



GRIFFITH JOURNAL OF
LAW & HUMAN DIGNITY

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Volume 6 Issue 1
2018

Published in August 2018, Gold Coast, Australia by the *Griffith Journal of Law & Human Dignity*

ISSN: 2203-3114

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THE INTERNATIONALISATION OF AUSTRALIA'S HIGHER EDUCATION SYSTEM: TRADING AWAY HUMAN RIGHTS

JACOB DEBETS*

The commoditisation and internationalisation of Australia's education system has been so far-reaching that Australia's economic stability, and the future of higher education institutes, are now largely dependent on the continued enrolment of overseas students into their courses. This paper critically analyses the international education industry, demonstrating that the current policy approach adopted by governments and education providers is fundamentally incompatible with Australia's human rights obligations towards international students and fundamentally unsustainable if left unaccompanied by human rights principles. It begins with a history of Australia's neoliberal approach to international education and how this approach has made international students vulnerable to significant and pervasive human rights abuses by both private and public actors. It then argues that the 2009 Indian student protests saga was at its core a revolt against this state of affairs and that responses to this crisis by government were ineffective because they fell back on market principles. It then discusses recent developments in the higher education sector and the 7-Eleven underpayments scandal, before making the case for restructuring Australia's international education sector in alignment with its human rights obligations.

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I INTRODUCTION

Since the 1990s, international education has been one of Australia's most lucrative industries, contributing \$28 billion to the domestic economy in 2016–17 alone,¹ making it Australia's third-largest export and largest service export.² On the world stage, Australia controls six per cent of the tertiary market with over 800 000 overseas students,³ studying at 169 different education institutes including 43 universities.⁴ It is ranked third in the world for attracting international students in tertiary education, and significantly outperforms its "competitors" on a per capita basis.⁵

Notwithstanding the significant economic contribution made by international students and their families, their treatment by the government and education providers, both historical and contemporary, has been callous. Many of their experiences are defined by vulnerability, uncertainty, and exploitation, a reality underscored by the 2015 7-Eleven workers scandal.

In the following paper, I analyse the international education industry with the object of demonstrating how the current policy approach adopted by governments and education providers is fundamentally incompatible with Australia's human rights obligations towards international students,⁶ and is moreover economically unsustainable if left unaccompanied by human rights principles.

¹ Department of Education and Training, Australian Government, *Export Income in to Australia from International Education Activity in 2016–17 (Research Snapshot)* (December 2017)

<<https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Export%20Income%20FY2016%E2%80%9317.pdf>>.

² Department of Foreign Affairs and Trade, Australian Government, *Australia's Trade in Goods and Services 2016* <<http://dfat.gov.au/about-us/publications/trade-investment/australias-trade-in-goods-and-services/Pages/australias-trade-in-goods-and-services-2016.aspx>>.

³ Department of Education and Training, Australian Government, *International Student Data 2017* <<https://internationaleducation.gov.au/research/International-Student-Data/Pages/InternationalStudentData2017.aspx>>.

⁴ Australian Government, *National Strategy for International Education 2025* (2016) 3 <<https://nsie.education.gov.au/>>.

⁵ Ibid.

⁶ Australia is a party to the seven key international human rights treaties. Australia has signed and ratified: *International Covenant on Civil and Political Rights*, opened for signature 16 December 1966, [1980] ATS 23 (entered into force 13 November 1980) ('ICCPR'); *International Covenant on Economic, Social and Cultural Rights*, opened for signature 16 December 1966, [1976] ATS 5 (entered into force 10 March 1976) ('ICESCR'); *Convention on the Rights of the Child*, opened for signature 20 November 20 November 1989, [1991] ATS 4 (entered into force 16 January 1991) ('CRC'); *Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment*, opened for signature 10 December 1984, [1989] ATS 21 (entered into force 7 September 1989) ('CAT'); *Convention on the Elimination of All Forms of Racial Discrimination*, opened for signature 7 March 1966, [1975] ATS 40 (entered into force 30

I advance my contention in five parts. In Part II, I provide a brief historical overview of Australia's neoliberal approach to international education. My aim is to illustrate that this approach has primarily treated (and progressively relied upon) international students *only* as sources of revenue, which has in turn left them vulnerable to significant and pervasive human rights abuses by public and private actors.

In Part III, I argue that the 2009 Indian student protest saga, where thousands of international students revolted against their mistreatment and neglect by Australian governments, was at its core a reflection — and rejection — of this reality. I further contend that whilst this campaign exposed the mortality of the international education industry and raised a plethora of human rights issues, the response by State and Federal governments — which largely fell back on market principles — failed to address these issues or insulate students against new frontiers of exploitation.

In Parts IV and V, I contend that this failure, exacerbated by recent developments in the higher education sector and the labour market, represents a grave threat to the sustainability of both the higher education sector and Australia's economy more broadly. I further contend that in order to avert this disaster, Australia's international education sector should be restructured in alignment with human rights principles.

Finally, in Part VI, I conclude by proposing a series of broad, interconnected reforms that align with this objective.

In this paper, the terms “international student” and “overseas student” are used interchangeably and encompass students studying vocational education and training (“VET”) courses, higher education courses, and those studying English Language Intensive Courses for Overseas Students.

October 1975) (*CERD*); *Convention on the Elimination of All Forms of Discrimination against Women*, opened for signature 18 December 1979, [1983] ATS 9 (entered into force 27 August 1983) (*CEDAW*); *Convention on the Rights of Persons with Disabilities*, opened for signature 30 March 2007, [2008] ATS 12 (entry into force 16 August 2008) (*CRPD*).

II INTERNATIONALISATION OF EDUCATION: PROFIT OVER PEOPLE

A Australia's Education Revolution: Neoliberalism and Globalism

Australia's acceptance of international students started in the late 1940s in the aftermath of World War II.⁷ By the 1960s, there were approximately 10,000 private overseas students, predominantly originating from Asia, enrolled in Australian education institutions, whose tuition fees were subsidised at the same rate as private domestic students 'as part of a wider effort to secure good diplomatic relationships with countries in the Asia-Pacific region'.⁸ In 1974, under Labor's Whitlam administration, all student fees (including those payable by international students) were abolished and placements were fully subsidised by the Commonwealth, a policy that was later revised by the Liberal Fraser government to require international students to pay a fee (called the "Overseas Student Charge") representing a quarter of the average cost of an Australian university degree.⁹

The catalyst for the transformation of international education, now one of Australia's leading exports on which Australia's future prosperity depends,¹⁰ occurred under Labor's Hawke-Keating government in the 1980s and 1990s. As part of a drastic slate of reforms to the domestic economy,¹¹ the administration spearheaded a new higher education model, which conceptualised education as a tradeable commodity rather than a public good, and depended on external revenue for future growth.¹² As Hil observes some 30 years after these reforms were implemented:

Economic rationalism, commercialisation, managerialism, corporate governance and other outgrowths of neoliberal ideology ... ushered in an entirely new way of thinking

⁷ Lyndon Megarrity, 'A Highly-Regulated "Free Market": Commonwealth Policies on Private Overseas Students from 1974 to 2005' (2007) 51(1) *Australian Journal of Education* 39, 39; Caroline M Rueckert, *Conceptions of Care in International Higher Education in Australia* (PhD Thesis, Queensland University of Technology, 2017) 15–16.

⁸ Megarrity, above n 7, 39; See also Lyndon Megarrity, 'Regional Goodwill, Sensibly Priced: Commonwealth Policies towards Colombo Plan Scholars and Private Overseas Students, 1945–1972' (2007) 38(129) *Australian Historical Studies* 88.

⁹ Megarrity, above n 7, 40.

¹⁰ Australian Government, above n 4, 6–7.

¹¹ See generally Mark Beeson and Ann Firth, 'Neoliberalism as a Political Rationality: Australian Public Policy since the 1980s' (1998) 34(3) *Journal of Sociology* 215.

¹² See generally Gwilym Croucher et al (eds), *The Dawkins Revolution: 25 Years On* (Melbourne University Press, 2013).

about what constitutes academic life, what universities are for, and what values these institutions represent.¹³

In line with these new imperatives, successive Coalition and ALP governments thereafter implemented policies that encouraged universities to attract overseas enrolments by deregulating fees for international students,¹⁴ whilst heavily reducing (public) university funding.¹⁵ The relatively easy pathway from study to permanent residency made Australia a highly appealing study destination for (predominantly young) persons thinking of studying abroad,¹⁶ and the industry flourished.

Australia's 'neoliberal approach to education export' has come to be the benchmark for university administrations across the world,¹⁷ including those in Europe.¹⁸ Today, there are upwards of five million international students worldwide (up from 1.3 million in 1990),¹⁹ these students being the subject of intense global competition amongst nation-states.²⁰ Although I revisit this point below, it is worth noting at the outset that

¹³ Richard Hil, *Whackademia: An Insider's Account of the Troubled University* (NewSouth Publishing, 2012) 10.

¹⁴ Chris Nyland, Helen Forbes-Mewett and Charmine E J Hartel, 'Governing the International Student Experience: Lessons from the Australian International Education Model' (2013) 12(4) *Academy of Management Learning & Education* 656, 659; Andrew Norton and Ittima Cherastidham, 'University Fees: What Students Pay in Deregulated Markets' (Grattan Institute, 2015) 6 <https://www.csu.edu.au/_data/assets/pdf_file/0009/1817190/2015-Grattan-Institute-University-FeesUniversity-fees-what-students-pay-in-deregulated-markets.pdf>.

¹⁵ See generally Simon Marginson, 'Nation-Building Universities in a Global Environment: The Case of Australia' (2002) 43(3) *Higher Education* 409, 416; See also Nyland, Forbes-Mewett and Hartel, above n 14, 659; Andrew Jakubowicz and Devaki Monani, 'International Student Futures in Australia: A Human Rights Perspective on Moving Forward to Real Action' (The Academy of Social Sciences in Australia, 2010) 9; Peter D Burdon and Mary Heath, 'Academic Resistance to the Neoliberal University' (2015) 23(2) *Legal Education Review* 379 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2585814>; For a localised perspective, see Duncan Wallace, 'Melbourne Law School and the Politics of Education', *De Minimis* (online), 1 March 2015 <<http://www.deminimis.com.au/1/post/2015/02/melbourne-law-school-and-the-politics-of-education.html>>; Jacob Debets, 'Bursting the Law School Bubble', *De Minimis* (online), 3 April 2016 <<http://www.deminimis.com.au/1/post/2016/04/bursting-the-law-school-bubble.html>>.

¹⁶ Michiel Baas, 'Victims or Profiteers? Issues of Migration, Racism and Violence among Indian Students in Melbourne' [2014] (2) *Asia Pacific Viewpoint* 212, 212.

¹⁷ Shanthi Robertson, 'Cash Cows, Backdoor Migrants, or Activist Citizens? International Students, Citizenship, and Rights in Australia' (2011) 34(12) *Ethnic and Racial Studies* 2192, 2193.

¹⁸ See generally Blue Ribbon Panel on Global Engagement, 'Strength through Global Leadership and Engagement: US Higher Education in the 21st Century' (American Council on Education, November 2011) <<http://www.acenet.edu/news-room/documents/2011-cige-brpreport.pdf>>.

¹⁹ ICEF Monitor, *The State of International Student Mobility in 2015* (5 November 2015) <<http://monitor.icef.com/2015/11/the-state-of-international-student-mobility-in-2015/>>.

