

Submission to the Senate Education and Employment Legislation Committee

Inquiry into Universities Accord (Australian Tertiary Education Commission) Bill 2025 and a related bill

**by
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About the author

I have worked on tertiary education funding for more than 18 years within the Commonwealth Government, Universities Australia and as a consultant. I am an Honorary Senior Fellow at the Centre for the Study of Higher Education, University of Melbourne.

I spent over 30 years in the Australian Public Service, obtaining extensive practical experience in designing and implementing policy for major government funding programs.

I was an adviser to Australian Government Ministers for nearly six years during the 1990s.

Dear Committee Members

Thank you for the opportunity to provide a submission to the inquiry on the *Universities Accord (Australian Tertiary Education Commission) Bill 2025 and a related bill*.

I urge the Committee to recommend that this Bill not be passed without substantial amendment. Suggestions for amending the Bill which might make it suitable for passage are at Attachment A.

I have provided general comments on the proposed Australian Tertiary Education Commission (ATEC) and its role in Part A below. I provide details on the amendments I am proposing in Part B.

A. General comments on the proposed ATEC

What should be expected from an ATEC?

For an ATEC to be worth legislating, there are certain features that it should have as a minimum. It should have a substantial degree of independence and expertise. It should be able to put in place, or at least recommend, stable funding, regulatory and accountability arrangements which support the development of a higher quality tertiary education sector than otherwise would be the case.

While only a few submissions to the Australian Universities Accord (the Accord) explicitly supported the re-establishment of a tertiary education commission, numerous submissions identified the sort of problems that such a commission should solve.

- The Group of Eight explicitly advocated for a commission: “The role of the Commission, in general terms, would be to provide long term, coordinated, and expert advice to government on higher education policy matters. This would ensure ... continuity of approach across electoral cycles.”
- Associate Professor Gwilym Croucher and Professor Vin Massaro also explicitly advocated for a commission: “an expert policy body that will have the longevity and research and planning capacities for long term planning ... Its primary purpose would be to lead the development of the higher education and research system with the objective of creating a coherent system of diverse institutions with distinct missions.” Its remit would be “providing advice to government that would be made public; acting as an intermediary (or negotiator) to broker agreements between institutions and government; and collecting and maintaining a research capacity and data repository”.
- The University of New England argued for enduring principles for a coherent, transparent, and collaborative Higher Education Policy Framework ... not just a series of short-term policy initiatives;
- Matt Brett was critical of the frequency of change to funding and regulation, observing “Policy can be made that is more stable and which allows for resources to be more effectively focused on the core purposes of higher education.”
- University DVC(A)’s observed “some government decision making has lacked a public policy basis and clear rationale. Ongoing program updates are announced at short-notice and have tended to be one-off or interim arrangements rather than sustainable public policy driven initiatives”.

I would add to these that an ATEC should be designed to ensure that financial resources are not allocated to advance political interests and/or ideological positions. These resources should only be used for genuine efforts to develop Australia’s higher education/tertiary education institutions and infrastructure, and to advance objectives such as those outlined in the Bill’s National Tertiary Education Objective.

The Final Report of the Accord recommended an ATEC with wide responsibilities for the tertiary education sector and drawing together many existing related agencies. The Government has chosen to proceed cautiously and take only a small initial step. In doing so, it has omitted critical features that should characterise an ATEC regardless of how modest its remit.

The Government is legislating a model of ATEC with few features of an independent steward and many that imply it may simply function as an extension of Ministerial and Departmental authority. The lack of detail made available on what ATEC will be asked to achieve in the near term, despite the Interim ATEC already having commenced this work, displays more continuity of policy approach than it does a new beginning.

The amendments I have proposed below would alter the ATEC so that it is more closely aligned with the sort of Commission described in my opening paragraph and which would make ATEC a more worthwhile proposal.

No transparency about how ATEC will drive change

Some submissions may argue that the Bill provides no definition of 'stewardship'. The ordinary meaning of this term is 'the careful and responsible management of something entrusted to one's care'. I do not foresee any problem with the term not being specifically defined in the Bill and hence taking its usual meaning.

