

The University of Sydney, feedback on the Commonwealth Department of Education’s Australian Tertiary Education Commission (ATEC) Consultation Paper, July 2024

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Executive summary and recommendations

The University of Sydney welcomes the opportunity to provide feedback to members of the Australian Tertiary Education Commission (ATEC) Implementation Advisory Committee (IAC) on the proposals outlined in the Department of Education's [Implementation Consultation Paper for the ATEC](#) released in June 2024.

Our detailed responses to the Consultation Paper's seven questions seek to support and complement the submissions that Universities Australia (UA) and the Group of Eight universities (Go8) have made on behalf of their respective members.

In summary, we agree with the feedback provided that the Department's proposed model for the ATEC cannot deliver the Accord's vision because of a lack of independence, insufficient expertise and capability, functions that are too broad and complex, and a work program that is ill-defined and requires phasing.

The University supported the reestablishment of a Tertiary Education Commission by the Commonwealth throughout the Accord process, albeit with less powers and fewer functions than the Accord Panel recommended, and the Department has proposed, in its Consultation Paper.

With the Government committed to establishing an ATEC, we are keen to work with all stakeholders to help design and deliver a model that is capable of surviving beyond the political cycle, so that over the next decade or more the ATEC can become the trusted independent steward of Australia's tertiary education sector that the Accord Panel concluded was necessary to realise its ambitious vision for the future.

We want to see a model for the ATEC emerge from these consultations that is worth the effort and investment of time and resources: a body that is empowered and enabled to take a long-term view; which has the broad support and trust of all sides of the Australian Parliament, the State and Territories, public and private tertiary education providers, staff, students and employers; and which possesses the deep in-house policy development and research expertise the Accord found is needed.

Through our analysis and six recommendations we seek to offer suggestions to help the IAC advise the Minister and Department on the changes needed to: strengthen the ATEC's expertise; clarify its purpose, functions and priorities; ensure its independence; create a place for an ongoing Accord-type discussion; achieve greater integration between the vocational and higher education sectors; and ensure that the principle of university autonomy continues to be respected as recommended by the Accord.

We trust our feedback is helpful and look forward to continuing to assist the IAC and Department as they work with stakeholders to strengthen the design of the ATEC.

Recommendations

Recommendation 1 – ATEC's expertise (Question 1)

That the Implementation Advisory Committee (IAC) recommend to the Minister for Education that he:

- Reject the Department's suggestion that individuals with current or recent leadership roles in the tertiary education sector should not be appointed as ATEC commissioners or hold senior roles with the Commission. The Department's proposal would exclude potential appointments with contemporary expertise that will be critical for delivery of a complex mission.
- Address risks of bias and conflict of interest by including suitable disclosure requirements in the enabling legislation, through ATEC's recruitment processes and through its employment terms and conditions.
- Explore ways to ensure ATEC can access expert international viewpoints, facilitate secondments and develop future generations of independent experts in tertiary policy, practice and research. In the long-term, the most suitable of these experts can be hired by ATEC as permanent staff.

Recommendation 2 – ATEC and a National Tertiary Education Objective (Question 2)

That the IAC should:

- Provide the Minister for Education with its recommended revised text for the Accord's proposed **National Tertiary Education Objective** to be included as the Objects clause of the relevant legislation (the *Higher Education Support Act* (HESA) or any replacement).
- Recommend that the Minister establish the ATEC through standalone legislation, not through sections in a new Act that would replace the entirety of the HESA as proposed by the Department in its Consultation Paper. The ATEC should have its own Act like TEQSA, the ARC, the Productivity Commission, and most other independent commissions established by the Commonwealth. The HESA's coverage is broad and the ATEC should be involved in advising the Government on the changes needed to the HESA to realise the Accord's goals.
- If the Government is committed to repealing and replacing the HESA as the Department proposes:
 - Recommend that the new Act be named the **Tertiary Education Funding Act**, not the **Higher Education Funding Act** as the Department has suggested. The HESA already includes provisions covering the VET FEE-HELP while there are increasing numbers of dual sector providers. Making such a name change would signal the Government's commitment to achieving greater integration between the higher education and vocational education and training sectors.
 - Advise the Minister that a standalone Objects clause for the ATEC is not needed, if a clear **National Tertiary Education Objective** is included in the Act. The Act need only specify ATEC's powers and functions in line with the Commonwealth approach with most existing statutory commissions.

Recommendation 3 – ATEC's independence (Question 3)

That the IAC provide the Minister for Education with advice on the following matters to ensure the ATEC is established as a genuinely independent steward of the tertiary education sector, capable of taking a long-term view of system coordination and planning, as recommended by the Accord:

- **Appointment and terms of Commissioners.** All commissioners should be appointed on a full-time equivalent basis to ensure the ATEC has the high-level capacity it will need to progress its functions effectively, as well as the flexibility accommodate outstanding potential candidates with substantial carer's responsibilities. Appointment should occur through an open and competitive application process, with terms of up to five years (longer than one election cycle) with options for renewal. (See [Sections 18 and 18A Jobs and Skills Australia Act](#), [Section 26 Productivity Commission Act](#).)
- **Direct advice to ministers.** The ATEC Chief Commissioner should have the legal authority to advise the Minister for Education and the Minister for Skills and Training directly, as well as the secretaries of the Department of Education and the Department of Employment and Workplace Relations. (See [Section 5 Jobs and Skills Australia Act](#).)
- **Accountable authority.** The ATEC's independence will be enhanced if the ATEC Chief Commissioner is the Accountable Authority for the purposes of Finance Law, in line with the arrangements for the Productivity Commission. (See [Section 5 Productivity Commission Act](#).)
- **Control over staff and their recruitment.** While we believe the ATEC should not form part of the Department of Education, if it must be based within it for budget efficiency reasons and be supported by staff of the Department, these staff must be subject to the directions of the ATEC Chief Commissioner. The ATEC Chief Commissioner should also have authority for staff recruitment and secondments. (See [Section 14 Jobs and Skills Australia Act](#).)