²⁰ John Douglass and Richard Edelstein, 'The Global Market for International Students: American Perspectives' [2015] (59) *International Higher Education* <<https://ejournals.bc.edu/ojs/index.php/ihe/article/view/8482>>; Vai Io Lo, 'Before Competition and beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3; See, eg, NAFSA: Association of International Educators, 'Restoring US Competitiveness for

competition in this sector has prompted widespread concern for the integrity of academic standards, insofar as universities' reliance on full-fee paying international students has forced them to compromise on their admission and assessment standards.

B International Students' Experience in Australia

The policy adopted by Australia treats the millions of international students within its borders primarily as sources of revenue and international prestige,²¹ and to a lesser extent as potential threats to national security.²² Enthusiasm for economic growth, and progressive border anxiety,²³ has displaced considerations of the inherent vulnerabilities of many students, deriving from their youth, cultural and linguistic backgrounds, insecure residence status, and limited social and political power as non-citizens.²⁴ That Australia is under an obligation to respect, protect, and fulfil the human rights of international students under international law, including rights to:²⁵

- an adequate standard of living including access to safe, adequate, and affordable housing;²⁶

International Students and Scholars' (June 2006)

<http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/restoring_u.s.pdf>; Bob Alagh on 17 Oct 2013 at 01:57 said, 'New Zealand Announces New Initiatives to Attract More International Students' <<http://monitor.icef.com/2013/10/new-zealand-announces-new-initiatives-to-attract-more-international-students/>>; Citizenship and Immigration — Government of Canada, *Notice — New Regulations for International Students Finalized* (2 December 2014) <<http://www.cic.gc.ca/english/department/media/notices/2014-02-12.asp>>; Rahul Choudaha, 'How China Plans to Become a Global Force in Higher Education', *The Guardian* (online), 13 October 2015 <<https://www.theguardian.com/higher-education-network/2015/oct/12/how-china-plans-to-become-a-global-force-in-higher-education>>.

²¹ Andrew Jakubowicz and Devaki Monani, 'Mapping Progress : Human Rights and International Students in Australia' (2015) 7(3) *Cosmopolitan Civil Societies Journal* 61, 10; Australian Bureau of Statistics, 'Participation in Education: Overseas Students in Higher Education' (20 June 1995) <<http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/de4fd4d0af435ad4ca2570ec007521f0!OpenDocument>>.

²² Sydney University Postgraduate Representative Association, Submission to Michael Knight, *Strategic Review of the Student Visa Program*, 15 April 2011.

²³ Simon Marginson, 'Including the Other: Regulation of the Human Rights of Mobile Students in a Nation-Bound World' (2012) 63(4) *Higher Education* 497, 4.

²⁴ Alex Reilly, 'Protecting Vulnerable Migrant Workers: The Case of International Students' (2012) 25 *Australian Journal of Labour Law* 181, 182–187; Marginson, above n 23, 497; Ana Deumert et al, 'Global Migration and Social Protection Rights: The Social and Economic Security of Cross-Border Students in Australia' (2005) 5(3) *Global Social Policy: An Interdisciplinary Journal of Public Policy and Social Development* 329, 330.

²⁵ See, eg, Economic and Social Council, *Statement on the Obligations of State Parties regarding the Corporate Sector and Economic, Social and Cultural Rights*, E/C.12/2011/1 46th sess (2–20 May 2011).

²⁶ ICESCR, above n 6, art 11.

- personal safety and security;²⁷
- access to physical and mental health services;²⁸ and
- safe and fair employment,²⁹

has, until recently, been entirely ignored. To the extent that “rights” are conferred on international students, it is through the narrow lens of consumer regulation, with the *Education Services for Overseas Students Act 2000* (Cth) (‘ESOS Act’) imposing limited obligations on service providers (but not governments) in relation to the quality of the student’s course, a process for claiming a refund, and students’ visa-compliance.³⁰ Responsibility for accommodation, employment, financial, and counselling services is delegated to the discretion of education providers which in practice has meant these needs are delegated to students or ignored.³¹

Fitting within the dominant paradigm of neoliberalism, which emphasises individual choice and autonomy,³² the (in)ability of international students to navigate Australian life outside of the university has therefore been largely ignored by the architects of policies designed to maximise overseas enrolments.³³ One limited exception to this is the ‘financial capacity’ requirements students must satisfy for the purposes of receiving a student visa, which require students to show they are able to pay their course fees and can access a prescribed annual sum to cover living expenses.³⁴ This sum however consistently falls below the Henderson Poverty line,³⁵ and as Reilly has noted, students and their families often meet these requirements by taking out loans or mortgaging their

²⁷ ICCPR, above n 6, art 9(1).

²⁸ ICESCR, above n 6, art 12(1); CRPD, above n 6, art 10(h), 12.

²⁹ ICESCR, above n 6, art 7; See also *Discrimination (Employment and Occupation) Convention*, 1958 (No 111).

³⁰ See *Education Services for Overseas Students Act 2000* (Cth) (‘ESOS Act’), Pt 3 (‘Obligations of Registered Providers’).

³¹ Marginson, above n 23, 502.

³² Rueckert, above n 7, 66.

³³ See generally Helen Forbes-Mewett et al, ‘Australian University International Student Finances’ (2009) 22(2) *Higher Education Policy* 141, 146.

³⁴ \$20,290 at the time of writing for a single student: Department of Immigration and Border Protection, Australian Government, *Student Visa (Subclass 500)* (1 February 2018) <<http://www.border.gov.au/Trav/Visa-1/500->>.

³⁵ For example, the Henderson Poverty Line in the final quarter of 2017 was \$518.16 per week (\$26,944.32 per year), more than \$6000 over the financial capacity requirement: Melbourne Institute of Applied Economics and Social Research, ‘Poverty Lines: Australia (December Quarter 2017)’ (The University of Melbourne, 18 April 2017) 3 <https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0011/2750933/Poverty-Lines-Australia-December-Quarter-2017.pdf>.

homes, compounding financial and familial pressures on students.³⁶ In practice then, students are largely left to their own devices in negotiating a life while studying, which has in turn left them vulnerable to mistreatment and exploitation by both private and public actors.

C Rights Abuses by Private Actors

A large and growing body of research documents the experience of international students in Australia and the various human rights abuses perpetrated against them by private actors. These encompass abuses in specific spheres such as housing and employment, as well as more amorphous challenges associated with racism and racial discrimination.³⁷

The research paints a stark picture. A lack of affordable student accommodation exposes international students to a private rental market often characterised by discriminatory and exploitative landlords,³⁸ with overcrowding and poor sanitation.³⁹ Unscrupulous employers use stringent student-visa conditions as leverage to force international students into submitting to reduced wages, breaches of workplace safety laws, and, in some cases, sexual harassment.⁴⁰ Many students have been the subject of violence;⁴¹ some have been murdered.⁴² Despite the ESOS Act, bodies charged with ensuring

³⁶ Reilly, above n 24, 186–7.

³⁷ See, eg, Australian Human Rights Commission, *International Students' Human Rights: A Review of the Principles and the Issues* (2015) 10–11 <https://www.humanrights.gov.au/sites/default/files/document/publication/2015_IS_ReviewReport%20.pdf>.

³⁸ Adam Graycar, *Racism and the Tertiary Student Experience in Australia* (Academy of the Social Sciences in Australia, 2010) <https://www.humanrights.gov.au/sites/default/files/content/racial_discrimination/publications/tertiary_students/Graycar_racism_tertiary2010.pdf>; Emma McCarthy, "We Forgot How Vulnerable We Were": *Foreign Students Struggle to Find Homes* (14 April 2015) Crikey <<https://www.crikey.com.au/2015/04/14/we-forgot-how-vulnerable-we-were-foreign-students-struggle-to-find-homes/>>.

³⁹ Victorian Equal Opportunity & Human Rights Commission, Submission to Victorian Government, *Victorian Overseas Student Taskforce*, 24 October 2008.

⁴⁰ Michael Knight, 'Strategic Review of the Student Visa Program 2011' (Australian Government, 30 June 2011) 85 <<https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/2011-knight-review.pdf>>; See also Simon Marginson et al, *International Student Security* (Cambridge University Press, 2010) 136.

⁴¹ See, eg, *Hussein v The Queen* [2010] VSCA 257 (4 October 2010); See generally Graycar, above n 38.

⁴² See, eg, *R v Wong* [2010] NSWSC 171 (Unreported, 10 March 2010).; *DPP v Caratozzolo* [2009] VSC 305 (29 July 2009); See also discussions in C Nyland, H Forbes-Mewett and S Marginson, 'The International Student Safety Debate: Moving beyond Denial' (2010) 29(1) *Higher Education Research & Development* 89, 96–7; Janelle Wells, '21 Years' Jail for "Reign of Sexual Terror"', *ABC News* (online), 16 July 2010 <<http://www.abc.net.au/news/2010-07-16/21-years-jail-for-reign-of-sexual-terror/907172>>.

compliance have historically used a “light touch”,⁴³ allowing many education providers to get away with dubious practices,⁴⁴ a reality underscored by the collapse of a significant number of private colleges in the wake of the 2009 crisis.⁴⁵ Although many educators are keenly aware of these problems, the burgeoning workloads of university academics,⁴⁶ and the ever-increasing imposition of economic and vocational imperatives at the expense of more traditional notions of pastoral care, limits their ability to meaningfully intervene.⁴⁷

D Rights Abuses by the Immigration Department

The government’s failure to *protect* and *fulfil* the economic, social, and cultural rights of international students, manifest in the devolution of responsibility to education providers and correlative abuses committed by private actors, is accompanied by an immigration regime that is actively hostile to students’ civil and political rights (failing to *respect* these rights). This is most visibly reflected in the policy of mandatory detention that underpinned the student-visa regime until the late-2000s and survives in a more limited form today.⁴⁸

This system, marginally improved after the 2009 crisis described below, fundamentally treated international students who breach their visas as criminals, with innocuous indiscretions resulting in mandatory visa cancellation and detention with limited access to appeal processes and high bond fees to be released back into the community on a bridging visa.⁴⁹ As observed by Michaela Rost, these processes cumulatively breach Article 9(1) (which prohibits arbitrary detention) and 9(2) (which prohibits the rights for

⁴³ Sushi Das, “‘Sham’ Colleges Operating with Impunity”, *The Sydney Morning Herald* (online), 25 October 2008 <<http://www.smh.com.au/national/sham-colleges-operating-with-impunity-20081024-58az.html>>.

⁴⁴ See generally Forbes-Mewett et al, above n 33.

⁴⁵ Deloitte Access Economics, ‘Broader Implications from a Downturn in International Students’ (Universities Australia, 30 June 2011) 35 <<https://www.deloitteaccessconomics.com.au/uploads/File/DAE%20International%20students%20analysis%2030%20June%202011.pdf>>.

⁴⁶ See generally Mary Sarah-Jane Gregory and Jason Michael Lodge, ‘Academic Workload: The Silent Barrier to the Implementation of Technology-Enhanced Learning Strategies in Higher Education’ (2015) 36(2) *Distance Education* 210.

⁴⁷ Hil, above n 13, 14–15, 101–130; Margaret Thornton, ‘The Law School, the Market and the New Knowledge Economy’ (2007) 17(1–2) *Legal Education Review* 1, 19.