The Government has announced its "three important structural reforms that are central to setting the tertiary education system up for the future". These are the ATEC, Managed Growth Funding and Needs-based Funding. It has not provided adequate detail on how any of these proposals will advance the objectives the Government has set for them.

In his second reading speech for this Bill, the Minister declared:

the ATEC is the Accord. ... It is a national project and it needs a steward that is there for the long haul. ... To get the sector to work more like a system. ... And to help drive real and lasting reform.

Unfortunately, the direction of change for the system is articulated only in the most broad and high-level terms:

- ATEC will work towards a more unified tertiary education sector.
- It will support more young people from poor families and the regions to go to university.
- It will help the Government achieve its overall tertiary attainment target of 80 per cent of working aged people by 2050.

There is no satisfactory detail on how ATEC is going to achieve any of these things. Given the magnitude of ambition for ATEC, it does not seem unreasonable to ask for some detail on precisely what changes it will be making in the short term, how it will go about making those changes and what leverage it will have to enforce those changes.

Many of the claims made about the Government's response to the Accord are inflated, as was the case with many claims made by the previous Government for its Job Ready Graduates changes.

In *Higher Education Attainment Under the New Managed Growth Funding System*, I show how both the claimed expansion associated with Fee-free Uni Ready places and the claimed additional funding provided in the 2024-25 MYEFO changes are overstated. I provide evidence that planned government funding will most likely result in lower higher education attainment in the 2030s, than in 2021. The paper is available on the CSHE website [here](#).

In his Second Reading Speech, the Minister stated of ATEC that "Its operations will be transparent". The Bill does not provide for this. I have proposed changes to:

- ensure that ATEC's proposals for sector change and its reporting on the sector are publicly available without redactions (I have not done this in respect of its advice to Ministers.);
- ensure that compacts with providers are publicly available without redactions;
- ensure that any proposed term of a mission-based compact which is the source of substantial disagreement between ATEC and a provider is made publicly available; and
- ensure that State of the Tertiary Education Sector reports provide details on how ATEC is using funding to drive sector change. My understanding is that the Bill already provides for this report to be available without redactions.

ATEC is to specify the number of international and domestic student places

In his Second Reading Speech, the Minister stated:

The ATEC will have its own decision-making powers.

It will take on responsibility for new mission based compacts with individual universities, setting out the number of domestic and international students in line with the Government's strategic direction.

This will be set out in more detail in the legislation I will introduce next year.

The Bill provides for ATEC to have the function of allocating a maximum number of international student commencements to ESOS registered providers at the direction of the Minister. I understand this will be done through mission based compacts. I am not sufficiently expert in migration arrangements to know what further legislative changes might be required to implement this. The Committee might like to explore this question and the extent to which ATEC might be involved in enforcing this maximum.

In contrast, the Bill does not provide for ATEC to allocate a maximum number of domestic student commencements, Commonwealth supported student commencements, or fully funded Commonwealth supported places (CSPs). The provisions to do this are likely to be in the legislation foreshadowed for next year.

The Government has indicated that under the new Managed Growth Funding arrangements each provider will have a set number of fully funded CSPs. It wants virtually all places to be fully funded and intends achieving this by removing from the sector an unknown number of student places which currently receive student contributions but no Government subsidy.

Some universities will be required to lower their commencing student intakes to achieve this. Only if they agree to this reduction will they be placed on the euphemistically labelled 'glidepath' which will allow them to avoid the sudden funding losses associated with the removal of 'student contribution only' funding for excess CSPs (also known as marginal funding). The next tranche of legislation is to give ATEC the financial levers to do this.

ATEC will be attempting to grow the student load of other universities. Those universities which due to past funding guarantees are receiving a lot of subsidies for student places that have no students are to have their funding gradually reduced.

The Interim ATEC has commenced compact negotiations with universities on these changes. The intention is to permanently alter the distribution and funding of Commonwealth Supported Student Places (CSPs) throughout the system. The distribution of funding and places is known to have drifted badly out of alignment since 2017, but the Department of Education keeps such matters as 'in house' secrets.

My personal view of this situation is that it is wholly unsatisfactory.

- There is very little public transparency around what is occurring despite the proposed changes being of significant public policy importance.
- As with other changes to higher education policy in the recent past, the long-term impact of these changes has not been fully considered. In the long term, the removal of 'student contribution only' funding for excess CSPs is likely to have its greatest impact on outer metropolitan and regional universities.

