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China-Australia FTA concerns unwarranted

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Earlier in September former Labor trade minister Craig Emerson offered a new proposal to break the political deadlock over the China-Australia Free Trade Agreement. He suggested that future Australian governments be legislatively bound to apply labour market testing in respect of the deal with China, as well as with any other country that we strike an agreement with, such as India.

It is important to recognise that if what is being proposed is the blanket application of labour market testing, this would be a radical departure from longstanding migration legislation requirements. In July the Migration Council Australia said in a submission to the Treaties Committee examining the China free-trade agreement that labour market testing was abolished in 2001 because it was determined to be ineffective at meeting its goal. It was reintroduced into the Migration Act in 2013 and even then only for certain occupations. Most remain exempt.

China might reasonably wonder why it is only now, when its free-trade agreement with Australia is being scrutinised, that new legislation is being promoted.

It's hard to see how the deal with China weakens the existing legislative protection for Australian workers. Consider where the controversy is greatest – the issue of Investment Facilitation Arrangements (IFAs). These potentially allow for skilled overseas workers to be brought in on Chinese-funded infrastructure projects worth more than $150 million.

But IFAs are not part of the free-trade agreement. Instead, they are presented in a separate Memorandum of Understanding (MOU). This means that if the free-trade agreement is ratified by Parliament, IFAs would not form part of Australia's international treaty obligations that might override domestic laws, such as the recent amendment to the Migration Act that requires labour market testing in certain occupations.

Voting down the free-trade agreement also wouldn't kill IFAs. But it would kill the best-ever market access China is offering Australian farmers and providers of services ranging from insurance to aged care. Yet even on IFAs Tony Abbott and Andrew Robb have been emphatic that a Coalition government would demand that labour market testing be conducted. The right of any Australian government to do so is clearly stated in clause eight of the MOU.



True, the Coalition could break its promise. But the political cost would be enormous. And because IFAs are negotiated on a case by case basis, this cost would come long before a significant number of Australian workers could be affected.

More probable though is that the Australian public will see IFAs working exactly as they should: facilitating more investment by reducing uncertainty, and in turn delivering new jobs for Australian workers. All this makes the real battleground chapter 10 of the free-trade agreement itself, which covers the movement of natural persons.

Much has been made of Article 10.4.3: "In respect of the specific commitments on temporary entry in this chapter … neither party shall … require labour market testing, economic needs testing or other procedures of similar effect as a condition of temporary entry."

But the chapter begins by stating that it applies to the movement of natural persons in five specific categories. One is business visitors. Why would any Australian government even begin to contemplate labour market testing in the context of issuing a business visa?

The others are intra-corporate transferees, independent executives, contractual service suppliers, and installers and servicers. But Australia's existing trade agreements mean that exemptions from labour market testing for these categories already apply to natural persons from New Zealand, Singapore, Thailand, the US, Chile, Malaysia, Korea and Japan.

And yet Australia's labour market has not been overrun by workers from these countries. It also shouldn't be missed that China is offering concessions for Australian workers in many of the same categories.

Chapter 10 further includes overarching protections that would allow a future Australian government to manage its temporary skilled migration settings such as in Annex 10-A.1: "Grant of temporary entry … is contingent on meeting eligibility requirements contained within Australia's migration law and regulations, as applicable at the time of an application for grant of temporary entry."

While the China free-trade agreement is being kicked around, the benefits it offers both sides from improved market access are begging to be unlocked. Australia has a $1.6 trillion economy that increased by $63 billion in 2014. That's the market that China gets better access to if the deal goes ahead.

Compare that with China's economy, which stands at $11.6 trillion and added $872 billion in 2014. In other words, new spending in a single year in China was worth more than half the value of the entire Australian economy.

What Labor must decide is whether it is in the national interest to delay or sink a deal that makes it easier for Australia to sell into that market than any other country.