

## A Critique of the Government's Proposal to Monetise Immigration Visas

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### Introduction

In the past two decades there have been a number of seismic shifts in Australia's immigration policy. Firstly, it has been rebalanced in terms of encouraging skills-based immigration rather than family reunion.<sup>1</sup> This focus on economic migration is reinforced by a second, even more significant phenomenon: the prioritisation of temporary labour migration over permanent migration.<sup>2</sup> This has largely occurred through the rapid growth of Australia's temporary labour migration programme, the subclass 457 visa.<sup>3</sup> When temporary visas for the employment of highly skilled workers in Australia were first introduced in 1996 they were a significant policy innovation. Until that time in Australia, all visas for economic and family migration entitled visa holders to permanent residence. The understanding was that migrants were permanent additions and contributors to the Australian community. The introduction of temporary labour migration visas reflects a change in national culture in response to shifting international realities, most notably the increased movement of people around the world for economic purposes. Thirdly, another highly significant development has been the burgeoning popularity of other temporary visa subclasses, namely international students and working holiday makers. This has been supplemented by various extensions of these traditional visa schemes, for example through graduate student visas, and the one-year extension on the working holiday maker visa based on a three month work-stint in a regional location. Increasingly, temporary migrants on these visas are doing a substantial amount of low skilled work in the economy,<sup>4</sup> although Australia's official entry pathway for low-skilled, seasonal work has not been widely embraced by employers. On top of these tectonic changes, it seems the Government is now considering another reform: to monetise immigration visas by using a market-based fee system to determine the composition of Australia's migrant intake. This proposal has the potential to transform Australia's approach to immigration far beyond the significant reforms that have taken place since the mid 1990s.

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<sup>1</sup> Australia also has an increasingly narrow definition of 'family' limiting it to parents, children and partners. The US, for example, extends family reunion to brothers and sisters, and even to aunts and uncles. For the importance of family reunion for migrant workers' wellbeing and productivity, see: Ruben Rumbaut, 'Ties that bind: immigration and immigrant families in the United States' in Booth, Couter and Landale (ed) *Immigration and the Family* (1997).

<sup>2</sup> M Crock, 'Contract or Compact: Skilled Migration and the Dictates of Politics and Ideology' (2001–2002) 16 *Georgetown Immigration Law Journal* 133.

<sup>3</sup> For previous analyses of the 457 visa, see J Tham and I Campbell, *Temporary Migrant Labour in Australia: The 457 Visa Scheme and Challenges for Labour Regulation*, (Working Paper No 50, Centre for Employment and Labour Relations Law, University of Melbourne, March 2011); J Howe 'The Migration Amendment (Worker Protection) Act 2008: Long Overdue Reform, But Have Migrant Workers Been Sold Short?' (2010) 24 *Australian Journal of Labour Law* 13.

<sup>4</sup> B Birrell and E Healy, *Immigration Overshoot*, CPUR Research Report, Centre for Population and Urban Research, November 2012, 33-35; See also Joanna Howe (with A Reilly) (2015-forthcoming) 'Meeting Australia's Labour Needs - The Case for a Low Skill Work Visa' 43(2) *Federal Law Review*.

As I will explain in this submission, at a fundamental level, the proposal to monetise immigration visas is intrinsically unfair, incapable of determining the most desirable migrant cohort for Australia and would structure the temporary migrant worker programme in such a way that creates the conditions whereby exploitative work practices can proliferate. It is a proposal that is superficially attractive for its simplicity but in practice would create more problems than it solves. Whilst a skills-based labour immigration system like Australia, brings with it certain difficulties in defining skills and ascertaining which skills are in need by local employers,<sup>5</sup> these difficulties can be overcome, albeit imperfectly.<sup>6</sup> In contrast, monetising immigration visas will bring with it other challenges, many of them of a far more intractable nature.