One of the motivations for these changes may be concern about the financial viability of smaller, less in-demand regional universities. These proposals are unlikely to be an effective way of ensuring their financial viability. There are alternative options for dealing with this issue which do not entail forced reductions in student load at some universities when there is a system wide objective of lifting tertiary education attainment.

Another potential motivation is to "allow for effectively demand driven CSPs for students from under-represented backgrounds". No-one in the sector understands how this policy can be practically implemented. In a university which has more student load than fully funded places, there is no way of deciding whether it is the disadvantaged or advantaged students who are in the fully funded places. Student places do not have student names on them. A 'place' is a funding concept.

It is worth noting that this program of change will circumscribe student choice which is a significant driver of quality within the sector.

ATEC and sector regulation

At each of the last two Senate Estimates hearings, the Secretary of the Department of Education has denied that ATEC will be a regulator. The truth of this statement appears to rely on a narrow definition of regulator.

The ordinary meaning of regulator is 'a person or organization whose job is to control an activity or process and make certain that it operates as it should'.

The Bill makes it clear that at least some of ATEC's functions will be regulatory in nature.

- In performing its functions, ATEC "must have regard to the objective of improving outcomes for persons facing systemic barriers to education" (Section 14). This is one of the major areas in which it is to 'drive change'.
- ATEC is to enter into mission based compacts with Table A and Table B providers and assess provider's performance against the terms of their compacts.
- As discussed above, ATEC will set maximum numbers for international and domestic students in these compacts.

These will be powerful levers for which the ATEC is responsible. They are the main mechanisms which will be used by ATEC in its stewardship of the sector. There is a risk that without appropriate legislative guardrails these powers may be misused by ATEC. If ATEC's legislation does not adequately provide for ATEC's independence, they may be misused by a current or future government.

There is little in the Bill that places limits on the terms that ATEC may seek to include in a compact and there are no principles of regulatory agency (such as with TEQSA which is not to impose burdens more than reasonably necessary and is to act with proportionality and in a manner that reflects risks).

While the Bill states that the purpose of compacts is to enable providers to 'contribute' and to 'meet student and community needs', it clearly envisages some level of potential conflict between ATEC and providers. It establishes a framework that is designed to deal with 'disagreements' between ATEC and higher education providers over the terms of mission based compacts and in relation to the assessment of provider performance in delivering the outcomes required in compacts.

These provisions simply make no sense unless ATEC is seeking to exercise some level of control over providers, that is to regulate some of their activities.

The Bill provides for 'default mission based compacts'. Situations in which these default mission based compacts may be put in place include where a provider:

- fails to meet one of the terms of its mission based compact;
- fails to provide information sought by ATEC; or
- is not, in ATEC's reasonable belief, participating in compact negotiations in good faith.

The terms of these 'default mission based compacts' will be specified by ATEC, subject to a number of provisions in Section 37 of the Bill. In this respect, they differ from a standard mission based compact which is to be 'negotiated in good faith'. Legislative provisions in the Bill ensure that default compacts satisfy the requirement under the Higher Education Support Act 2003 (HESA) to have a compact to be eligible to receive grants. Otherwise, the status of default mission based compacts and the implications of having one is unclear.

It will be surprising if there is not some form of financial leverage/penalty to encourage providers to accept the terms sought by ATEC in a standard mission based compact. It is possible the model is simply one of 'name and shame', but I am sceptical this the case. The Committee might like to seek further details on the full implications of a provider having a default mission based compact.

Given the above provisions, it is simply disingenuous to argue that the role envisaged for ATEC is not, at least in part, regulatory. For this reason, the Bill should:

- ensure that ATEC has a substantial degree of independence from Government;
- place limits on ATEC's powers to impede academic freedom;
- place limits on ATEC's power to seek information from providers, in particular personal information;
- provide for the publication of any term ATEC has sought to include in a provider's mission based compact which has not been acceptable to the provider and resulted in the provider having a default mission based compact.

B. Detail on proposed amendments

1. Composition of the Commission, quorum at meetings and decision making

The provisions in the Bill effectively enable ATEC to be a one-person operation run by the Chief Commissioner.