- **Maximum budget certainty.** Budget certainty is necessary to provide the ATEC Chief Commissioner with independence, reasonable certainty for work planning, and to assist with the attraction and retention of quality staff.
- **Ministerial Councils' sign-off of the Federal Minister for Education's statement of expectations for ATEC.** The Ministerial councils for Education and Skills and Workforce should review and agree on the Minister's regular statements of expectations before they are conveyed to the Commission.
- **Preparation of work plans.** The ATEC Chief Commissioner should have the authority to prepare a written work plan, through a public and transparent process of consultation set out in the legislation. The process for developing the work plan should include an opportunity for any stakeholders to provide advice on priorities. A quadrennial work plan with rolling annual reviews and consultations should be considered because of the complexity of many of the matters the ATEC will be seeking to address, beyond the immediate priorities of the government of the day. This is consistent with the Accord's vision that a key function for the ATEC would be to take a long-term perspective of system reform. (See [Section 10A of the Jobs and Skills Australia Act.](#))
- **In-house research and policy expertise.** To ensure the ATEC has the strong independent capacity for the deep thinking, high-quality evidence-based research and policy development that the Accord identified as lacking, the Government should respond positively to Recommendation 32 of the Accord Final Report concerning the establishment of a **Centre of Excellence in Higher Education and Research** within the ATEC. However, the name and remit of this centre should not be limited to Higher Education, given that the ATEC needs to take a whole-of-tertiary-sector perspective. To this end, the feasibility of bringing the [National Centre for Vocational and Education Research \(NCVER\)](#) into the ATEC should be considered as well as renaming it the **National Centre for Tertiary Education Research and Policy**. With additional investment from governments in response to the Accord's Recommendation 32, the scope of this centre's work would grow to cover vocational and higher education teaching and learning, as well as issues relevant to research and research training undertaken in Australian tertiary institutions.
- **Ability to engage assistance from other government agencies directly.** The ATEC Chief Commissioner, like the JSA Commissioner, should have the ability to make arrangements with other Commonwealth agencies, State and Territory government authorities (including public tertiary education providers) for the provision of staff and services to assist the performance of any of the Commission's functions, and to directly commission contractors and consultants to assist with research and other services. (See [Sections 15-16 Jobs and Skills Australia Act.](#))
- **Ability to conduct or commission independent research and analysis.** The ATEC should have the authority and resources to undertake or commission, on its own initiative, research about matters relevant to tertiary education, as well as respond to directions from the Minister for Education made through executive orders. (See [Section 6, Productivity Commission Act.](#))

Recommendation 4 – ATEC and ongoing Accord discussion (Question 3)

That the IAC recommend to the Minister for Education that the ATEC's structure includes a broad-based Advisory Board or Council, as recommended by the Accord Final Report. The Board's membership and functions could be modelled on the JSA Ministerial Advisory Board. (See [Sections 16A-G Jobs and Skills Australia Act.](#)) Critically, tertiary education students, academic and professional staff should have membership of the Advisory Board, along with State and Territory Governments. The advisory board should include expertise/experience in all aspects of Tertiary education including research.

Recommendation 5 – ATEC and the autonomy of universities (Question 3)

That the IAC recommend to the Minister for Education that, if a new Act is to replace the *Higher Education Support Act* and establish the ATEC, the new legislative framework should continue to respect the principle of university autonomy as vital to sustaining a high-performing sector under our

uniquely federated system of democracy. As the Accord Final report stated in relation to its vision for the ATEC, *“Importantly, each of these [proposals] is intended to be implemented in a way that reduces administrative burden on institutions whilst increasing tertiary education system intelligence, harnessing system capability and reinforcing institutional autonomy. This will enable the system to grow and to deliver on areas of national need, now and in the future.”* (p.226)

Recommendation 6 – ATEC’s functions and early priorities (Question 3)

That the IAC recommend to the Minister for Education the functions that should be the ATEC’s priorities during the first three to five years of its operation. In considering ATEC’s early priorities, the IAC should recommend that responsibility for implementing enforceable mission-based compacts remains with the Department of Education at least until the ATEC is well-established and has its policy advisory and independent pricing authority functions fully operational and proven to be effective. This would minimise disruption to the operations of the sector during ATEC’s establishment phase, support ATEC’s independence and allow its commissioners to focus their limited time and resources on functions agreed with the Minister.

Responses to the questions posed by the Consultation Paper

Question 1. How can the ATEC be set up so that it has sufficient expertise in the higher education sector while maintaining its focus on decision making that is in the national interest, rather than sectoral interest?

To perform its proposed diverse and complex roles effectively, the ATEC will need deep and current knowledge about diverse aspects of tertiary education and research policy, regulation, funding, finances, data and operations. This includes an understanding of health and medical education and research, given the significance of Australia’s universities’ activities in these fields. The ATEC can gain this expertise through its commissioners, staff, advisory councils, and by using its resources to build research capacity, hire consultants, second staff from the sector, commission projects and train its future workforce.

