ChAFTA is good for Australian jobs

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ChAFTA is good for Australian Jobs

The China-Australia Free Trade Agreement (ChAFTA) helps Australian exporters to grow and create jobs for Australians. These jobs are threatened by a scare campaign implying that these new jobs will not go to Australians, or that the agreement opens the door to "hordes of cheap Chinese workers".

But Australians have no need to be concerned. While, arguably, the text of the agreement may create the impression the labour provisions will have a significant impact, the reality is that such impressions are illusory.

Concerns centre on three aspects. Firstly, that some occupations will not have to be skills assessed, and secondly, that jobs generated by Chinese companies working on Australian projects will not be advertised or offered to Australians. Thirdly, and most speculatively, that the agreement will lead to workers receiving wages and conditions lower than equivalent Australian workers.

Skills assessment

In a side letter to ChAFTA, Australia agreed to reduce from 25 to 15 the skilled occupations subject to mandatory skills assessment for Chinese applicants for a temporary skilled migration visa (457 visa). These occupations include automotive electrician, cabinetmaker, carpenter and electrician. There is also a commitment to review the remaining 15 occupations and progress better trades recognition. This may sound concerning but further information shows why these concerns are misplaced.

Under Australia's temporary skilled migration program, for workers coming from most countries and for all skilled occupations from those countries[1], skills assessment is not mandatory. Instead the Department of Immigration and Border Production has the discretion to rely on evidence such as proof of qualifications, CV and experience.

But for 25 trade occupations, including the ones listed in the side letter, but only for workers from 10 specified countries, the DIBP has no discretion – skills assessment is mandatory. These 10 countries are Brazil, China (including Hong Kong and Macau), Fiji, India, Papua New Guinea, Philippines, South Africa, Thailand, Vietnam, and Zimbabwe.[2]

The side letter agrees to move China from this list and back into the discretionary group in which most countries reside for 10 of the 25 relevant occupations, meaning that an assessment could be

[1] With the exception since 2013 of two general occupations of Program and Project Administrator and Specialist Manager not elsewhere classified.

[2] For a further three occupations, for workers from only some of these countries (not including China) assessment is also mandatory.

required but is not mandatory. For the other 15 occupations China would stay on the list for at least the next two years, retaining mandatory skills assessment.

Therefore the impact of the side letter is to treat Chinese workers in the 10 listed occupations alongside workers from all but nine countries, and also alongside skilled Chinese workers from the hundreds of other occupations not in the list of 25 occupations.

Most importantly, for licensed trades, such as electricians, skills assessment is only the first step. The Australian licensing system applies to all workers from all countries regardless of FTAs. In the case of licensed occupations the visa-holder is only able to get an Offshore Technical Skills Record. This allows them to get a provisional license to work under supervision but not a full license until they go through the requirements of the relevant state or territory.

In summary, ChAFTA puts China (for 10 of the 25 occupations) in the same category as most other countries – skills assessment could be required but is not mandatory. ChAFTA takes an incremental, measured approach to review and change, befitting China's status as a significant trading partner and its major improvement in skills formation, helped in part by Australian vocational training exporters.

Labour market testing

Any employer wishing to sponsor an overseas worker to work in Australia under the temporary skilled migration program (457 visa) must meet basic sponsor obligations. These include the requirement to:

- attest that they have a strong record of, or a demonstrated commitment to, employing local labour;
- have a strong record of, or demonstrated commitment to, non-discriminatory work practices;
- pay market rates of pay, with a minimum income threshold of $53,900, and meet all requirements under Australian workplace laws;
- pay substantial sponsor and visa application fees;
- pay all the travel costs in the case where the visa applicant is not already in Australia on another visa; and
- meet minimum training requirements.

Nothing in general provisions of ChAFTA removes these fundamental sponsorship requirements. But ChAFTA does say in 10.4:

> *In respect of the specific commitments on temporary entry in this Chapter, unless otherwise specified in Annex 10-A, neither Party shall:*
>
> *…*
>
> *(b)* ***require labour market testing,*** *economic needs testing or other procedures of similar effect as a condition for temporary entry.*

In 2013 the requirement for labour market testing (LMT) was reinserted into the Migration Act for the 457 visa. LMT required that the vacancy for the skilled worker was advertised before a 457 visa application can be made.

Concerns about ChAFTA providing exemption to LMT requirements are based on the premise that LMT is effective in protecting local jobs. But LMT is ineffective in achieving this aim. It adds significantly to the regulatory burden for employers without ensuring locals are recruited ahead of foreign workers. This is because no regulation can be designed to stipulate which advertising and recruitment approach best fits each situation, and no regulation can force employers to recruit one worker over another.

This demonstrates the ineffectiveness of LMT. Even if this argument is rejected, and the union claim regarding the benefits of LMT is accepted, several other factors need to be considered:

- Most Level 1-2 occupations (around two-thirds of the 457 program) are exempt from LMT for all origin countries. The only occupations that require LMT are engineers, nurses and trade-level occupations.
- Overseas workers in licensed trades have additional barriers to working in Australia due to the strict licensing requirements, which are not exempted under ChAFTA.
- The cost of the 457 visa program, including the cost of the sponsor obligations, is a barrier to use.

ChAFTA's Investment Facilitation Arrangement, negotiated in a separate MOU, for infrastructure projects greater than $150 million allows investors to enter into a labour agreement under the 457 program. This requires employers to provide evidence more stringent than labour market testing that there is a genuine and systemic shortage of skilled workers, that there are no suitably qualified Australian workers available, and that they have a commitment to training Australians. Labour agreements, also open to Australian employers, provide some ability to seek concessions to the 457 program relating to those matters raised in the MOU. But **no concessions are available on the need to pay market wage rates and comply with all workplace laws**.

In summary, ChAFTA's LMT exemption will not in any material way lessen the obligations for employers to employ local labour, pay equivalent wages and meet minimum training requirements. For large infrastructure projects the labour agreements will require evidence of labour market shortages as part of the rigorous DIBP process to finalise an agreement.

Underpayment of Wages and Conditions

There is absolutely no part of ChAFTA that opens up the regulatory opportunity for Chinese workers under a 457 Visa to be paid less than Australians. The obligations of the 457, the most important of which is that workers shall be paid market rates, and that employers have to abide by all Australian workplace laws, will still apply. There are no exemptions, even in the Labour Agreement option, from these fundamental workplace rights.

Summary

Provisions in ChAFTA have a lot in common with the most recent FTAs including Japan and Korea which have been approved by Parliament. It is inconceivable that an agreement with our major trading partner should be a lesser offering than our other trading partners, and they quite rightly expect it to reflect Australia's best offer.

Australian Chamber of Commerce and Industry

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