## **Background**

The terms of reference for this inquiry require the Productivity Commission to specifically consider a scenario where fees are the primary determinant of entry to Australia. But the Commission's remit is also more broadly based, as it is concerned with 'an examination of the scope to use alternative methods for determining intakes – including through payment – and the effects these would have.' Although the use of fees as the primary lever was taken from a paper by economist Gary Becker in 2011 where it was conceived as being for the purposes of permanent migration,<sup>7</sup> the Productivity Commission's terms of reference explicitly include consideration of the lever's applicability to Australia's temporary migration program and the relationship between Australia's permanent and temporary programs. Most importantly, the examination of these issues is to take place within an overarching context designed to serve the national interest through improving national income, living standards, reducing the administrative burden on the immigration department and meeting Australia's international obligations. Absent from these objectives are the specific needs relating to the wellbeing of migrants, the needs of employers or the concerns of local workers – the balancing of the latter two being the current principal mission of Australia's permanent and temporary labour migration programmes.

### ***Proposal One: Charging a fee for migrants with capacity to pay upfront***

The basic premise of a fee-based immigration model is that it relies upon a price mechanism to match supply and demand. Becker's proposal proposes that economic principles could be used to allocate visas, either by selling the right to migrate at a price that called forth a desired number of migrants, or by auctioning immigrant visas. This is made possible because more people want to immigrate to destination countries like Australia than the amount of places available for immigration. Market-based economics suggests that the interaction of these two – demand by destination countries and supply by origin countries, will produce a price for immigration. The proposal is aimed to reduce the role of government and immigration bureaucracies in determining the quantity and composition of immigrants by

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<sup>5</sup> Joanna Howe 'Is the Net Cast Too Wide? An Assessment of Whether the Regulatory Design of the 457 Visa Meets Australia's Skill Needs' (2013) 41 *FL Rev* 443.

<sup>6</sup> See for example, Martin Ruhs, 'Immigration and Labour Market Protectionism: Protecting Local Workers' Preferential Access to the Local Labour Market' in *Migrants at Work*, Cathryn Costello and Mark Freedland (eds) (OUP, 2014) 70; J Howe, 'Does Australia need an expert commission to assist with managing its labour migration program?' (2014) 27 *Australian Journal of Labour Law*.

<sup>7</sup> Gary Becker (2011) 'The Challenge of Immigration: a Radical Solution', Occasional Paper for the Institute of Economic Rights (UK).

greater reliance on the market mechanism. Becker suggests this would create a substantial potential revenue stream, encourage the migration of economically active individuals motivated by a desire to recoup their investment in immigration and an incentive for individuals to preference legal immigration rather than illegal immigration and thus undermine people smuggling businesses.<sup>8</sup>

Building on Becker's basic premise, the Productivity Commission's Issues Paper canvases that entry fees be varied according to the visa category and could incorporate qualitative requirements.<sup>9</sup> This would mean that potential immigrants would not only have to pay an entry charge but also meet selection criteria based upon other indicators. These are not identified in the Issues Paper but are likely to include factors such as age, occupation, skill set, net wealth and English language ability. To some extent, such a system already exists in that each of Australia's temporary and permanent visa subclasses rely upon a combination of fees and selection criteria relating to the personal attributes of applicants. However, the central proposal in the Issues Paper is that these fees would be increased to the point in which they become prohibitive for certain prospective immigrants so that only those that could afford to pay *and* meet the qualitative requirements would be eligible for immigration. Becker suggests that the amount for an entry fee might be in the region of US\$50,000.

