UNSW Submission – ATEC Enabling Legislation

UNSW welcomes the opportunity to contribute to the Education and Employment Legislation Committee's consideration of the legislation establishing the Australian Tertiary Education Commission (ATEC) through the Universities Accord Bills. The Universities Accord Final Report rightly identified Australia's need for an independent authority that 'draws advice widely' to deliver a 'stronger, more diverse, innovative, mission-driven system' and UNSW supports the Government's commitment to these reforms and the creation of an expert, independent, and effective ATEC.
We are committed to working collaboratively with government to support the Accord reforms and propose complementary amendments.

Executive Summary

For the Committee's consideration, we propose 16 recommendations on ATEC's enabling legislation:

1. Purpose

- **Recommendation 1:** To achieve its stated objectives and deliver optimal policy outcomes as canvassed by the Universities Accord, the proposed ATEC should:
  - Ensure Australia has a strong and sustainable higher education sector;
  - Foster a stable, forward-looking and evidence-based partnership between government and education providers;
  - Deliver long-term analytical capability and advice supported by Commissioners and staff with extensive higher education experience and expertise in the exercise of its policy and other functions;
  - Provide independent data-gathering and costing functions to support evidence-based decision-making; and
  - Possess coordinated, future-focused and evidence-based decision-making capacity necessary for Australia's future success.

- **Recommendation 2**: ATEC must operate with a long-term policy horizon, recognising that its work and reforms may take several years to develop and implement. Governments should acknowledge this timeframe and avoid introducing overlapping or competing policy initiatives while ATEC processes are underway.

- **Recommendation 3**: ATEC should be designed to support sustained, long-term policy settings, with appropriate safeguards to minimise the impact of short-term political cycles and shifting priorities on its work.

- **Recommendation 4**: To support its purpose and effectiveness, ATEC should operate at a strategic level and avoid micromanaging the higher education sector, allowing institutions sufficient autonomy to respond to diverse missions and circumstances.

- **Recommendation 5**: ATEC should be designed and operate in a way that avoids duplicating existing public service functions, with clear delineation of responsibilities to ensure its role is distinct from, and does not replicate, current departmental or agency activities.

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2. Expertise

- **Recommendation 6**: Strengthen Section 59 to ensure the balance of Commissioners collectively brings extensive higher education expertise and experience appropriate to setting the sector's strategic direction, and that Commissioners also possess the following:
    - Eextensive experience in the day-to-day running of tertiary institutions, particularly in relation to governance and funding arrangements;
    - Demonstrated ability to collaborate across sectors and drive system-level change;
    - A deep understanding of policy and regulation across the sector, including the development of sector standards given the HESP function is moving into the ATEC;
    - Expertise in both education and research; and
    - An understanding of equity considerations relating to the sector.

- **Recommendation 7:** Increase the number of Commissioners to a minimum of 5, and ideally 7. To support the ATEC in effectively fulfilling its ambitious mandate and wide range of functions, we encourage strong consideration of the following:
    - Provide ATEC with absolute discretion over its staffing and the ability to recruit expertise from the sector and from across the APS, rather than having this function sit with the Secretary of the Department of Education; and
    - Enable the Commission to appoint Assistant Commissioners for limited periods to bring in specialised expertise as needed.

- **Recommendation 8:** We support the Universities Accord Final Report's recommendation to seek a wide range of views to support the ATEC. This should include embedding sector-specific advisory panels that serve as a structured mechanism for engagement comprising experts from the higher education sector, the Commonwealth, and State Governments.

- **Recommendation 9:** Develop, with the sector's input, a clearly phased capacity-building plan for the ATEC, given its initial focus on the first *State of the Sector* report and mission-based compacts, in parallel with costing and pricing work, and tertiary harmonisation priorities.

3. Independence

- **Recommendation 10**: Mandate a merit-based process for the appointment of Commissioners which includes delineated selection criteria and an overall skills matrix to minimise direct Ministerial influence.

