools in Queensland (February 2000), most of which have a tuckshop. Although tuckshops are usually administered by the P&C of the school concerned, P&Cs may employ convenors or contract outside providers to run tuckshops.

Tuckshops generally limit the types of items they sell to foodstuffs, but may potentially stock any item whose sale by a tuckshop is not prohibited or restrained by legislation other than section 14 of the Regulation. A tuckshop may sell stationery items, for example, or other non-food goods which might be attractive to or required by a student or staff member at school. This can be distinguished from the situation present in some schools where stationery and uniforms are sold from tuckshop premises but are not part of the tuckshop's stock.

Tuckshops, therefore, form part of the market for retail food, along with delicatessens, fast or take-away food outlets, convenience stores, supermarkets and the like. They may also compete with providers of certain non-food items, such as stationers and newsagents.

In theory, apart from the restriction made possible by section 14, a tuckshop is not subject to any restriction on what it may sell other than those imposed upon those other outlets. In practice as the section 14 restriction has never been exercised tuckshops are not affected at all by the operation of section 14. The operators of individual tuckshops decide what will or will not be sold from amongst those items which it may legally offer for sale: no outlet, for example, may sell liquor to a minor.

Decisions about what is stocked may be based upon purely economic factors. Alternatively, the P&C of a school, as the body representing the parents of students at the school and the members of the school's wider community, may decide that certain items are not appropriate for regular consumption or use by students at the school. Such items may include foods with a high proportion of chemical additives or with little nutritional value.

Further, the principal of a school may decide that students will not be permitted to bring into, or have at, the school certain items because they are potentially dangerous to the students or to school property, or are likely to encourage misbehaviour. Electronic toys, gadgets and knives are commonly banned and chewing gum is also often forbidden in school. Tuckshops are unlikely to stock goods which principals have restricted. Further, the regulation provides a “backstop” necessary to protect the health and wellbeing of school children.

Thus, although the restriction contemplated by section 14 has never been exercised, in practice a restriction similar in effect to that in section 14 is commonly exercised by the operators of the tuckshops themselves.

Consumers

Students and staff are not obliged to use the tuckshop to make purchases on school days, but may bring to school from other sources goods that are also available at the tuckshop. Thus, the unavailability of an item at a school tuckshop by reason of the exercise of section 14, or the operator's own restriction, will not prevent a school student or staff member obtaining the item from another outlet.

For obvious safety reasons, children are usually not permitted to leave the school grounds during school hours and persons other than students, staff and authorised personnel are not permitted onto school grounds for any reason. Therefore, consumers using tuckshops are restricted generally to students and staff.

In deciding between alternative outlets, however, consumers may be swayed by the convenience of the tuckshop over its competitors. Students are not usually permitted to leave school grounds to visit shops during school hours, and staff may find it difficult to do so. Unless consumers can anticipate a need or want arising through the school day by purchasing goods before classes, or can delay satisfaction until after school, they are likely to choose the tuckshop as the best place to make the purchase.

Queensland Government

Apart from section 14 (formerly s.18A), the Queensland Government may subject the operation of tuckshops to the same restrictions imposed upon other outlets of the types with which tuckshops compete, that is, restrictions concerning licences and what may be legally offered for sale, and legislation concerning industrial relations, workplace health and safety and other matters applicable to businesses of those kinds.

Section 54(2) of the *Education (General Provisions) Regulation 1989* allows the Director-General to order closure of a tuckshop being conducted by a P&C or principal. Advice received from the Crown Solicitor indicates that this section may be used to order closure of a tuckshop being operated by a private concern that has entered into a contract with the P&C or principal for that purpose. As the section does not stipulate the circumstances under which the order may be made, it might, in the absence of section 14, be exercised to prevent a tuckshop selling a disagreeable item.

Other retail outlets

While it is difficult to make precise statements about the market relationship of other retail outlets and tuckshops, it is obvious that invoking the power of prohibition provided by section 14 would benefit other outlets. Almost all of the goods sold by tuckshops are also sold by retail food outlets, including milk bars, fast or take-away food outlets, convenience stores, supermarkets and the like as well as drapers, stationers and newsagents, and preventing on-campus sales of any item or class of item would, to some extent, benefit other outlets.

Currently, these outlets may attract staff, students and parents when selling goods a tuckshop does not offer, although, with the exception of that imposed by section 14, these outlets are still subject to the same legal restrictions as State school tuckshops

i.e. can not sell alcohol to minors.

Likely future changes in market structures

As noted, some tuckshops are presently operated by private concerns. It is likely that private operators are motivated more by profit than by the desire to "facilitate, assist or be of advantage to members of the staff in their professional duties or to students of the State school in the course of their studies". If, in the future, more tuckshops are run privately, it is possible that they will sell items that are desirable to their customers, but not necessarily ideal for consumption or use by students. There are conflicting forces at work in relation to the likelihood of more schools contracting out the tuckshop operation to catering contractors.

The overall effect of the introduction of GST cannot be determined. Those tuckshops which are run by P&C have been advised not to register for GST purposes, because they will be exempt from charging GST.

On the other hand, possible changes in the relationship between State school tuckshop Crown Land status and legislation regarding food handling, outside the scope of this report, and indeed outside the deliberations of Education Queensland, could result in P&C groups deciding that running a school tuckshop is too complicated, and their handing over to outside contractors. Such a change in current arrangements in the form of possible legislative action undertaken by the Queensland Department of Health could result in tuckshops in school grounds being deemed to be bound by food preparation provisions, i.e. not to be regarded as Crown property in the interpretation of any such amended or new legislation. This could have far-reaching impacts on the future market structure.

Another possible future change in market structure is the use of co-operative purchasing power by groups of school tuckshops. A commercial enterprise already exists which has represented its member tuckshops in calling tenders for supply of items categorised as "bakery, confectionery, dairy products, ice cream, juices, snack foods and soft drinks". Suppliers have been accepted for all categories, resulting in good discounts for the participating tuckshops (27 1/2% for snack foods). While this enterprise is currently concentrated in the south-east of Queensland, and in non-State schools, 77 State school tuckshops have membership, and enquiries have been received from many of the more remote areas of the State.