The tertiary education sector is filled with knowledgeable and passionate professionals committed to improving the national system. The ATEC will need to tap into this expertise to be effective. Leaders and senior staff often move between institutions and organisations, adapting to the requirements of each new role. There are already procedures in place for similar entities to manage any real or perceived conflicts of interest. Any concerns about bias or conflict of interest should be handled individually during recruitment, by including strong public disclosure requirements in the new Act, and through ATEC’s employment and performance management arrangements for commissioners and senior staff.

Initially, it will be crucial for ATEC to have contemporary expertise about Australia’s tertiary education system. Longer-term, the Commission will benefit from including people with relevant experience from other high-performing countries’ post-school education and industry sectors. Also, in the long run, ATEC should collaborate with governments and the sector to create an excellent academic and practical training program to nurture future generations of independent tertiary education policy experts. During ATEC’s establishment phase, consideration should also be given to developing a structured program of seconding expert staff between it, the sector and other relevant government agencies and organisations.

Recommendation 1 – ATEC’s expertise

That the Implementation Advisory Committee (IAC) recommend to the Minister for Education that he:

- Reject the Department’s suggestion that individuals with current or recent leadership roles in the tertiary education sector should not be appointed as ATEC commissioners or hold senior roles with the Commission. The Department’s proposal would exclude potential appointments with contemporary expertise that will be critical for delivery of a complex mission.

- Address risks of bias and conflict of interest by including suitable disclosure requirements in the enabling legislation, through ATEC’s recruitment processes and through its employment terms and conditions.
- Explore ways to ensure ATEC can access expert international viewpoints, facilitate secondments and develop future generations of independent experts in tertiary policy, practice and research. In the long-term, the most suitable of these experts can be hired by ATEC as permanent staff.

Question 2. Is ATEC’s proposed legislated objective comprehensive?

The Department proposes the following objective for the ATEC to be included in a new *Higher Education Funding Act (HEFA)*:

The Department’s proposed ATEC legislative objective

The objective of the ATEC is to underpin and drive:

- a) equitable opportunity through supporting all Australians to access and participate in high-quality, engaging and transformative tertiary education programs
- b) a productive economy and society through the delivery of highly skilled and educated graduates, and through facilitating the production and application of new knowledge
- c) a strong civic democracy through institutions that foster robust debate and critical inquiry and contribute to Australia’s cultural and intellectual life.

Department of Education, ATEC Consultation Paper, June 2024, p.2.

We further understand that the Department proposes that the above objective will replace the *Higher Education Support Act 2003*’s Objects clause, which we also set out below for ease of reference, highlighting in yellow the section most relevant to our feedback, which follows the extract.

Higher Education Support Act 2003

Division 2—Objects

2-1 Objects of this Act

The objects of this Act are:

- (a) to support a higher education system that:
 - (i) is characterised by quality, **diversity** and equity of access; and
 - (ii) contributes to the development of cultural and intellectual life in Australia; and
 - (iii) is appropriate to meet Australia’s social and economic needs for a highly educated and skilled population; and
 - (iv) **promotes and protects freedom of speech and academic freedom;** and
- (b) **to support the distinctive purposes of universities, which are:**
 - (i) **the education of persons, enabling them to take a leadership role in the intellectual, cultural, economic and social development of their communities; and**
 - (ii) **the creation and advancement of knowledge; and**
 - (iii) **the application of knowledge and discoveries to the betterment of communities in Australia and internationally; and**
 - (iv) the engagement with industry and the local community to enable graduates to thrive in the workforce;

recognising that universities are established under laws of the Commonwealth, the States and the Territories that empower them to achieve their objectives as autonomous institutions through governing bodies that are responsible for both the university’s overall performance and its ongoing independence; and

- (c) **to strengthen Australia’s knowledge base, and enhance the contribution of Australia’s research capabilities to national economic development, international competitiveness and the attainment of social goals;** and
- (d) to support students undertaking higher education and certain vocational education and training.

Our first piece of feedback is to question whether asking stakeholders if the proposed legislative goal for the ATEC is ‘comprehensive’ is the right approach. Our analysis of more than twenty existing commissions established by the Commonwealth suggests it is uncommon for their establishing Acts to include an Objects clause. Instead, they typically specify the body’s functions or duties.

A better starting question might be whether it is necessary to include a separate Objects clause for the Commission in the proposed new Act, which will need to cover many issues not directly relevant to ATEC’s functions. Additionally, we query whether establishing the ATEC requires the total repeal

and replacement of the current *Higher Education Support Act*. The scale of legislative change that may be required to deliver the Accord's objectives is significant and the Accord Panel anticipated that the detail of such reforms would be informed by evidence-based policy advice from the ATEC. Moreover, we are concerned about the potential for major changes to the HESA's provisions to cause operational uncertainty for providers, with risk of negative consequences for students and prospective students, especially during the transition to any new legislative requirements.

In the Consultation Paper, the Department seems to have interpreted the Accord's recommended **National Tertiary Education Objective** as being about the ATEC. However, the Accord's first recommendation arises from the Accord Panel's finding that a new overarching objective needs to be legislated for the '*tertiary education system – both higher education and vocational education and training*' (**Accord Recommendation 1**), with the ATEC viewed as a necessary reform to steward the system towards the achievement of the new vision:

"That to deliver on the National Tertiary Education Objective and establish a public sector steward for the tertiary education system, the Australian Government establish an Australian Tertiary Education Commission as a statutory, national body reporting to the Minister for Education and the Minister for Skills and Training." (Accord Recommendation 30)

If there is to be an entirely new HEFA, with a new overarching Objects clause, consideration of the Objects and Functions clauses for ATEC should logically occur once the text of the proposed new Act's Objects clause is settled.