Having outlined the proposal itself and its rationale, I now turn to its merits. Prioritising immigrants' capacity to pay an entry charge over their skills or occupational profile will have implications on employers seeking to recruit overseas workers to meet domestic skill shortages. It would fundamentally change the orientation of Australia's temporary migrant worker program, the 457 visa, as this was conceived as a means of giving Australian employers access to highly skilled workers in a competitive global market.<sup>10</sup> At its inception the 457 visa programme was underpinned by employer-demand because it was believed that employers would have to make themselves attractive in order to recruit internationally, otherwise highly skilled migrant workers would go elsewhere. Even the name of the Roach Report which provided the blueprint for the 457 visa, suggests that giving Australia access to highly skilled workers in the global market place was seen as critical: 'Committee of Inquiry into the Temporary Entry of Business People and Highly Skilled Specialists'. Although the 457 visa programme already incorporates fees as part of the sponsorship nomination process, the proposal envisaged by the Productivity Commission is that these fees would play a more significant role in sifting between applicants for immigration. This may mean that an employer's preferred candidate would be less likely to receive a visa because of a lack of capacity to pay the entry charge than another individual able to meet the qualitative selection criteria and to pay the entry charge. Charging higher fees so that they become somewhat determinative of migrant intake under the 457 visa programme potentially constrains the employer-driven nature of the 457 visa and may limit the ability of the scheme to meet employer demand in areas where skill shortages exist.<sup>11</sup>

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<sup>8</sup> Becker (2011).

<sup>9</sup> Productivity Commission, Issues Paper, p 29.

<sup>10</sup> For example, see: L Cerna, *Selecting the Best and the Brightest* (Migration Observatory 2011).

<sup>11</sup> Although I have chosen to focus on employer-sponsorship under the 457 visa programme, these points about the limitations of a fee-based immigration model can be made about the employer-nomination scheme in Australia permanent migration programme.

Also at issue is whether a flat price is the best lever to attract the most desirable immigrant cohort. What is 'desirable' is dependent on what the Australian government wants to achieve from the immigration system. With its current anchorage in delivering economic outcomes, it is uncertain whether using entry charges will optimise national wealth in the long term, despite the short-term revenue raising aspect of the proposal. This is because a flat price will not necessarily attract the most talented, driven, skilled or educated individuals likely to achieve the best labour market outcomes. Cully's study of the labour market absorption effect of employer-sponsored migrant workers finds these workers are more likely to be employed in skilled jobs and earning more than migrant workers entering Australia through a pathway other than employer-sponsorship.<sup>12</sup> Cully concludes that his study 'provides support for the shift more than a decade ago towards embracing demand-driven migration'.<sup>13</sup> Further, as stated by Diane Doyle, a member of the UK's Migration Advisory Committee, 'one of the obvious objections to using the price mechanism to select immigrants is that many will not be able to afford to pay upfront, but might nevertheless be valuable members of the host workforce.'<sup>14</sup> Nonetheless, Becker suggests that only those individuals who calculate they will be able to recoup their investment in paying the entry charge will apply for immigration under a fee-based model. In his view, this would ensure destination countries receive the most attractive immigrants. But prospective immigrants have myriad motivations for seeking to move to another country, for example, personal safety, more opportunities for offspring, greater civil liberties, climate, the welfare state, free or subsidised education and healthcare. Monetising immigration visas will not automatically attract the most productive individuals or those with the skill set and work experience that Australia needs. It is also a blind measure that obscures the impact of 'purchasing power parity', which is an economic technique used to determine the relative values of different currencies. Unless the entry charge accounts for differences in exchange rates, it will be virtually impossible for highly talented individuals in some countries to immigrate to Australia, but relatively easy for less worthy individuals from other countries with a better purchasing power parity.

A critique of the fee-based immigration model can also be made on fairness grounds as it prioritises rich migrants over those that would have the best labour market outcomes but might not be able to pay the entry fee. Monetising immigration visas would have significant normative implications for Australia's approach to labour market regulation by undermining its role in facilitating and achieving fair outcomes. Renowned historian, Professor Stuart Macintyre notes that the emphasis of the Australian Constitution's framers and the Conciliation and Arbitration Court's early members was on egalitarianism and 'shaping the political economy according to the national ethos of the fair go'.<sup>15</sup> While seemingly a colloquialism, the 'fair go' became deeply embedded in Australia's labour laws and jurisprudence. According to Professor Joellen Riley:

