

# **Australian Catholic University**

## **Feedback to the Department of Education**

### ***Australian Tertiary Education Commission: Implementation Consultation Paper***

**July 2024**

## **Feedback on the *Australian Tertiary Education Commission: Implementation Consultation Paper***

Australian Catholic University (ACU) welcomes the opportunity to provide feedback to the Department of Education on its consultation paper on establishing an Australian Tertiary Education Commission (ATEC).

ACU acknowledges the Federal Government's proposal to give effect to recommendations made by the Australian Universities Accord Panel in its final report, to establish ATEC to provide leadership and stewardship for the Australian tertiary education sector. Such a body, as envisaged by the Panel, would "transform the tertiary education system" and "aim for a stronger, more diverse, innovative, mission-driven" higher education system.<sup>1</sup>

As currently presented, however, ACU considers the proposal for ATEC requires reconsideration. ACU urges the Federal Government to undertake more extensive, coordinated consultation with the sector to further assess the viability of such a body, and the value-add it would provide to the sector and nation.

This requires careful deliberation on its scope of authority and parameters of operation, which currently are too broad and complex. This process should not be rushed for the sake of administrative expediency, as a poor policy framework will have serious ramifications for the tertiary education sector, and in turn, the national skills base and international reputation of Australia's well-regarded university sector.

ACU is particularly concerned ATEC, as proposed, would not have sufficient independence from government, and would lack the level of higher education expertise and resourcing that is necessary to successfully deliver on its objectives; a mandate which in itself is not clearly articulated. As proposed, ATEC would be housed within the Department of Education and draw heavily upon departmental resources. Furthermore, the level of sector expertise ATEC would need to hold, and call upon, to effectively execute its functions is not adequately reflected in the proposal.

If ATEC is established as presented there would also be considerable confusion regarding the respective roles and responsibilities of ATEC and TEQSA. For example, TEQSA as the sector quality assurance regulator already has a role in fostering excellence and diversity in the sector. Moreover, ATEC's operations would add to a regulatory and compliance environment that is already complex and resource intensive for universities.

Currently, there is a stronger case to concentrate efforts on enhancing the operations and functions of TEQSA and the Department of Education, than establishing a new body in the form of ATEC, which would result in a larger bureaucracy and confusion of roles.

If the Federal Government is, nevertheless, minded to proceed and establish ATEC, ACU strongly recommends:

1. Further work be undertaken in close consultation with the higher education sector and the Accord Implementation Advisory Committee, to redevelop the proposal for ATEC; and
2. The Federal Government make available an Exposure Draft of any enabling legislation developed to establish ATEC, for sector feedback, ahead of its finalisation and introduction to Federal Parliament.

ACU also provides the following feedback on specific questions raised in the consultation paper.

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<sup>1</sup> O'Kane, M., Behrendt, L., Glover, B., Macklin, J., Nash, F., Rimmer, B., & Wikramanayake, S. (2023). *Australian Universities Accord Final Report*, at 7.

**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?**

The underlying premise of this question is problematic. Fundamentally, Australian universities serve the national interest through their specific missions and operations. The question, as framed, suggests there is difference and opposition between universities' and national interests. In addition to the significant public contributions universities make through their teaching, research, and community engagement activities, they also have a distinct role to play through their capacity to scrutinise, help inform, and shape national priorities.

With respect to ensuring ATEC is set up with sufficient higher education expertise, ACU considers there should be provision to require ATEC Commissioners – either individually or collectively – to hold policy expertise and/or a working knowledge of the higher education sector. This is necessary to effectively fulfil ATEC's tertiary education leadership and stewardship role, as proposed by the Australian Universities Accord Panel. As proposed, Commissioners would only have to have either tertiary, industry *or* government sector expertise. Furthermore, the rationale behind the proposal that Commissioners should “not have worked in a leadership position in the tertiary sector within a set number of years” is problematic. There is also an overemphasis in the Consultation Paper on ambiguous and undefined criteria such as demonstrating “an ability to work in the national interest” and “retain sufficient distance from narrow, sectoral views”.

Fundamentally, it will be important to ensure ATEC's leadership holds sufficient higher education expertise, and ideally, a working and contemporary knowledge of the sector. This is integral to ensuring ATEC is equipped with the requisite knowledge and skills to facilitate its effective operation and deliver on its objectives.

