



INDEPENDENT
HIGHER EDUCATION
AUSTRALIA

IHEA SUBMISSION

AUSTRALIAN TERTIARY EDUCATION COMMISSION IMPLEMENTATION CONSULTATION PAPER

26 July 2024

IHEA Submission

Consultation on Australian Tertiary Education Commission (ATEC) Implementation Consultation Paper

Independent Higher Education Australia appreciates the opportunity to provide feedback on the Department of Education's (DoE) Australian Tertiary Education Commission (ATEC) Implementation Consultation Paper, for which submissions are due by 26 July 2024.

Establishment of ATEC

It is understood that the ATEC is proposed to be established as a new statutory office, under its own legislation, and would be companion legislation to the funding legislation, mooted to be the *Higher Education Funding Act* to replace the *Higher Education Support Act 2003*.

Maintaining independence

The ATEC is proposed to act as a steward for Australia's tertiary education system with responsibility for informing policy decisions for the benefit of our nation. Its creation has been motivated by an observed lack of clarity, direction and coordination in government policy that has been motivated by short term objectives rather than long term strategy.

Given the enduring nature of the ATEC's mission, it will be critical that ATEC is able to maintain a level of independence from the immediate policy priorities of the Government of the day. However, the ATEC is proposed to be co-located with DoE and have access to DoE staff to undertake its proposed functions of Stewardship; Funding and Pricing; Policy; and Performance. It is stated that the ATEC will be accountable for delivering higher education and specified tertiary education outcomes, including delivering on Government objectives. As such, the Minister could have statutory powers to direct the ATEC on particular matters and would determine an annual statement of expectations. Further, the Secretary of DoE will be the accountable authority for the purposes of finance law, including financial and annual reporting.

This reflects the current arrangements. The Minister already has DoE at his disposal to undertake the proposed work of the ATEC and the Secretary of DoE is already the accountable authority, so this raises the question of what ATEC will achieve beyond the current arrangements. The proposal, as stated, appears to be a reshuffle of departmental resources by effectively establishing the ATEC as another group within DoE's current structure. The investment in setting up the ATEC has the potential to deflect from progressing the actual reforms. As such, IHEA does not support the establishment of ATEC, as proposed.

It would be beneficial to gain greater clarity regarding the average staffing levels (ASL) of both the ATEC and DoE, as well as whether there will be new ASL, the explicit functions of each of DoE and ATEC in tertiary education and whether staff will work across ATEC and DoE. This will assist in understanding the nexus between DoE and the ATEC and whether ATEC will provide any greater capacity, capability and insights than currently occurs. This will be important to understand, otherwise the establishment of the ATEC will likely be seen as a bureaucratic and re-branding exercise.

ATEC Commissioners and the independent sector

Given that the proposal appears to be that the staff undertaking the work will only be existing DoE staff, the new appointments identified in the establishment of ATEC are senior appointments. This includes the establishment of a full-time Chief Commissioner and two part-time Deputy Commissioners, of which the Deputy Commissioner positions must be held by people who can demonstrate their independence from the tertiary sector. It is stated that this may involve not having worked in a leadership position in the tertiary sector within a set number of years. The argument for this proposal is to ensure that Commissioners are able to make decisions and provide advice in the national interest.

While IHEA acknowledges that it would not be feasible for a Commissioner to simultaneously hold a leadership role in the tertiary education sector, for example as a Chief Executive Officer of a provider, IHEA believes it would be important for people who fill these positions to have knowledge of, and expertise in, the higher education sector (in the first instance), which can be extended to that of Vocational Education and Training (VET) and the schools sector, which is the primary pipeline of students entering tertiary education. It will be important for the ATEC to have access to staff and expertise that understand the operations of higher education providers, especially independent higher education providers. ATEC's understanding of the diversity that exists within independent higher education providers will be paramount to ensure that decisions for the sector are not solely based on the operations of public universities. The ban on immediate past employees from the sector is opposed and is an unusual imposition that runs counter to normal public service recruitment, based on merit.

IHEA remains disappointed that the proposed model for ATEC does not explicitly identify that expertise or understanding of the independent higher education sector will be drawn upon, to inform its operations. As stated, ATEC will not receive input on issues that reflect the concerns and diversity of independent higher education providers. We strongly urge for the appointment of one of the part-time Deputy Commissioners to be someone who represents the independent higher education sector or at the very least someone who has recognised experience as a leader in the independent sector.

