



BOND UNIVERSITY

Professor Tim Brailsford
Vice Chancellor and President

14 University Drive

Bond University

Queensland 4226 Australia

Website: www.bond.edu.au

ABN: 88 010 694 121

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Professor Helen Bartlett
Chair
Higher Education Standards Panel

By email HESFconsultation@atec.gov.au

Dear Professor Bartlett,

Bond University Submission - Amendments to the *Higher Education Standards Framework (Threshold Standards) 2021*

Bond University welcomes the opportunity to contribute to this important consultation on proposed amendments to the *Higher Education Standards Framework (Threshold Standards) 2021*.

We commend the Higher Education Standards Panel (HESP) for the thoroughness and transparency of its consultation process, and for the care taken in the consultation paper to draw together evidence from the Australian Universities Accord, the Expert Council on University Governance, and the Senate Education and Employment Legislation Committee's Inquiry (the Inquiry).

Bond University has an interest in all aspects of the consultation paper, which overlap generally with the sector; however, Bond has a specific interest in Consultation Question 4, given our status as a private, not-for-profit university. As such, our response is focused on this matter.

Response to Consultation Question 4

If a new Part C is created to incorporate the University Governance Principles, what are the advantages and risks of having some standards apply only to public universities?

Bond University supports the creation of a new Part C, and recognises that strengthening governance and transparency requirements for public universities is a legitimate and proportionate response to the concerns raised by the Australian Universities Accord, the Expert Council on University Governance, and the Inquiry.

This submission focuses on ensuring that Part C is appropriately scoped, with a clear provision confirming its application to public universities, and that it does not extend to private, not-for-profit universities incorporated under the *Corporations Act 2001* which are already regulated by the Australian Securities and Investments Commission (ASIC).

This position rests on three foundations.

Firstly, private universities such as Bond University are already subject to a distinct, strict regime of enforced oversight and regulation of its corporate governance framework and practises under the *Corporations Act 2001* by ASIC and the Australian Charities and Not-for-profits Commission (ACNC).

Applying standards designed for the public statutory model, in addition to the strict and comprehensive regime of legislated governance obligations, risks creating incompatibility and inconsistency without producing better governance outcomes; and at a higher cost due to duplication, overlap and multiple reporting requirements.

Secondly, the evidence base informing the proposed Part C standards relates specifically to the governance arrangements of public universities. The University Governance Principles were developed by the Expert Council expressly for public universities. The Inquiry examined issues arising in that context, and the transparency measures proposed are directed at the accountability structures of statutory authorities.

A scoping provision that reflects this context ensures the standards are proportionate and fit for purpose.

Thirdly, the Threshold Standards are designed to be principle-based, and support a diverse higher education provider sector. This principle has been reinforced and embedded as core within the Universities Accord. Appropriate application of Part C preserves that design intent, by maintaining the inherent diversity of both public and private institution governance models that serves students and the sector well.

1. Engaging with the evidence base: why Part C is appropriately directed at public universities

The HESP consultation paper draws on a substantial body of evidence. That evidence consistently and specifically concerns the governance arrangements of public universities.

- The Expert Council on University Governance was tasked to develop governance principles specifically for *public* universities, and its final report identified areas for improvement, including accountability structures, transparency practices, and community engagement, that reflect the characteristics of a public statutory authority model.
- The Expert Council itself noted that the governance principles are intended to apply to *public* universities; those not subject to board and shareholder oversight or compliance with the ASX Corporate Governance Principles.
- The Inquiry similarly examined transparency, accountability, and employment compliance issues at public institutions.

The proposed Part C standards have been designed with the public university context in mind. The HESP's own principles for amending the Threshold Standards counsel that amendments be concise, and universal where possible, but *complementary rather than replicative*. Extending Part C to private universities would risk replicating governance obligations already imposed under existing legal frameworks, and applying standards

calibrated for a different corporate structure and legal context to providers for whom those standards were not designed.

2. Rationale of limiting Part C to public universities

2.1 Targeted regulation matched to demonstrated need

Public universities are statutory authorities established under state legislation, subject to ministerial oversight and state audit frameworks. The transparency and accountability considerations identified across the Universities Accord, the Expert Council on University Governance, and the Inquiry reflect the governance context of that model.

A Part C directed only at public universities would address those considerations directly and proportionately, without importing public sector constructs to private entities that operate under a fundamentally different legal and corporate structure.

2.2 Regulatory coherence and avoidance of legal duplication

Private universities established under the *Corporations Act 2001* already operate under a rigorous and well-enforced governance framework: directors' duties of care and diligence, duties to act in good faith and for a proper purpose, conflicts of interest management obligations, responsible fiscal management requirements, and personal liability for insolvent trading. These obligations are enforceable by ASIC and, in the case of registered charities and not-for-profit corporations, the ACNC.

2.3 Sharpened regulatory oversight for Tertiary Education and Quality Standards Agency (TEQSA)

Concentrating the new transparency and reporting obligations in Part C on public universities will assist TEQSA to monitor compliance against standards that are meaningful and verifiable for public institutions, rather than administering hybrid standards that sit awkwardly across fundamentally disparate corporate structures established under distinctly different legislative frameworks.

