

# It's a long way down

## The underlying tensions in the education export industry

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The stellar rise of the education export industry in Australian higher education, and the even more spectacular downturn now occurring, mask underlying tensions that have long dogged the industry and prevented it from improving quality or achieving long-term sustainability. The international education programme has been unbalanced by the drive for revenues at any cost. The tensions are (1) between education policy and immigration policy, (2) between commercial export and the health of the domestic education and research system, (3) between neo-imperial economic exploitation of Asia and a more holistic engagement on the basis of equal respect, (4) between international students as consumers and students as people with comprehensive rights, and (5) between the national political economy and the global public good. The article suggests ways to resolve these tensions, including the forms of a bilateral protocol that would provide more coherent and comprehensive rights for international students.

### Introduction

In the two decades after 1990 the number of international students in Australian higher education grew by an annual average of 12 per cent plus. This was an extraordinary rate of sustained expansion for any social sector.

Between 1990 and 2007 international students in higher education rose from 25,000 to 254,414, one in five of all onshore university students. Four in five of these international students were from Asia (DEEWR 2010). Total national exports of higher education, vocational education, schooling and English-language courses were \$18.0 billion AUD in 2009 and student numbers in all sectors peaked at 630,000 in 2009 (AEI 2009). By then education, a commercial export industry that did not exist until the last 20 per cent of Australia's history, had become the nation's largest services export and fourth largest export (briefly third) after coal, iron ore and gold, ahead of tourism and all specific sectors in agriculture and manufacturing. By 2008 Australia was the world's fifth largest exporter of tertiary education with 6.9 per cent of all

foreign students, though Australia's population was much smaller than that of the other major education export nations. In higher education in Australia in 2008 a dozen institutions enrolled more than 8000 international students—more international students than in any American doctoral university—led by RMIT University with an incredible 22,497 international students and Monash with 19,079 of whom 13,131 were onshore, the largest group in any Australian university. Total national tuition revenues in higher education were \$2.6 billion, 14.9 per cent of all income (DEEWR 2010; ABS 2010; OECD 2010).

These are all spectacular numbers with no equivalent in any other higher education system in the world. The first half of 2009 was the highpoint of the export industry. It seemed then that international student numbers, export revenues, university budget injections and the migration of international graduates would each go on expanding forever, with international student numbers ballooning to half or more of the total student body: the demography of urban Asia recast in miniature on the far underside of the world.

Commencements began to slow in the second half of 2009, offshore visas started to fall and from the second half of 2010 onwards, international student numbers began to trend sharply down, first in vocational education and training (VET) and English language colleges and then in higher education. From the point of view of the many employees working in international education, not to mention the educational institutions and local economies dependent upon the export sector, these trends are of much concern. It has been estimated by the International Education Association of Australia that in 2010 the sector generated at least 125,000 Australian jobs per annum.

The article examines the drivers of growth and the immediate factors that have contributed to the collapse of growth in international student numbers. It then discusses the tensions that underlie the export industry. The final section discusses possible measures for alleviating those tensions and establishing a more secure industry. It argues that Australia could offer international students a global protocol setting out their rights and entitlements. A possible wording of such a global protocol ('Compact') is included as an appendix.

### Drivers of growth

The long boom fluctuated but the growth remained positive. It lasted right through all the many changes in the Australian dollar, the Asian financial crisis of the late 1990s, and the first stage of the 2008–2010 global financial crisis.

Growth was sustained because contrary to general belief it was primarily supply-regulated, not demand-regulated. The size of the Asian middle classes continually expanded through the two decades of growth, especially in China and India. Correspondingly the number of applications to study in Australia also grew. Demand was always well in excess of the supply of places—as late as early 2010, the DEEWR education counsellor in the Australian embassy in Beijing reported that the number of applications from China exceeded the number of student visas granted by a factor of four to one (Watt, 2010). In sum, the number of enrolled students was determined by two factors on the supply side: (1) the willingness of universities to take them; and (2) the willingness of the federal immigration department, now designated as the Department of Immigration and Citizenship (DIAC), to grant visas.

Most of the time DIAC was supportive of the export industry and positive about the throughput of gradu-

ates into skilled migration. For their part Australian universities needed the money, badly. That need increased over the years. Growth was sustained by successive cutbacks in the public funding of higher education, notably a 12–15 per cent fall in per student funding in 1988–1989 at the beginning of the commercial market (Burke 1988) and the Vanstone cuts of 1996 which triggered accelerated growth in international students. Between 1995 and 2002 Australia private spending on tertiary education increased by 78 per cent while public spending fell by 8 per cent.

The OECD then noted that in most countries 'increasing private spending on tertiary education tends to complement, rather than replace, public investment' (OECD 2005: p. 175, 187 & 193)—but Australia was the exception. The Labor Party made much of this before the 2007 election. Labor in government has now discarded the international comparison on public funding, in case it is used to make fiscal claims for more funding.