Such use of an intermediary purchasing agent could be affected by GST, as the primary purchaser would not have "government entity" status, and the input tax element would be further complicated.

Any of these changes may attract more consumers to school tuckshops than to other outlets, to the detriment of other outlets. Overall, the effect of any move of custom to tuckshops from their competitors is unlikely to have a profound impact upon the market as a whole, however, rival operations close to schools in non-metropolitan or isolated areas may suffer a loss of income.

Impact of current regulatory arrangements on market structures for other goods and services in the future

It is possible that, if more tuckshops are operated by private concerns, more non-food items may be sold in tuckshops. It is likely that such items would be limited to those of use to staff and students in their study or work at school, for example stationery, computer software, or sports goods. The degree to which tuckshops diversify is likely to be limited by the presence in or near the school of other outlets

selling these items. No data was available to indicate the precise number of tuckshops operated by private concerns, however the vast majority of tuckshops are operated by P&C associations and there is nothing to indicate a change in this trend. As discussed above, changes in the legislative framework within which P&C's must operate may change the existing trend.

Other Regulatory Requirements

State school tuckshops are bound by the same health and safety regulations as other areas of schools, and as other food outlets, except that not all matters relating to food preparation are held to bind school tuckshops at the moment. As stated in 7.1 above, that situation is currently under review by the Department of Health.

Market Failure

Section 14, by providing the Director-General with the power to prohibit a State school tuckshop from selling "an item or class of item" constitutes market failure as a conduct restriction. It is not a large restriction, especially as it has never been exercised, and its purpose is for public good, in that it is to protect school children from danger to their health. It is unlikely ever to be exercised, especially in light of the tuckshop system's direct contribution to facility purchase in schools (derived from an estimated annual turnover for State school tuckshops of \$77 million), and the labour contribution of volunteer tuckshop workers (estimated at \$76 million annual wage equivalent at a rate of \$10 per hour).

7.2 International Educational Institutions - Section 144 of the Act

International Educational Institutions compete in the overall market for providing primary and secondary education to students.

Market Boundaries

Although in theory there is no restriction on Australian students attending an IEI for instruction and undertaking an overseas curriculum, it will predominantly be overseas students who will be the consumers of an IEI. Therefore the geographical scope of the market in which IEI's compete is potentially global, and Queensland providers of education to overseas students also compete in an Australian sub-market.

The geographical boundaries of the market in which IEI's compete can be considered to be limited to Queensland for the purposes of this review due to the application of section 144 of the *Education (General Provisions) Act 1989*.

Thus, although this review focuses primarily on the Queensland 'sub-market', it is important to note that as Queensland providers operate within this much wider market for the provision of education and training services to overseas students. Therefore, reports of unfair practices, college closures, poor standards of service delivery, etc. in one State may adversely impact on all other Australian jurisdictions.

International education and training is a vital Australian export industry, which currently earns \$3.8 billion per annum. According to the UNESCO figures cited in the 1997 *Survey of International Students Studying in Australia*, Australian International Education Foundation, 1998, an analysis of the higher education section shows that, in terms of overseas student numbers, Australia is ranked third in the English-speaking world behind the United States and the United Kingdom, and seventh worldwide behind the United States, France, Germany, the United Kingdom, the Russian Federation and Japan. There has been a dramatic increase in the

number of students studying in Australia: from 21,118 in 1988 to 151,464 in 1997^[1]
Commonwealth Department of Employment, Education, Training and Youth Affairs (DETYA)
Overseas Student Statistics 1997

^[1] Commonwealth Department of Employment, Education, Training and Youth Affairs (DETYA)
Overseas Student Statistics 1997

1⁽¹⁾. The Queensland Education Department's overseas unit (Education Queensland International) cites its largest competitors as Canada, the United Kingdom, the United States and New Zealand.

Price Determination

Providers must price on at least a cost recovery basis (costs would include such items as facilities, staff and resources etc - the actual costs of the one established IEI are unknown because of lack of available data). Market forces determine prices above this level, and theoretically should act against the possibility of monopoly exploitation. Fees charged by the one existing IEI for tuition in Japanese curriculum are \$21,560 per annum. There is no information available to the Department as to how the institution determines the fee level.

Determinants of Demand

Demand is elastic and is influenced by a variety of factors. These include:

Price

An increase in price level may lead to a decrease in demand as consumers substitute their source of supply and purchase from competitors outside the Queensland market (i.e. in another geographic area where the price of the good is lower).

Extent and effectiveness of overseas marketing

The more extensive and effective overseas marketing is, the higher the perceived quality and reputation of Queensland's education and training courses, the higher the level of consumer awareness, and thus the higher the level of demand.

Quality and reputation of the product in comparison to substitute products

The higher the quality and reputation of Queensland products compared to substitute products, the higher the demand.

Regulation in other markets, and other government policies

If a change were to be made to immigration entry conditions, such as tighter study visa controls, that could adversely affect Australia's share of the market. Conversely, laxer Australian controls could increase the nation's share of the overseas market.

Political factors both in Australia and overseas

From time to time, Australia's relations with some Asian countries have become strained for a period. During such periods, numbers of student applicants from that country for study in Australia tend to decrease.

Supply

To date only one International Educational Institution (IEI) has been approved by the Governor in Council under section 144 and is operating in Queensland. This approved International Educational Institution is run by the Hills Educational Foundation. The Hills Foundation campus at Jimboomba comprises the "South Queensland Academy" and a non-State school known as the "South Queensland International College". The South Queensland Academy is the part of the campus that offers a Japanese curriculum and it was the South Queensland Academy that was approved legal status as an IEI. In 1999 there was a total of 29 students enrolled at the South Queensland Academy. All of these 29 students were overseas

students². The South Queensland International College non-State school part of the campus offers an English curriculum. It is non-denominational and co-educational. It caters for students from grades one to twelve. The school caters for boarding students, male and female, from years eight to twelve. In 1999 the number of overseas fee paying students at the South Queensland International College was 52. As at July 1999, the South Queensland International College had a total enrolment of 242 students.