The 'fair go' is an idiomatic expression of the Australian commitment to an egalitarian democracy which respects the autonomy and dignity of its citizenry. Those who engage workers and those who work are all working citizens, and

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<sup>12</sup> Mark Cully, 'Skilled migration selection policies: recent Australian reforms', Department of Immigration and Citizenship: <[http://www.immi.gov.au/media/publications/research/\\_pdf/skilled-migration-policies.pdf](http://www.immi.gov.au/media/publications/research/_pdf/skilled-migration-policies.pdf)>.

<sup>13</sup> Ibid.

<sup>14</sup> Becker (2011) 58.

<sup>15</sup> Stuart Macintyre, 'Arbitration' in Graeme Davison, John Hirst and Stuart Macintyre (eds), *The Oxford Companion to Australian History* (OUP, 2001) 31.

as such they are entitled to equal respect and consideration in the determination of matters affecting their working lives.<sup>16</sup>

This notion of the ‘fair go’ has been developed over time. For example, in the decision of *FEDA v Robe River Iron Association* the Commission explained it in the following terms, ‘managerial prerogative is not a sword that can be wielded in wanton disregard of the industrial consequences nor is it a shield to hide behind. An employer has a responsibility to manage fairly.’<sup>17</sup> Despite the tectonic changes that have occurred in Australia’s labour laws since the demise of conciliation and arbitration in the mid 1990s, the uniquely Australian concept of the ‘fair go’ still endures and has even made it into federal legislation governing unfair dismissal,<sup>18</sup> and into the name of the federal labour law statute,<sup>19</sup> and the institution charged with resolving disputes between employers and employees.<sup>20</sup> In a recent speech, the President of the NSW Industrial Relations Commission observed that the ‘notion of a fair go is a profound one, firmly rooted in the Australian psyche’.<sup>21</sup> If immigration visas are monetised, this value of fairness is undermined as being from a poor background or from a country with a low-valued currency disadvantages migrant workers without the capacity to pay the entry charge. This is profoundly unfair as it limits the opportunities for migrant workers who would otherwise have access to the Australian labour market but for their limited capacity to pay. In her commentary on Becker’s proposal, Diane Coyle suggests there is a ‘deeper reason why Professor Becker’s proposal is not immediately attractive’ because ‘there is a dimension of fairness, an ethical dimension, to the issue of immigration which is not addressed by the purely economic arguments’.<sup>22</sup>

A further normative consideration is whether it is fair to ‘sell’ citizenship. Assuming that monetising immigration visas applies not just to selling labour market opportunities, but perhaps a more valuable ‘good’ of being able to permanently reside and belong as an Australian citizen, raises the question as to whether citizenship should be commodified in this way. Citizenship recognises the particular ties that an individual has to a state and it involves both rights and responsibilities. For example, in Australia, citizenship accords access to social security, health care, public education for primary and secondary schooling, government loans for tertiary education, grants to access the housing market and so on. The benefits of citizenship are immense. The corresponding responsibilities include the right to vote and to pay taxes, amongst other things. It is unfair that an individual would have a better claim to citizenship because of his or her capacity to pay, rather than because of merit. Under the current system, citizenship is accorded via birth, family connection or because an immigrant has worked in an occupation desired by Australia and is therefore eligible to apply for, or be sponsored for, permanent residency. Each of these factors produces a sense of belonging to Australia either through relationships, social ties or work. Merely paying an entry fee is a far less appropriate mechanism for determining citizenship as money alone cannot determine an

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<sup>16</sup> Joellen Riley, ‘Good Faith Performance’ in Mordy Bromberg and Mark Irving (eds), *The Australian Charter of Employment Rights* (Hardie Grant Books, 2007) 13.

<sup>17</sup> *FEDA v Robe River Iron Association* (1987) AILR 131.