More care, work, and consultation time is needed to ensure the text of the proposed new HEFA's overarching Objects clause is appropriate. The text of the Accord's recommended **National Tertiary Education Objective** is a good starting point. However, the language is very broad and would benefit from close review and suggested refinements by the IAC. For example, it currently lacks or insufficiently emphasises significant issues including:

- Recognition that all tertiary education providers' onshore campuses and teaching locations are on the traditional lands of First Nations peoples.
- Recognition of the importance of diversity in students, staff, provider types, and delivery models.
- Recognition of the intrinsic value of tertiary education and research informed by free inquiry for individuals, local communities and society.
- Explicit recognition of freedom of speech, academic freedom, institutional autonomy and independence as vital in relation to Australia's public universities, as exists currently in the *Higher Education Support Act* highlighted above.

Despite concerns about the need for and sequencing of drafting different parts of the proposed new HEFA Bill, if a standalone Objects clause is also to be legislated for the ATEC, the key drafting goals should be to ensure its text provides a clear, unambiguous, and succinct statement of why the ATEC is being established. The role of objects clauses in any legislation is to help the reader understand and interpret the legislation by making the aims of the regime clear, before they get into the detailed substantive provisions. A clearly drafted Objects clause is critical to inform the drafting and alignment of the substantive provisions that will govern the delivery of ATEC's operations, including those that set its powers and functions.

Recommendation 2 – ATEC and a National Tertiary Education Objective

That the IAC should:

- Provide the Minister for Education with its recommended revised text for the Accord's proposed **National Tertiary Education Objective** to be included as the Objects clause of the relevant legislation (the *Higher Education Support Act* (HESA) or any replacement).
- Recommend that the Minister establish the ATEC through standalone legislation, not through sections in a new Act that would replace the entirety of the HESA as proposed by the Department in its Consultation Paper. The ATEC should have its own Act like TEQSA, the

ARC, the Productivity Commission and most other independent commissions established by the Commonwealth. The HESA's coverage is broad and the ATEC should be involved in advising the Government on the changes needed to the HESA to realise the Accord's goals.

- If the Government is committed to repealing and replacing the HESA as the Department proposes:
 - Recommend that the new Act be named the ***Tertiary Education Funding Act***, not the ***Higher Education Funding Act*** as the Department has suggested. The HESA already includes provisions covering the VET FEE-HELP while there are increasing numbers of dual sector providers. Making such a name change would signal the Government's commitment to achieving greater integration between the higher education and vocational education and training sectors.
 - Advise the Minister that a standalone Objects clause for the ATEC is not needed, if a clear ***National Tertiary Education Objective*** is included in the Act. The Act need only specify ATEC's powers and functions in line with the Commonwealth approach with most existing statutory commissions.

Question 3. Does the proposed structure of the commission, including consultation with other relevant stakeholders, allow for an effective decision-making process?

The structure proposed for the ATEC departs significantly in key respects to those recommended by the Accord Panel in its final report. Some of these departures make sense and are supported; others do not and we suggest steps that could be taken to address them. Overall, a significantly revised approach is needed to ensure the ATEC's independence, access to expertise and resources so that it can effectively deliver and support evidence-based decision-making.

First Nations recognition and proposals for TEQSA and the ARC

The Department's proposal for a designated First Nations Commissioner and a First Nations Council are strongly supported, as is the proposal for two deputy commissioners appointed for their expertise. The University also supports the Department's proposal that the Australian Research Council (ARC) and Tertiary Education Quality and Standards Agency (TEQSA) will not become part of the ATEC - as recommended by the Accord. This will preserve the independence of the higher education sector's regulator and the key Commonwealth agency responsible for funding non-health and medical research conducted in universities. The ATEC commissioners will be able to influence the work of both agencies through regular consultation and the advice they provide to the Minister for Education.

At an appropriate time after establishment, the ATEC should assume the responsibilities of the [Higher Education Standards Panel](#) for advising the Minister for Education on the Threshold Standards against which TEQSA regulates the sector. For the ARC, over-time, the ATEC may assume responsibility for quality and impact assessment of university research, for independently evaluating outcomes from ARC-funded research and for providing evidence-based policy advice to the ARC and Department of Education at their request or under a direction from the Minister.

ATEC's independence

The Accord Panel stressed in its final report that the ATEC *'should be an independent statutory authority answering to the Education and Skills Ministers, to enable it to provide robust advice and support evidence-based decision making and planning.'* (**Accord Final Report, p.234**) However, ATEC's capacity for independence and to consistently provide objective advice is questionable under the Department's proposed structure, where:

- It is unclear whether the ATEC Chief Commissioner will advise and report directly to the Minister for Education and the Minister for Skills and Training on relevant matters, or to them via the Secretary of the Department of Education.