Certain conditions were imposed on the approval of the South Queensland Academy by the Governor in Council. These conditions concerned:

- the employment of Australian labour in the construction of the institution;
- the inspection of the campus by officers of Education Queensland;
- a program to be submitted to the Minister each year of social, sporting, recreational and cultural activities involving opportunities for Queensland school students and the general community to enjoy the Academy's facilities and to interact with the Academy's staff and students;
- a minimum of 40% of the total enrolment of the campus (comprising both the Academy and College) to be Australian students;
- consistency of the institution's curriculum with that offered in similar institutions in the country of origin; and
- employment of a stipulated minimum number of Australian persons in administration, services and teaching staff.

The South Queensland International College and the South Queensland Academy are registered as providers of education to overseas students. The market for the provision of education and training for overseas students in Queensland consists of 320³⁽²⁾ As at 18 June 1999 (Education Queensland International):

- . 162 private schools
- . 11 Universities
- . 86 Vocational Education and Training Colleges
- . 23 ELICOS Colleges
- . 38 Government schools (all registered under Department of Education as a system provider)

² These figures have been obtained from Education Queensland International.

³⁽²⁾ As at 18 June 1999 (Education Queensland International):

- . 162 private schools
- . 11 Universities
- . 86 Vocational Education and Training Colleges
- . 23 ELICOS Colleges
- . 38 Government schools (all registered under Department of Education as a system provider)

3⁽²⁾ registered service providers providing tuition to approximately 23,000 overseas students (of a national total of approximately 150,000). The University sector provides the largest number of courses to overseas students. The South Queensland's Academy (IEI) share of the Queensland sub-market of education to overseas students is very minimal.

In the overall market for providing preschool, primary and secondary education in Queensland in 1999 there were 424 non-State schools (one of which is the South Queensland International College) and 1,296 State schools providing preschool, primary and secondary education. A total of approximately 636 860 full-time students (in preschool, primary, secondary, special and school of distance education) were enrolled in these schools in 1999. Therefore the total enrolment of the South Queensland Academy in the overall Queensland market for providing preschool, primary and secondary education in Queensland is also very small.

Substitute Products

No substitute products are available in Queensland in respect of education in overseas curriculum as all institutions that wish to offer an overseas curriculum or something that purports to be an overseas curriculum (whether it be the whole or part of the curriculum of a foreign country) must be approved under section 144 of the *Education (General Provisions) Act 1989*⁴. Therefore in the provision of an overseas curriculum, IEI's compete with each other. The level of competition however will be determined by factors such as consumer choice and their determination of substitutability of products in the market. For example, a student from a particular country may only consider schools offering curriculum of the country of origin of that student and therefore only schools offering that particular overseas curriculum will compete against each other for the student's enrolment. On the other hand, if an Australian student wanted to undertake education in an overseas curriculum then all of the existing IEI's, despite the type of overseas curriculum offered, may compete with each other for that student's enrolment.

Substitutes for education and training for overseas students delivered by Queensland registered providers include education and training that is delivered by providers in other Australian States, education and training that is delivered by providers in the individual's home country and education and training that is delivered by providers in other countries.

There are no substitute products for education and training of overseas students delivered *within* Queensland, as the *Education (Overseas Act) 1996* requires that all providers of education and training services to overseas students be registered.

Therefore International Educational Institutions compete with all other registered providers for enrolments of overseas students.

In respect of non-overseas students, substitute products of primary and secondary education are available from all other State and non-State schools in Queensland (and potentially Australia).

Other regulatory requirements

The market for providing education to overseas students is regulated via a system of registration of course providers and courses, both at the Commonwealth and State

⁴ However schools offering an international baccalaureate course provide a type of product that may be considered to some degree as substitutable with the product provided by an IEI.

levels. The current regulation of the education exports industry is a co-operative approach between the Commonwealth, State and Territory governments and industry with the universal support of stakeholders.

The Commonwealth Government has delegated responsibility for the registration of providers and courses of overseas students to all States and Territories. While the Commonwealth has delegated this responsibility, it maintains a national register (the Commonwealth Register of Institutions and Courses – “CRICOS”) that is disseminated to all Australian Visa Posts and Missions to be used as the basis for issuing student visas. The Commonwealth legislation also imposes financial conditions on private education providers.

The *ESOS Act 1991 (Commonwealth)* provides the specific prohibition on offering or providing courses to overseas students unless the provider and courses have been admitted to CRICOS. Under the *Migration Act 1958 (Commonwealth) and Regulations* an applicant for a student visa must nominate a CRICOS-listed provider and course. Once in Australia, overseas students must maintain enrolment with a provider and in a course registered on CRICOS. To maintain registration on CRICOS, providers must comply with the requirements of the State authority and the *ESOS Act 1991 (Commonwealth)*.

The Queensland legislation refers to the criteria and ongoing conditions of registration and covers most areas of day-to-day significance to providers of education and training programs for overseas students. In general, all matters to do with registration and, in particular, all matters concerned with changes to register details, addition, amendment or deletion of courses and most matters to do with provision of information in respect of providers and courses, are dealt with by the State.

Division 2 of the *Education (Overseas Students) Regulation 1998* sets out the criteria for registration for providers of education to overseas students and Division 3 sets out the criteria for application for registration of courses provided to overseas students.

Proponents of IEI's may also be subject to any State and Commonwealth legislation concerning planning and construction of the institution and foreign investment and ownership.

Market Failure

Information Asymmetry

The market for providing education to students (including the sub-market for providing education to students in an overseas curriculum) is characterised by information asymmetry. Providers supply most of the information available to consumers about the product and therefore lack of information from neutral parties may lead to a lack of checks and balances on the information being provided. A prospective student will have little opportunity to verify a provider's information and claims about the product. However, this failure may be addressed if the curriculum is approved by the country of origin and the qualification or award obtained on completion or the course can be comparable and or/converted to an equivalent Australian award.