<sup>18</sup> *Workplace Relations Act 1996* (Cth) s 170CA(2); *Fair Work Act 2009* (Cth) s 381.

<sup>19</sup> *The Fair Work Act 2009* (Cth).

<sup>20</sup> The Fair Work Commission.

<sup>21</sup> Justice Boland, *In Defence of Industrial Tribunals* (Paper presented to the National Conference of the Industrial Relations Society of Australia, May 2010).

<sup>22</sup> Becker (2011) 59.

applicant's commitment and/or suitability to becoming Australian. This can be distinguished from the current system whereby two visa types, namely the significant investor visa or high net worth individual visa, permit the entry of migrants who can effectively 'buy' their way into Australia through being asset-rich. The rationale for these visa subclasses is that the significant financial resources of these individuals will produce a substantial revenue stream and greater investment in the Australian economy, thereby increasing national wealth and labour market opportunities for local workers.

***Proposal Two: Providing an employer-loan for migrants with no capacity to pay upfront***

Both Becker's proposal and the Productivity Commission's Issues Paper canvas the possibility of a fee-based immigration model where parties other than the immigrant can pay the entry charge, for example labour hire firms or prospective employers.<sup>23</sup> For a limited number of highly skilled migrants who had the benefit of being desired by multiple employers, this might amount to something tantamount to a 'signing on bonus' by incentivising them into accepting an offer of employment by a prospective Australian employer. Nonetheless, for the vast majority of temporary and permanent migrants, it is hard to envisage a situation where an employer would not expect the debt to be paid back over time via deductions from an employee's wages. Such an arrangement renders an employer as an immigrant-worker's employer, migration sponsor and debt-collector. From a labour law perspective, cognisant of Freedland and Kountouris's normative conception of labour law's 'worker-protective' mission,<sup>24</sup> this latter scenario is deeply troubling.

At a fundamental level, this situation could establish the conditions for unfree labour by creating additional dependence on the employer. Distinct from terms such as 'slavery', 'forced labour' and 'servitude', each of which refer to specific legal concepts 'embodying distinctive institutional forms of work relation',<sup>25</sup> 'unfree labour' refers to a broader phenomenon whereby the structural features of labour migration programs create the conditions for exploitation to occur. Professor Judy Fudge says that 'what is needed is a vocabulary that enables us to see the different and related processes at work in creating modalities and degrees of unfreedom'. Relying on this analytical concept of 'unfree labour', we can see that monetising immigration visas may encourage and even facilitate exploitative practices by employers. An entry charge model for temporary migrant workers means that a migrant worker is dependent upon or 'tied' to her employer for her migration status as well as for the economic means to service the debt.<sup>26</sup> Such an employee would be in a highly precarious situation as the withdrawal of support from the employer-sponsor-debtor may mean cancellation of the visa and/or being forced to repay a substantial debt without the capacity to earn the income required to fund the repayments. This threat, actual or perceived, may induce a temporary migrant worker to accept any degree of substandard working conditions. Even without the added pressure of debt-repayment, most temporary migrant work is regarded as inherently precarious,<sup>27</sup> and most employment relationships are

<sup>23</sup> Productivity Commission, Issues Paper, 31.

<sup>24</sup> M Freedland and N Kountouris, *The Legal Construction of Personal Work Relations* (OUP: 2011) 372.

<sup>25</sup> Cathryn Costello 'Migrants and Forced Labour: A Labour Law Response' in Alan Bogg and others (eds), *The Autonomy of Labour Law* (Bloomsbury 2015) 211.

<sup>26</sup> Costello identifies the presence of 'a tie' that requires a migrant worker to remain in a particular job to retain immigration status as one of the conditions allowing for the domination of migrant workers.