- The ATEC would sit within the Department of Education and be supported by staff of the Department approved to work on ATEC functions, however, no details are provided about the degree of control the ATEC will have over its staffing.
- The Secretary of the Department - not the ATEC Chief Commissioner - would be the *Accountable Authority* for ATEC for the purposes of Finance Law.¹
- There will be an ATEC Chief Executive Officer responsible for the day-to-day management of the Commission, but it is unclear whether the CEO will report to the Chief Commissioner, to another official with the Department of Education, or to both the Chief Commissioner and another official of the Department.
- The ATEC will be publicly accountable for delivering higher education and specified tertiary education outcomes, including delivering on Government objectives.
- The Minister could have statutory powers to direct ATEC on particular matters and would determine an annual statement of expectations.
- The ATEC would report on higher education outcomes [not tertiary] through an annual *State of the Sector* report. However, the extent to which officials of the Department or Education will contribute to this report is not clear, nor is it clear which officials or bodies will receive the reports (i.e Parliament, Minister for Education, Minister for Skills and Training, the Ministerial Education and Skills and Workforce Councils).
- As the Consultation Paper notes, the Accord Final Report found that the absence of a sector steward has created a system characterised by *'a lack of deep thinking and clarity of direction for the sector', 'fragmented changes to policy and funding, driven by immediate priorities rather than long-term strategy'* and *'inadequate coordination and planning of effort and resources for growth areas'*. (**Consultation Paper, p.1**) To address these problems, the Accord recommended that *'to build the evidence and expertise base necessary to support the Australian Tertiary Education Commissions' core functions, the Australian Government establish a Centre of Excellence in Higher Education and Research'*. (**Recommendation 32**) However, the Consultation Paper does not include any proposals to respond to this recommendation.

ATEC's role in research policy and advice

The Consultation Paper provides little clarity or detail about the role that the ATEC will play in relation to the development of research policy and funding advice to the Government. Taking Accord recommendations 1 (**National Tertiary Education Objective**) and 30 (**Establish the ATEC to deliver the objective**) together, the Accord Panel clearly saw the ATEC as having a role to play in the design and operation of Australia's research and innovation ecosystem. This is because a large proportion of Australian research is conducted within tertiary institutions and is deeply interconnected with educational activities, personnel and students. Moreover, under the heading **'Producing new knowledge and using research capability'** Accord recommendations 24 to 29 are especially relevant to the functions the Accord Panel thought the ATEC could usefully provide. For example:

- **Rec 25** talks of governments (plural) working with industry groups, communities and universities – this will need coordination, and a role for ATEC.
- **Rec 26 (f)** suggests that the ATEC develop a National Research Workforce Development Strategy and undertake national research workforce planning.
- **Rec 27** refers to the Australian Government elevating First Nations research, which will require coordination across the sector.
- **Rec 28** is about funding for research, which in the tertiary education context needs to be considered alongside student-related and other aspects of university funding - a critical part of ATEC's role and responsibility.

¹ This is different to the structure of the Productivity Commission and various other existing independent commissions, but is similar to the structures under which Jobs and Skills Australia and the recently established Ant-Slavery Commissioner operate.

- **Rec 29** requires ATEC to work with ARC, TEQSA (and presumably other agencies such as NHMRC, Industry groups etc) and universities to “*develop a fit for purpose research quality and impact evaluation system*”. **(pp.28-31)**

Collaboration with stakeholders

Under the Accord Panel’s vision for the ATEC, it would ‘*be established under legislation to work collaboratively with tertiary education institutions, supporting the tertiary education system to meet the needs of students, community, research users.*’ **(Accord Final Report, p.234)**

The Accord envisaged the ATEC as the ‘*convenor of the ongoing process of consultation*’, ‘*charged with responsibility to build and maintain a coalition of stakeholders to drive the Review’s reforms*’. **(p.235)**

It saw the ATEC as providing a mechanism and place for ongoing ‘*collaborative and purposeful work between all governments, tertiary education providers, industry, employers and unions*’. **(Recommendation 1, p.16)**

To these ends, the Accord recommended that the Commission should ‘*also include an Advisory Board with representatives from tertiary education providers, governments, students, staff, employers (including business and industry representatives), unions, alumni, and civil society organisations, to facilitate ongoing consultation and inform the Commission’s advice to Ministers.*’ **(Accord Final Report, p.234 and Recommendation 30, p.32).**

The Department’s proposed structure for the ATEC is silent on this Accord recommendation as well as its related recommendations for the establishment of a Learning and Teaching Council and arrangements for regular engagement with key stakeholders covering learning and teaching, research, equity, regional issues and private tertiary education providers.

Whole-of-tertiary-education perspective

The Accord’s proposed model for ATEC took a whole-of-tertiary-education perspective:

“The Review has heard from many stakeholders that the complexity of the connections between the higher education and VET sectors requires a body with responsibility for improving experiences for students and coherent policy development across the tertiary education system. This body needs to be able to work with all stakeholders across the whole of the tertiary education sector, including states and territories.” **(Accord Final Report, p.234)**

The Consultation Paper speaks of the ATEC fostering connections and alignment between the two sectors and of the ATEC working with all levels of Government. **(p.5)** However, it proposes that the new Act will continue to specify **Higher Education** in its title while, as noted above, there is no indication that an Advisory Board or Council will be established as the Accord recommended. Moreover, few details are provided about how State and Territory governments will have a say in the ATEC’s design, contribute to its work plan priorities, and engage with and receive advice from the ATEC once it is established.

An Advisory Board with broad-based membership as recommended by the Accord is needed to realise the Accord’s vision for an ATEC that provides the enduring forum for an ongoing Accord-type discussion with stakeholders, as well as a formal mechanism to facilitate ongoing planning, consensus building and collaboration towards the achievement of shared goals for the sector’s future. The membership and functions of such a body could be similar to the [Jobs and Skills Australia’s Ministerial Advisory Board](#). It would sit alongside the ATEC First Nations Council as recommended by the Accord and proposed in the Consultation Paper.