It provides for only three Commissioners. One will be full-time but with a substantial workload associated with First Nations matters. Another will be part-time and there will be a full-time Chief Commissioner.

Meetings require a quorum of two commissioners and various provisions in the Bill mean decisions can be made by a single person. For example, the chair (usually, the Chief Commissioner) has a casting vote if votes at the meeting are equal. If one person must absent themselves from the making of a decision at the meeting (for example due to a conflict of interest), the decision may be made by a single remaining Commissioner.

These arrangements do not adequately provide for the skills and perspectives to properly inform ATEC in the making of major strategic decisions of significance for the long-term development of Australia's tertiary education sector.

I recommend:

- ATEC's membership have at least three part-time commissioners, in addition to the Chief Commissioner and the First Nations Commissioner.
- A quorum at a meeting should be three members.
- If ATEC is unable to make a decision because three or more members are required to absent themselves from making the decision, the Minister should make the decision and the outcome should be noted in the minutes of the next ATEC meeting.

2. Functions of the Commission

The functions of the Commission are narrowly framed and effectively enable the proposed stewardship of the tertiary sector to perpetuate the same 'behind closed doors' operation that has characterised funding for higher education student places since the demand driven funding system was terminated.

In the interests of public accountability and given the significance of higher education/tertiary education to Australia's economic and social development, such matters should not be 'secrets' between Vice-Chancellors and government officials.

ATEC should engage openly and transparently with the higher education sector. Its stewardship of the sector should be open, transparent and subject to public policy discussion by Members of Parliament, Senators and the Australian community.

I recommend ATEC's functions state clearly that it is:

- to prepare and publish regular reports on the state of the tertiary education system and recommend directions for its future development.
- to prepare and publish information on the distribution of Commonwealth funding to higher education providers, the rationale for that funding distribution and the performance of individual higher education providers in delivering outcomes required for that funding and under their mission based compact.

3. Mission based compacts and academic freedom

The current Bill enables ATEC to decide that overriding academic freedom in a mission based compact may be warranted. It requires academic freedom to be considered but does not guarantee it.

Around the world universities are being subject to considerable political influence. Their dependence on governments for funding makes them vulnerable to such influence, as it does in Australia. It is only legislation, policy and enterprise agreements which bolster academic freedom in Australia's universities.

In Australia, the split of responsibilities between the Commonwealth with prime responsibility for funding, and the states and territories with prime responsibility for governance and accountability, may reduce potential threats to academic freedom. There is however a clear trend of the Commonwealth expanding its control over Australian universities.

The Bill relies on the Corporations power (paragraph 51(xx) of the Constitution) as the main source of its authority for exercising control over universities. My understanding is that there is some doubt as to the extent of the Commonwealth's ability to use that power over State/Territory created universities, but the matter has not been tested. Certainly in this Bill, the Commonwealth is acting on the assumption that it does have the power to exercise control over a wide range of university activities through ATEC's negotiation of mission based compacts with universities.

The Government has placed few limits on what ATEC might seek to achieve through mission based compacts. I recommend that the Bill explicitly provide that mission based compacts:

- not infringe the academic freedom of the provider, its staff or its students. (This is consistent with provisions in the *Higher Education Support Act 2003*);
- must not restrict a provider's ability to make benefits available to its students (for example, HELP loans and Commonwealth support under the *Higher Education Support Act 2003*); and
- must not interfere in matters concerning employment, including who is to undertake teaching and research at the university.

4. Mission based compacts and disputes between the parties

As indicated in Part A, the Bill establishes a framework to deal with 'disagreements' between ATEC and higher education providers over the terms of mission based compacts. If a default mission based compact is in place, the ATEC must meet with the provider every three months unless both parties agree otherwise.

Requiring disputing parties to meet every 3 months without their agreement is excessive.

It is rare for a university not to accept the Government's authority over the broad direction of change for the sector, or the conditions associated with funding programs once those programs are in place.

Universities are not inclined to publicly disagree with the Government of the day, given the considerable control the Minister has over their future grants. ATEC is only likely to decide a university is not negotiating in good faith if there is significant disagreement over a proposed compact term and/or a significant principle is at stake.