<sup>27</sup> For example, see: Laurie Berg, *Migrant Rights at Work: Law's precariousness at the intersection of migration and labour* (Routledge, 2015).

considered inherently unequal.<sup>28</sup> For example, an Australian employer that employed a number of tradesmen on 457 visas, was found at first instance to be guilty of exploitation and manipulating the vulnerable position of these workers who ‘would sign anything’ because they were ‘frightened of being sent back’.<sup>29</sup> In this case, the Federal Magistrate was unequivocal in his articulation of the vulnerable position of some workers on 457 visas:

The court has no difficulty in concluding that this was a vulnerable set of employees, that the respondent, through its principal officer, Mr Hanssen had knowledge of that, and that he exploited his perception of these employees as being malleable to the wishes of the respondent.<sup>30</sup>

A more recent example involving an Indian chef who was forced to work twelve hours per day, seven days per week and was virtually unpaid, saw the court question the integrity of the 457 visa programme as a mechanism for meeting skill shortages.<sup>31</sup> Although both these cases are at the extreme end of exploitation of the 457 visa programme, this highlights the particular vulnerability of many temporary migrant worker because of the binary role of employer/sponsor. The proposal to add an additional role of employer-as-debt-collector would only intensify the precarious position of many temporary migrant workers. The situation is slightly different for permanent entrants in that their immigration status would not be contingent upon their employer’s continuing sponsorship of their visa. Nonetheless, a migrant worker entering under the permanent stream would still be highly susceptible to exploitation because of the presence of a large financial debt. This would mean the worker would be less likely to voice concerns in the workplace or to seek employment elsewhere because of the need to service the debt.

Becker’s proposal that a migrant worker be *contractually* tied to an employer until the loan is paid off is even more concerning. He suggests:

Although the immigrants would have to be the ones indirectly paying the fees for immigration, they might finance their loans by making contracts with companies that pay the fee directly for them. In return, an immigrant could commit to working for the company for a certain number of years. If an immigrant decides to move to another company, he would have to repay the loan at that time (or have the new company repay the loan.)<sup>32</sup>

Becker’s argument is blind to the labour law realities present in this scenario. Such an immigrant would be beholden to the employer because of the contract preventing voluntary departure unless the debt is paid off. Becker’s suggestion that an immigrant would be able to convince a new company to repay the loan would only work for an employee with highly

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<sup>28</sup> For example, see: M Freedland and N Kountouris, *The Legal Construction of Personal Work Relations* (OUP: 2011).

<sup>29</sup> *Jones v Hanssen Pty Ltd* [2008] FMCA 291; BC200801596 at [8]–[9]. This case was later appealed and the Federal Court reduced the penalty imposed on the employer because the Federal Magistrate placed too much emphasis on the vulnerable position of the 457 visa holders, rather than articulating the actual detriment suffered by them: *Hanssen Pty Ltd v Jones* (2009) 179 IR 57; [2009] FCA 192; BC200901181.

<sup>30</sup> *Jones v Hanssen Pty Ltd* [2008] FMCA 291; BC200801596.

<sup>31</sup> *RAM v D&D Indian Fine Foods Pty Ltd & Anor* [2015] FCCA 389, 187.

<sup>32</sup> Becker (2011) 31.

sought after skills or experience. The vast majority of migrant workers would not be able to rely on this market-based protection. Instead, the migrant worker by virtue of her contract and her financial debt would effectively become ‘owned’ by the employer, in a situation, that in some circumstances, could amount to forced labour.<sup>33</sup> This would also have negative implications for the job opportunities of the local labour force as some employers would prefer to rely on migrant labour because of the extra control which could be exerted over an employee with a contract preventing her departure and a financial debt to be repaid.

Additionally, the proposal that an employer can loan the entry fee to a prospective migrant seems fairly susceptible to abuse by unscrupulous employers. This would enable an employer to recruit a migrant worker for a reason unrelated to her skill set or work experience as the employer’s goal might be to create a compliant workforce with favourable behavioural traits, to deunionise its local workforce or to illegally undercut local wages and conditions gambling on the limited enforcement capabilities of authorities and the unlikelihood of a migrant worker voicing a complaint. Such a system would also be open to abuse by labour hire companies, a type of employer well known in the scholarly literature for its tendency to create exploitative work arrangements, and whose presence in the Australian temporary migration sphere has led to a significant expose by an investigative television programme, *Four Corners*,<sup>34</sup> and the establishment of two state government inquiries and a special national taskforce to address the specific concerns arising from the use of labour hire companies to employ migrant workers.