Independent higher education providers are a critical part of the sector and deliver high quality education outcomes for domestic and international students alike, as reflected in the excellent performance in the annual student experience surveys of the Quality Indicators for Learning and Teaching (QILT). A Commissioner with expertise and understanding of the independent higher education sector needs to be given a voice at ATEC, which is proposed to be the most significant body in setting Australia's higher education future, especially around pricing, funding regulation and diversity. The absence of such representation would be a great concern as the diversity and importance that the independent higher education sector brings to the Australian higher education landscape will otherwise be overlooked.

It will also be important for the ATEC to strike a balance between the tertiary sector interests and the national interest, the latter of which is likely to change with, and be strongly influenced by, the Minister and Government of the day. Ensuring that ATEC has access to expertise in the daily operation of higher education providers, including independent higher education providers, will be critical in being able to undertake its functions and set an agenda for tertiary education. A focus on the national interest, however it will be defined, should not come at the expense of the tertiary education sector. If it does, it will create challenges in developing and implementing a strategic plan and approach that is in the best interest of dealing with the longer term needs of the tertiary education sector and developing and implementing a plan to achieve it. A strong and integrated tertiary education sector will be key to "drive improvements to national workforce participation and productivity", which is why the Australian Government has set a tertiary education attainment target of at least 80% of the working age population (Accord Final Report, p.17).

Without the critical work and support of independent providers, such an ambitious growth target will be unmet. It is understood that public universities are effectively at capacity and will struggle to support growth in students. "Exploring the case for the establishment of new public universities in under-served areas" (p.36, Accord Final Report) will be a costly response to ensure that the proposed growth can be supported. As such, Independent higher education providers should be included in funding arrangements to ensure this target can be met.

Regulatory overlap

ATEC is being created within a system that already includes established regulatory, advisory and administrative agencies, councils, commissions and government departments (most of which are listed on page three of the Implementation Consultation Paper.) A clear delineation of responsibilities must be established to prevent unnecessary complexity, redundant policy, and conflicting compliance requirements.

Policy levers that are already available to one of the existing agencies (e.g. compliance reporting on issues of

quality, currently sitting with TEQSA and ASQA) must be explicitly removed from ATECs ambit, or the scope of activities for the existing body must be formally amended.

Ensuring a focus on students

The Implementation Paper is notable for its silence around consultation with or consideration of the needs of students (other than through the collection of quantitative outcomes metrics).

Tertiary education policy should be viewed through a student lens. To respond adequately to the needs of our expanding and increasingly diverse student body, Australia must create a higher education system that offers sufficient breadth and depth of opportunities for learners from every background, and at each stage in their careers, to access knowledge and skills that are relevant and build prosperity for the individual.

This will be achieved through the creation of a more diverse, competitive and innovative sector that is made up of institutions of different shapes, sizes, structures and missions, and underpinned by coherent policy settings that assure quality while supporting institutional autonomy and mission–focus.

The ATECs focus on the public sector will be assured by the magnitude of their responsibility for managing CSP funding (or its equivalent under new legislation). The challenge, therefore, will be to ensure that the interest of the public sector do not dominate the Commissioners’ thinking and influence the policy solutions.

As such, and as reflected elsewhere in this submission, the proposed model for the ATEC should identify a mechanism to ensure that expertise from, or understanding of, the independent sector will inform its operations.

Proposed, specific functions of the ATEC

The proposed functions of the ATEC are as follows:

Stewardship

- Monitors tertiary targets.
- Implements and negotiates enforceable mission–based compacts with higher education providers.
- Engages and communicates with the sector.
- Delivers on Government objectives.

Funding and pricing

- Administers funding for higher education teaching and research programs (which does not include research grants administered by the research councils)
- Delivers enhanced compliance for higher education funding conditions.
- Supports the implementation of higher education Managed Growth and needs–based funding.
- Decides institutions’ Managed Growth Targets.
- Manages higher education and research programs.
- Provides higher education pricing advice to Government.

Policy

- Advises on and implements higher education, research and tertiary policy.
- Drives tertiary harmonisation efforts.
- Undertakes research and analysis of emerging and entrenched issues.
- Advises on policy settings for higher education Managed Growth and needs–based funding.
- Drives improvements in regulatory systems.

Performance

- Monitors and analyses higher education provider and sector performance.
- Delivers new higher education quality metrics.
- Delivers enhanced higher education data functionality and analytics.

The ATEC will also manage international student profiles for public universities.

