

Labour mobility

Introduction

- 4.1 The most contested provisions of the China Australia Free Trade Agreement (ChAFTA) are those on labour mobility. This chapter examines the provisions, breaking them down into their component parts to establish the individual issues and the way the provisions interconnect within the ChAFTA structure.
- 4.2 Labour movement is governed by two separate areas of the treaty plus two Memoranda of Understanding (MOUs), which operate in conjunction. In much of the discussion, the issues in the separate sections have been conflated, adding confusion to an already complex framework. This has led to considerable public debate fed by a widespread media campaign.
- 4.3 The Migration Council of Australia (MCA) suggests that much of the community concern being expressed over the labour mobility provisions in ChAFTA 'relate to the technical nature of migration related to FTA provisions and a lack of understanding of the existing regulatory framework'.¹
- 4.4 The two sections containing labour provisions within the Agreement are:
- Chapter 10: Movement of Natural Persons; and
 - Side letter on skills assessment.

1 Migration Council of Australia (MCA), *Submission 72*.

- 4.5 Labour provisions are also contained in two MOUs which are not part of the Agreement but are official documents considered to be part of the overall ChAFTA package:²
- Memorandum of Understanding: Investment Facilitation Arrangement; and
 - Memorandum of Understanding: Work and Holiday Visa Arrangement.

Movement of Natural Persons

- 4.6 Under Chapter 10: Movement of Natural Persons, Australia agrees to provide temporary entry for Chinese individuals in the following categories:
- business visitors;
 - intra-corporate transferees;
 - independent executives;
 - contractual service suppliers; and
 - installers and servicers.³
- 4.7 With regard to temporary entry under the provisions in Chapter 10, Australia shall not:
- (a) impose or maintain any limitations on the total number of visas to be granted to natural persons of the other Party; or
 - (b) require labour market testing, economic needs testing or other procedures of similar effect as a condition for temporary entry.⁴
- 4.8 Based on the definition of 'contractual service suppliers' in Annex 10-A:10, these provisions have given rise to two major concerns: unlimited numbers of Chinese workers entering Australia, and no labour market testing taking place to determine if Australian workers are available to fill particular positions. The Construction, Forestry, Manufacturing and Energy Union (CFMEU) outlined these concerns:

2 Department of Foreign Affairs and Trade (DFAT), 'China-Australia Free Trade Agreement: FTA Text', <<http://dfat.gov.au/trade/agreements/chafta/official-documents/Pages/official-documents.aspx>> viewed 15 September 2015.

3 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA)*, Annex 10-A: Specific Commitments on the Movement of Natural Persons pp. 116-118.

4 *Free Trade Agreement between the Government of Australia and the Government of the People's Republic of China (ChAFTA)*, Article 10.4: Grant of Temporary Entry.

In the non-concessional 457 visa program, the effect of the Australian commitments in ChAFTA is that all 457 sponsoring employers (not just Chinese companies) can engage unlimited numbers of Chinese nationals on 457 visas in all 651 'skilled' occupations (trade, technical and professional) currently on [the Consolidated Sponsored Occupation List] with no legal obligations to look first for qualified Australian workers and prove none are available.⁵

457 visa process

- 4.9 Visas for contractual service suppliers will be implemented through Australia's existing 457 visa programs.⁶ Given this, an understanding of the 457 process is necessary to consider the impact of the ChAFTA agreement.
- 4.10 The Temporary Work (Skilled) (subclass 457) visa is demand driven and enables 'employers to address labour shortages by bringing in skilled workers where they cannot find an appropriately skilled Australian'.⁷ The 457 visa process consists of three stages: sponsorship, nomination and visa application. Business sponsors must comply with a range of obligations and must ensure that 457 visa holders are afforded the equivalent employment terms and conditions of an Australian worker.⁸ This includes being paid no less than the local market rate and more than the Temporary Skilled Migration Income Threshold (TSMIT), currently \$53 900 per annum.⁹
- 4.11 Labour market testing was re-introduced into the process in 2013. Most occupations remain exempt. Those occupations requiring labour market testing are 'mostly trades-based as well as nurses and some engineering occupations'.¹⁰

Existing exemptions in the 457 process

- 4.12 The *Migration Act 1958* gives the Minister the discretion to waive the requirement for labour market testing to comply with Australia's

5 Construction, Forestry, Manufacturing and Energy Union (CFMEU), *Submission 80*, p. 15; Australian Council of Trade Unions (ACTU), *Submission 51*, p. 9; Australian Manufacturing Workers' Union (AMWU), *Submission 66*, pp. 4-5; UnionsWA, *Submission 89*, p. 5.