⁴⁸ See summary in Michaela Rost, Submission to Senate Education, Employment & Workplace Relations Committee, *Inquiry into Welfare of International Students 2009*, September 2009, 7–19; *Migration Act 1958* (Cth) s 189.

⁴⁹ Rost, above n 48.

detained persons to challenge the lawfulness of their detention) of the *International Covenant on Civil and Political Rights*, and likely Article 31 of the *Refugee Convention* (which prohibits states from imposing penalties on ‘unauthoris[ed]’ residents who present themselves to authorities).⁵⁰

From 2001 to mid-2005, this regime led to the detention of 2310 international students,⁵¹ many of whom were placed alongside an ‘unholy mix’ of criminal deportees and ‘traumatised’ asylum seekers.⁵² Reasons for detention included inadequate academic results and attendance, working for more than 20 hours per week,⁵³ or overstaying their visas (often as a result of these breaches).⁵⁴

III THE 2009 CRISIS

A Synopsis of Events

The longstanding indifference shown towards the needs of international students studying in Australia by governments and education providers came to a head on 31 May 2009 when, in response to a spate of racially motivated criminal acts perpetrated against Indian students,⁵⁵ thousands of Indian students staged a “revolt” in Melbourne,⁵⁶ which was accompanied by smaller solidarity protests across Australia.⁵⁷

⁵⁰ *Convention Relating to the Status of Refugees*, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954).

⁵¹ See Nick Johns-Wickberg and Inga Ting, *Students in Detention? Life Gets Harder for International Scholars* (24 September 2010) Crikey <<https://www.crikey.com.au/2010/09/24/students-in-detention-life-gets-harder-for-international-scholars/>>.

⁵² Frederika Steen, Submission No 131 to Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, 3 September 2008.

⁵³ See visa condition 8104 and 8105. This entitlement was changed from 20 hours a week to 40 hours per fortnight on 26 March 2012 in response to a recommendation of the Knight review discussed in Part IV. these conditions were introduced so as to prevent students’ employment from interfering with their studies; Reilly, above n 24, 201; See also Neville Neill et al, ‘The Influence of Part-Time Work on Student Placement’ (2004) 28(2) *Journal of Further and Higher Education* 123, 129.

⁵⁴ Senate Inquiry into Migration Act: Reply to QON from Senator Ludwig re International Students — M Rost, 28 October 2005; Rost, above n 48, 8; Steen, above n 52; See also Marginson, above n 23, 500.

⁵⁵ Gail Mason, ‘Naming the “R” Word in Racial Victimization: Violence against Indian Students in Australia’ (2012) 18(1) *International Review of Victimology* 39; Baas, above n 16; Graycar, above n 38.

⁵⁶ Jakubowicz and Monani, above n 21, 65.

⁵⁷ Mason, above n 55, 39–40; Jacqueline Joudo Larsen, Jason Payne and Adam Tomison, *Crimes Against International Students in Australia, 2005–09* (Australian Institute of Criminology, 2011) 4 <<http://www.pravasitoday.com/wp-content/uploads/2011/08/Report.pdf>>.

Whilst the ultimate catalyst for the 2009 saga was the screw-driver stabbing of 25-year-old Sravan Kumar Theerthala,⁵⁸ the protests raised a plethora of long-standing welfare and educational problems facing international students that were directly attributable to the government's treatment of these persons as commodities,⁵⁹ and the related failure to provide them with adequate rights protection.⁶⁰

That students were implicitly challenging the government's derogation of human rights obligations was reflected by the set of demands issued by the Federation of Indian Students of Australia to the Victorian State Government during the saga. These included: the establishment of a multicultural police section (reflecting inter alia a perception of racism in the response of police to attacks on international students,⁶¹ and thus the right to be free from racial discrimination),⁶² insurance for accidents and assaults (reflecting inter alia a frustration at the lack of direct government responsibility towards students' physical safety and concurrent economic burdens placed on them),⁶³ and an education campaign highlighting the positive influence that international students had on the country.⁶⁴ Students also expressed a desire for on-site accommodation for Indian students at universities and colleges,⁶⁵ implicitly invoking the right to adequate housing protected under the *International Covenant on Economic, Social and Cultural Rights* ('ICESCR').⁶⁶

⁵⁸ Ibid, 42–8.

⁵⁹ Margaret Simons, 'Exodus: The International Student Sector', *The Monthly* (online), November 2010 <<https://www.themonthly.com.au/issue/2010/november/1288836088/margaret-simons/exodus>>.

⁶⁰ Hurriyet Babacan et al, 'The Community Safety of International Students in Melbourne: A Scoping Study' (Institute for Community, Ethnicity and Policy Alternatives, Victoria University, February 2010) 11–25 <<http://eprints.vu.edu.au/15491/>>.

⁶¹ See discussion in Baas, above n 16, 219–220; See further AAP, 'Rudd's Plea: We're Not Racists', *Sydney Morning Herald* (online), 1 June 2009 <<http://www.smh.com.au/national/rudds-plea-were-not-racists-20090601-bsnj.html>>; Matt Wade and Chris Johnston, 'Rudd Steps in as Tensions Rise over Attacks on Students', *The Age* (online), 30 May 2009 <<http://www.theage.com.au/national/rudd-steps-in-as-tensions-rise-over-attacks-on-students-20090529-bqb3.html>>; Cf ET Bureau (last), 'Australia, Land of Racism', *The Economic Times* (online), 28 May 2009 <<http://economictimes.indiatimes.com/news/politics-and-nation/australia-land-of-racism/articleshow/4587003.cms>>.

⁶² CERD, above n 6; ICCPR, above n 6, art 2(1); ICESCR, above n 6, art 2(2).

⁶³ ICCPR, above n 6, art 2(2).

⁶⁴ Ben Doherty and Paul Millar, 'Indian Anger Boils Over', *The Sydney Morning Herald* (online), 3 June 2009 <<http://www.smh.com.au/national/indian-anger-boils-over-20090531-brrm.html>>; Paul Millar, 'Indian Students March in Protest against Attacks', *The Age* (online), 31 May 2009 <<http://www.theage.com.au/national/indian-students-march-in-protest-against-attacks-20090531-brhj.html>>.

⁶⁵ Doherty and Millar, above n 64.

⁶⁶ ICESCR, above n 6, art 11.

B Reform of the Sector

The 2009 saga and its fallout spelled disaster for Australia's international education sector, with the upward trend in international enrolments coming to an abrupt halt and Indian student enrolments plummeting by 49 per cent in 12 months.⁶⁷ Economic modelling estimated this downturn would cost \$37.8 billion to Australia's GDP from 2010–2020,⁶⁸ which 'triggered widespread soul-searching and hard-head policy reviews' by governments and education providers.⁶⁹

Despite the centrality of human rights issues to the protests and numerous calls for greater human rights protections by a number of public authorities,⁷⁰ the ensuing reforms implemented by the Australian government avoided these issues. Instead, they were largely oriented around recouping Australia's market share of international students through the application of market-based principles (through changes to the student visa program)⁷¹ and a marginally improved consumer-rights framework (implemented by increased regulation of the education sector).

C Student Visa Changes

Changes to the student visa program included a requirement that students show a higher level of financial security before being granted a visa and a crackdown on migration agents engaging in fraud.⁷² A number of occupations were also removed from the Skilled

⁶⁷ Deloitte Access Economics, above n 45, 70.

⁶⁸ *Ibid* 70.

⁶⁹ Jakubowicz and Monani, above n 21, 64.

⁷⁰ Australian Human Rights Commission, 'Human Rights of International Students a Major Issue' (Media Release, 5 November 2009) ('AHRC') <<http://www.humanrights.gov.au/news/media-releases/2009-media-release-communicate-human-rights-international-students-major-issue>>; Australian Human Rights Commission, *Principles to Promote and Protect the Human Rights of International Students* (2012) <<https://www.humanrights.gov.au/publications/book-principles-promote-and-protect-human-rights-international-students>>; Babacan et al, above n 57, 6–7, 38, 44; Human Rights Law Resource Centre, *Briefing Paper on Key Human Rights Issues in Australia* (July 2009) 12 <<http://www.hrlrc.org.au/files/Briefing-Paper-Human-Rights-Issues-in-Australia-July-2009.pdf>>; Victorian Equal Opportunity & Human Rights Commission, *Annual Report (2008/09)* 6–7, 38, 44 <http://www.humanrightscommission.vic.gov.au/our-resources-and-publications/annual-reports/item/download/8595_f501ab086c63bb6a32c8cc07d232b4c0>.

⁷¹ See, eg, Deloitte Access Economics, above n 45, 39–53.

⁷² Elsa Koleth, *Overseas Students: Immigration Policy Changes 1997–May 2010* (Parliament of Australia, 18 June 2010)

<http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/OverseasStudents>; For a more recent exposition of this requirement see: Department of Immigration and Border Protection, *Answer to Question on Notice*, 17 July 2015 (received 11 August 2015); Evidence to Senate Standing Committee on Legal and Constitutional Affairs, Parliament of

Occupation List, which had hitherto operated as a pathway to permanent residency for international students studying vocational courses unlikely to improve their job prospects back home.⁷³

Reforms were also introduced in accordance with recommendations made in the *Strategic Review of the Student Program 2011* ('the Knight Review'), their express object being to 'strengthen the competitiveness of [the] international education sector'.⁷⁴ This included the conferral of two years of post-study work rights on students who had completed two years of tertiary study in Australia,⁷⁵ and the replacement of automatic/mandatory visa cancellation with the conferral of discretion on Immigration officers.⁷⁶

These reforms, although welcomed insofar as they blunted some of the more draconian elements of the student visa program, were cumulatively ineffectual in many respects. In particular, whilst changes to the Skilled Occupation List were important in dissuading education providers from offering vocational courses that were proxies for permanent residency pathways, the introduction of post-work rights for tertiary students, described by Knight as a marketing tool,⁷⁷ merely transferred the possibility of 'extended years of precarious residency' to a different class of students,⁷⁸ without addressing the underlying causes for international student insecurity.

D Regulation of International Education Sector

The two primary reviews undertaken into the international education sector were the *Review of the ESOS Act* ('Baird Review') in February 2010 by Bruce Baird,⁷⁹ and the

Australia, 17 July 2015, 46 (David Wilden, Acting Deputy Secretary, Department of Immigration and Border Protection).

⁷³ See discussion in Bob Birrell and Ernest Healy, 'The February 2010 Reforms and the International Student Industry' (2010) 18(1) *People and Place* 65, 73–5.

⁷⁴ Knight, above n 40, 127; Nyland, Forbes-Mewett and Hartel, above n 14, 664.

⁷⁵ Knight, above n 40, recommendation 4.

⁷⁶ *Ibid* recommendation 25.

⁷⁷ *Ibid* xiv.

⁷⁸ Students for Migrant Workers Rights, 'Rights without Borders — Realising Human Rights for All Workers Irrespective of Citizenship' (*University of Sydney*, 2013) 20–1 <http://www.hrca.org.au/wp-content/uploads/s4mwr_report_rights_without_border1.pdf>.

⁷⁹ Bruce Baird, *Strong, Simpler, Smarter ESOS: Supporting International Students* (Department of Education, Employment and Workplace Relations, 2010) <http://www.aei.gov.au/AEI/GovernmentActivities/InternationalStudentsTaskforce/ESOS_REview_Final_Report_Feb_2010_pdf.pdf>.