There are a number of areas in which further clarity is sought regarding the ATEC's proposed functions, many of which may relate to the interchangeable use of 'university' and 'higher education institutions' in the consultation paper: It is stated that ATEC will:

- Stewardship: Monitors tertiary targets.
 - This should clearly reflect monitoring sector tertiary targets, which are separate from enrolment targets.
- Stewardship: Implement and negotiate enforceable mission-based compacts with higher education providers.
 - Is it proposed that all independent providers will be subject to mission-based compacts? IHEA's view is that it would be to apply these arrangements to providers that are not in receipt of Commonwealth Supported Places (CSP), and so greater clarity is required.
- Stewardship: Engages and communicates with the sector.
 - This statement should clearly outline that communication and engagement will occur with the whole sector.
- Funding and Pricing: Delivers enhanced compliance for higher education funding conditions.
 - Compliance needs to align with existing, prescriptive legislative requirements.
- Funding and Pricing: Decides institutions' Managed Growth Targets.
 - Will targets be set for all higher education providers, given the consultation paper only focuses on CSP? IHEA's view is that targets should only be set for providers in receipt of CSP.
- Funding and Pricing: Provides higher education pricing advice to Government.
 - Appropriate expertise should be sourced to undertake this work, in consultation with the whole of the sector.
- Performance: Monitors and analyses higher education provider and sector performance.
 - Is this the same as QILT, noting this functionality may be impacted by the reduction in funding to QILT of \$8 million over four years, as announced in the 2024–25 Budget?
 - IHEA's view is that sector and provider performance should be addressed via the regulator (i.e. TEQSA).
- Performance: Delivers enhanced higher education data functionality and analytics.
 - Does this involve a transfer of the Tertiary Collection of Student Information (TCSI), and will it be able to provide the real time data that will be needed, or is a different source of the data proposed? IHEA's view is that TCSI should deliver on this functionality.
- It is also stated that ATEC will manage international student profiles for public universities.
 - Does this include independent providers as per the proposed arrangements in the Education Services for Overseas Students Amendment (Quality and Integrity) Bill 2024 (ESOS Bill)? IHEA's

view, as per our submission on the ESOS Bill, is that caps should not apply, particularly to independent providers, which have been adversely impacted by visa processing arrangements.

Harmonisation of higher education and VET

It is proposed the ATEC will lead and manage Australia's higher education system, including promoting a more harmonised tertiary education system by breaking down barriers between the higher education and VET sectors.

IHEA supports genuine efforts to harmonise higher education and VET. Reform of the national architecture of tertiary education delivery is critical to realising the economic and societal benefits that education brings. Historically, higher education and VET have ostensibly been two separate pathways, with some intersections. As a result, there are differences in funding, regulation and a lack of guidance resulting in inconsistencies in credit transfer for students between the sectors. These should be priorities for ATEC.

Addressing the skills needs of the future will require more collaboration and alignment between the higher education and VET sectors. Better integration of the sectors to support lifelong learning should commence with creating pathways between vocational and higher education, including recognising prior study in each. It could also include higher education, VET providers and employers collaborating in the design and delivery of courses to meet emerging skills needs and future workforce needs.

It will be fundamental to have a connected funding system between higher education and VET, which needs to include microcredentials and to develop a tertiary education system that supports lifelong learning. As stated in the Accord Final Report, it will be paramount "to deliver new options for lifelong learning and to encourage higher education participation from new cohorts, the Australian Government move toward funding a set of microcredentials as a new element in the system of CSP, initially in areas of employer demand and national priority" (p.19, Accord Final Report).

Further, actions to better integrate the sectors to support lifelong learning could include creating pathways between vocational and higher education, including consistent approaches to recognising prior study in each. It could also include higher education, VET providers and employers collaborating in the design and delivery of courses to meet emerging skills needs and future workforce needs.

However, a fundamental and critical first step in all of this is for students to have appropriate incentives and access to upskill and reskill at every stage of their lives to connect with the type of education that is right for them at the time. A joined-up funding system between the two sectors, as is being rolled out in the United Kingdom as a Lifelong Learning Entitlement will be a key piece of the puzzle. This will set in place a core element of any successful lifelong learning approach to meet the skills' needs and employers needs of the future through a flexible, supportive and joined-up tertiary education system.

Streamlined regulation will be another important piece of work to progress to support better harmonisation of higher education and VET. IHEA proposes a simple reform to streamline regulation and reduce red-tape through single registration via TEQSA for dual sector providers. Dual sector providers will be critical in supporting a 'better-connected connected tertiary education system centred on meeting skills needs including through upskilling, reskilling and other forms of lifelong learning' (p.69, Accord Final Report).