Accountability and university autonomy

The Accord Panel stressed the importance of the ATEC working in ways that support ‘*universities’ academic freedom and autonomy to guide aspects of course design, delivery and research*’ **(p.235)** and the need for the ATEC to ensure ‘*careful and balanced management of system wide policy advice, regulatory oversight, enforcement roles and respect for institutional autonomy.*’ **(p.239)** Yet the Consultation Paper states that: ‘*ATEC will be publicly accountable for delivering higher education and specified tertiary education outcomes, including delivering on Government objectives.*’ This

raises the question of how the ATEC can be held accountable for delivering higher education and research outcomes that are the responsibility of autonomous institutions, which are regulated by TEQSA and/or ASQA? As discussed and recommended in response to Question 2 above, any new Objects clause for the legislation governing the tertiary education sector should recognise and protect the autonomy of public universities established by Acts of State and Territory parliaments to operate within the rule of law as provided by Australia's uniquely federated democracy.

Resourcing and expertise

The ATEC's practical capacity to provide significant and impactful evidence-based decision-making will depend on the appropriateness of the staff and other resources to deliver its legislated powers and functions. The functions proposed for the ATEC in the Consultation Paper are extensive and wide-ranging. Delivering on all proposed functions effectively will require ATEC to have a sizeable workforce with diverse knowledge, skills and expertise and significant information technology resources.

For example, the Accord and Consultation Paper envisages a much more significant role than currently exists for mission-based compacts with universities and other higher education providers in receipt of funding under the Commonwealth Grants Scheme. The Consultation Paper also suggests that the ATEC will '*manage international student profiles for public universities*' (p.6) while the Government's Draft International Education and Skills Strategic Framework suggests that compacts will be the mechanism through which providers' annual international student caps will be set. **(Draft Framework p.16)**

All public universities have participated in different iterations of the mission-based compact agreement processes since 2009. From this experience, senior university planners have a sound sense of the time and sophisticated resources that will be required by the ATEC if it is to manage the proposed level of enforceable compacts process effectively and efficiently. Moreover, with enrolment caps now proposed for both domestic and international students, there is a strong case that the compact enrolment profiles will need to be set at least 18 months ahead of the academic year for which they will apply. This could mean that negotiations for three-year compact agreements may need to start two and a half years before the year they take effect.

We are concerned that the time and resources the inaugural ATEC Commissioners and staff will need to dedicate to the compact process in the early years must reduce the amount of attention they can give to functions that arguably require more urgent attention and are likely to have greater long-term impacts on the sector. These include work on funding policy reform and undertaking the sophisticated consultation, research and analysis needed if the ATEC is to become the sector's independent pricing authority as proposed by the Accord and the Consultation Paper. **(pp.6-7)**

Recommendation 3 – ATEC's independence

That the IAC provide the Minister for Education with advice on the following matters to ensure the ATEC is established as a genuinely independent steward of the tertiary education sector, capable of taking a long-term view of system coordination and planning, as recommended by the Accord:

- **Appointment and terms of Commissioners.** All commissioners should be appointed on a full-time equivalent basis to ensure the ATEC has the high-level capacity it will need to progress its functions effectively, as well as the flexibility accommodate outstanding potential candidates with substantial carer's responsibilities. Appointment should occur through an open and competitive application process, with terms of up to five years (longer than one election cycle) with options for renewal. (See [Sections 18 and 18A Jobs and Skills Australia Act](#), [Section 26 Productivity Commission Act](#).)
- **Direct advice to ministers.** The ATEC Chief Commissioner should have the legal authority to advise the Minister for Education and the Minister for Skills and Training directly, as well as the secretaries of the Department of Education and the Department of Employment and Workplace Relations. (See [Section 5 Jobs and Skills Australia Act](#).)
- **Accountable authority.** The ATEC's independence will be enhanced if the ATEC Chief Commissioner is the Accountable Authority for the purposes of Finance Law, in line with

the arrangements for the Productivity Commission. (See [Section 5 Productivity Commission Act.](#))

- **Control over staff and their recruitment.** While we believe the ATEC should not form part of the Department of Education, if it must be based within it for budget efficiency reasons and be supported by staff of the Department, these staff must be subject to the directions of the ATEC Chief Commissioner. The ATEC Chief Commissioner should also have authority for staff recruitment and secondments. (See [Section 14 Jobs and Skills Australia Act.](#))
- **Maximum budget certainty.** Budget certainty is necessary to provide the ATEC Chief Commissioner with independence, reasonable certainty for work planning, and to assist with the attraction and retention of quality staff.
- **Ministerial Councils' sign-off of the Federal Minister for Education's statement of expectations for ATEC.** The Ministerial councils for Education and Skills and Workforce should review and agree on the Minister's regular statements of expectations before they are conveyed to the Commission.
- **Preparation of work plans.** The ATEC Chief Commissioner should have the authority to prepare a written work plan, through a public and transparent process of consultation set out in the legislation. The process for developing the work plan should include an opportunity for any stakeholders to provide advice on priorities. A quadrennial work plan with rolling annual reviews and consultations should be considered because of the complexity of many of the matters the ATEC will be seeking to address, beyond the immediate priorities of the government of the day. This is consistent with the Accord's vision that a key function for the ATEC would be to take a long-term perspective of system reform. (See [Section 10A of the Jobs and Skills Australia Act.](#))
- **In-house research and policy expertise.** To ensure the ATEC has the strong independent capacity for the deep thinking, high-quality evidence-based research and policy development the Accord identified as so lacking, the Government should respond positively to Recommendation 32 of the Accord Final Report concerning the establishment of a **Centre of Excellence in Higher Education and Research** within the ATEC. However, the name and remit of this centre should not be limited to Higher Education, given that the ATEC needs to take a whole-of-tertiary-sector perspective. To this end, the feasibility of bringing the [National Centre for Vocational and Education Research \(NCVER\)](#) into the ATEC should be considered as well as renaming it the **National Centre for Tertiary Education Research and Policy**. With additional investment from governments in response to the Accord's Recommendation 32, the scope of this centre's work would grow to cover vocational and higher education teaching and learning, as well as issues relevant to research and research training undertaken in Australian tertiary institutions.
- **Ability to engage assistance from other government agencies directly.** The ATEC Chief Commissioner, like the JSA Commissioner, should have the ability to make arrangements with other Commonwealth agencies, State and Territory government authorities (including public tertiary education providers) for the provision of staff and services to assist the performance of any of the Commission's functions, and to directly commission contractors and consultants to assist with research and other services. (See [Sections 15-16 Jobs and Skills Australia Act.](#))
- **Ability to conduct or commission independent research and analysis.** The ATEC should have the authority and resources to undertake or commission, on its own initiative, research about matters relevant to tertiary education, as well as respond to directions from the Minister for Education made through executive orders. (See [Section 6, Productivity Commission Act.](#))