### The end of growth: Changes in policy and regulation

The growth tendency shuddered to a halt in 2010, though this will not fully show itself in universities until 2011 and more so 2012. There was a reduction in demand in South Asia following the patterned violence against South Asian students in Melbourne in 2008–2010 (Marginson 2010a), media coverage of this in India and the desultory response of the Australian authorities. But despite the dip in South Asian demand, the change was again primarily driven on the supply side. Education institutions continued to be dependent on growth in international student numbers and still held the door wide open. The change in supply resulted from dramatic shifts in Australia's migration policy and regulation. This was triggered by three factors, only two of which were acknowledged publicly.

The first factor was migration-related education sector 'scams' involving education agents and students from South Asia. There was a blowout of migration-oriented international students in certain vocational programmes, and instances of corrupt practices and dubious educational provision. This triggered a belated crackdown by the Federal Government in 2010. The second and partly related factor was concern in DIAC and elsewhere in government that the mix of skilled migrants entering Australia following graduation as international students was not optimal. For example, many graduates lacked adequate English proficiency

for work, and Australia did not need vocational education graduates in cooking and hairdressing in the numbers that were being produced. (Cooking and hairdressing were also two programme areas favoured by 'scam' institutions).

The third and unacknowledged factor, one that could be inferred from the 2010 election campaign, was migration resistance in pockets of the electorate. This was apparent in key marginal seats in Western Sydney, as indicated by opinion polls, and had also become visible in 2008-2009 in the street violence against South Asian students. Migration resistance triggered the decision, manifest in the stance of both the Labor Party in government and the opposition Liberal and National Parties, to support an overall reduction in net overseas migration, facilitated by restrictions in temporary student migration and steeper tests for the passage of graduates into permanent migration—though as noted, the last also originated from DIAC's desires to clean up the education market and improve graduate quality.

Student visas have become much harder to obtain. There are steep income tests and also processing delays, so that to obtain an Australian visa from China (the largest student source country) or India takes longer than in competitor English-speaking countries, often more than three months. Graduates who want to become permanent residents face a mix of English language and work experience tests. One requirement to be implemented in July 2011 means that international graduates will be required to have at least 12 months work experience. Under the new system graduates who work in an occupation for which they have been trained are favoured. However, this requirement is difficult to meet. Labour markets are never closely matched to the qualifications profile—across the world roughly half of all graduates work outside their fields of training. Internationals face discriminatory barriers (Marginson, *et al.* 2010, Ch.6) and employers are reluctant to hire persons without permanent residence. Graduates need a job to get migration status. But the same graduates need migration status to get a job. Catch 22!

The Federal Government explained these changes by stating that the cleanup of the vocational sector would improve 'quality', and the new visa rules would decouple demand for Australian education

from demand for migration. It is doubtful if the policy changes will achieve either of these goals. The education and migration motivations of international students are essentially inseparable—individual students move freely between one and the other and many have both goals at various times—and the October 2010 statement by the federal minister in fact claims migration outcomes as one benefit of the international education programme (Evans 2010).

'Quality' is not guaranteed by tightening the regulation of marginal colleges but by resources and incentives in the mainstream of institutions. These continue a long slow decline, the inevitable outcome of the evacuation of core public funding and the forced substitution of private revenues in place of public income, while a large proportion of those private revenues are

steered away from teaching and research capacity and absorbed by business costs. One assumes that by 'quality' the minister actually meant 'reputation'. If so, the changes in regulation will have little impact on the main factors shaping

the reputation of the industry in the next period: the sudden end to the miracle of accelerated growth and the fall in Australia's share of global student flows.

One area where quality may lift is in English language proficiency. From 2010 some institutions lifted the IELTS (International English Language Testing System) score that students had to achieve. However, much research indicates that regulating English proficiency at the point of entry is insufficient alone to secure ongoing and developing competence in academic or vocational English. Applicants learn for the test but the skills may not stick unless reinforced and augmented during the programme of study. English support services are highly inadequate in some universities. Some persons score lower in IELTS tests conducted after graduation than at the point of entry as international students (see Marginson *et al.*, 2010, Chapter 12).

Regardless of its virtues in terms of lifting standards, a tougher IELTS regime has contributed to the reduction in new student visas granted. In the second half of 2010 it was already apparent that there was a catastrophic decline in VET students from India, the largest source country for Australian VET in 2009 (AEI 2010), and also Nepal. In higher education the commencements total fell by 6 per cent in the second half of 2010, compared with

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the same period in 2009. Universities highly dependent on India as a source country face serious problems. Numbers from China are also expected to decline because of the changes in visa regulation and a drop in both visa applications and visas granted (Hare 2010). Because of pipeline effects the full effects of changes already in train in 2010 will not show until 2012.

The trend is now unstoppable, and even if correctives were factored into policy immediately would take some years to turn around (and there are no guarantees this would happen). Around the world international student numbers are growing. But numbers coming to Australia are falling. Students who once would have gone to Australia are now heading elsewhere. While the position is affected by a high value Australian dollar, there is no doubt the change is primarily due to Australian-specific factors.