Council of Australian Governments' *International Students Strategy for Australia* ('COAG Strategy').⁸⁰

Together, these reviews addressed a number of criticisms of the industry, which had long been ignored,⁸¹ through legislative change,⁸² and reformed industry practice.⁸³ This included the need for harsher penalties for non-compliant education institutes;⁸⁴ the strengthening of consumer protection rights;⁸⁵ and the provision of more robust information and support services for students.⁸⁶ Community engagement strategies were also implemented to reduce negative attitudes towards international students,⁸⁷ and provide better access to complaint and dispute resolution mechanisms for students.⁸⁸

As observed by the Australian Human Rights Commission ('AHRC') and others, these reforms were inadequate in a number of key respects, foremost because they merely facilitated international students' access to legal protections and services (addressing the 'information gap')⁸⁹ rather than addressing deficiencies with the protections themselves. Crucial discussions (such as those into affordable transport and accommodation and labour market exploitation) and strategies (such as those to combat racism) were lacking, and insofar as rights rhetoric did pervade these debates, they were overshadowed by or

⁸⁰ Council of Australian Governments, *2010–2014: International Students Strategy for Australia* (2010) <<https://www.coag.gov.au/sites/default/files/International%20Students%20Strategy%20-%20PDF.pdf>>.

⁸¹ See, eg, Sushi Das, 'College Collapses Spark Fresh Probe', *The Age* (online), 17 August 2010 <<http://www.theage.com.au/victoria/college-collapses-spark-fresh-probe-20100816-126xy.html>>; Das, above n 43.

⁸² See *Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010* (Cth); *Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012* (Cth); *Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Act 2012* (Cth); *Education Services for Overseas Students (TPS Levies) Act 2012* (Cth).

⁸³ See, eg, Australian Universities Quality Agency, 'Good Practice Principles for English Language Proficiency for International Students in Australian Universities' (March 2009) <http://www.deewr.gov.au/HigherEducation/Publications/Documents/Final_Report-Good_Practice_Principles.pdf>.

⁸⁴ Baird, above n 80, 22–9 (ch 4).

⁸⁵ *Ibid*, 30–6 (ch 5).

⁸⁶ *Ibid*.

⁸⁷ Council of Australian Governments, above n 80, 13.

⁸⁸ *Ibid*, 22–4.

⁸⁹ Marginson, above n 23, 506–7.

conflated with the more operative desire to 'protect Australia's lucrative market share' of the industry.⁹⁰

IV NEW FRONTIERS FOR ABUSE

A Developments in Higher Education Sector

Since 2009, the international education sector has largely recovered, with over 800 000 international enrolments in 2017.⁹¹ This is in part a product of the above reforms, however more operative have been continued cuts in public funding for the higher education sector, which have forced universities to increasingly rely on, and seek out, international enrolments to fund their operating expenses.⁹² Significantly, in April 2016, the then Minister for Tourism and International Education identified international education as one of Australia's five 'super growth' sectors, stressing the importance of pursuing a greater 'share' in students from traditional origin countries (China and India) whilst also pursuing those in emerging markets (Philippines, Thailand, Indonesia, Vietnam, South Korea, Malaysia, and Hong Kong).⁹³

The integral place of overseas students to the sustainability of higher education, combined with increased competition from other Western host countries, has means that universities are now being compelled to supply more university places than there are international students with suitable academic capabilities.⁹⁴ Consequently, the quality control measures implemented under the Baird Review have been largely undercut, with the NSW Independent Commission Against Corruption ('ICAC') recently warning:

⁹⁰ Robertson, above n 17, 2206.

⁹¹ Department of Education and Training, above n 3.

⁹² Victorian Ombudsman, Victoria Government, *Investigation into How Universities Deal with International Students* (October 2011) 12, 71 <<https://www.ombudsman.vic.gov.au/Reports-Publications/Parliamentary-Reports/Investigation-into-how-universities-deal-with-inte>>; Stephen Corones, 'Consumer Guarantees and the Supply of Educational Services by Higher Education Providers' (2012) 35(1) *University of New South Wales Law Journal* 1, 1; New South Wales and Independent Commission Against Corruption, *Learning the Hard Way: Managing Corruption Risks Associated with International Students at Universities in NSW* (2015); See, eg, University of Melbourne, 'The University of Melbourne Strategic Plan 2015–2020: Growing Esteem' <https://about.unimelb.edu.au/_data/assets/pdf_file/0006/1462065/11364-GROWING-ESTEEM-2015-FA-WEB.pdf>; See also Rea Jeannie, 'Critiquing Neoliberalism in Australian Universities' (2016) 58(2) *Australian Universities' Review* 1, 11.

⁹³ Australian Government, above n 4, x, 4–5.

⁹⁴ New South Wales and Independent Commission Against Corruption, above n 93, 4.

[T]here is a gap — at least in some courses — between the capabilities of many students and academic demands. *Students may be struggling to pass, but universities cannot afford to fail them.*⁹⁵

This tension has had a devastating effect on the integrity of higher education, with the need to remain ‘competitive’ in many cases leading universities to compromise both their admission and marking standards,⁹⁶ a process expedited by offshore “education agents” who fall outside Australia’s regulatory regime.⁹⁷

Quite apart from the perilous consequences that may befall universities in the future as a result of these arrangements,⁹⁸ a more immediate cause for concern for our purposes is the influx of international student populations who are even more susceptible to rights abuses than their pre-2009 counterparts. High levels of financial and academic pressure and low levels of English proficiency make these students vulnerable to exploitation both in the workplace (discussed below) and by educators.⁹⁹

B The 7-Eleven Scandal & Labour Market Exploitation

The consequences of the government’s failure to adopt a more holistic, rights-oriented response to the 2009 saga, and its continued recklessness in pursuing profit in the international education sector as a means of sustaining Australia’s economic growth, are perhaps most visible in the labour market exploitation of student visa holders — a reality laid bare in the 2015 7-Eleven wage scandal.¹⁰⁰

⁹⁵ Ibid (emphasis added).

⁹⁶ Corones, above n 93, 1.

⁹⁷ Knight, above n 37, xiv; Jerry Gomez, ‘Student Visa Fraud Out of Control But DIBP Still Refuses to Act against Unregistered Education Brokers’ on *Migration Alliance* (21 January 2015) <<https://migrationalliance.com.au/immigration-daily-news/entry/2015-01-student-visa-fraud-out-of-control-but-dibp-still-refuses-to-act-against-unregistered-education-brokers.html>>.

⁹⁸ Corone for example has argued these practices may constitute breaches of the Australian Consumer Law guarantees of due care and skill and fitness for purpose: See generally Corones, above n 93; There has also been a steady increase in international student complaints to industry regulators: Overseas Student Ombudsman, *Annual Report* (2014–15) 2–6 <http://www.ombudsman.gov.au/_data/assets/pdf_file/0016/37330/Overseas-Students-Ombudsman-Annual-Report-2014-15.pdf>.

⁹⁹ For educators asking for bribes or sexual favours: see, eg, Four Corners, *Degrees of Deception* (20 April 2015) ABC News <<http://www.abc.net.au/4corners/stories/2015/04/20/4217741.htm>>.

¹⁰⁰ See generally Four Corners, *7-Eleven: The Price of Convenience* (30 August 2015) ABC News <<http://www.abc.net.au/4corners/7-eleven-promo/6729716>>.

The scandal involved the widespread and systemic exploitation of international students working at 7-Eleven stores, who made up a majority of the 7-Eleven workforce.¹⁰¹ Exploitation manifested itself, inter alia, in the underpayment of wages;¹⁰² the coercion of workers to stand for long periods without sitting down, eating, or going to the toilet;¹⁰³ denial of sick pay and compensation for workplace injuries (which were commonplace);¹⁰⁴ and extortion.¹⁰⁵ In some of the most egregious cases, employees compared their conditions to slavery,¹⁰⁶ and many victims remain uncompensated.¹⁰⁷

These practices are clearly irreconcilable with the rights of international students under the ICESCR to 'just and favourable' employment, including to equal remuneration, and safe and healthy working conditions.¹⁰⁸ Moreover, and despite media commentary focusing mainly on the moral bankruptcy of the 7-Eleven corporation, they are largely the product of a confluence of variables directly attributable to the government's international education policy, being:

- The high number of international students seeking part-time or casual employment,¹⁰⁹ who lack knowledge regarding their legal entitlements (see

¹⁰¹ Education and Employment References Committee, Parliament of Australia (Senate), *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (March 2016) 227; Fair Work Ombudsman, Commonwealth of Australia, *A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven: Identifying and Addressing the Drivers of Non-Compliance in the 7-Eleven Network* (2016) 11, 46; *Fair Work Ombudsman v Bosen Pty Ltd and Others (Industrial)* Magistrates Court of Victoria Y03727156 [49].

¹⁰² Klaus Toft, Adele Ferguson and Sarah Danckert, '7-Eleven: A Sweatshop on Every Corner', *The Sydney Morning Herald* (online), 29 August 2015 <<http://www.smh.com.au/business/workplace-relations/7eleven-a-sweatshop-on-every-corner-20150827-gj8vzn.html>>.

¹⁰³ Education and Employment References Committee, above n 102, 227.

¹⁰⁴ *Ibid* 229–30.

¹⁰⁵ Stewart Levitt, Submission No 61 to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 18 September 2015, 2.

¹⁰⁶ See, eg, AAP, 'I Was Paid 47c an Hour: 7-Eleven Worker', *News.com.au* (online), 15 February 2016 <<https://www.news.com.au/national/breaking-news/i-was-paid-47c-an-hour-7-eleven-worker/news-story/054d5a1b461afef0a86e5ff9e7e15c07>>; Leigh Sales, "'I Would Call Myself a Modern Century Slave,' Says Former 7-11 Worker", *ABC News* (online), 3 September 2015 <<http://www.abc.net.au/7.30/content/2015/s4305800.htm>>.

¹⁰⁷ Adele Ferguson and Sarah Dunckert, '7-Eleven's Wage Fraud Sparks \$170 Billion Blow Back', *The Sydney Morning Herald* (online), 27 August 2016 <<http://www.smh.com.au/business/retail/7eleven-wage-fraud-sparks-170-billion-blow-back-20160826-gr264h.html>>.

¹⁰⁸ ICESCR, above n 6, art 7.

¹⁰⁹ Joo-Cheong Tham, Submission No 3 (Supplementary Submission) to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 16 September 2015, 2.

above) and experience difficulty securing employment in less ‘precarious’ industries;¹¹⁰

- The ease with which employers are able to force international students into breaching their visas, putting them at risk of visa cancellation and placing them outside the purview of the *Fair Work Act 2009* (Cth);¹¹¹
- A ‘profound’ lack of empirical knowledge regarding international students’ experience in the labour market which is critical to developing policies that protect their interests,¹¹² which Forbes-Mewett et al note is consistent with ‘the highly commercial manner in which Australia’s governments and universities approach the supply of international students’;¹¹³ and
- The limited presence of third parties otherwise responsible for securing compliance with workplace law (eg the Fair Work Ombudsman which is chronically under-funded,¹¹⁴ or trade unions which international students and convenience store workers rarely join).¹¹⁵

The highly visible plight of international students working in the convenience store industry is accompanied by less conspicuous (but equally pervasive) forms of labour exploitation in other areas, such as in the food services, cleaning, and taxi industries,¹¹⁶ and more worryingly, the budding internship industry. A report to the Fair Work Ombudsman in 2013, for example, reported the existence of for-profit agencies brokering unpaid internships and job placements, a business that is ‘largely ... confined to’ current or recently graduated international students.¹¹⁷ This additional tier of exploitation

¹¹⁰ See generally Iain Campbell, Martina Boese and Joo-Cheong Tham, ‘Inhospitable Workplaces? International Students and Paid Work in Food Services’ (2016) 51(3) *Australian Journal of Social Issues* 279 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2849687>; See also Australian Education International, Commonwealth of Australia, *International Graduate Outcomes and Employer Perceptions* (2010) 13–8.