Recommendation 4 – ATEC and ongoing Accord discussion

That the IAC recommend to the Minister for Education that the ATEC's structure includes a broad-based Advisory Board or Council, as recommended by the Accord Final Report. The Board's membership and functions could be modelled on the JSA Ministerial Advisory Board. (See [Sections 16A-G Jobs and Skills Australia Act.](#)) Critically, tertiary education students, academic and professional staff should have membership of the Advisory Board, along with State and Territory Governments.

Recommendation 5 – ATEC and the autonomy of universities

That the IAC recommend to the Minister for Education that, if a new Act is to replace the *Higher Education Support Act* and establish the ATEC, the new legislative framework should continue to respect the principle of university autonomy as vital to sustaining a high-performing sector under our uniquely federated system of democracy. As the Accord Final report stated in relation to its vision for the ATEC, *“Importantly, each of these [proposals] is intended to be implemented in a way that reduces administrative burden on institutions whilst increasing tertiary education system intelligence, harnessing system capability and reinforcing institutional autonomy. This will enable the system to grow and to deliver on areas of national need, now and in the future.” (p.226)*

Recommendation 6 – ATEC's functions and early priorities

That the IAC recommend to the Minister for Education, the functions that should be the ATEC's priorities during the first three to five years of its operation. In considering ATEC's early priorities, the IAC should recommend that responsibility for implementing enforceable mission-based compacts remains with the Department of Education at least until the ATEC is well-established and has its policy advisory and independent pricing authority functions fully operational and proven to be effective. This would minimise disruption to the operations of the sector during ATEC's establishment phase, support ATEC's independence and allow its commissioners to focus their limited time and resources on priority functions agreed with the Minister.

Question 4. What does effective stewardship look like for the ATEC? What levers should the ATEC have to steward the sector?

Effective stewardship by the ATEC would look like a body that has grown to be respected by governments, students, staff, employers and providers alike as the most authoritative source of knowledge, expertise and understanding about Australia's tertiary education and research sector. This trust has been earned because of (i) the quality of ATEC's work, (ii) the transparent, consultative and collaborate way its commissioners and staff conduct their business and engage with stakeholders, and (iii) the positive outcomes that have been achieved for students, industries and communities thanks to policy reforms implemented by ATEC's work.

To steward the sector effectively the ATEC will need levers including:

- A combination of clear legislative powers and functions, deep expertise, resources matched to functions, and sound structures to enable ongoing Accord-type dialogue and collaboration with diverse stakeholders.
- Statutory and operational independence, with the authority to advise relevant ministers directly.
- A clear integrity and accountability framework to ensure trust and credibility.
- The sophisticated skills needed to measure and advise on the costs of tertiary education teaching, scholarship and university research in different fields and contexts.
- A seat at the table to contribute to thinking and decisions about national policy and funding frameworks for research, including the Government's proposed *strategic examination of Australia's research and development system*.

- Clear mechanisms to consult with State and Territory governments, and engagement with them in ATEC's work planning and prioritisation.

Question 5. How can the ATEC seek the regular information and advice it needs to operate, while ensuring minimal additional regulatory burden on the sector?

For public universities, in addition to engaging the Department of Education, Department of Social Services, Department of Home Affairs, Department of Industry Science and Resources, JSA, ABS, TEQSA, ARC, NHMRC and the Medical Research Future Fund, the ATEC should open dialogue with a range of sector professional bodies once it is ready to discuss its information and data needs:

- The [Australian Council of Learned Academies \(ACOLA\)](#) representing the Australian Academy of Science (AAS), the Australian Academy of Health and Medical Sciences (AAHMS), the Australian Academy of Technological Sciences & Engineering (ATSE), the Academy of Social Sciences in Australia (ASSA) and the Australian Academy of the Humanities (AAH).
- The [Australian Network of University Planners \(ANUP\)](#) to understand the current data and reporting environment relating to domestic and international students.
- The [Australasian Research Management Society \(ARMS\)](#) for insights on data and reporting on all aspects of Research and Development undertaken by universities and their affiliated research institutions.
- The [Australian University Senior Finance Officers Group \(AUSFOG\)](#) for insights about current reporting of finance data and about the long-running annual [Transparency in Higher Education Teaching costing exercise](#).
- The [Society of University Lawyers \(SOUL\)](#) for information about the regulatory and compliance framework within which Australian universities operate, noting that large research-intensive universities like the University of Sydney currently list more than 300 distinct Commonwealth and State regulations on their compliance registers.
- The [Australian Higher Education Industrial Association \(AHEIA\)](#) for information and insights about existing data and reporting about staffing and industrial matters.