The market for providing education is also characterised by a product that few purchasers will buy more than once, regardless of perceived quality. A student will also not have the benefit of hindsight when making a purchasing decision.

Externalities

Education generates positive externalities in society and consequently Government intervention in the market may be justified. The positive externalities generated by education are both social and economic. Education contributes to increased public health and safety, increased law and order, economic and regional development and increased employment opportunities.

Funding and Accountability

In order to capture positive externalities that education can generate in society, Governments (State and Commonwealth) subsidise and fund education.

Section 144(7) of the *Education (General Provisions) Act 1989* allows, subject to an appropriation by the Parliament for the purpose, a regulation may be made with respect to the payment of allowances to persons enrolled in an International Educational Institution.

The Government has a responsibility to taxpayers to ensure accountability for funds that are distributed to all schools and to ensure that public money is used efficiently and effectively to achieve Government objectives and Government Priority Outcomes.

7.3 CONCLUSION

Due to the very small enrolment share of the one existing IEI and the fact that only one IEI has been approved under section 144 (or its predecessor), section 144 can be viewed as having little effect on the market.

Given that section 14 (formerly s.18A) has never been exercised and tuckshops themselves already decide what they will and will not sell, section 14 has very little if any real effect on the current market structure.

7.0 IDENTIFICATION AND DESCRIPTION OF VIABLE ALTERNATIVES

7.1 Other Less Restrictive Alternatives

(a) Section 144 of the Act

Two alternatives to the current regulatory arrangements have been identified. These are:

Non-Legislative Alternative: Free Market

- (i) To repeal section 144. This would allow IEI's to establish without the need to obtain the Governor in Council's approval and without the imposition of conditions on approval and conduct and the other requirements in section 144; and

Legislative Alternative:

- (ii) To amend section 144 to limit the powers of the Governor in Council by specifying in the section the criteria upon which approval for the establishment and conduct of International Educational Institutions will be considered. This alternative retains the restriction on approval of IEI's but limits the extent

to which it may be exercised.

Alternative 2 could also be achieved by amending the section allowing the creation of guidelines that outline the criteria to apply to the approval for the establishment and conduct of an IEI.

(b) Section 14 of the Regulation:

Non-Legislative Alternative – Free Market

(i) An alternative to the current regulatory arrangements is to repeal section 14, leaving tuckshops subject only to those restrictions borne by other retail food outlets, and for individual tuckshop operators to decide which items will be available for purchase.

Note: section 54 of the Education (General Provisions) Regulation 1989 would still continue to apply if the alternative were adopted.

No Legislative Alternatives can be identified.

9.0 KEY AFFECTED STAKEHOLDER GROUPS

9.1 Section 144 of the Act

- overseas students and their parents
- Australian and Queensland students and their parents
- International Educational Institutions approved under section 144 – (There is currently only one, the South Queensland Academy run by the Hills Educational Foundation.)
- Queensland Government

9.2 Section 14 of the Regulation

- tuckshops
- students
- parents/carers
- Queensland Government
- other food outlets

10.0 OUTCOMES OF CONSULTATION

An Issues Paper identifying possible alternatives to the existing regime, together with an invitation to make a written submission, were distributed for general comment to all interested stakeholders. A public notice was also placed in *The Courier Mail* (February 28, 1998) and *Education Views* (March 6, 1998) advising that the review was in progress and inviting submissions from interested parties.

10.1 Section 144 of the Act

A majority of consulted stakeholders did not support option 1 as a viable alternative. Clearly Alternative 2 was the preferred viable option with consulted stakeholders.

Out of 8 stakeholders who responded to the issues paper a total of five addressed the alternatives proposed in respect of section 144. The following table summarises the responses given:

Stakeholder	Summary of Responses
1.	Option 2 supported – Criteria used in making judgements about approval of IEI's should be published so that the discretion of the Governor in Council is not arbitrary
2.	Option 1 supported: No compelling reason for rejecting the move towards self-regulation
3.	Neither option supported - Current restriction on establishment should be retained
4.	Option 1 not supported and Option 2 supported
5.	Option 1 not supported – Not acceptable as quality becomes a lesser or non-existent criterion Option 2 supported – Is sound and achievable

10.2 Section 14 of the Regulation

A total of eight issues papers were sent to stakeholders and seven responses were received. Three stakeholders supported Option 1 repealing section 14 of the Regulation, two stakeholders opposed change and two offered no specific comment.

Stakeholder	Summary of Responses
1.	Support – legislation should be brought into line with current practice
2.	Support – if the change allows for individual tuckshops to decide what will be sold
3.	Support – option supports present practice as well as being in line with school -based management
4.	Oppose – current restrictions should be retained with the State Government's obligation to ensure a maximum degree of protection of the health and safety of students and to minimise the chance of students' being exploited commercially in an inappropriate way
5.	Oppose – current restriction should be retained with additional requirement that Chief Executive consult "with informed bodies and interested persons".

11.0 IDENTIFICATION OF IMPACTS ON STAKEHOLDERS OF A MOVE FROM A RESTRICTIVE TO A LESS RESTRICTIVE STATE

1.1 OPTION 1 – Section 144 of the Act

Non-legislative Alternative

Students

If there are no controls on the establishment of IEI's and no provision for inspection, the quality of facilities and instruction are likely to decline and place students at risk.

Students enrolling at an IEI where the curriculum and teaching standards have not been subjected to independent scrutiny may be at a disadvantage as compared with students studying Australian curricula and their compatriots in their country of origin. This in turn may result in the qualification of a student not being recognised in their country of origin. If this were the result, the loss to the students of the IEI might be,

for example as listed on the next page.