- **Recommendation 11:** Amend sections of the Bill to reflect the Universities Accord Final Report's vision for an ATEC that provides 'robust advice', supports 'evidence-based decision making and planning', and 'is agile and responsive to immediate issues, while remaining future-focused':
    - Clarify the scope and circumstances under which the Minister can issue written directions or engage in the delegation of higher education related duties to the Secretary and other staff of the Department of Education rather than the ATEC;
    - Enable the ATEC to be able to prepare reports, advice, and recommendations without having to be requested by the Minister to do so (Section 11), including on funding matters (Sections 11(d)(ii) and 41(1)(b));
    - Allow the ATEC to be able to publish advice or recommendations without needing the Minister's agreement (Section 69 of the Bill);
    - Expand Section 71(2) on what the Minister cannot give directions to Commissioners on to include: how ATEC conducts modelling and research, the methodologies ATEC uses for costing or pricing, the order inquiries or analyses are conducted, and which issues are examined for regulatory-related reviews; and
    - Require the *State of the Sector* report to be published within 3 months of the Minister receiving the report instead of no later than 12 months after the calendar year (Section 42(3)(a)).

4. Effectiveness

- **Recommendation 12:** We support those elements of the Bill that ensure that the ATEC prepares a work plan and enables public submissions on its content (Section 45(3)(b)).
- **Recommendation 13:** Develop a comprehensive evaluation framework with central agencies to produce a key set of performance and effectiveness indicators for the Commission that support two- and five-year reviews. These indicators should be strongly aligned to the principles that underpin the mission-based compacts while allowing assessment as to whether the new arrangements are working as intended.
- **Recommendation 14:** Develop a data improvement plan to consider existing data assets, improvements needed to collections, analysis, or publication of data, and an implementation plan for linking related data across agencies. A financial analysis data function may also be needed for the ATEC to deliver on its costing and pricing work.
- **Recommendation 15:** Specify scope and formal relationships with other government agencies involved in higher education related policy and regulation, including TEQSA, NSO, JSA and Councils, the Tertiary Sector Advisory Council, EMM, SWMCO, ASQA, agencies with responsibility for state university acts, universities, and peak bodies. This is essential to ensure coherent system oversight and clear accountability, while keeping the ATEC focused on setting the sector's strategic direction rather than adopting a compliance-driven approach.
- **Recommendation 16:** The ATEC should be designed to preserve the autonomy and diversity of higher education institutions by recognising their unique circumstances, including their different stages of strategy, range of educational offerings, student profiles, research capabilities, financial robustness, infrastructure needs, and geographical location. This will help to drive meaningful, ongoing, and collaborative engagement with the sector.

1. Purpose

We support the government's view that Australia's tertiary system plays a vital role in our nation's social, economic, and environmental wellbeing. ATEC as an expert steward of this system will be a critical enabler of our sector's ongoing success. However, we are concerned that the Bill in its current form will fail to deliver on ATEC's fundamental objectives and functions, and risks duplication of the existing regulatory framework at great cost to the Australian taxpayer, with little associated benefit.

To achieve its stated objectives and deliver optimal policy outcomes, the proposed ATEC should:

- Ensure Australia has a strong and sustainable higher education sector;
- Foster a stable, forward-looking and evidence-based partnership between government and education providers;
- Deliver long-term analytical capability and advice supported by Commissioners and staff with extensive higher education experience and expertise when exercising its functions;
- Provide independent data-gathering and costing functions to support evidence-based decision-making; and
- Possess coordinated, future-focused and evidence-based, decision-making capacity necessary for Australia's future success.

ATEC must operate with a long-term policy horizon, recognising that its work and associated reforms may take several years to develop, consult on, and implement effectively. This timeframe should be acknowledged by governments, including by avoiding the introduction of overlapping or competing policy initiatives while ATEC processes are underway, to allow its work to proceed in a coherent and coordinated manner.

ATEC should operate with a strategic, system-level focus rather than engaging in detailed operational or compliance-based oversight. Avoiding micromanagement would allow institutions sufficient autonomy to respond to their diverse missions, circumstances, and student cohorts, while ensuring ATEC remains focused on setting the strategic direction for the sector as a whole.