¹¹¹ *Smallwood v Ergo Asia Pty Ltd* [2014] FWC 964 [59]–[80].

¹¹² Tham, above n 110, 5.

¹¹³ Forbes-Mewett et al, above n 33, 146.

¹¹⁴ Joo-Cheong Tham, ‘7-Eleven Is the Tip of the Iceberg in Worker Exploitation. So Who’s Turning a Blind Eye?’, *The Guardian* (online), 12 May 2016 <<https://www.theguardian.com/commentisfree/2016/may/12/7-eleven-is-the-tip-of-the-iceberg-in-worker-exploitation-so-whos-turning-a-blind-eye>>.

¹¹⁵ Tham, above n 110, 4.

¹¹⁶ Campbell, Boese and Tham, above n 111; United Voice, ‘International Students Cop Melbourne’s Worst Paid Jobs’ (Media Release, 17 October 2013) <www.unitedvoice.org.au/press-releases/international-students-cop-melbourne-s-worst-paid-jobs>; *Fair Work Ombudsman v Primeage Pty Ltd & Ors* [2015] FCCA 139, [32].

¹¹⁷ Andrew Stewart and Rosemary Owens, Fair Work Ombudsman, *Experience or Exploitation? The Nature, Prevalence and Regulation of Unpaid Work Experience, Internships and Trial Periods in Australia*

(*paying* agencies to work for free) is attributable to the over-supply of under-equipped international graduates and the conferral of post-graduation work rights (recommended by the Knight Review), the latter reform being explicitly introduced to make Australia's international education sector more competitive.¹¹⁸

Together, these forms of exploitation risk permanently relegating international students and graduates to subordinate economic and social status even as they transition into the next phase of life in Australia and distort the labour market by driving down wage growth and diluting workplace protections.¹¹⁹ Their prevalence is hostile to Australia's commitment to securing universal human rights, which are premised on the 'principle of fair treatment for all'.¹²⁰

V ADOPTING A HUMAN RIGHTS RESPONSE

A Limitations of the Consumer-Approach

As reflected in the Baird Review and COAG strategy, to the extent that governments have recognised a need to "protect" international students, it has been manifested in the conferral of rights on them as consumers, which are founded on the financial transaction entered into between the student and their education provider.¹²¹ As I have argued above, this approach is fundamentally incapable of protecting international students from rights abuses in Australia, posing a correlative risk to the stability of the international education sector and the economy more broadly.

Foremost of these limitations is the problem of scope. As I have prefaced above, international students' legal position as "non-citizens" limits their access to public services and,¹²² more damningly, to legal protections (such as in the labour market). Strengthening consumer protections does nothing to fill these gaps and moreover places

(2013) xii, 62 (emphasis added)

<<http://cdn.workplaceexpress.com.au/files/2013/unpaidworkreport.pdf>>; See, eg, *Host an Intern* <<http://www.studyandwork.com.au/pages/host-an-intern>>.

¹¹⁸ Knight, above n 40, xiv.

¹¹⁹ Commonwealth, *Parliamentary Debates*, Senate, 15 March 2016, 1937-8 (Doug Cameron, Shadow Minister for Social Services).

¹²⁰ Australian Government, *Australia's National Framework for Human Rights: National Action Plan* (2004) <<http://wwda.org.au/wp-content/uploads/2013/12/austnaphr1.pdf>>; see also *Al Ferdous v Minister for Immigration & Citizenship* [2010] FMCA 824 [59].

¹²¹ ESOS Act, s 4A.

¹²² Marginson et al, above n 40, 17-20.

responsibility on private actors, rather than public bodies, who are ill-equipped to and structurally discouraged from protecting students from exploitation and mistreatment.¹²³

The second limitation is one of *responsibility*. As the AHRC has noted, a system that relies on international students making complaints (eg to a host institution, industry regulator, or other body) is inherently inappropriate and unappealing to students with a limited understanding of the law and fear of jeopardising their future employment, housing opportunities, and permanent resident status.¹²⁴

Finally, there is the question of *accountability*. Even insofar as international students are willing to seek out the help of government regulators, the international education regime is nevertheless 'characterised by a lack of clear standards that leave considerable discretion to universities',¹²⁵ and there is moreover no direct recourse *against* the government — whose policies directly cause students' acute vulnerability.¹²⁶ Combined with the general inability of international students to negotiate better conditions for themselves at a structural level (they have no voting rights in Australia and are underrepresented in student unions and other representative bodies),¹²⁷ they are left with limited recourse when they are mistreated. Resultantly, they are more likely to resort to extreme (and disruptive) measures to secure better conditions, such as protests or appeals to their home government. As the 2009 saga showed, these actions are capable

¹²³ Silvia Sovic and Margo Blythman, *International Students Negotiating Higher Education: Critical Perspectives* (Routledge, 2012) 10.

¹²⁴ Victorian Equal Opportunity & Human Rights Commission, *Submission to Victorian Overseas Students Taskforce* (24 October 2008) 5 <<http://pandora.nla.gov.au/pan/99466/20090514-1405/www.humanrightscommission.vic.gov.au/pdf/SubmissionInternationalStudentsTaskforce.pdf>>; A similar point was made by the AHRC, Helen Szoke, in 2012: AHRC, above n 70, 3; See also Marginson, above n 23, 505; For a recent illustration of this, see Fair Work Ombudsman (FWO), above n 102, 48, which asserts that out of all complaints to the FWO by visa holders in 2014–15, only 8% were by student visa holders.

¹²⁵ Corones, above n 93, 11; Victorian Ombudsman, above n 93, 40–1 [187]–[195], 62–8 [314]–[351].

¹²⁶ Marginson, above n 23, 502.

¹²⁷ Benjamin Johnson, Patrick Kavanagh and Kevin Mattson, *Steal This University: The Rise of the Corporate University and the Academic Labor Movement* (Psychology Press, 2003) 178; Cf Reilly, above n 24.

of causing great detriment to the stability of the international education sector,¹²⁸ the broader economy, and Australia's international standing.¹²⁹

B A Human Rights Response

The need to develop a human rights-based response to the above problems is underscored by three claims at the centre of the preceding analysis: (a) that Australia has consistently failed to protect the human rights of international students, who are inherently vulnerable to mistreatment by private and public actors; (b) that this failure is rooted in the 'marketisation' of student populations;¹³⁰ and (c) that so long as this continues, the viability of the international education sector and the integrity of the national labour market are at risk. More broadly, without human rights-based reform, the example Australia sets as a market leader in the education export trade threatens to induce its competitors to adopt similar policies that undermine the state's obligations towards international student populations and exacerbates the relative dearth of initiatives by international bodies to protect these persons from rights abuses.¹³¹

As expounded by the AHRC in its 2012 *Principles to Promote and Protect the Human Rights of International Students*,¹³² a human rights-based approach, at its most elementary, recognises that Australia has a responsibility to protect overseas students under international law as persons within its jurisdiction and that this responsibility implicates the broad range of public, private, and international stakeholders with whom they interact and rely upon.¹³³

¹²⁸ See generally Australian Education Union, *International Education Crisis and the Failure of Private Providers* (February 2010) <<http://www.aeusa.asn.au/03ie.pdf>>.

¹²⁹ Mason, above n 55, 50; Deloitte Access Economics, above n 45, 35–6; Babacan et al, above n 60, 11–25; Gail Mason, 'Violence against Indian Students in Australia: A Question of Dignity' (2010) 21(3) *Current Issues in Criminal Justice* 461, 461–5.

¹³⁰ Shanthi Robertson, 'The Production of the Indian Student: Regimes and Imaginaries of Migration, Education, Labour, Citizenship and Class' (2015) 7(3) *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 1, 3.

¹³¹ See generally Nyland, Forbes-Mewett and Hartel, above n 14.

¹³² AHRC, above n 70.

¹³³ See also Danwood Mzikenge Chirwa, 'Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights' (2004) 5 *Melbourne Journal of International Law* 1; United Nations: Office of the High Commissioner, *Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations, 2011) <http://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nethqur44§ion=14>; But see discussions in Irina Kolodizner, 'The Charter of Rights Debate: A Battle of the Models' (2009) 16 *Australian International Law Journal* 219; Dianne Otto, 'From Reluctance to Exceptionalism' (2001) 26(5) *Alternative Law Journal* 219.

It is obviously beyond the scope of this paper to set out in detail how this recognition translates into effective and comprehensive reform. However, central to this approach is (a) the conferral of legal equality on international students; (b) the imposition of human rights standards on education providers in relation to how they promote and provide their services; and (c) the facilitation of greater accountability of governments and education providers, for international students, through both domestic and bilateral processes. These structural pillars are reflected in the proposed reforms below.

VI PROPOSED REFORMS

Recommendation 1: Addressing Gaps in Conventional Rights

Protection for International Students

At the heart of Australia's human rights obligations is the obligation to ensure that all persons are entitled to equal protection before the law.¹³⁴ As Marginson argues, this 'norm of equivalence' informs broader cultural, social, and economic inclusivity and is moreover pivotal to international students' assertion of stable human agency.¹³⁵

Exclusionary public laws should thus be amended to bring international students into parity with Australian citizens (with limited exceptions for example with respect to voting for national government or tuition costs),¹³⁶ which then provide a foundation for longer-term efforts to ensure that formal equality is accompanied by fairness, certainty, and transparency in the law's application.¹³⁷

The central example I have relied upon in the above discussion is the intersection of Australia's student visa and labour market regimes, which operates to exclude international students (and other migrant workers)¹³⁸ from workplace protections where they breach visa-imposed work restrictions.¹³⁹ Compounded with poor regulation, this state of affairs permits unscrupulous employers to profit from the direct

¹³⁴ ICCPR, above n 6, art 16, 26; ICESCR, above n 6, art 2(2); CERD, above n 6, art 5.

¹³⁵ Marginson, above n 23, 499.

¹³⁶ Ibid 508.

¹³⁷ United Nations: Office of the High Commissioner, above n 134, 4; See CERD, above n 6, art 1(4).

¹³⁸ See generally Employment and Workplace Relations References Committee, Commonwealth of Australia (Senate), *Welfare of International Students* (2009).

¹³⁹ *Australian Meat Holdings v Kazi* [2004] QCA 147; *Smallwood v Ergo Asia Pty Ltd* [2014] FWC 964.

breach of students' rights under domestic and international law,¹⁴⁰ with dire implications for the cumulative social and financial wellbeing of international students and broader industry standards.