Tuition fees per student per annum	\$21,560
Course runs for three years (based on 150 enrolments)	\$64,680

Hypothetical loss for 150 students for course = \$9,702,000

It is possible that repealing section 144 and thereby the restriction on establishment of an IEI may encourage more to establish which may consequently increase competition in the market and decrease fees for students. However despite increased competition, existing IEI's may not reduce fees because of their standing and reputation.

An increase in the number of IEI's may not reduce fees of other competitors offering only an English curriculum. As IEI's are concerned primarily with instruction in overseas curriculum, there is likely to be little or no significant impact on competition with other schools that do not offer the same or any overseas curriculum. Therefore other schools are likely to continue to charge for their services at the present rate despite an increase in the number of IEI's.

Queensland Government

Although the Government would lose its power under section 144, it still would retain its powers under the *Education (Overseas Student) Act 1996*, which deals with provision of education to overseas students and in respect of approved non-State schools under the *Education (General Provisions) Act 1989*. However, as outlined above, these Acts do not appear to deal with the quality of the actual course provided, and because it is an overseas curriculum offered by IEI's, it is essential to have safeguards in respect of curriculum provided to ensure qualifications gained by a student will be recognised in the country of origin of the curriculum undertaken.

Even if there is an increase in IEI's as a result of repealing section 144, there may not be a subsequent increase in overseas students if there is a decline in the teaching and quality of the course offered through lack of enforcement of standards and safeguards. If substandard providers commenced operation, the whole of Queensland's education export industry might be damaged, causing economic loss to other IEI's and to other schools and institutions in the education industry. If there were a consequent decrease in overseas students coming to Queensland, it would also act significantly to the detriment of Queensland's economy generally and other export and service industries.

If the section were repealed, it would also not allow for the attaching to the approval conditions that address concerns of the community and that allow for Government Priority Outcomes, such as more jobs for Queenslanders, to be achieved by the Government.

Any initial benefit of increased enrolments associated with increased IEI's, however, may be lost if the lack of Government control over the establishment and conduct of IEI's were to result in damage to the reputation of the Queensland education industry among overseas students, as expressed above in the costs that may result from deregulation.

No regulation has been made to date for the provision of payment of allowances to persons enrolled at IEI's pursuant to the power in section 144. Therefore any

potential savings in revenue if this power is repealed are unquantifiable as no revenue is currently paid to the established IEI pursuant to this section.

Existing IEI's (South Queensland Academy)

The existing IEI could be tainted by negative publicity if new IEI's are of poor quality.

Proliferation of IEI's offering the same curriculum could result in decreased enrolment share and reduction in fees

There may also be a disadvantage to the existing IEI if the conditions of its approval are maintained after section 144 is repealed, as any other new IEI's would not be subject to the same limitations. Therefore the existing institution may be competitively disadvantaged. This issue would have to be addressed if option 1 were implemented.

New IEI's establishing without controls to which the existing IEI was subject, may be compared as unfavourable to the existing institution, to the benefit of the existing IEI. However the extent to which the existing IEI may be able to trade on its present reputation may diminish if new institutions prove themselves to be as good or better, and is likely in any event to be of limited value over time.

Proponents of New IEI's

The establishment of too many IEI's providing the same overseas curriculum may depress the market, forcing down fees and keeping profits low.

Establishment of new IEI's would not be dependent on Governor in Council approval and therefore establishment may be perceived as less burdensome and less costly without such approval being necessary. Fewer restrictions and conditions on the conduct of an IEI could also reduce running costs.

Providers of alternative forms of instruction (including other State and non-State schools)

Costs

The establishment of more IEI's could result in decreased enrolment share, particularly the enrolment share of overseas students at other State and non-State schools registered as providers of education to overseas students. In a practical sense, increased numbers of IEI's may have little or no significant effect on the enrolment share of non-overseas students of other institutions, as IEI's are concerned primarily with instruction in overseas curriculum and therefore will predominantly only affect consumers preferring overseas curriculum. The number of consumers preferring to undertake an overseas curriculum is likely to be relatively low.

Other State and non-State schools in Queensland (and even in Australia) may be tainted in the market for overseas students if new IEI's are of poor standard and quality.

11.2 OPTION 2 – Section 144 of the Act

Legislative Alternative

Students

Increase in IEI's may result in more variety in curriculum offered and increased competition resulting in lower instruction fees. (See discussion in Alternative 1 above).

Government

The Government would lose the ability to refuse approval for establishment/conduct except for failure to meet specified criteria (for example the Government would not be able to refuse the establishment of a IEI despite strong public opposition to its establishment).

Proliferation of IEI's may result in increased enrolments, bringing more consumers of other goods and services into the Queensland economy resulting in increased revenue for the State. (See discussion in Alternative 1 above.)

Existing IEI (South Queensland Academy)

Proliferation of IEI's may result in decreased enrolment share (and possible consequent reduction in fees). However in a practical sense the enrolment share of the existing IEI is likely to be significantly affected only by the establishment of IEI's offering the same curriculum.

Proponents of new IEI's

The establishment of too many IEI's providing the same overseas curriculum may depress the market, forcing down fees and keeping profits low.

New investors as proponents of IEI's may not be put off establishing an IEI in Queensland by the possibility of the Governor in Council arbitrarily refusing establishment of an IEI. More open and evident criteria may encourage the establishment of more IEI's.

Providers of Alternative forms of Instruction

More IEI's may result in decreased enrolment share. (See above discussion in Alternative 1.)

11.3 SECTION 14 of the Regulation

Option 1 – section 14 of the Regulation

Non-legislative Alternative

Tuckshops

For the reason that the proposed alternative reflects what is current practice in tuckshops, and the existing restriction has never been exercised, there are unlikely to be any significant changes to the market structure if the alternative is adopted.

However, if in theory tuckshops were to sell a wider range of items, this might encourage increased competition with other providers of those goods, possibly resulting in a lowering of prices, increased custom and increased profits.

A negative factor is the possibility that tuckshop operators, knowing that the Director-General cannot directly restrict the sale of an item without exercising section 54, may choose to stock a wider range of items than at present. The items may be attractive to tuckshop consumers but also be of a kind that might have prompted the Director-General to exercise section 14.