The changes to migration policy and regulation have been central to the turnaround. Nevertheless, those changes are symptomatic of a larger change in policy outlook. Writing in late 2010, the Federal Government might seem to have been surprisingly sanguine about the impending collapse of the industry. But the downturn in numbers fulfills an outcome many in Canberra support. It reflects a partial shift in immigration policy from international student graduates to migrants from offshore. It also reflects a shift in the higher education policy settings from the emphasis on international student growth that prevailed after the mid 1990s, to an emphasis on domestic student growth as favoured by the Government's Bradley report (2008) and the participation targets implemented after the Bradley Review (Gillard 2009). In other words, the open-ended expansion of the export sector seems to have reached its political use-by date, at least for the time being.

These crude unresolved tradeoffs, between immigration policy and education policy, and between commercial international student growth and subsidised domestic student growth, point to the tensions underlying the export industry. This suggests that now is a good time to review the character, dynamics and effects of international education in Australian higher education.

## Tensions

Australian international education illustrates the strengths and weaknesses of a commercial approach. It has also been shaped by Australia's global position and positioning strategy. International education has gener-

ated great wealth in the export nation. But despite the obvious success of the programme it has been constrained by unresolved problems that have inhibited its evolution to a higher level and undermined its long-term sustainability. This article identifies five key tensions in International education in Australia, as follows:

- Tension within national government, between immigration policy and education export policy.
- Tension within Australian higher education, between the education export policy, and the domestic education and research missions of universities.
- Tension in the global engagement of higher education institutions, between commercial exploitation of Asia and maximising Australia's position vis a vis global knowledge flows.
- Tension in the lives of international students, between their role as economic consumers, and their larger human rights and security.
- And the 'master' tension, the permanent contradiction between national political economy and the global public good.

### *Tension in policy between immigration and education export*

Commercial international education is an economic market. But economic markets rarely operate on the basis of the free interaction of supply and demand imagined in textbooks, especially in education. They are shaped by government subsidies and regulation, by natural or artificial monopolies and other protections accorded to favoured suppliers, and by social and cultural factors. International education generates profits in English speaking countries because of the positional advantages offered by the acquisition of global English, together with the opportunities (educational, social and economic) that developed countries provide for some though not all students. In other words the commercial product is created by global inequalities. These global inequalities are not simply the outcome of history or the blind operation of market forces but are politically sustained. Access to the product 'international education' is determined not simply by buying power but by arbitrary policy, and is policed by force. In Australia, the most important force determining the size and character of the market is immigration regulation.

International education has always been partly about opportunities for both temporary and permanent migration. As noted, DIAC mostly facilitated the growth of the market, until recently. But the federal department

has always been concerned about backdoor migration through students overstaying their visa term, breaches of the rules concerning changes to study programmes, and breaches of the restrictions on student work during semester. Beneath these concerns are deeper worries about the potential threats posed by aliens, including terrorism, and a determination to preserve the national 'character'—whatever DIAC considers that to be, for DIAC has its own undeclared albeit evolving assumptions about Australia. DIAC's classical method of administering people movement is to be harsh in its dealings with the non-citizens it wants to limit and police, as a principal method of managing the flow. We see this also in policy on refugees. It reflects the underlying anxiety of all immigration authorities about dangerous aliens at the border. As many international students have experienced it, DIAC is arbitrary, bureaucratic and people unfriendly. This was documented in the 200 international students interviews reported in *International Student Security* (Marginson, *et al.* 2010):

After the 9/11 attack on targets in New York and Washington in 2001 it emerged that some of the attackers had entered the country as students. Subsequently the then Bush Administration established the SEVIS system of surveillance, which positioned international students as potentially dangerous aliens. This created a regulatory burden for universities and infringed the liberties of the students (Rosser, *et al.* 2006; NAFSA 2008). Non-white students were especially targeted (Harvard Civil Rights Project, 2003). In the early part of the last decade DIAC in Australia cancelled the visas of many international students for often minor breaches of the rules governing student work, placing many students in prison-like detention. The students had no recourse but protracted and expensive appeals—often from within detention—against the loss of their visas. Nevertheless a third of the visa cancellations were overturned on appeal (Marginson, *et al.* 2010, pp. 247-250).

Struggling to manage global people flows they never fully control, receiving national governments flip between the benefits and the dangers (as they see them) of international students. The students are regulated within two conflicting normative frameworks. One policy framework is positive and encouraging. The other framework treats international students as a threat. The frequent student difficulties with DIAC are an ongoing problem for universities, that also find DIAC inflexible and hard of hearing. International education is a more or less permanent stand-off between on one hand DIAC, on the other

hand the education department and the institutions. The latest round of restrictions on migration highlights this ongoing tension.

Can this tension be removed? It cannot be totally abolished—in a nationally-bordered world regulation of incomers is inevitable—but can be modified. As far as possible, temporary migration should be handled separately from the regulation and politics of permanent migration. Further, there seems no good reason why temporary student visa holders should not be treated with the same courtesies as are accorded to citizens, for the duration of their stay. International students should no longer be subject to arbitrary detention, which is a form of imprisonment, for alleged breaches of visa conditions.