As Tham has argued (though not exclusively through a human rights lens), a number of legislative reforms should be implemented to address this injustice and in turn prevent these practices from becoming further entrenched.¹⁴¹ These include amending the *Migration Act 1958* (Cth) and *Fair Work Act 2009* (Cth) to provide:

- that visa breaches do not necessarily void contracts of employment; and
- that standards under the *Fair Work Act* apply even when there are visa breaches,

as well as amending Australia's anti-discrimination laws,¹⁴² to specifically prohibit discrimination against international students (and other temporary migrant workers) on the basis of their migrant status.¹⁴³

*Recommendation 2: Impose Human Rights Due Diligence
Requirements on Education Providers*

The actions of education providers, both in promoting their 'product' to international audiences and by engaging "education agents" to secure more overseas enrolments,¹⁴⁴ directly mediate the journey of international students into Australia. It follows that a rights-oriented reform should encompass these stakeholders. This notion aligns with the increasing recognition in international law that the State's human rights obligations towards persons within its jurisdiction extend to imposing requirements on private

¹⁴⁰ See, eg, *ICESCR*, above n 6, art 7; *International Convention on the Protection of All Migrant Workers and Members of Their Families*, opened for signature on 18 December 1990, 2220 UNTS 3 (entered into force 1 July 2003) art 25 (though note Australia has not ratified this instrument and that international students are not covered in this definition).

¹⁴¹ Joo-Cheong Tham, Submission No 3 to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 29 April 2015, 21.

¹⁴² *Racial Discrimination Act 1975* (Cth); *Discrimination Act 1991* (ACT); *Anti-Discrimination Act 1977* (NSW); *Anti-Discrimination Act 1996* (NT); *Anti-Discrimination Act 1991* (Qld); *Equal Opportunity Act 1984* (SA); *Anti-Discrimination Act 1998* (Tas); *Equal Opportunity Act 2010* (Vic); *Equal Opportunity Act 2010* (WA).

¹⁴³ Tham, above n 107, 7–10.

¹⁴⁴ Luke Slattery, 'Too Many University Students Spoil the Product', *The Australian* (online), 23 April 2016 <<http://at.theaustralian.com.au/link/3b1651e97a65f00c79f1b9696057d8ae?domain=theaustralian.com.au>>; Productivity Commission, 'International Education Services: Research Paper' (Australian Government, April 2015).

enterprises to respect human rights in their operations,¹⁴⁵ particularly for enterprises controlled or substantially supported by the state (such as universities).¹⁴⁶

A relatively simple means of achieving this would be imposing due diligence reporting obligations on universities in relation to how their activities promote respect for the human rights of international students, and providing greater public funding for compliant universities. University undertakings meeting this description might include:

- Greater investment in learning and language services to support international students at all levels of study;¹⁴⁷
- Implementing more comprehensive screening mechanisms for internship, employment, and housing opportunities marketed through universities to exclude illegal or predatory operators;¹⁴⁸
- Allocating additional time and funding towards programs that identify and reach out to international students believed to be at risk of mistreatment in the employment and housing markets;
- Facilitating student access to appropriate legal services where issues do arise and providing support and assistance throughout;¹⁴⁹
- Facilitating student access to physical and mental health services, including information and health services.¹⁵⁰

Recommendation 3: Initiate Bilateral Treaties with Origin Countries

Above, I have argued that Australia's rights crisis has largely been caused by the government's distinctly inward-looking economic conception of international students as sources of external revenue that is only marginally tempered by the conferral of consumer rights protections. This conception of international student welfare, as limited

¹⁴⁵ United Nations: Office of the High Commissioner, above n 134, 13–26.

¹⁴⁶ *Ibid* 6–7.

¹⁴⁷ See, eg, Craig Baird, 'Targeted, Timely, Learning Support for International Students: One Australian University's Approach' (2012) 5(1) *Journal of Learning Design* 52.

¹⁴⁸ Amy McNeilage, "'You Just Take It': The Students at the Sharp End of Sydney's Housing Nightmare', *The Guardian* (online), 19 March 2018 <<http://www.theguardian.com/australia-news/2018/mar/19/you-just-take-it-the-students-at-the-sharp-end-of-sydneys-housing-nightmare>>.

¹⁴⁹ See, eg, Study Melbourne, *International Students Work Rights Legal Service* (24 February 2017) Study Melbourne <<https://www.studymelbourne.vic.gov.au/event/international-students-work-rights-legal-service-wednesday>>.

¹⁵⁰ See generally AHRC, above n 70, 9.

to a matter of 'national private good',¹⁵¹ is inherently flawed however, in that it ignores the interests that origin countries have in securing better conditions for students and — more significantly — the respective abilities of both governments and student communities to pursue those interests through formal and informal processes.¹⁵² Indeed, both of these stakeholders undertook highly consequential actions during the 2009 protests: the students by protesting and lobbying and the Chinese and Indian governments by discouraging tens of thousands of potential international students from enrolling in Australian educational programs.¹⁵³

In recognition of the interests that home countries have in securing conditions for international students, and in free and secure cross-border movement more broadly, a reform worth exploring is the creation and entry of bilateral treaties (or alternatively, more informal 'protocols') between Australia and these countries. These instruments should explicitly recognise the rights and entitlements of students (for example by reference to the *Universal Declaration of Human Rights*),¹⁵⁴ clearly identify the shared responsibility that individuals, governments, and private bodies (like educational institutes) bear in asserting and protecting those rights, and impose greater accountability on the Australian government for the protection of non-citizen students within its borders. This last-mentioned limb might best be achieved by the conferral of 'coercive' rights on home countries to enforce human rights standards; where there are clear derogations however, this would more likely be pursued through persuasion and 'acculturation'.¹⁵⁵ At the very least, there should be recognised processes and forums whereby origin countries can express concerns to government officials by reference to the standards set out in the treaty or protocol. This should also be accompanied by a streamlined complaints procedure, whereby students who have been victims of significant human rights abuses can seek redress from or through the Australian

¹⁵¹ Marginson, above n 23, 507.

¹⁵² See generally 'Australia in Damage Control over Indian Attacks', *ABC News* (online), 1 June 2009 <<http://www.abc.net.au/news/2009-06-01/australia-in-damage-control-over-indian-attacks/1699936>>.

¹⁵³ See, eg, Sharon Verghis, 'Australia: Attacks on Indian Students Raise Racism Cries', *Time* (online), 10 September 2009 <<http://content.time.com/time/world/article/0,8599,1921482,00.html>>.

¹⁵⁴ Marginson, above n 23, 508–9; Frank J Garcia, 'The Global Market and Human Rights: Trading Away the Human Rights Principle' (1999) 25 *Brooklyn Journal of International Law* 51, 64–9.

¹⁵⁵ Ryan Goodman, 'Sociological Theory Insights into International Human Rights Law' (Unpublished presentation, Institute for International Law and Justice, Legal Theory Colloquium: Interpretation and Judgment in International Law, NYU Law School, 3 April 2008) 5–7.

government (in the form of declarations, injunctions, or compensation) after exhausting other legal processes.

An additional benefit of the treaty option, even if implemented in a limited form, would be the potential to safeguard Australian nationals studying abroad as this practice becomes more popular,¹⁵⁶ and in turn begin to address the current lacuna of international human rights standards that apply specifically to overseas students.¹⁵⁷ As Marginson has noted, the best means of addressing these 'gaps' is through an 'incremental process of voluntary agreement': starting with bilateral protocols with the aim of stimulating the development of *global* standards to be monitored by both governments and international NGOs (non-governmental organisations).¹⁵⁸ Importantly, a multilateral and democratic effort to reform the global international education space to align with human rights principles would stand to mitigate the extent to which any single state would suffer competitively by initiating such reforms in isolation — an approach that has significant precedent in international trade law.¹⁵⁹

VII CONCLUSION

Australia's international education industry, on which the future of tertiary education and the nation's economic prosperity increasingly depends, is fundamentally unsustainable. By conceiving of international students as transient populations with limited consumer rights, rather than humans with universal rights, governments and education providers have left them vulnerable to mistreatment and abuse on a wide scale. This is not only detrimental to Australia's human rights commitments and the integrity of its education sector and labour market, but also threatens to undermine the international human rights framework at a time when global mobility is significantly increasing. Human rights oriented reforms, which increase the accountability of

¹⁵⁶ Julie Hare, 'Number of Australians Studying Abroad Doubles', *The Australian* (online), 8 June 2016 <<http://at.theaustralian.com.au/link/597b3f9dca710d12e4f3f9ab2104a1a4?domain=theaustralian.com.au>>; Universities Australia, *More Australian Students See the Value of Study Abroad* <<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/More-Australian-students-see-the-value-of-study-abroad#.WAozJtxA8dU>>.

¹⁵⁷ See generally Deumert et al, above n 24.

¹⁵⁸ Marginson, above n 23, 509; Sovic and Blythman, above n 124, 24.

¹⁵⁹ Garcia, above n 156, 64–9.

education providers and governments and engage with origin countries, are necessary to address this crisis and have significant flow-on benefits.

REFERENCE LIST

A Articles/Books/Reports

Australian Education International, *International Graduate Outcomes and Employer Perceptions* (Commonwealth of Australia, 2010)

Australian Government, 'Australia's National Framework for Human Rights: National Action Plan' (2004) <<http://wwda.org.au/wp-content/uploads/2013/12/austnaphr1.pdf>>

Australian Government, *National Strategy for International Education 2025* (2016) <<https://nsie.education.gov.au/>>

Australian Human Rights Commission, *Principles to Promote and Protect the Human Rights of International Students* (2012) <<https://www.humanrights.gov.au/publications/book-principles-promote-and-protect-human-rights-international-students>>

Australian Universities Quality Agency, 'Good Practice Principles for English Language Proficiency for International Students in Australian Universities' (March 2009) <http://www.deewr.gov.au/HigherEducation/Publications/Documents/Final_Report-Good_Practice_Principles.pdf>

Baas, Michiel, 'Victims or Profiteers? Issues of Migration, Racism and Violence among Indian Students in Melbourne' [2014] (2) *Asia Pacific Viewpoint* 212

Babacan, Hurriyet et al, 'The Community Safety of International Students in Melbourne: A Scoping Study' (Institute for Community, Ethnicity and Policy Alternatives, Victoria University, February 2010) <<http://eprints.vu.edu.au/15491/>>

Baird, Bruce, 'Strong, Simpler, Smarter ESOS: Supporting International Students' (Department of Education, Employment and Workplace Relations, 2010) <http://www.aei.gov.au/AEI/GovernmentActivities/InternationalStudentsTaskforce/ESOS_REview_Final_Report_Feb_2010_pdf.pdf>

Beeson, Mark, and Ann Firth, 'Neoliberalism as a Political Rationality: Australian Public Policy since the 1980s' (1998) 34(3) *Journal of Sociology* 215

Birrell, Bob, and Ernest Healy, 'The February 2010 Reforms and the International Student Industry' (2010) 18(1) *People and Place* 65

Blue Ribbon Panel on Global Engagement, 'Strength through Global Leadership and Engagement: US Higher Education in the 21st Century' (American Council on Education, November 2011) <<http://www.acenet.edu/news-room/documents/2011-cige-brpreport.pdf>>

Burdon, Peter D, and Mary Heath, 'Academic Resistance to the Neoliberal University' (2015) 23(2) *Legal Education Review* 379