2.4 Preservation of sector diversity

The Threshold Standards are deliberately designed to support a diverse provider sector. A differentiated Part C ensures a fit-for-purpose approach to the governance model applicable to different types of institutions. .

3. Risks if Part C extends to private universities

3.1 Legal conflict and irreconcilable obligations

This is the most significant risk. Mandating public-sector board composition requirements (for example, ministerial appointment mechanisms or prescribed council structures) for a private corporation is legally incompatible with a corporation's constitution, and the *Corporations Act 2001* provisions governing the appointment and removal of directors.

Where obligations under the Threshold Standards and obligations under the *Corporations Act 2001* or ACNC regime cannot both be satisfied, directors face an irreconcilable legal conflict.

3.2 Erosion of skills-based and independent governance

Private universities like Bond University are governed by a skills-based board with independent directors appointed and removed under a company constitution. The Expert Council's governance principles were developed for public university councils, which have different composition requirements and accountability mechanisms. Importing prescriptive representational requirements designed for public university councils into a private corporation would risk diluting the intended benefits associated with skills-based boards and compromise the independence principle that underpins directors' fiduciary duties.

3.3 Regulatory duplication without commensurate benefit

Applying public-sector transparency mechanisms, such as mandatory publication of Council outcomes in formats calibrated for statutory authorities or remuneration reporting templates aligned to public entity requirements, to private universities would layer compliance obligations on top of existing ASIC and ACNC obligations without producing any benefit to students, TEQSA, or the public. The additional burden would divert resources from core educational business without improving governance outcomes.

4. Practical drafting suggestions to operationalise a public university-only Part C

Bond University proposes that the following drafting would provide a practical solution to the issues identified in this submission, which would effectively limit Part C's application to public universities only.

4.1 Scope for Part C

The opening of Part C should include an express scope clause such that Part C applies only to 'public universities' for the purposes of the Standards.

4.2 Non-duplication principle

Part C should include an opening note that its standards are not intended to replicate obligations already imposed by corporations law, not-for-profit standards, or other applicable legislation, consistent with the HESP principles for amending the Threshold Standards.

4.3 Cross-reference in Part A

Part A should be amended to clearly note that *all* providers, public and private, continue to meet Part A governance and academic standards, with Part C adding public-sector-specific transparency and accountability measures. This preserves a coherent two-tier structure without creating ambiguity about the obligations of private providers.

4.4 Alignment with the University Governance Principles

For completeness, Bond University notes that the substantive content of the eight University Governance Principles - Accountability, Diversity of Perspectives, Independence, Transparency, Trustworthiness, Inclusive and Responsive, Sustainable, and Responsible - are already addressed for private universities through the following existing frameworks:

- Accountability, Transparency, and Trustworthiness: directors' duties under the sections 180-184 of the *Corporations Act 2001* and ACNC governance standards.
- Sustainable: responsible financial management duties and the ACNC's financial oversight regime.
- Responsible: workplace laws applicable to all university employers.
- Diversity of Perspectives, and Inclusive and Responsive: Bond University's constitutional requirements for board composition and the existing Part A governance standards.

This analysis supports the conclusion that Part C, in its present form, does not enhance existing corporate governance obligations held by private universities, while simultaneously creating legal incompatibility and conflict. The value of Part C lies entirely in addressing the accountability gaps, specific to the public statutory model.

5. Bond University's Governance Context

Bond University is a company limited by guarantee under the *Corporations Act 2001* and a registered charity with the ACNC. It is governed by a skills-based Council (board), whose members are appointed and removed in accordance with the company's constitution. Council members are Directors appointed pursuant to the *Corporations Act 2001*, and hold fiduciary duties that impose specific duties on directors, including obligation to:

- Act with reasonable care and diligence;¹
- Act honestly and fairly in the best interests of the charity and its charitable purpose;²
- Not misuse their position or information obtained through their role;³
- Disclose and appropriately manage conflicts of interest);⁴ and
- Prevent the charity from trading while insolvent.⁵

These obligations do not apply in the same way to members of public university councils, which are not corporations, and whose members are not directors under the *Corporations Act 2001*. This fundamental legal distinction, that is not merely a difference in institutional character, is the principal reason why the governance standards appropriate to public universities cannot be applied to private not-for-profit corporations.

¹ Section 180, *Corporations Act 2001*

² Section 181, *Corporations Act 2001*

³ Sections 182-183, *Corporations Act 2001*

⁴ Section 191, *Corporations At 2001*

⁵ Section 588G, *Corporations Act 2001*

Summary

Bond University supports the creation of Part C and the incorporation of the University Governance Principles into the Threshold Standards, on the basis that:

- Part C is expressly scoped to public universities only, with a clear legislative definition;
- Part C includes a non-duplication principle confirming it does not replicate Corporations Act or ACNC obligations; and
- Part A is amended to cross-reference Part C and confirm that private universities' obligations are governed by Part A alone.

This approach delivers the governance reform the evidence demands, in a form that is legally coherent, proportionate, and consistent with the diversity and principles-based design of the Threshold Standards.

Yours sincerely,



Professor Tim Brailsford
Vice Chancellor and President