### ***Tension between export policy, and the education and research missions of universities***

It is widely realised, except in university marketing departments, that a high commercial orientation is in tension with a deep focus on education and research. Teaching and learning are concerned with the self-development of students, not money as an end in itself. Research is about knowledge creation and application. There, money is the means to more fundamental objectives. Research generates many long-term benefits of both the public and the private kind, benefits that cannot all be predicted in advance. In economic terms, public sector education is essentially about product maximisation. As new needs emerge they are addressed, until resources are exhausted.

In contrast, the commercial producer is primarily concerned to maximise revenues and market share while minimising unit costs. Despite the myths, education markets are not primarily driven by meeting needs. First, these markets are producer dominated—there is an inevitable asymmetry between the producer and the consumer, who cannot know what the teaching and learning are like until halfway through the programme. Second, in the process of producing mass international education, there are always downward pressures on extra costs such as individualised services, extra help with English or innovations in intercultural learning. The strength of the Australian business model was that it became very good at the standardised production of high volume medium quality low unit cost programmes in areas such as business education. However, the very success of the model created a path dependent approach designed to keep the money flowing. When the good times were rolling,

the opportunity should have been taken to innovate and improve the product. But the production model was stuck. It was unable to evolve into a higher quality approach or even to differentiate and nuance sub-markets and products. The one size standard business model fitted all.

The market model is readily organised so as to minimise low quality product, using quality assurance mechanisms. But it is a poor device for striving for excellence. In a competitive education market, at the 'high quality' end, 'excellence' becomes signified by selectivity and price—not by the intrinsic quality of teaching and learning, which escapes market scrutiny. Further, in the commercial framework a system of quality assurance than is primarily driven by self-regulation becomes corrupted. It is turned into a branch of marketing. It becomes just another way of promoting the institution. In this context the surveillance has no objectivity, no 'warts and all' rigour—or at least none that is publicly acknowledged. And unless weaknesses are made transparent the dynamic of continuous improvement becomes inhibited. Instead the flaws are papered over. The objective becomes not better product, or better customer satisfaction, but better satisfaction ratings.

At the national level, the relentless barrage of self-promotion by institutions-as-firms, supported by quality assurance operating in the service of producers, aggregates into a culture of denial. Public funding per student is falling, and this funding is a crucial condition of 'real' quality, but it seems that everything is always becoming better and better. This reduces the political pressure on governments to provide the core funding that underpins staffing, social access and the public good of basic research. Thus in a higher education market, the mechanisms designed to advance quality only succeed in emptying it out.

The notion of a conflict between profit and quality, between price and value, between capitalism and human needs, is not news. And there is a counter-argument. On a good day, the market is quicker than public administration to expand opportunities and throw the door open to all (or all of those with the money in their hands). But in order to understand and modify this tension in Australian international education we need to unpick the way it works. It is not simply an abstract political problem. It is also localised and policy specific.

As noted, in Australia the growth of international education has been driven by, and a primary means of achieving, the reduction of public fiscal outlays on higher education. In the 1980s these outlays were

above the OECD average. In 2008, they were 0.7 per cent of GDP compared to an OECD average of 1.0 per cent (OECD 2010). The government share of total university income fell from 91 per cent in 1983 to 44 per cent in 2003, rising slightly to 45 per cent in 2007. All forms of tuition fees and charges reached 38 per cent of university income in 2007 (DEEWR 2010). In the two decades after 1984, the fall in public resources per student coupled with expanding business functions and services—much of this triggered by the business of international education—led to a fall in the average resources for teaching and research. The growth of non-academic staff outstripped that of academic staff especially in the newer universities. In the two decades after 1984, the average student-staff ratio rose from 13 to 20 (DEEWR 2010), as highlighted in the 2008 Bradley report.

It is inconceivable that this would not have had negative impacts on teaching capacity, including teaching in international education. The policy and funding changes in the wake of the Bradley report have slowed or halted the deterioration in resources for teaching, but not reversed it. The downward trend in public outlays also places pressure on basic research. Research was once supported in common with teaching from the public funding allocated on a per student basis. But the level of funding of subsidised student places, coupled with the student contribution, has now fallen below actual cost, while research project funding—which is funded below real cost—cannot be used to sustain core capacity. Both domestic teaching and basic research are more and more dependent on the same source: international student fees. Thus Australia's research-intensive universities enroll large numbers of international students, at a level unique among the world's top 200 research institutions. Yet this dissipates their efforts and limits the basis of their global engagement.

Can this tension be overcome? Yes, by public refunding of the higher education system, so that institutions are no longer dependent on the export industry for core funding. (If China and Singapore can do it, so can Australia).

### ***Tension between commercial exploitation of Asia, and maximising Australia's position vis a vis knowledge flows***

It might seem that the tension between commercial objectives, and education and research objectives, is a tension between global marketing and domestic education and research. This would suggest that it is

globalisation that erodes the education and research capacity of Australia universities, and that to assert public values it is necessary to break with global activity. But that would be to misread the situation.