ATEC should work with TEQSA and ASQA to avoid duplication and to minimise burden and costs for dual sector providers. In the short-term, there is an opportunity for the development of a Service Obligation Charter between TEQSA and ASQA to minimise burden and cost. This would address an obvious overlap for dual sector providers. As noted during the Accord process, IHEA proposed five relatively simple changes, under a Service Obligation Charter, to ensure effective and cohesive regulation of dual sector providers. In summary they are:

Designate TEQSA as the primary regulator for dual sector providers for functions such as Commonwealth Register of Providers and Courses for Overseas Students (CRICOS) registration and for Provider Information Requirements.

- Align TEQSA and ASQA's Fit and Proper Persons and Financial Viability assessment data sets and processes to promote single point reporting. Some of TEQSA and ASQA's information requirements such as Fit and Proper Persons and Financial Viability assessment processes are quite similar and would benefit from mutual recognition.
- Create a single annual data reporting system for dual sector providers that uses standardised data sets. This would involve consolidating and streamlining data in the Tertiary Collection of Student Information (TCSI) and the VET Streamlining program, which currently results in overlap and confusion.
- Mutual recognition policies between TEQSA and ASQA for higher education provider/Registered Training Organisation (RTO) registration and re-registration decisions made by either regulator. ASQA's Draft RTO Standards are similar to TEQSA's Threshold Standards, which could be addressed through mutual recognition arrangements to remove complexity and ambiguity.

Such approaches will support the development of the infrastructure needed to support lifelong learning to deliver on the increased attainment of qualifications 'to meet Australia's future skills needs and drive improvements to national workforce participation and productivity' (p.17, Accord Final Report).

Who We Are

Independent Higher Education Australia Ltd. (IHEA) is a peak body established in 2001 to represent Australian independent (private sector) higher education institutions. Our membership spans independent universities, university colleges and other institutes of higher education, all of which are registered higher education providers accredited by the national higher education regulator, TEQSA or associate members seeking registration.

Our Vision is that: students, domestic and international, have open and equitable access to world class independent higher education in Australia, built on the foundations of equity, choice, and diversity.

Our Mission is to represent independent higher education and promote recognition and respect of independent providers as they contribute to Australian education, the Australian economy, and to society in general. We achieve this by promoting continuous improvement of academic and quality standards within member institutions, by advocating equity for their staff and students, and by delivering services that further strengthen independent providers' reputations as innovative, sustainable, and responsive to the needs of industry and other relevant stakeholders in both higher education and vocational education and training. IHEA's commitment is to excellence, productivity and growth in independent higher education being delivered through a trusted Australian education system underpinned by equity, choice, and diversity.

IHEA members have different missions, scales, and course offerings across the full AQF range (Diplomas to Doctorates). Members comprise:

- Four private universities (Bond University, Torrens University, University of Divinity, Avondale University).
- Six University Colleges (Alphacrucis University College, Moore Theological College, Australian College of Theology, Sydney College of Divinity, SAE University College and the Australian College of Applied Professions).
- Six self-accrediting institutes of higher education (Griffith College, Kaplan Business School, Marcus Oldham College, Excelsia College, The College of Law and the Australian College of Applied Professions).
- A further sixty eight not-for-profit and for-profit institutions of Higher Education; and related corporate entities.

IHEA members teach approximately 74 percent of the students in the independent sector (i.e., more than 130,000 students) and educate students in a range of disciplines, including law, agricultural science, architecture, business, accounting, tourism and hospitality, education, health sciences, theology, creative arts, information technology, and social sciences.

IHEA holds a unique position in higher education as a representative peak body of higher education providers. Membership in IHEA is only open to providers registered with the Australian regulator – TEQSA. However, some IHEA members are dual and multi-sector providers who also deliver VET and/or English Language Intensive Courses for Overseas Students (ELICOS) courses.

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Appendix: Questions asked in the Consultation Paper

- Is the ATEC’s proposed legislated objective comprehensive?
- Does the proposed structure of the Commission, including consultation with other relevant stakeholders, allow for an effective decision–making process?
- What does effective stewardship look like for the ATEC? What levers should the ATEC have to steward the sector?
- How can the ATEC seek the regular information and advice it needs to operate, while ensuring minimal additional regulatory burden on the sector?
- What does a successful tertiary future state look like and how can the governance of the ATEC help to achieve this?
- 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?