However, given that principals will retain the power to restrict the presence of items in their schools, a tuckshop is unlikely to stock an item that is unwelcome in the school. It is also probable that given P&Cs usually coordinate contract arrangements with outside tuckshop administrators, the P&Cs would also apply restrictions on what such bodies are "contracted" to sell.

Consumers

If, following the adoption of the alternative, tuckshop operators were to expand the range of goods they offer for sale, this would increase the choice of both goods and suppliers for students and staff. Instead of having to anticipate, or wait to satisfy, a need or want, or to substitute something else for the preferred item on a school day, consumers may decide to patronise their tuckshops rather than rival providers, whom they may not be able to visit during school hours.

Queensland Government

With the repeal of section 14, the Director-General would lose the ability to impose a "ban" upon the sale of certain items in tuckshops. The Director-General would, however, retain the power under section 54 to order closure of a tuckshop. In theory, the Director-General could exercise this power to close a tuckshop that was selling or proposing to sell an item that might have been prohibited under section 14. In practice, to do so may be a drastic cure for a relatively minor ill, particularly if the goods in question are stocked by a number of tuckshops. Further, the exercise of the power may be subject to judicial review and the courts may find that this use of it for such purpose is unwarranted.

However, as mentioned above, other means exist to prohibit undesirable goods from being sold from tuckshops i.e. by the actions of the principal and P&C. The Queensland Government would also obviously continue to regulate tuckshops in the same way that outlets selling goods of a similar nature are regulated, following the adoption of the proposed alternative.

Other retail food outlets

Outlets which might have attracted the staff and students a tuckshop could not have serviced owing to the imposition of a prohibition would not, following repeal of section 14, be able to benefit from exercise of the restriction.

Other outlets might still, however, benefit from a tuckshop's decision not to sell certain items, made for reasons other than exercise of section 14, for example restriction by the principal, lack of consumer interest, P&C resolution, or community pressure.

However, as section 14 has never been exercised and tuckshops presently decide upon those considerations what they will and will not sell, the impact of the repeal upon other outlets is unlikely to be significant.

The major impacts of the proposed alternatives to the existing restrictive provision are summarised in **Appendix 1, Major Impacts Table**, and have been assessed by a cost benefit analysis in comparison to current market structure.

12.0 INTERSTATE COMPARISONS

12.1 Section 144 of the Act

There are no provisions similar to section 144 of the *Education (General Provisions) Act 1989* that can be identified in the legislation of any other State or Territory in Australia allowing specifically for the provision of instruction in an overseas curriculum.

Neither can any specific provisions be identified that prohibit instruction in an overseas curriculum except in Victorian legislation which provides that all schools other than State schools can only offer instruction in the English language (except so

far as the use of language other than English is necessary for giving instruction in such other language as a single subject or in relation to any bilingual education approved by the Board).

12.2 Section 14 of the Regulation

No direct reference to school tuckshops or canteens has been found in the education **legislation** for other States and Territories, but there are restrictions under food and health legislation. There are references in various canteen or tuckshop handbooks and manuals to Acts and other provisions in Regulations, By-laws and the like.

Most of the legislation which might be construed as having a bearing on the operation of on-campus food outlets relates to the functions, powers, duties and obligations of school principals and/or parent and community bodies. If these are regarded, as they may be, as *de facto* legislated measures affecting such food outlets, they can be compared with the powers of the Queensland Director-General.

Only the Northern Territory Minister has greater powers, in that he/she has the power under section 71K(1) of the Education Act as in force on 3 February 1998 to "*by instrument in writing, abolish that school council*" if "*in the opinion of the Minister, the school council is not complying with the requirements of this Act in so far as those requirements are applicable to that school council.*"

The same Act contains a provision in section 71J(1) giving the Minister power to "*cause to be prepared and published for the guidance of school councils, guidelines, not inconsistent with this Act, for or in relation to the exercise of powers and the performance of functions conferred or imposed by this Act upon school councils*". This would appear to give the Northern Territory Minister much broader powers in relation to school canteens than the Queensland Director-General has, in that there is no specific exemption of the power of prescription in the Act.

It is believed that these powers have not been used specifically in relation to school canteens.

13.0 ANALYSIS OF ALTERNATIVE LESS RESTRICTIVE ARRANGEMENTS

Ability of Alternatives to comply with Objectives of the Legislation and Government Priority Outcomes

13.1 Section 144 of the Act

Alternative 1 is not a viable alternative as it is not consistent with legislative objectives and general policy objectives of the Government to ensure that quality educational instruction is provided to all students in Queensland. Option 1 does not allow for any, let alone adequate, standards and controls to be placed on IEI's for the delivery of educational services in Queensland.

The criteria for registration of overseas providers and courses under the *Education (Overseas Students) Act 1996* and *Regulation* does not specifically address the standard or quality of course to be offered by a provider in the criteria set out for registration as a provider or in the registration of a course to be provided to overseas students. In particular the Act does not address the provision of an overseas curriculum, which is really a unique course in itself. No established Australian body exists, such as ELICOS (English Language Intensive Courses for Overseas Students), which is capable of assessing the suitability of overseas curricula, nor of

the institution providing it.

Therefore if section 144 of the Act is removed, there exist few if any remaining safeguards as to quality of course provided. Without any such safeguards, recognition of qualifications gained at the IEI in the country of origin of the course is at significant risk.

Option 1 allows for the entry into the market of substandard providers that may damage the reputation of the whole Queensland education market among overseas students. Allowing for control over overseas curriculum goes to further protect Queensland's and Australia's reputation overseas, supporting underlying policy objectives behind the regulation of the market of providing education to overseas students by the State and Commonwealth Governments.

Option 1 would also not allow for conditions to be attached to the approval of IEI's that provide for Government Priority Outcomes to be achieved by the Government.