I recommend that the requirement to meet be the same as for standard mission based compacts, that is every 12 months. This will provide sufficient time for any disputed term of a mission based compact to become public under the minimum reporting requirements I have suggested below. It will allow for public scrutiny of the issues at stake.

5. ATEC information seeking powers

In Section 30(2), the Bill provides that ATEC may require of a provider such information as the ATEC directs. The clause begins 'In order to make an assessment under subsection (1)'. I understand that the legal interpretation may be that this limits ATEC from seeking information not relevant to such an assessment. It may not prevent the collection of personal information.

Amendments to HESA in the Consequential and Transitional Provisions Bill mean that an ATEC commissioner may have access to personal information as defined in that Act, provided it is in the course of their official employment. The amendments make unauthorised disclosure of that information an offence. These provisions do not protect personal information which may be collected by ATEC for the purposes of what is to become the ATEC Act.

I recommend that more explicit limits be placed on ATEC's information collection powers. Section 30(2) should preclude the collection of personal information and state explicitly that requested information is to be relevant to assessing the provider's performance in delivering outcomes that are both specified in its

mission based compact and relevant to the purposes of mission based compacts specified in subsections 28(a), 28(b) and 28(c) of the Bill. A definition of personal information should be included in the Bill.

6. Minimum requirements for public reporting on tertiary education and compacts

The Bill requires ATEC to produce a State of the Tertiary Education System report every year. The Bill lists things that the report may contain but does not require reporting on anything in particular.

This is wholly deficient for an organisation undertaking a national project of fundamentally changing Australia's tertiary education system. ATEC's annual report on the system should be fundamental to ATEC's stewardship of the tertiary education sector and a significant element of its public accountability for the actions it is taking to change that sector.

I recommend that that the report be required to contain information on:

- the funding of higher education providers and the rationale for that funding;
- higher education provider's achievement of required outcomes;
- a list of higher education providers with a default mission based compact, the reason the provider has a default mission based compact and any terms ATEC has sought to include in the provider's mission based compact which have not been acceptable to the provider and have led to it having a default mission based compact; and
- any matter relevant to the functioning of the tertiary education sector which ATEC considers to be having a detrimental impact on achievement of the National Tertiary Education Objective.

I also recommend that this report be required within six months of the end of a calendar year. This will ensure that ATEC can be held accountable for its stewardship within a reasonable time frame. A report on a calendar year released in the December after that year would not be scrutinised until the following year. Such a lag reduces the report to an historical artifact.

7. Restrictions on the publishing of information

The Bill contains many clauses with notes to the effect that material may be redacted from public documents if its release would be contrary to the public interest. This includes, but is not limited to, information that might prejudice relations between the Commonwealth and the states/territories, and information that would disclose deliberations of the Cabinet or its committees.

ATEC should be able to give frank and fearless advice to Ministers, and the deliberations of Cabinet and its committees should be afforded the usual protections. These protections can be retained while ensuring ATEC is fully accountable for its actions.

The Australian public should be advised of all actions being taken by ATEC to implement change to the tertiary education sector. Under HESA, mission based compacts and funding agreements must be published in full. There is no reason for ATEC's stewardship of the sector, its agreements with providers, its reports on their performance and its pursuit of the National Tertiary Education Objective to be hidden from the public.

I recommend that the following documents be precluded from containing material that cannot be published:

- the Minister's strategic priorities for the tertiary education sector, ATEC's statement of strategic priorities and ATEC's work plan
- mission based compacts and default mission based compacts; and
- the State of the Tertiary Education System report.

I hope this information assists the Committee.

Yours sincerely

Mark Warburton

10 December 2025

Attachment A

**Recommended minimum amendments to the
Universities Accord (Australian Tertiary Education Commission) Bill 2025**

1. Composition of the Commission, quorum at meetings and decision making

Section 9 delete 'the commissioner', substitute 'three commissioners'

Note: Amendments to various sections of the Bill will be required to ensure this change is reflected consistently throughout the Bill (for example in sections 20, 21, 58 and 63). Section 58 provides for the three commissioners to be part-time.