***Proposal Three: Providing a government loan for migrants with no capacity to pay upfront***

Both Becker and the Productivity Commission posit that a government loan scheme could enable prospective migrants from poor backgrounds or countries to pay the entry fee and gain temporary or permanent residency in Australia. They compare this to the use of a student loan scheme which gives all students access to tertiary education, irrespective of their capacity to pay for it at the time. Known in Australia as the ‘Higher Education Loan Program’, this scheme requires loans to be paid back once an individual’s income reaches a certain level. The proposal of a government loan scheme for immigration has an advantage over an employer-loan scheme because it means that the employer is no longer the debtor for the migrant worker. Becker also touts it as being egalitarian: ‘immigration loans would enable poorer immigrants to invest in human capital in the form of moving to a country that offers them more opportunities.’<sup>35</sup>

Despite Becker’s optimism, it is doubtful whether an immigration loan scheme would realise its egalitarian objective. Instead, it is more likely to become a challenging and significant debt for a migrant worker to repay. Even assuming the debt is interest-free or set at a low interest rate to match inflation, it still creates a significant financial burden on a migrant

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<sup>33</sup> An example of another temporary migrant worker program which scholars have labeled as creating the potential for forced labour to occur is Canada’s domestic migrant workers program which previously required that domestic workers be sponsored by, and reside in the same house as, their employer. Although this scheme was initially praised by the ILO for giving these workers rights to permanent residency after two years, Canadian scholars have observed how many domestic workers became ‘live-in’ slaves because of the structural features of this visa programme. See, for example, Bakan, Abigail B. and Daiva Stasiulis. 2012. ‘The Political Economy of Migrant Live-in Caregivers: A Case of Unfree Labour’ in Patti Lenard and Christine Straehle, eds., *Legislated Inequality: Temporary Labour Migration in Canada* (McGill-Queens University Press).

<sup>34</sup> Four Corners, ABC, ‘Slaving away: The Dirty Secrets Behind Australia’s Fast Food’, 4 May 2015.

<sup>35</sup> Becker (2011) 31.



worker. This would provide a relatively easy means for an unscrupulous employer to exploit as it means a migrant worker is less likely to see employment elsewhere or to do anything to jeopardise her present employment because of the pressing need to make loan repayments.

Another, more fundamental problem, also exists with the immigration loan idea: paying for tertiary education is different to paying for immigration. The normative basis for a student loan scheme is that it enables those who would not be able to pay fees upfront to access tertiary education. This then increases the earning potential of these individuals and once they are in a secure job, there is an onus to pay back the loan. In this way, a student loan scheme operates as an equalising force by increasing the earning potential of students from poorer backgrounds. In contrast, whilst an immigration loan scheme might give migrant workers access to the Australian labour market, this does not, in and of itself, improve their earning potential. Whilst it is true that performing the same occupation in Australia and India might accrue higher wages and better conditions in the former because of Australia's relatively high minimum wage and strong labour market protections, permanent migrant workers still have to support themselves in Australia where the cost of living is likely to be higher. Unlike student loans which are usually paid back in greater degree as a student's earning potential is realised, it is likely the immigration loan would have to be deducted from wages as soon as a job was procured. This has the potential to create a permanent underclass of migrant workers because of the financial imperative that they repay their debt from their earnings. It would entrench inequality between migrant workers and local workers as the former would be required to service a debt but not be remunerated any higher to compensate for this additional burden. This can be contrasted to a student loan scheme whereby most employees have a student loan debt and are on a similar footing.