Globalisation is about worldwide engagement, convergence and partial integration. Although it takes economic forms, such as the cross-border student market, economies remain partly bordered on a national basis. Globalisation is triggered more readily by people and knowledge flows moving freely across borders. In many respects globalisation in higher education is more cultural than economic. It is especially active in research. In fact the same tension between commercial objectives, and education and research objectives, shows itself within the global strategies of Australian universities.

The global higher education environment now provides an extraordinarily rich set of options for developing teaching and research. Above all it provides scope for knowledge exchange, partnerships and for work on projects that contribute to the common global good, for example research

on the reduction of epidemic diseases, and work on climate change and water management. Australian universities do some of this, but not as much as universities in Europe and North America. Why? Resources and priorities. In their global positioning strategies Australian universities have become primarily focused on the one-way flow international student volume. They have become more dependent on their business acumen than their academic capacity. Thus the 'sell' for Australian education is not its intellectual fire-power or its distinctive contribution to human knowledge but its beaches and the happy life. Marketing departments set the global agenda, not research professors. Australians can hardly complain that the world sees them as its 'dumb blonde', attractive, lightweight, not very smart or useful. This has been the primary image that even some Australian universities have chosen to project.

Research-intensive universities like Monash, Melbourne, Sydney, New South Wales and Queensland exhibit a Jekyll and Hyde personality in the global setting. At home, they are student selective and focus on research. They also engage in global benchmarking and cross-border research collaborations. But they also

have another international agenda, which is to build massive fee-paying enrolment to fill the revenue gap. Entering these institutions is much easier for international students than for domestic students.

Compared to academic activities, business methods provide a more limited set of global options. Unfortunately, it has proven difficult to synergise the academic capacities of Australian universities with their business strengths. This is because while academic activities are multiple and flexible, the business model is one-dimensional. There is limited scope to bring research insights and cultures to bear on improving standardised high volume coursework programmes for middle-level business education students. Australia is relatively weak in top end international doctoral education where global competition is scholarship based not fee based. In

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order to sustain commercial incentives the Australian government provides little in subsidies for international doctoral scholarships, much less than does the UK, though the UK also operates international education as a commercial export industry.

This limits Australian universities in East and Southeast Asia where the nation's geography, demography, trade and diplomatic efforts ought to secure an advanced role for its higher education institutions. In world higher education the chief story of the last decade is the formation of world-class systems of education and research in Korea, Singapore, Taiwan China, Hong Kong China and above all mainland China. East Asia has become the third great zone of higher education and research, along with North America and Western Europe (Marginson 2010b). But Australian universities still primarily treat Asia not as a zone for research collaboration but as a source region for full fee-paying international students—in other words, as a zone for economic exploitation. Here Australia is still in the neo-imperial era and confronts Asia handicapped by the old British belief that the West is better. One would have thought that this had been well and truly exploded by the march of China, Japan and the 'tiger' economies, but it persists. There is an easy assumption that international students come to Australia because it offers not just educational and linguistic opportunities but a 'superior' education and research culture. This downplays the potential of East Asia as a zone of research.

Thus while most of the fee-paying students come from Asia, most of the Australian research collaborations are still in North America, UK and Europe. Universities have been slow to develop the expertise in Asian languages that is essential to deeper research encounters. There are few interfaces between scholars of Asian languages and area studies in Australia, and the international education programme, and the main research nodes. Also the number of local students learning Asian languages remains low and relatively few local students travel to universities in Asia as part of their degrees.

The lack of balance, range and depth in Australia's international programme was remarked on by the Bradley (2008) report. Perhaps the most serious defect is that because of the one-sided emphasis on revenues, Australia makes only a minor contribution to higher education in the developing world. As in the UK the growth of the commercial market has been correlated with a decline in aid for post-secondary education (OECD 2004). Ausaid is a good programme but not large enough. It is sometimes argued that full fee international education expands capacity in emerging nations. But it benefits only the middle class—and it contributes nothing to building teaching and research where it matters most, which is in emerging nations themselves. It often seems that Australian policy makers and institutions have lost sight of the global public good. Japan and some Western European governments do more for education in emerging nations. American and Canadian universities are also more generous. Many in Australian universities would provide greater aid if they could. But the policy settings ensure that revenue raising must take priority. Every dollar counts.

Can this tension be corrected? As long as there is commercial international education there will be pressures to elevate profit to the main goal. Yet market forces can be modified by policy, regulation and countervailing practices. The Bradley report called for a broader range of activities. Inescapably, practices such as two-way student exchange, more student scholarships, richer research collaboration and foreign aid for emerging systems in Southeast Asia or Africa need to be subsidised. More extensive research collaborations in Asia also need subsidisation. These are public good activities. By definition, market forces are unable to sustain and fund them. Yet they generate long term benefits all round, building capacity in Australia as well as abroad and feeding back into the strength and reputation of the export sector.