13.2 Section 14 of the Regulation

Option 1 in respect of section 14 of the Regulation relating to tuckshops is not a viable alternative in that it cannot achieve legislative objectives relating to the protection of the health and safety of students.

No specific, relevant and direct connection has been discerned between either the retention or the repeal of section 14 on the one hand, and the Government's Priority Outcomes for Queensland, although tuckshops in a general consideration could be seen to have the opportunity to contribute to a better quality of life and valuing the environment. This opportunity was stressed in both *Guidelines for Queensland School Tuckshops* (Department of Education, Queensland 1993) and *School Tuckshop Handbook* (Queensland Health 1993).

14.0 NET IMPACT STATEMENT

14.1 Section 144 of the Act

As outlined above the legislative objectives of section 144 could not be achieved by Option 1. The costs associated with change to Option 1 from the present restrictive state clearly outweigh any benefits that result to the community from the change.

Option 2 would seem to support legislative objectives and Government Priority Outcomes. Option 2 allows for adequate standards and controls to be placed upon a school (an IEI) involved in the delivery of education in Queensland. It is less restrictive than the existing provisions in that the criteria for approval of International Educational Institutions would be clearly and openly set out for new market participants, and it does not allow for arbitrary refusal of new IEI's.

The objectives of the legislation can only be achieved by imposing some legislative control on the approval of IEI's, however Option 2 provides for a less restrictive state than presently exists. Option 2 also goes further to support underlying Commonwealth and State Government objectives relating to protection of overseas students seeking education in Australia.

Market demand for overseas curriculum appears to be low, given that only one IEI has been established since 1989 and the low enrolment share of this institution. Therefore any changes to restrictions that currently exist in the market that result

from Option 2 are not likely to have any significant on the market to the detriment of the community or any interested stakeholders.

Many of the costs associated with the changed state of Option 2 are speculative, may not eventuate and are unquantifiable costs. The benefits to the stakeholders and the community from Option 2 clearly outweigh any costs to the community that result from the changed state.

Therefore it is recommended that Option 2 be implemented.

14.2 Section 14 of the Regulation

The repeal of Section 14 (formerly 18A) of the *Education (General Provisions) Regulation 1999* would have little effect on the operation of tuckshops in State schools in Queensland because:

- the provisions of Section 14 have never been invoked, and are considered unlikely to be invoked;
- principals and Parents and Citizens Associations would continue to exercise their own constraints on what would be available in their tuckshops; and
- the Chief Executive Officer of Education Queensland would retain the power to close a tuckshop as an extreme alternative to prohibiting the sale of an item or class of items.

It is recommended that the existing regulatory environment be retained as the benefits of the restrictions to the community as a whole, as detailed above, outweigh the costs, i.e. the restrictive provisions in the regulation impart minimal impacts on competition in the market and are not considered onerous. Furthermore, the objectives of the legislation can only be achieved by restricting competition.

APPENDIX 1 - MAJOR IMPACT TABLES

Option 1: Repeal section 144 of the Education (General Provisions) Act 1989

Current and Potential Students (number of future students unascertainable – existing student at IEI = 29)

Impact and Comment	Likelihood and Size	Direction
IEI's establishing and conducting business without present restrictions may result in lower quality facilities and instruction.	Likelihood: Medium Size: Large	Negative
No or minimal safeguards may mean risk for students in qualifications not being recognised in the student's country of origin resulting in loss of fees paid for their course (eg. \$21,560 x three years course duration = total loss of tuition fees of enrolled students at existing IEI - \$64,680).	Likelihood: Low Size: Large	Negative
Proliferation of IEI's may result in increased variety in curricula available, i.e. increased choice for students.	Likelihood: Low Size: Small	Positive
Competition between IEI's offering same curricula may result in lower instruction fees at those IEI's.	Likelihood: Very Low Size: Small	Positive
Fees for instruction in other schools (apart from IEI's) may fall with increased competition in the market.	Likelihood: Very Low Size: Small	Positive

Existing Institution (1 provider only)

Impact and Comment	Likelihood and Size	Direction
Reputation may be tainted if new IEI's are of poor quality.	Likelihood: Medium Size: Large	Negative
Proliferation of IEI's offering the same curriculum may result in decreased enrolment share and thus decreased fees and profits.	Likelihood: Very Low Size: Small	Negative

Proponents of and future IEI's (number of stakeholders unknown)

Impact and Comment	Likelihood and Size	Direction
Proliferation of IEI's offering the same curriculum may result in decreased enrolment share and thus reduce fees and profits.	Likelihood: Very Low Size: Small	Negative

More flexibility in operations due to limited or no Government intervention may result in lower operational costs and greater profits.	Likelihood: Low Size: Small	Positive
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Queensland Government

Impact and Comment	Likelihood and Size	Direction
The Government would lose control over establishment and conduct of IEI's, which may affect quality of institutions.	Likelihood: Medium Size: Large	Negative
If IEI's were not of good quality and acted to the detriment of the Queensland education export industry, there would be subsequent loss of revenue.	Likelihood: Medium Size: Large	Negative
Proliferation of IEI's may result in increased enrolments, meaning more consumers of other goods and services in Queensland and increasing revenue.	Likelihood: Medium Size: Medium	Positive
Increased revenue could result from the Government having no power to provide for allowances for students of IEI's (unquantifiable as no allowances currently paid).	Likelihood: Low Size: Very Small	Positive

Providers of other forms of instruction (i.e. other schools, State and non-State)

Impact and Comment	Likelihood and Size	Direction
May be tainted by negative publicity if new IEI's are of poor quality thereby affecting enrolments of overseas fee paying students and therefore profits.	Likelihood: Medium Size: Medium	Negative
Proliferation of IEI's may result in decreased enrolment share.	Likelihood: Very Low Size: Small	Negative

**Option 2 : Amend section 144 of the Education (General Provisions) Act
1989 to allow for criteria for approval to be evident**