Campbell, Iain, Martina Boese and Joo-Cheong Tham, 'Inhospitable Workplaces? International Students and Paid Work in Food Services' (2016) 51(3) *Australian Journal of Social Issues* 279 <http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2849687>

Chirwa, Danwood Mzikenge, 'Doctrine of State Responsibility as a Potential Means of Holding Private Actors Accountable for Human Rights' (2004) 5 *Melbourne Journal of International Law* 1

Deloitte Access Economics, 'Broader Implications from a Downturn in International Students' (Universities Australia, 30 June 2011)
<<https://www.deloitteaccesseconomics.com.au/uploads/File/DAE%20International%20students%20analysis%2030%20June%202011.pdf>>

Deloitte Access Economics, 'The Value of International Education to Australia' (Australian Government, 2016)
<<https://internationaleducation.gov.au/research/research-papers/Documents/ValueInternationalEd.docx>>

Douglass, John, and Richard Edelstein, 'The Global Market for International Students: American Perspectives' [2015] (59) *International Higher Education*
<<https://ejournals.bc.edu/ojs/index.php/ihe/article/view/8482>>

Education and Employment References Committee, Parliament of Australia (Senate), *A National Disgrace: The Exploitation of Temporary Work Visa Holders* (March 2016)

Employment and Workplace Relations References Committee, Commonwealth of Australia (Senate), *Welfare of International Students* (2009)

Fair Work Ombudsman, Commonwealth of Australia, 'A Report of the Fair Work Ombudsman's Inquiry into 7-Eleven: Identifying and Addressing the Drivers of Non-Compliance in the 7-Eleven Network' (April 2016)

Forbes-Mewett, Helen et al, 'Australian University International Student Finances' (2009) 22(2) *Higher Education Policy* 141

Garcia, Frank J, 'The Global Market and Human Rights: Trading Away the Human Rights Principle' (1999) 25 *Brooklyn Journal of International Law* 51

Graycar, Adam, *Racism and the Tertiary Student Experience in Australia* (Academy of the Social Sciences in Australia, 2010)

<https://www.humanrights.gov.au/sites/default/files/content/racial_discrimination/publications/tertiary_students/Graycar_racism_tertiary2010.pdf>

Harry, Keith, *Higher Education Through Open and Distance Learning* (Routledge, 2002)

Human Rights Law Resource Centre, 'Briefing Paper on Key Human Rights Issues in Australia' (July 2009) <<http://www.hrlrc.org.au/files/Briefing-Paper-Human-Rights-Issues-in-Australia-July-2009.pdf>>

Jakubowicz, Andrew, and Devaki Monani, 'International Student Futures in Australia: A Human Rights Perspective on Moving Forward to Real Action' (The Academy of Social Sciences in Australia, 2010)

Jakubowicz, Andrew, and Devaki Monani, 'Mapping Progress : Human Rights and International Students in Australia' (2015) 7(3) *Cosmopolitan Civil Societies Journal* 61

Jeannie, Rea, 'Critiquing Neoliberalism in Australian Universities' (2016) 58(2) *Australian Universities' Review* 1

Johnson, Benjamin, Patrick Kavanagh and Kevin Mattson, *Steal This University: The Rise of the Corporate University and the Academic Labor Movement* (Psychology Press, 2003)

Knight, Michael, 'Strategic Review of the Student Visa Program 2011' (Australian Government, 30 June 2011)

<<https://www.border.gov.au/ReportsandPublications/Documents/reviews-and-inquiries/2011-knight-review.pdf>>

Kolodizner, Irina, 'The Charter of Rights Debate: A Battle of the Models' (2009) 16
Australian International Law Journal 219

Larsen, Jacqueline Joudo, Jason Payne and Adam Tomison, *Crimes Against International Students in Australia, 2005–09* (Australian Institute of Criminology, 2011)
<<http://www.pravasitoday.com/wp-content/uploads/2011/08/Report.pdf>>

Lo, Vai Io, 'Before Competition and beyond Complacency: The Internationalisation of Legal Education in Australia' (2012) 22 *Legal Education Review* 3

Lyndon Megarrity, 'Regional Goodwill, Sensibly Priced: Commonwealth Policies towards Colombo Plan Scholars and Private Overseas Students, 1945–1972' (2007) 38(129)
Australian Historical Studies 88

Marginson, Simon, 'Nation-Building Universities in a Global Environment: The Case of Australia' (2002) 43(3) *Higher Education* 409

Marginson, Simon, 'Including the Other: Regulation of the Human Rights of Mobile Students in a Nation-Bound World' (2012) 63(4) *Higher Education* 497

Marginson, Simon et al, *International Student Security* (Cambridge University Press, 2010)

Mason, Gail, 'Violence against Indian Students in Australia: A Question of Dignity' (2010) 21(3) *Current Issues in Criminal Justice* 461

Mason, Gail, 'Naming the "R" Word in Racial Victimization: Violence against Indian Students in Australia' (2012) 18(1) *International Review of Victimology* 39

Megarrity, Lyndon, 'A Highly-Regulated "Free Market": Commonwealth Policies on Private Overseas Students from 1974 to 2005' (2007) 51(1) *Australian Journal of Education* 39

Melbourne Institute of Applied Economics and Social Research, 'Poverty Lines: Australia (December Quarter 2017)' (University of Melbourne, 18 April 2017)
<https://melbourneinstitute.unimelb.edu.au/_data/assets/pdf_file/0011/2750933/Poverty-Lines-Australia-December-Quarter-2017.pdf>

NAFSA: Association of International Educators, 'Restoring US Competitiveness for International Students and Scholars' (June 2006)

<http://www.nafsa.org/uploadedFiles/NAFSA_Home/Resource_Library_Assets/Public_Policy/restoring_u.s.pdf>

New South Wales and Independent Commission Against Corruption, 'Learning the Hard Way: Managing Corruption Risks Associated with International Students at Universities in NSW' (2015)

Norton, Andrew, and Ittima Cherastidtham, 'University Fees: What Students Pay in Deregulated Markets' (Grattan Institute, 2015)

<https://www.csu.edu.au/_data/assets/pdf_file/0009/1817190/2015-Grattan-Institute-University-FeesUniversity-fees-what-students-pay-in-deregulated-markets.pdf>

Nyland, C, H Forbes-Mewett and S Marginson, 'The International Student Safety Debate: Moving beyond Denial' (2010) 29(1) *Higher Education Research & Development* 89

Nyland, Chris, Helen Forbes-Mewett and Charmine E J Hartel, 'Governing the International Student Experience: Lessons from the Australian International Education Model' (2013) 12(4) *Academy of Management Learning & Education* 656

Otto, Dianne, 'From Reluctance to Exceptionalism' (2001) 26(5) *Alternative Law Journal* 219

Overseas Student Ombudsman, *Annual Report* (2014–15)

<http://www.ombudsman.gov.au/_data/assets/pdf_file/0016/37330/Overseas-Students-Ombudsman-Annual-Report-2014-15.pdf>

Productivity Commission, 'International Education Services: Research Paper' (Australian Government, April 2015)

Reilly, Alex, 'Protecting Vulnerable Migrant Workers: The Case of International Students' (2012) 25 *Australian Journal of Labour Law*

<http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2218021>

Robertson, Shanthi, 'Cash Cows, Backdoor Migrants, or Activist Citizens? International Students, Citizenship, and Rights in Australia' (2011) 34(12) *Ethnic and Racial Studies* 2192

Robertson, Shanthi, 'The Production of the Indian Student: Regimes and Imaginaries of Migration, Education, Labour, Citizenship and Class' (2015) 7(3) *Cosmopolitan Civil Societies: An Interdisciplinary Journal* 1

Rueckert, Caroline M, *Conceptions of Care in International Higher Education in Australia* (Queensland University of Technology, 2017)

Smith, David Livingstone, 'Dehumanization, Essentialism, and Moral Psychology' (2014) 9(11) *Philosophy Compass* 814

Sovic, Silvia, and Margo Blythman, *International Students Negotiating Higher Education: Critical Perspectives* (Routledge, 2012)

Stewart, Andrew, and Rosemary Owens, 'Experience or Exploitation? Report for the Fair Work Ombudsman' (Adelaide Law School, 2013)
<<http://cdn.workplaceexpress.com.au/files/2013/unpaidworkreport.pdf>>

United Nations: Office of the High Commissioner, *Implementing the United Nations 'Protect, Respect and Remedy' Framework* (United Nations, 2011)
<http://heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals/nethqur44§ion=14>

University of Melbourne, 'The University of Melbourne Strategic Plan 2015–2020: Growing Esteem'
<https://about.unimelb.edu.au/_data/assets/pdf_file/0006/1462065/11364-GROWING-ESTEEM-2015-FA-WEB.pdf>

Victorian Equal Opportunity & Human Rights Commission, *Annual Report* (2008/09)
<http://www.humanrightscommission.vic.gov.au/our-resources-and-publications/annual-reports/item/download/8595_f501ab086c63bb6a32c8cc07d232b4c0>

Victorian Ombudsman, 'Investigation into How Universities Deal with International Students' (Victoria Government, October 2011)

<<https://www.ombudsman.vic.gov.au/Reports-Publications/Parliamentary-Reports/Investigation-into-how-universities-deal-with-inte>>

Woodfield, Steve, 'Trends in International Student Mobility: A Comparison of National and Institutional Policy Responses in Denmark, Germany, Sweden and The Netherlands' (Kingston University, December 2009)

<http://eprints.kingston.ac.uk/19772/1/Woodfield2009-Trends_in_International_Student_Mobility__A_Comparison_of_National_and_Institutional_Policy_Responses_in_D.pdf>

B Cases

Al Ferdous v Minister for Immigration & Citizenship [2010] FMCA 824

DPP v Caratozzolo [2009] VSC 305 (29 July 2009)

Fair Work Ombudsman v Bosen Pty Ltd and Others (Industrial) Magistrates Court of Victoria Y03727156

Fair Work Ombudsman v Primeage Pty Ltd & Ors [2015] FCCA 139

Hussein v The Queen [2010] VSCA 257 (4 October 2010)

R v Wong (2010) [2010] NSWSC 171 (Unreported, 10 March 2010)

Smallwood v Ergo Asia Pty Ltd [2014] FWC 964

C Legislation

Anti-Discrimination Act 1977 (NSW)

Anti-Discrimination Act 1996 (NT)

Anti-Discrimination Act 1991 (Qld)

Anti-Discrimination Act 1998 (Tas)

Discrimination Act 1991 (ACT)

Education Services for Overseas Students Amendment (Re-registration of Providers and Other Measures) Act 2010 (Cth)

Education Services for Overseas Students Legislation Amendment (Tuition Protection Service and Other Measures) Act 2012 (Cth)

Education Services for Overseas Students (Registration Charges) Amendment (Tuition Protection Service) Act 2012 (Cth)

Education Services for Overseas Students (TPS Levies) Act 2012 (Cth)

Equal Opportunity Act 1984 (SA)

Equal Opportunity Act 2010 (Vic)

Equal Opportunity Act 2010 (WA)

Racial Discrimination Act 1975 (Cth)

D Treaties/International Materials

Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, opened for signature 10 December 1984, [1989] ATS 21 (entered into force 7 September 1989)

Convention on the Elimination of All Forms of Discrimination against Women, opened for signature 18 December 1979, [1983] ATS 9 (entered into force 27 August 1983)