### ***Tension for students between economic consumption, and broader rights and security***

So far the article has focused on the limitations that these tensions create, for Australian higher education and Australia. Arguably, though, in some respects those most disadvantaged by international education are the international students who pay the cost. In the book *International Student Security* (2010), in research funded first by the Monash Institute for Global Movements and then by the Australian Research Council, Chris Nyland, Erlenawati Sawir, Helen Forbes-Mewett and myself have brought this to attention.

When international students enter the nation of education they are in a difficult position. At a time when most of them have just been cut off from their customary personal support, they find themselves classified both officially and unofficially as 'outsiders'. They are something less than citizens. International students cannot exercise the full rights and entitlements of citizens in either their country of origin, or their country of temporary residence. On the one hand they cannot fully access their home country legal, welfare and political systems. On the other hand they have a different and inferior status in the new country. Exactly what this means depends on the nation of education. The position of international students is affected by all laws concerning aliens and citizenship, and also by specific laws and programmes that pertain to them.

The inferior status of non-citizen students is de-powering. It renders them vulnerable compared to national citizens. This might seem unexceptional in the case of short-term visitors like tourists. It is more problematic for mobile persons resident for several years. These students are classified as aliens yet they must deal with the housing and employment markets and subject themselves to the authority of police, the legal system and public bureaucracies, just like local citizens. Many pay the same taxes as locals.

International education in Australia is regulated by the *Education Services for Overseas Students (ESOS) Act*, and its National Code. Most of the wording of the Act and the Code is about immigration compliance and consumer protection. The international student is modelled not as a person with the full set of rights and entitlements but as an economic consumer. The Act is strong on the protection of the monies students invest in fees, and on the rights of students to be informed before they sign a contract, but little else.

According to the Code 'the registered provider must enter into a written agreement with the student',



which specifies the programme of study, monies payable, and 'information in relation to refunds of course money' (DEEWR, 2007: Standard 3, Section 3.1). There is no contract between students and government and no reference in the Code to political rights or representation. The Act and the Code touch only briefly on other areas of international students' security, more in relation to information and advice concerning services in areas such as accommodation and welfare, than in relation to services themselves. On campus student safety is not mentioned. Nor does the ESOS structure, which regulates international education by controlling the provider institutions, provide for international student security and rights in the community outside the campus where most of the problems are.

The international student is treated as only half a person. A person with consumer rights, but not legal, civil, industrial, political or educational rights. International Student Security includes a comparison of the formal governmental rights, entitlements and benefits available to international and local students respectively, in all domains (Marginson, *et al.* 2010, pp. 17-20). There were 28 policy areas in which the position of international students was both distinctive and inferior. Nearly all forms of public financial support, including welfare and housing, were inaccessible. In the two largest Australian States, they paid full fares on public transport, local students paid concession rates. While public schooling was free for local families, most international students paid full fees for their student children. International students received less personal financial aid from universities though they paid much higher tuition. Some postgraduate research scholarships were closed to them, as were certain bank services. Both groups had access to health cover but international students were not included in the public Medicare scheme and had to take out private insurance, more costly than the Medicare levy paid by local students through taxation. International student visas specified that during semester the students could work only 20 hours per week. Local students had an unrestricted right to work. International students from certain countries had implied restrictions on political activity. Their visas included condition 8303: 'You must not become involved in any activities that are disruptive to, or in violence threaten harm to, the Australian community or a group within the Australian community'. Not only are the rights of international students restricted, they are officially Othered as aliens and a potential threat.

This official Othering provides conditions for their unofficial Othering. The 200 students interviewed in International Student Security discuss numerous instances in which they were subordinated, marginalised or abused. Either their outsider status was at play, or the perpetrator attempted to position them as outsiders. Some such experiences were on campus. Nevertheless, nearly all of the sharply negative experiences happened in the general community. Among the 200 interviewees, 99 of them, just under 50 per cent, had experienced cultural hostility or prejudice in Australia. Almost all were non-white students. The exceptions were two American students criticised for US intervention in Iraq. The perception of hostility or prejudice was higher among women than men. Muslim students faced particular difficulties. Several students had been profoundly distressed by unprovoked incidents. In these incidents they were made to feel outsiders, aliens, often with lasting effect. There was no process whereby they could claim rights and seek redress. Consumer rights were no help at this point. They needed to reassert their dignity and agency, to claim the right to respect and to belong. They could not. Instead they found themselves been pushed in the other direction.

The uncorrected binary structure of citizen/outsider opens international students to this more brutal marginalisation in the community. It gives comfort to the perpetrators—who are in no doubt they belong in Australia and are superior to all outsiders. Recurring problems of stereotyping, discrimination and abuse affect not just international students in Australia but in all English speaking provider nations where the legal structure is similar (e.g. of many UKCISA 2004; Spencer-Rodgers 2001; Spencer-Rodgers and McGovern 2002). The same asymmetry of treatment and respect makes it hard to close the gap between local and international students, a problem often noted in the research (e.g. Lee and Rice 2007; Volet and Ang 1998). It seems it is only when local and international students live together for sustained periods in student residences that the dynamics of cultural segregation begin to shift on a broad basis (see Marginson, *et al.* 2010: Chapters 7 and 16). But Australia refuses to subsidise intercultural student housing, or any student housing.