Accordingly, its design should support sustained, long-term policy settings that provide stability and continuity for the higher education system. Appropriate safeguards should be incorporated to minimise the impact of short-term political cycles and shifting priorities on ATEC's work, enabling it to maintain a consistent focus on long-term outcomes.

2. Expertise

The current proposal has an ATEC with three Commissioners who are expected to cover a wide range of functions and have a substantial range of expertise appropriate to setting the sector's strategic direction. The requirements of Commissioners collectively possessing certain knowledge and experience (outlined in Section 59) need to be strengthened to ensure Commissioners:

- Have extensive experience in the day-to-day running of tertiary institutions, particularly in relation to governance and funding arrangements;
- Have demonstrated ability to collaborate across sectors and drive system-level change;
- Can bring deep understanding of policy and regulation across the tertiary sector including the development of sector standards given the HESP function is moving into the ATEC;
- Possess expertise in both education and research to ensure a breadth of understanding across all challenges the sector faces; and
- Identify and guide equity considerations relating to the sector.

To support this, we strongly recommend increasing the number of Commissioners to a minimum of 5, and ideally 7. This is particularly important given that, under Section 5 on what constitutes a quorum, a single Commissioner may be able to exercise the powers of the full Commission in certain circumstances. Additionally, to ensure the ATEC can effectively fulfill its ambitious mandate and wide range of functions, consideration should be given to the following:

- Provide ATEC with absolute discretion over its staffing and the ability to recruit expertise from the sector and from across the APS, rather than having this function sit with the Secretary of the Department of Education (DoE); and
- Enable the Commission to appoint Assistant Commissioners for limited periods to bring in specialised expertise as needed.

We support the Universities Accord Final Report's recommendation to seek a wide range of views to support ATEC. This should include embedding sector-specific advisory panels that serve as a key structured mechanism for engagement comprising experts from the higher education sector, the Commonwealth, and State Governments. This will help the ATEC to steward a stronger, more diverse, innovative, mission-driven system.

We recommend that this be complemented with a clearly phased capacity building plan which should be developed as a key priority for the ATEC with the sector's input. This is important given the ATEC's initial focus will be on the first *State of the Sector* report and mission-based compacts, in parallel with costing and pricing work, and tertiary harmonisation priorities. It is only later that consideration will be given to increasing scope to include the VET sector. A heavy workload at the outset would involve a high risk of failure, an outcome not in the national interest.

3. Independence

A strong and effective ATEC must be founded on genuine statutory independence. To fulfil its purpose, the Commission must be able to provide objective information and frank, fearless advice to the Government and the Australian public.

Independent bodies play a crucial role in helping governments avoid short-term incentives that may be politically attractive but detrimental in the long-term. The Reserve Bank of Australia and Productivity Commission provide valuable models for how statutory independence can safeguard decision-making integrity.

To support this, the ATEC and the DoE must have distinct, complementary roles. ATEC should provide strategic advice, system stewardship, and high-quality data and analysis. There should be clear demarcation of powers and responsibilities between ATEC and the DoE to establish credibility and avoid overlap, ambiguity, and potential conflicts of interest. This should include**:**

- Requiring both the ATEC and DoE to report independently to the Minister for Education, including for annual reporting purposes
- Structure ATEC's budget separately from the DoE including through a multi-year appropriation
- Explicit allocation in the annual Federal Budget
- Statement of expectations from the Minister
- Transparent Commissioner appointment process which should include a mandated merit-based appointments process which includes delineated selection criteria and an overall skills matrix to minimise direct Ministerial influence
- Independent secretariat with secretariat staff appointed by the Commission
- Performance assessment independent of the DoE
- Independent process for commissioning research
- Own media arrangements though subject to Ministerial direction
- Operating values (transparency, wide consultation, dialogue, no conflicts of interest)
- Published work plan

ATEC must also be able to control its own staff and build its own capability. While the Bill provides that staff 'made available to the ATEC' will be employees of the DoE (Section 22), they will operate under the direction of ATEC Commissioners (Section 22(3)). ATEC may also engage contractors and consultants, but only with the approval of the Departmental Secretary (Section 24). This arrangement risks undermining ATEC's operational independence, particularly if staffing decisions are constrained by departmental processes. ATEC should have absolute discretion over its staffing and the ability to recruit expertise from the sector, while also developing internal capability and engaging deeply with existing centres of higher education policy research.