Section 50 Delete (2), substitute

- (2) If ATEC is unable to make a decision on a particular matter because 3 or more commissioners are required not to take part in that decision under rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013*, the matter will be referred to the Minister for decision.
- (3) If the Minister makes a decision under subsection 50(2), the Minister's decision and the date of that decision must be noted at the next ATEC meeting and recorded in the minutes of that meeting.

2. Functions of the Commission

Section 11 delete current (g) and substitute two new subclauses

- (ga) to prepare and publish regular reports on the state of the tertiary education system and recommend directions for its future development;
- (gb) to prepare and publish information on the distribution of Commonwealth funding to higher education providers, the rationale for that funding distribution and the performance of individual higher education providers in delivering outcomes required for that funding and under their mission based compact;

3. Mission based compacts and academic freedom

Section 29 After subsection (1) insert

- (1a) A mission based compact must not contain any term which:
 - (a) infringes the academic freedom of a provider, its staff or its students as defined in the Higher Education Support Act 2003;
 - (b) restricts a provider's ability to make available to a student undertaking a course of study:
 - (i) the opportunity to be a Commonwealth support student under the Higher Education Support Act 2003;
 - (ii) a HELP loan under the Higher Education Support Act 2003; or
 - (iii) any scholarship, stipend or other benefit which would otherwise be available to the student.
 - (c) in respect of any individual person, restricts the provider's ability to decide whether:
 - (i) to employ or dismiss the person;
 - (ii) the person is to perform teaching duties; or
 - (iii) the person is to undertake research activities.

4. ATEC information seeking powers

Section 30 delete (2) and substitute

(2) The ATEC may, by notice in writing, require the provider to provide information, other than personal information, relevant to:

- assessing the provider's performance in delivering outcomes specified in its mission based compact; and
- the purposes specified in subsections 28(a), 28(b) and 28(c).

Note: An appropriate definition of personal information should be included in Section 5 Definitions.

5. Mission based compacts and disputes between the parties

Section 39 In subsection (2), delete 'every 3 months' and substitute 'every 12 months'.

6. Minimum requirements for public reporting on tertiary education and compacts

Section 30 Delete subsection (4) and the note under (4).

Section 33 Delete subsection (5) and the note under (5).

Section 38 Delete subsection (4) and the note under (4).

Note: Under the amendments proposed here, the information that 'may' or 'must' be published under Sections 30, 33 and 38 'must' be published in the State of the Tertiary Education System report (see suggested amendment to Section 42 immediately below).

Section 42 Insert between (1) and (2)

(1a) A report must include the following:

- details on the distribution of Commonwealth funding to higher education providers and the rationale for that funding distribution;
- for each higher education provider, a report on its delivery of the outcomes required:
 - from its funding; and
 - under its mission based compact or default mission based compact;
- a list of higher education providers with a default mission based compact, the reason the provider has a default mission based compact and any terms ATEC has sought to include in the provider's mission based compact which:
 - have not been acceptable to the provider; and
 - resulted in ATEC deciding that the provider was not negotiating in good faith and should be placed on a default mission based compact;
- any matter relevant to the functioning of the tertiary education sector which ATEC considers to be having a detrimental impact on achievement of the National Tertiary Education Objective.

In subsection (3)(a), delete '12 months' and substitute '6 months'.

7. Restrictions on the publishing of information

Section 15 Delete the note after subsection (3) and insert

(3a) A notification under subsection (1) must not include information which could not be published under Section 70.

Section 27 Delete the note after subsection (2) and insert

(2a) A mission based compact must not contain any material which could not be published under Section 70.

Section 36 Delete the note after subsection (2) and insert

(2a) A default mission based compact must not contain any material which could not be published under Section 70.

Section 42 Delete the note following subsection (1) and insert

(3a) ATEC must not include in a report on the State of the Tertiary Education System under subsection (1) any material which could not be published under Section 70.

Section 43 Delete the note following subsection (5) and insert

(5a) ATEC must not include in a statement of strategic priorities under subsection (1) any material which could not be published under Section 70.

Section 44 Delete the note under subsection (4)

Section 45 Delete the note following subsection (4) and insert

(4a) ATEC must not include in a work plan under subsection (1) any material which could not be published under Section 70.

Section 46 Delete the note under subsection (4)