Convention on the Elimination of All Forms of Racial Discrimination, opened for signature 7 March 1966, [1975] ATS 40 (entered into force 30 October 1975)

Convention on the Rights of Persons with Disabilities, opened for signature 30 March 2007, [2008] ATS 12 (entry into force 16 August 2008)

Convention on the Rights of the Child, opened for signature 20 November 1989, [1991] ATS 4 (entered into force 16 January 1991)

Convention Relating to the Status of Refugees, opened for signature 28 July 1951, 189 UNTS 150 (entered into force 22 April 1954)

International Covenant on Civil and Political Rights, opened for signature 16 December 1966, [1980] ATS 23 (entered into force 13 November 1980)

International Covenant on Economic, Social and Cultural Rights, opened for signature 16 December 1966, [1976] ATS 5 (entered into force 10 March 1976)

E Other

AAP, 'Rudd's Plea: We're Not Racists', *Sydney Morning Herald* (online), 1 June 2009 <<http://www.smh.com.au/national/rudds-plea-were-not-racists-20090601-bsnj.html>>

AAP, 'I Was Paid 47c an Hour: 7-Eleven Worker', *News.com.au* (online), 15 February 2016 <<https://www.news.com.au/national/breaking-news/i-was-paid-47c-an-hour-7-eleven-worker/news-story/054d5a1b461afef0a86e5ff9e7e15c07>>

Australian Bureau of Statistics, 'Participation in Education: Overseas Students in Higher Education' (20 June 1995) <<http://www.abs.gov.au/ausstats/abs@.nsf/2f762f95845417aeca25706c00834efa/de4fd4d0af435ad4ca2570ec007521f0!OpenDocument>>

Australian Education Union, *International Education Crisis and the Failure of Private Providers* (February 2010) <<http://www.aeusa.asn.au/03ie.pdf>>

Australian Human Rights Commission, 'Human Rights of International Students a Major Issue' (Media Release, 5 November 2009) <<http://www.humanrights.gov.au/news/media-releases/2009-media-release-communicu-human-rights-international-students-major-issue>>

Choudaha, Rahul, 'How China Plans to Become a Global Force in Higher Education', *The Guardian* (online), 13 October 2015 <<https://www.theguardian.com/higher-education-network/2015/oct/12/how-china-plans-to-become-a-global-force-in-higher-education>>

Citizenship and Immigration – Government of Canada, *Notice — New Regulations for International Students Finalized* (2 December 2014) <<http://www.cic.gc.ca/english/department/media/notices/2014-02-12.asp>>

Corones, Stephen, 'Consumer Guarantees and the Supply of Educational Services by Higher Education Providers' (2012) 35(1) *UNSW Law Journal* 1

Council of Australian Governments, *2010–2014: International Students Strategy for Australia*

<<https://www.coag.gov.au/sites/default/files/International%20Students%20Strategy%20-%20PDF.pdf>>

Croucher, Gwilym et al (eds), *The Dawkins Revolution: 25 Years on* (Melbourne University Press, 2013)

Das, Sushi, 'College Collapses Spark Fresh Probe' *The Age*, 17 August 2010

<<http://www.theage.com.au/victoria/college-collapses-spark-fresh-probe-20100816-126xy.html>>

Das, Sushi, "'Sham" Colleges Operating with Impunity', *The Sydney Morning Herald* (online), 25 October 2008 <<http://www.smh.com.au/national/sham-colleges-operating-with-impunity-20081024-58az.html>>

Debets, Jacob, 'Bursting the Law School Bubble', *De Minimis* (online), 3 April 2016

<<http://www.deminimis.com.au/1/post/2016/04/bursting-the-law-school-bubble.html>>

Department of Education and Training, *Export Income in to Australia from International Education Activity in 2016–17 (Research Snapshot)* (Australian Government, December 2017) <<https://internationaleducation.gov.au/research/Research-Snapshots/Documents/Export%20Income%20FY2016%E2%80%9317.pdf>>

Department of Foreign Affairs and Trade, *Australia's Top 10 Goods and Services Exports* (Australian Government, 2016–17) <<http://dfat.gov.au/trade/resources/trade-at-a-glance/pages/top-goods-services.aspx>>

Doherty, Ben, and Paul Millar, 'Indian Anger Boils Over', *The Sydney Morning Herald* (online), 3 June 2009 <<http://www.smh.com.au/national/indian-anger-boils-over-20090531-brrm.html>>

Ferguson, Adele, and Sarah Dunckhert, '7-Eleven's Wage Fraud Sparks \$170 Billion Blow Back', *The Sydney Morning Herald* (online), 27 August 2016 <<http://www.smh.com.au/business/retail/7elevens-wage-fraud-sparks-170-billion-blow-back-20160826-gr264h.html>>

Four Corners, *7-Eleven: The Price of Convenience* (30 August 2015) ABC News

<<http://www.abc.net.au/4corners/7-eleven-promo/6729716>>

Four Corners, *Degrees of Deception* (20 April 2015) ABC News

<<http://www.abc.net.au/4corners/stories/2015/04/20/4217741.htm>>

Gomez, Jerry, 'Student Visa Fraud Out of Control But DIBP Still Refuses to Act against Unregistered Education Brokers' on *Migration Alliance* (21 January 2015)

<<https://migrationalliance.com.au/immigration-daily-news/entry/2015-01-student-visa-fraud-out-of-control-but-dibp-still-refuses-to-act-against-unregistered-education-brokers.html>>

Goodman, Ryan, 'Sociological Theory Insights into International Human Rights Law' (Unpublished presentation, Institute for International Law and Justice, Legal Theory Colloquium: Interpretation and Judgment in International Law, NYU Law School, 3 April 2008)

'Government Launches Inquiry into Indian Student Attacks', *SBS News* (online), 2 June 2009 <<http://www.sbs.com.au/news/article/2009/06/02/government-launches-inquiry-indian-student-attacks>>

Hare, Julie, 'Number of Australians Studying Abroad Doubles', *The Australian* (online), 8 June 2016

<<http://at.theaustralian.com.au/link/597b3f9dca710d12e4f3f9ab2104a1a4?domain=theaustralian.com.au>>

ICEF Monitor, *The State of International Student Mobility in 2015* (5 November 2015)

<<http://monitor.icef.com/2015/11/the-state-of-international-student-mobility-in-2015/>>

Johns-Wickberg, Nick, and Inga Ting, *Students in Detention? Life Gets Harder for International Scholars* (24 September 2010) Crikey

<<https://www.crikey.com.au/2010/09/24/students-in-detention-life-gets-harder-for-international-scholars/>>

Johnston, Matt Wade and Chris, 'Rudd Steps in as Tensions Rise over Attacks on Students', *The Age* (online), 30 May 2009 <<http://www.theage.com.au/national/rudd-steps-in-as-tensions-rise-over-attacks-on-students-20090529-bqb3.html>>

Koeth, Elsa, 'Overseas Students: Immigration Policy Changes 1997–May 2010' (Parliament of Australia, 18 June 2010) <http://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/pubs/BN/0910/OverseasStudents>

Levitt, Stewart, Submission No 61 to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 18 September 2015

McCarthy, Emma, "We Forgot How Vulnerable We Were": Foreign Students Struggle to Find Homes (14 April 2015) Crikey <<https://www.crikey.com.au/2015/04/14/we-forgot-how-vulnerable-we-were-foreign-students-struggle-to-find-homes/>>

Millar, Paul, 'Indian Students March in Protest against Attacks', *The Age* (online), 31 May 2009 <<http://www.theage.com.au/national/indian-students-march-in-protest-against-attacks-20090531-brhj.html>>

Rost, Michaela, Submission to Senate Education, Employment & Workplace Relations Committee, *Inquiry into Welfare of International Students 2009*, September 2009

Sales, Leigh, "I Would Call Myself a Modern Century Slave," Says Former 7-11 Worker', *ABC News* (online), 3 September 2015 <<http://www.abc.net.au/7.30/content/2015/s4305800.htm>>

Simons, Margaret, 'Exodus: The International Student Sector', *The Monthly* (2010) <<https://www.themonthly.com.au/issue/2010/november/1288836088/margaret-simons/exodus>>

Slattery, Luke, 'Too Many University Students Spoil the Product', *The Australian* (online), 23 April 2016 <<http://at.theaustralian.com.au/link/3b1651e97a65f00c79f1b9696057d8ae?domain=theaustralian.com.au>>

Steen, Frederika Submission No 131 to Joint Standing Committee on Migration, *Inquiry into Immigration Detention in Australia*, 3 September 2008

Students for Migrant Workers Rights, 'Rights Without Borders — Realising Human Rights for All Workers Irrespective of Citizenship' (University of Sydney, 2013)
<http://www.hrca.org.au/wp-content/uploads/s4mwr_report_rights_without_border1.pdf>

Sydney University Postgraduate Representative Association, Submission to Michael Knight, *Strategic Review of the Student Visa Program*, 15 April 2011

Tham, Joo-Cheong, '7-Eleven Is the Tip of the Iceberg in Worker Exploitation. So Who's Turning a Blind Eye?', *The Guardian* (online), 12 May 2016
<<https://www.theguardian.com/commentisfree/2016/may/12/7-eleven-is-the-tip-of-the-iceberg-in-worker-exploitation-so-whos-turning-a-blind-eye>>

Tham, Joo-Cheong, Submission No 3 (Supplementary Submission) to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 16 September 2015

Tham, Joo-Cheong, Submission No 3 to the Senate Standing Committee on Education and Employment, *The Impact of Australian Temporary Working Visa Programs on the Australian Labour Market and on Temporary Work Visa Holders*, 29 April 2015

Toft, Klaus, Adele Ferguson and Sarah Danckert, '7-Eleven: A Sweatshop on Every Corner', *The Sydney Morning Herald* (online), 29 August 2015
<<http://www.smh.com.au/business/workplace-relations/7eleven-a-sweatshop-on-every-corner-20150827-gj8vzn.html>>

United Voice, 'International Students Cop Melbourne's Worst Paid Jobs' (Media Release, 17 October 2013) <www.unitedvoice.org.au/press-releases/international-students-cop-melbourne-s-worst-paid-jobs>

Universities Australia, *More Australian Students See the Value of Study Abroad*
<<https://www.universitiesaustralia.edu.au/Media-and-Events/media-releases/More-Australian-students-see-the-value-of-study-abroad#.WAozJtxA8dU>>

Verghis, Sharon, 'Australia: Attacks on Indian Students Raise Racism Cries', *Time* (online), 10 September 2009
<<http://content.time.com/time/world/article/0,8599,1921482,00.html>>.

Victorian Equal Opportunity & Human Rights Commission, *Submission to Victorian Overseas Students Taskforce* (24 October 2008)
<<http://pandora.nla.gov.au/pan/99466/20090514-1405/www.humanrightscommission.vic.gov.au/pdf/SubmissionInternationalStudentsTaskforce.pdf>>

Wallace, Duncan, 'Melbourne Law School and the Politics of Education', *De Minimis* (online), 1 March 2015 <<http://www.deminimis.com.au/1/post/2015/02/melbourne-law-school-and-the-politics-of-education.html>>

Wells, Jamelle, '21 Years' Jail for "Reign of Sexual Terror"', *ABC News* (online), 16 July 2010 <<http://www.abc.net.au/news/2010-07-16/21-years-jail-for-reign-of-sexual-terror/907172>>