Although ATEC is established as a structurally independent body, the Minister retains significant oversight and influence in the proposed legislation. The following sections of the Bill need to be amended to reflect the ambitions of the Universities Accord Final Report vision for an ATEC that provides 'robust advice', supports 'evidence-based decision making and planning', and 'is agile and responsive to immediate issues, while remaining future-focused':

- Clarify the scope and circumstances under which the Minister can issue written directions or engage in the delegation of higher education related duties to the Secretary and other staff of the DoE rather than the ATEC;
- Enable the ATEC to be able to prepare reports, advice, and recommendations without having to be requested by the Minister to do so (Section 11), this includes on funding matters (Sections 11(d)(ii) and 41(1)(b));
- Allow the ATEC to be able to publish advice or recommendations without needing the Minister's agreement (Section 69 of the Bill);

- Expand Section 71(2) on what the Minister cannot give directions to the Commissioners on to include: how ATEC conducts modelling and research, the methodologies ATEC uses for costing or pricing, the order in which ATEC conducts inquiries or analyses, and which issues ATEC chooses to examine in its regulatory-related reviews;
- Require the *State of the Sector* report to be published within 3 months of the Minister receiving the report instead of no later than 12 months after the calendar year (Section 42(3)(a)); and
- The Minister's statement of strategic priorities is *not* a disallowable legislative instrument and is therefore not subject to parliamentary scrutiny or disallowance. This heightens the risk that universities become increasingly dependent on government direction, despite the appearance of independent oversight.

4. Effectiveness

We support those elements of the Bill that ensure the ATEC prepares a work plan and enables public submissions on its content (Section 45(3)(b)). We recommend that a comprehensive evaluation framework be developed with central agencies to produce a key set of performance and effectiveness indicators for the Commission that support two- and five-year reviews. These indicators should be strongly aligned to the principles that underpin the mission-based compacts while allowing assessment as to whether the new arrangements are working as intended.

To help ATEC build a future-focused and evidence-based decision-making capacity, a data improvement plan is necessary. This plan should consider existing data assets, improvements needed to collections, analysis, or publication of these data, and an implementation plan for linking related data across agencies. A financial analysis data function would enable the ATEC to deliver on its costing and pricing work. Arguably, one of ATEC's most important roles is to provide independent costing advice to government and to supply reliable higher education data for government and society. Independence here is critical to ensure that policymakers and the broader public receive accurate and trustworthy information - the Australian Bureau of Statistics provides a useful model.

The ATEC should also be required to specify scope and formal relationships with other government agencies involved in higher education policy and regulation, including TEQSA, NSO, JSA and Councils, the Tertiary Sector Advisory Council, EMM, SWMCO, ASQA, agencies with responsibility for state university acts, universities, and peak bodies. This is essential to ensure coherent system oversight and clear accountability while keeping ATEC focused on setting the sector's strategic direction rather than adopting a compliance-driven approach. To complement this, the ATEC should utilise outputs such as the annual *State of the Sector* report to inform higher education needs.

This should be undertaken in a manner that supports national coordination objectives while respecting and preserving the autonomy and diversity of higher education institutions – by recognising their unique circumstances, including their different stages of strategy, range of educational offerings, student profiles, research capabilities, financial robustness, infrastructure needs, and geographical location. This will help to drive meaningful, ongoing, and collaborative engagement with the sector.

Conclusion

UNSW is committed to working collaboratively with government and stakeholders to support the Government's commitment to implementing the Universities Accord reforms. Our recommendations aim to ensure that ATEC achieves its objectives and delivers optimal policy outcomes as an expert, independent, and effective Commission.

We thank the Government for the opportunity to contribute to this important inquiry. For further discussion, please do not hesitate to contact Senior Manager of Government Relations & Policy, Ms Cassandra Switaj, on 02 9348 2246 or at c.switaj@unsw.edu.au.