### ***Tension between national political economy, and the global public good***

The human rights of international students, like all mobile persons, are a global public good. We all share

an interest in safe and secure passage between nations and mutual respect between national citizens and mobile non-citizens in an interdependent world. However the Australian international education programme is focused not on the global public good, but on the good of the national political economy—and within that, on the private good of low taxpaying citizens and of the individual universities that need the money.

Global mixing and tolerance are also public goods and higher education has a leading role in creating them. Does international education contribute to these public goods? Yes, of course it does and profoundly so—often despite the policy settings rather than because of them—but is flawed and lop-sided and could be much better. The cultural diversity international students bring to the country of education ought to be seen as an asset. Instead this diversity often works to the indifference in the host and the disadvantage of the guest. International students are trapped in two binaries, the familiar/unfamiliar binary of cultural difference and the us/them binary of citizenship. These two binaries are interactive and reinforce each other. Differences of appearance and voice brand the foreign student as not one of us. By no means all local citizens are prejudiced towards international students and some are culturally engaged. But all see them as outsiders with weak claims to the common weal. The structure 'nation' is geared so as to deny them full equality of respect.

The underlying problem is the inability of nation-states to rise to the challenge of global interdependence, as was writ large in the climate negotiations in Copenhagen. When political decisions on global matters are left in the hands of national states, whether operating unilaterally or bilaterally, they automatically put the interests of their own citizens above others. Weak essays into the global good are dropped like a stone when companies or taxpayers object. It is politically as well as economically expedient to push half a million foreign students to the margin.

### Possible ways forward

In the face of these limitations there are two moves that can be made, when national governments such as the Australian government find themselves in an enlightened moment.

The first move is to re-norm international education. International students are not people in educational, social or cultural 'deficit'. They should be understood as strong human agents, deciding for themselves, man-

aging complex personal changes, engaged in self-formation through education and global mobility. Their challenges and achievements mostly exceed those of local students. They should be accepted as persons with the full set of human rights, whatever country they are in. Nations should extend to non-citizen international students the same rights and entitlements as citizen students. International students should be quasi-citizens for the duration of their stay. (We might make exceptions in a small number of designated areas where national treatment might be warranted, such as the right to vote in national elections).

To those that object on the grounds that international students are not lifetime taxpayers, and on that ground should receive a lesser entitlement, it can be pointed out that international students do pay taxes and extra tuition in the country of education—and they would not receive lifetime benefits. The arrangement would stand only for the duration of their stay as students.

The second move is to make this concrete by developing a global protocol for the empowerment and protection of mobile students. Sending/importing countries could negotiate with the receiving/exporting government a set of principles that provide for the rights and entitlements of the students. This protocol would be developed on the basis of the United Nations' (UN) Universal Declaration of Human Rights, with specifications referring to areas such as education, housing, crisis support and intercultural relations. A possible wording of such a protocol ('Compact') is included as an appendix.

In legal form the protocol would be akin to the UN Declaration (which was piloted through the UN in 1948 by the then Australian Minister for Foreign Affairs and Chair of the UN General Assembly, HV Evatt). It would not take the form of a legislated Bill of Rights, a conception yet to take root in Australia. Rather it would function as an advisory statement of standards for policy and provision in international education. Nevertheless, this would be a significant policy step with potential resonances in domestic affairs in Australia, and potential flow-on effects in relation to policy on refugees.

As set out in the appendix, the protocol would begin with a preamble establishing basic principles. Then it would list the rights provided to international students enrolled in Australian education institutions including access to justice and rights of property ownership; a safe and non-discriminatory environment, and privacy, freedom from harassment and freedom of movement and residence; access to work and fair conditions of

work; access to health, welfare, transport, educational and accommodation-related services; and freedoms such as religion, civil and political association, freedom of opinion and of expression. To specify these rights is not to imply that the entitlements of international students should be limited to the listed areas; nor to imply that the rights concerned are currently denied to international students. For example, those students have freedom of religion now. Rather the intention is to move beyond convention to establish clearly in the eyes of the world an official Australian commitment to normalising these conditions for temporary migrant students.

Rights should be distinguished from service provision. The protocol would go on to list a minimum list of specific services provided to international students, including the provision of specific information, access to safe accommodation, and access to communication-related services. The protocol would close with broad undertakings in relation to implementation. Implementation is a large issue in itself, one not further explored here, except to state that it would be essential to create machinery that would incorporate both federal and state governments, relevant educational providers, community-based welfare and other relevant non-government organisations.

Such protocols have the potential to become seen as best practice in international education. If enough such agreements are developed around the world on a bilateral basis, this begins to create momentum for the emergence of an informal global standard subject to widespread policy imitation. Thus the regime of international student security and rights could be constructed by an incremental process of voluntary agreement, whereby each nation makes its education system into a globally responsible space. Going further, when enough international agreement has been secured in this manner, eventually the rights of international students could be regulated by a global agency.