If ATEC is established as currently proposed, there is also a significant risk it may undervalue advice from the higher education sector in the pursuit of government objectives. Therefore, ACU recommends ensuring ATEC is supported by articulated levels of sector expertise within its mandate.

*Sector consultation processes*

The Consultation Paper proposes that an aspect of ATEC's operating model would entail working with the sector and seeking “regular information and advice” on various matters including universities' strategic goals such as teaching and research goals, students' needs and preferences, and demographic changes, amongst others. ACU supports this proposal in principle, however, emphasises three key points.

First, ATEC should ensure the diversity of the higher education sector is reflected, and represented, in its consultation processes and operations. It is imperative it consults with the sector holistically. This should include the views and interests of smaller and/or regional universities, with appropriate acknowledgement of their contributions to the nation.

Second, ATEC work should not place undue administrative burden on providers through multiple additional requests for information. Requests for information or advice should be well planned and streamlined, and ideally, aligned to existing reporting requirements. These include TEQSA periodic reports or well-coordinated sector consultations to ensure providers' resources are used efficiently and not unnecessarily diverted away from core university activities.

Third, ACU notes that expertise in higher education can come from within the university sector, as well as from many non-university quarters – such as alumni, industry and employers of university graduates, research services, and scholars employed in the private sector or non-university settings, amongst others. ATEC should promote broad consultation.

## **2. Is the ATEC’s proposed legislated objective (page 2) comprehensive?**

The proposed legislative objectives for ATEC require reassessment and revision. As proposed, they are too broad to facilitate any clear or meaningful outcomes. The objectives should be refined having regard to both short and longer-term aims for the tertiary education sector, and taking into the account the level of resources ATEC would be equipped with to deliver on its objectives.

The objectives should also be an accurate representation of ATEC’s functions. For example, while the Consultation Paper uses words such as “facilitate”, “foster” and “enhance”, if the actual intent is for ATEC to “organise” or “direct” the sector on particular matters (for example, as the Federal Government has proposed with respect to managing enrolments, higher education and research programs), the objectives should articulate this and set clear parameters on the scope of ATEC’s authority.

ACU also notes the proposed objective that ATEC would underpin and drive “a strong civic democracy through institutions that foster robust debate and critical inquiry and contribute to Australia’s cultural and intellectual life.” Further consideration needs to be given to this proposition and ATEC’s role in such matters, including how it would intersect with principles of freedom of expression that universities uphold.

## **3. Does the proposed structure of the Commission, including consultation with other relevant stakeholders (pages 3-4), allow for an effective decision-making process?**

ACU reiterates it is imperative to ensure ATEC, if established, is independent from government in order to effectively execute its functions. A model similar to the Australian Research Council is one option that could be explored. The current proposed structure for ATEC is not fit for purpose.

As proposed, ATEC would be housed within the Department of Education, and draw upon significant departmental resources. For instance, it is proposed: “The Secretary of the Department of Education would be the accountable authority for the purposes of the finance law, including annual and financial reporting”.<sup>2</sup> It is also stated: “The Commission would – through staff of the Department working on ATEC functions – be able to commission additional advice or expertise as required to carry out functions and responsibilities.”<sup>3</sup> ATEC, if established, should be adequately resourced to operate independently from government, and without such reliance on the Department.

As outlined in Question 1, the proposed structure of the Commission overall, including its consultation processes, should be reconsidered and revised. The inclusion of higher education experts and other stakeholder views in ATEC’s decision-making processes needs to be explicitly articulated and would serve to minimise the risk of unintended consequences.

It is unlikely a leadership group comprising four Commissioners (three being part-time appointments), supported by a Chief Executive Officer, would be able to effectively implement the aims of ATEC. A command-and-control type model, or bureaucracy operating from Canberra alone is not likely to be effective. Facilitating effective and efficient development of funding agreements, amongst other proposed responsibilities, would require adopting an approach which adheres to the principle of subsidiarity. ATEC promises “enhanced collaboration”, and ensuring decision-making is informed and empowered at the local level will make it more effective. At a minimum, ATEC should have jurisdictional-based checks and balances incorporated into its consultation and decision-making processes, and ideally reflected in its enabling legislation.