Also, the:

- [Independent Health and Aged Care Pricing Authority \(IHACPA\)](#) and Deloitte Access Economics for information and insights about methodologies to understand cost of delivering tertiary education teaching and research activities to relevant minimum standards.
- [Australian Health Practitioner Regulation Agency \(AHPRA\)](#), for information and data about health workforce and regulatory requirements for all health professions registered under the National Registration and Accreditation Scheme.

Consideration should also be given to recruiting or seconding staff from the sector with relevant expertise.

Question 6. What does a successful tertiary future state look like and how can the governance of the ATEC help to achieve this?

As quoted below, the Accord Final Report (p.10) and the University of Sydney in its April 2023 submission to the Accord (p.5) set out their respective visions for a successful tertiary future state:

<u>Accord Final Report future state vision</u>	<u>University of Sydney future state vision</u>
<p>“Our vision is to grow and strengthen tertiary education in Australia over the next two decades so that all Australians have the opportunity to obtain the knowledge, skills and understanding to create and thrive in the jobs of the future. Australia needs this expanded tertiary education system to help achieve skills through equity and excellent, fit-for-purpose research, enabling more people to help meet the challenges facing our nation, region and world. Education, research, innovation and society-wide partnerships are vital for Australia’s economic prosperity, democratic cohesion and environmental sustainability.”</p>	<p>“By 2040 Australia is among the top 10 most educated, skilled and innovative countries globally.</p> <p>We support individuals of all backgrounds to thrive, make a difference to their communities and contribute to a diversified, advanced economy throughout their adult lives.</p> <p>We are known for our research creativity and innovation—sustaining high-value industries and jobs, enhancing productivity, and supporting a healthy, tolerant, and cohesive society.”</p>

While the Government is yet to fully articulate its vision for the sector’s future state, as discussed in our response to Question 2 above, the proposed inclusion of a **National Tertiary Education Objective** in relevant legislation presents an opportunity for the Government to seek Parliament’s support for an appropriately ambitious vision for the sector’s future.

ATEC’s governance can help achieve this new vision by holding it accountable only for the outcomes it is responsible for and has the actual ability to control. The Consultation Paper’s statement that the ‘ATEC will be publicly accountable for delivering higher education and specified tertiary education outcomes, including delivering on Government objectives’ (p.4) requires elaboration. It is difficult to see how the ATEC can be held accountable for delivering educational and other outcomes that are the responsibility of autonomous public and private institutions regulated by ASQA or TEQSA. The Minister of the day should retain overall accountability for the achievement of outcomes in their portfolio, setting performance goals transparently for the ATEC Chief Commissioner and managing accountability through the Australian Public Service’s standard processes.

Question 7. How can the ATEC be designed to maximise harmonisation between the two tertiary education systems?

- **What are the steps needed for harmonisation and how should they be timed/staged?**
- **How should states and territories be engaged in the process?**

We have addressed elements of this question in our responses to the previous questions, with suggestions including:

- Naming the proposed new Act the **Tertiary Education Funding Act** rather than the Higher Education Funding Act as proposed in the Consultation Paper. This would signal clearly the Commonwealth’s commitment to achieving harmonisation between Australia’s vocational and higher education sectors.
- Ensuring that State and Territory governments are included formally in the ATEC’s design and ongoing work-prioritisation, as occurred and continues for JSA.
- Responding positively to Accord Recommendation 32, which called for the Government to provide funding support to ensure that the ATEC can build an outstanding in-house capacity for evidence-based research and policy development spanning the whole of the tertiary education and research landscape rather than higher education only.
- Establishing a Ministerial Advisory Board/Council as recommended by the Accord and based on the model the Government adopted for JSA.

In terms of other steps needed for better integration between the vocational and higher education sectors:

- **An early priority for the ATEC should be assuming the role of Independent Costing and Pricing Authority for the entire tertiary education system and building the research, data analysis and advisory capacity needed to perform this role effectively.**
This work to determine the efficient cost of delivery of teaching to a minimum standard is critical to achieving effective integration between the vocational and higher education sectors as its outputs will provide the evidence-base needed to develop a student-centred funding model capable of - with the agreement of the States and Territories - being applied consistently across the vocational and higher education sectors.

A key component of this work will involve the ATEC quantifying the 'base research' component that remains embedded in the Commonwealth Grant Scheme as it would be wasteful and unfair for teaching-only vocational and other providers to receive funding intended to support research. The work of the [Independent Health and Aged Care Pricing Authority \(IHACPA\)](#) provides one potential model for the ATEC to consider, as well as a potential source of relevant expertise.

- The following goals, of governments past, should be referred to ATEC for advice soon after it is established: (i) to bring together the Higher Education Standards Framework and HESA along with the ESOS Act and National Code into one Act (ii) combine ASQA and TEQSA into a single national regulator for the tertiary education system, which operates independently of the ATEC, and (iii) reform the AQF to make it fit-for-purpose for a modern and integrated education and skills system.

Ends/