## APPENDIX

### Compact In Relation To International Students Studying In Australia (Draft Only)

#### Statement of Rights and Responsibilities

##### *Preamble*

Australia is a signatory to the International Covenant on Economic, Social and Cultural Rights (ICESCR) which states: "The States Parties to the present Cov-

enant recognise the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace". Australia is committed to the provision of non-discriminatory forms of education for all persons, and to the provision of the conditions and resources necessary to ensure the right to education as outlined in the ICESCR.

International students are especially welcomed in Australia because of their financial, economic, social, cultural and moral contributions to Australia; and because of the benefits that their education brings to friendly relations between their home countries and Australia. Because of their many contributions, Australia has obligations to protect and uphold them, and government in Australia has responsibilities for ensuring that this obligation is met.

Temporary migrants holding student visas shall be considered to be members of Australian society for the duration of those visas. Government in Australia will undertake such actions and measures as are necessary to ensure the full inclusion of each international student as a valued member of the Australian community, with all the rights and obligations that this implies, for the duration of the student visa.

Australia has a duty of care in relation to international students, many of whom stay on the soil of the nation for a period of several years duration. Government in Australia also recognises that international students are self-managing persons, with the right to make choices about their education and their lives, and the right to exercise their own values and beliefs, in a manner consistent with the laws of Australia and the obligations of those students to their home country governments.

All members of Australia society, including temporary migrants holding student visas, have the right to social security and to the realisation, through national effort and in accordance with the organisation and resources of Australian government, of the economic, social and cultural rights indispensable for individual dignity and the free development of personality.

International students studying in Australia shall be entitled to the same protections and benefits as Aus-

tralian citizens, except where specific provision is made to the contrary according to law. This statement shall not exclude international students from receiving protections and benefits specifically pertaining to their status as international students.

Government in Australia recognises that the inclusion of significant numbers of international students creates additional requirements in relation to social and economic infrastructure and services in Australia. In addition, a large scale international education programme creates the need for specific services tailored specifically to the needs of international students.

International students in Australia have both rights and responsibilities. While in Australia international students have obligations to conduct themselves according to the laws and relevant regulations of Australia and government in Australia, including the conditions governing their student visas.

## Provisions

1. Equivalence with citizens. Consistent with this compact and the laws of Australia, international students shall enjoy rights equivalent to those of citizens, in general, and specifically in relation to the rights:
  1. To access to justice. This includes recognition as a person before the law, equality before the law, equal protection of the law without any discrimination, freedom from arbitrary arrest or detention, the right not to be tried or punished twice for the same offence, and access to legal services as appropriate.
  2. To live in a safe environment, including protection from crime.
  3. To own property alone as well as in association with others, without being arbitrarily deprived of that property.
  4. To live in a non-discriminatory environment, to protection from any discrimination in violation of this Compact or in law, and to practise any language of choice.
  5. To privacy and freedom from harassment by any party, including arbitrary interference with family, home or correspondence, or attacks on honour and reputation.
  6. To freedom of movement and residence within the borders of Australia; to leave the country, and to return to it, subject to visa requirements.
  7. To work, subject to visa requirements, to free choice of employment, to just and favourable

conditions of work, to decent work and the payment of minimum wages, and to other award conditions as appropriate, to equal pay for equal work, to form and join trade unions.

8. To equal access to health and welfare services, as appropriate.
  9. To equal access to transport services.
  10. To equal access to accommodation services.
  11. To good quality education for self and for dependants.
  12. Of freedom of religion.
  13. Of freedom of civil and political association, including peaceful assembly.
  14. Of freedom of opinion and expression; this includes freedom to hold opinions without interference, and to seek, receive and impart information and ideas through any media and regardless of frontiers.
2. Specific requirements as international students. In addition Government in Australia undertakes to ensure that international students will have access to such specific services, pertaining to their needs as international students, as they require for the duration of their stay. Without exclusion this shall include:
1. The provision of specific information in relation to educational and other matters, as required, with attention to the needs of international students as new arrivals in Australia.
  2. Access to safe accommodation.
  3. Access to interpreter and translation services as required.
  4. Access to assistance in matters of communication and the use of the English language, while studying.

## Statement concerning implementation

The parties to this compact shall be the Australian Government, and the home country government of any nation from which international students accepted to study in Australia have originated.

International education in Australia is governed under the Australian Constitution by the Educational Services for Overseas Students (ESOS) Act and the relevant schedules and regulations.

All references to 'government in Australia' in this compact shall be held to apply jointly and severally to the Australian Government (the Government of the Commonwealth of Australia), the Governments of the

States/Territories, and local government. Responsibility for specific tasks shall be determined as appropriate on the basis of negotiation between the levels of government, the Australian Constitution, and any prevailing legislation.

All international students studying in Australian institutions are entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

In the exercise of the rights and freedoms of international students, they shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society, or for the protection of national security, public order, public health or public morality.

All Australian educational providers shall set aside one per cent of the revenues received for the education of each individual international student, for the promotion of the social inclusion of international students in Australia, consistent with this compact and any prevailing legislation.

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