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<sup>2</sup> Ibid, at 4.

<sup>3</sup> Ibid.

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

First, government and the sector must have a common understanding of what “stewardship” means in the context of ATEC’s work. For instance, it could be argued regulation is a means to “steward” the sector, however, that role is (appropriately) undertaken by TEQSA as the sector’s regulator. ATEC could, perhaps, work with the sector on ways to better support and foster continued excellence rather than approaching quality assurance by reference to minimum standards, as overseen by TEQSA with reference to the *Higher Education Standards Framework (Threshold Standards) 2021*.

Second, ATEC’s objectives and scope of authority should be codified in legislation. If it adopts a longer-term approach to the exercise of its powers, it has a greater chance of being an effective steward for the sector. The sector also requires policy and funding certainty. Aligning re-registration (every seven years) and ensuring longer-term funding certainty for providers would give the sector a necessary degree of certainty and stability to forward plan and respond to any strategic plans and policy reforms. If, on the other hand, ATEC operates according to a three-year timeline tied to the electoral cycle, this is more likely to bring uncertainty and unhelpful disruption to the sector. Furthermore, ATEC should ensure a broad range of perspectives are considered in its consultation and decision-making processes. It should facilitate balanced intellectual debate on policy matters; for example, including representation of scientific, legal, humanities, and other perspectives, and not just economic and political perspectives on policy issues.

Third, there should be a clear articulation, and delineation, of ATEC’s and TEQSA’s respective roles and responsibilities under the new proposed structure. As presented in the Consultation Paper, this is not well articulated. Regulatory matters should be left to TEQSA, which should continue to operate on its current regulatory principles, adopting a risk-based approach to sector regulation. As core principles, any provider or sector intervention should be:

- proportionate;
- understand provider circumstances; and
- promote university autonomy.

Finally, the administration of Mission-based Compacts would need to be strengthened to give effect to the proposed changes to funding mechanisms and additional monitoring requirements at provider level.

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

ATEC’s work should be informed by existing processes and reporting to the Department of Education and TEQSA. Any requests for information should be carefully planned, managed and streamlined to avoid placing further administrative burden and cost on providers. Furthermore, ATEC must not be empowered to duplicate the functions of existing statutory bodies.

It should be recognised that *ad hoc* requests for information create additional administrative burden for providers, and typically require the diversion of limited resources away from core university activities to comply. These requests are not normally factored into business-as-usual. Therefore, information requests that do not align with current reporting arrangements will be considered as additional ‘red-tape’ in a sector already overburdened with regulation.

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

This can be informed by the work and recommendations of the Australian Universities Accord Panel. If established, ATEC should serve to support a strong and vibrant tertiary education sector into the future by using well-designed incentives, based on evidence-based principles of action to encourage providers to achieve desired objectives; for example, improving higher education access and participation. An incentive-based approach would, appropriately, recognise the importance of university autonomy and has the best prospects of achieving ATEC's strategic objectives. Direct intervention in matters such as course offerings and enrolments via funding agreements is likely to result in an inefficient and slow-moving sector that cannot respond to emerging needs.

## **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 this process?**

As a priority action, ATEC, if established, should facilitate a review of the Australian Qualifications Framework (AQF). The higher education and vocational education and training (VET) systems cannot be effectively harmonised until the structure of the AQF is settled. This process should not be rushed as it requires close consultation, and engagement, with both sectors and relevant stakeholders, including state/territory governments. This structural reform should precede any work to address matters concerning credit and recognition of prior learning between the sectors.

Broadly, harmonisation would require work to be undertaken in three key stages: 1) *Investigate* barriers to harmonisation, identify potential solutions, and resourcing impacts; 2) *Plan* how to implement reforms at sector and institutional levels; and 3) *Implement* the reforms to support harmonisation.

Furthermore, while efforts to achieve harmonisation between the two tertiary education systems should be supported, it is equally important to ensure this work recognises, and affirms, that VET and higher education are distinct from each other, with different roles and contributions. Successful harmonisation is dependent on recognising this distinction, as a clear articulation and evidence of difference is what stakeholders who use the AQF (especially education providers) require.