Students

Impact and Comment	Likelihood and Size	Direction
Proliferation of IEI's may result in more varied curricula being available.	Likelihood: Low Size: Small	Positive
Fees of IEI and other institutions may fall with increased competition in the market.	Likelihood: Low Size: Small	Positive

Proponents of new IEI's

Impact and Comment	Likelihood and Size	Direction
Less chance of irrecoverable costs involved in establishment of an IEI that is not approved if there is no possibility of the Governor in Council arbitrarily refusing establishment. Less costs may need to be expended on application for establishment having criteria to measure application against.	Likelihood: Medium Size: Medium	Positive

Queensland Government

Impact and Comment	Likelihood and Size	Direction
Proliferation of IEI's may result in increased enrolments (particularly overseas students) meaning subsequent increased revenue to Queensland.	Likelihood: Medium Size: Medium	Positive

Existing IEI

Impact and Comment	Likelihood and Size	Direction
Proliferation of IEI's offering same curriculum may result in decreased enrolment share.	Likelihood: Low Size: Small	Negative

Providers of alternative instruction (i.e. other State and non-State schools)

Impact and Comment	Likelihood and Size	Direction
Proliferation of IEI's may result in decreased enrolment share.	Likelihood: Very Low Size: Small	Negative

Section 14 Regulation : Cost/Benefit Analysis of Option compared with existing arrangements

Students

Impact and Comment	Likelihood and Size	Direction
The removal of the power of the CEO to prohibit items from sale in tuckshops could conceivably result in a wider range of items for sale, but given P&C interest in student welfare it is unlikely.	Likelihood: Low Size: Small	Positive
Less nutritious items could be offered for sale, but again it is unlikely that a P&C would allow that.	Likelihood: Low Size: Small	Negative

Teachers

Impact and Comment	Likelihood and Size	Direction
Teachers could save travel time and costs if a wider range of goods were available at tuckshops, especially as volunteer counter labour may give the tuckshops a pricing advantage.	Likelihood: Low Size: Small	Positive

Parents/Carers

Impact and Comment	Likelihood and Size	Direction
If a wider range of items were available in tuckshops, greater sales could result, creating a need for more volunteer labour.	Likelihood: Low Size: Small	Negative
If a wider range of items became available, students might need or want to take more money to school.	Likelihood: Low Size: Small	Negative

Tuckshops

Impact and Comment	Likelihood and Size	Direction
If repeal of the section were to result in a wider range of items for sale, it could produce higher turnover and profit.	Likelihood: Low Size: Small	Positive

Other Outlets

Impact and Comment	Likelihood and Size	Direction
If repeal of the section were to result in greater sales in tuckshops, that could cause lower turnover and profit in other outlets.	Likelihood: Low Size: Small	Negative

Queensland Government

Impact and Comment	Likelihood and Size	Direction
If the section were repealed, other departments would have increased responsibilities and costs in advising and checking.	Likelihood: High Size: Moderate	Negative
Education Queensland would lose a responsibility and thus the costs associated with administration of this responsibility.	Likelihood: High Size: Very small	Positive

Appendix 2 : 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 Straight 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
- Deliver improved and integrated Government services

Appendix 3: Relevant sections of *Education (General Provisions) Act 1989* and *Education (General Provisions) Regulation 1989*

Education (General Provisions) Act 1989

2(2) A school, not being a State school, that provides, in the opinion of the Minister, facilities for and instruction in preschool, primary, secondary or special education in accordance with guidelines approved by the Governor in Council, is a non-State school, for that type of education, for the purposes of this Act.

Decision about non-State school

2A.(1) This section applies if the Minister is to make a decision under section 2(2) for a school.

(2) Before the Minister may make the decision, the Minister must be satisfied the school has been granted, and complied with, a planning approval under the planning guidelines for the type of education to be provided by the school.

(3) However, subsection (2) does not apply if—

(a) the school is a non-State school for primary education and the Minister is to make a decision about whether the school provides facilities for, and instruction in, preschool education; or

(b) the Minister is to make a decision about whether the school provides facilities for, and instruction in, special education.

(4) A decision by the Minister under section 2(2) that results in a school being a non-State school for a type of education is subject to any continuing conditions about facilities or instruction imposed, under the planning guidelines, on the planning approval granted in relation to the school for the type of education.

Restriction on establishment of places for teaching overseas curriculum

144.(1) In this section—

“international educational institution” means an institution, facility, school, college or other place in Queensland that offers or proposes to offer an overseas curriculum or something that purports to be an overseas curriculum.

“overseas curriculum” means a curriculum that is, or is a variation of, the whole or part of the primary or secondary curriculum of a foreign country.

(2) A person must not establish or conduct an international educational institution without the approval of the Governor in Council.

Maximum penalty—10 penalty units.

(3) The Governor in Council may impose conditions on the approval that the Governor in Council considers appropriate.

(4) A person establishing or conducting an international educational institution must comply with the conditions of the approval.

Maximum penalty—10 penalty units.

(5) The Minister may cause an international educational institution to be inspected by the executive director of the region in which the institution is situated at the intervals, and in the way, that the Minister determines.

(6) The Minister may recover from the person who conducts an

international educational institution the reasonable costs incurred in relation to an inspection.

(7) Subject to an appropriation by the Parliament for the purpose, a regulation may be made with respect to the payment of allowances to persons enrolled in an international educational institution.

(8) Subsection (7) does not apply to—

(a) a State educational institution; or

(a) a non-State school; or

(a) a place where instruction is received under section 115(2)(a).

Education (General Provisions) Regulation 1989

Tuckshops—prohibited items

14.(1) The chief executive may, by notice in the Education Office Gazette, prohibit an item, or class of item, from being sold in a tuckshop.

(2) In deciding whether to prohibit an item or class of item, the chief executive must have regard to the safety and well being of students.

(3) A school's principal or association must not sell a prohibited item, or an item of a prohibited class, in the school's tuckshop.

(4) In this section—

“prohibit” means prohibit under subsection (1).

“sell” includes offer for sale.

“tuckshop” means a tuckshop in a school operated by the school's principal or association.