6 Ms Jan Adams, Deputy Secretary, Department of Foreign Affairs and Trade (DFAT), *Committee Hansard*, 7 September 2015, p. 24.

7 Department of Immigration and Border Protection (DIBP), *Submission 88*, p. 5.

8 DIBP, *Submission 88*, p. 6.

9 DIBP, *Submission 88*, p. 6.

10 MCA, *Submission 72*.

international trade obligations.¹¹ Australia has exercised this power with regard to contractual services providers in previous free trade agreements including the agreements with Korea, Chile and Thailand.

- 4.13 The Department of Immigration and Border Protection (DIBP) pointed out that exemption from labour market testing for 457 visas in similar categories for other FTAs has not led to a substantial increase in the number of applications or temporary workers coming into Australia.¹²
- 4.14 This suggests that legislative change will not be required to maintain the current framework of safeguards, which includes a degree of ministerial discretion. There is a risk that additional legislation will increase compliance costs and reduce flexibility.

Impact of ChAFTA on 457 process

- 4.15 DIBP argue that the existing standards and obligations are sufficient to ensure that Australian workers will be protected within the Australian employment market:

Under the standard business sponsored project, the first thing you have to be is a lawfully trading entity in Australia. We then approve you as a sponsor. Once you have been approved as a sponsor, you have a right to apply to access workers beyond the domestic labour market. Once you are a sponsor, however, you are actually signing up to a whole pile of obligations. You make attestations around putting Australians first in terms of the jobs; you make attestations around how you will treat them, the money you will pay them et cetera.¹³

- 4.16 Once the sponsor has acknowledged these obligations, they may make a nomination. At this point the Department looks at the company, its size and the size of its workforce to satisfy itself that the job and the vacancy are genuine before approving the nomination.¹⁴ Labour market testing only comes into play after the steps of sponsorship and nomination have been fulfilled, and only for certain categories of employment and where an existing exemption does not apply.¹⁵

11 *Migration Act 1958*, s 140BA(1)(c), 140GBA(2).

12 Mr David Wilden, First Assistant Secretary, Immigration and Citizenship Policy Division, Department of Immigration and Border Protection (DIBP), *Committee Hansard*, Canberra, 7 September 2015, p. 24. The definition of 'contractual service suppliers' is the same in the Korea FTA and the China FTA.

13 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 27.

14 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 27.

15 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 24.

- 4.17 The Department maintains that the first two steps in the 457 visa process provide assurance that Australian workers will be offered jobs ahead of temporary foreign workers:
- ‘Genuine job’ and ‘genuine vacancy’ are the two prime criteria at the nomination phase. We would not classify that strictly as labour market testing, however ... that is where our obligations are triggered.¹⁶
- 4.18 The MCA confirmed the requirements to undertake the initial steps in the 457 visa process will protect Australian workers:
- ... Chinese citizens on 457 visas under ChAFTA will still require English proficiency and sponsorship under standard terms and conditions of the 457 visa program, including market salary rates and a wage threshold. In effect, those elements of the 457 regulatory framework that have been shown to be most effective in preventing employers from preferencing overseas workers will still apply.¹⁷
- 4.19 With regard to contractual service suppliers, DIBP does not concede that the provisions in Chapter 10 will led to an influx of Chinese workers into Australia:
- ... the contractual service suppliers are the individuals who would come in here. It is not company based; they are the service suppliers under the definition of natural persons. Let us use one of the examples you have just said, say a cleaning company. If they wanted to bring in a worker, they would still have to be trading here and the worker would have to meet all necessary mandatory qualifications. You would be talking about maybe the accountant or the managing director; you are not talking about cleaners as they do not qualify under the 457 because they are not considered skilled positions. They have to be ANZSCO level 3 or above. As I said, you still have to go through nominations, sponsorship et cetera before you can even look at accessing an individual worker and then that individual worker still has to meet all of the mandatory requirements that Australia has for the occupation.¹⁸
- 4.20 DIBP also identified the cost to the employer of using the 457 visa program as a deterrent to misuse.¹⁹ This was corroborated by Master Builders Australia who told the Committee that the compliance costs for

16 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 28.

17 MCA, *Submission 72*.

18 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 31.

19 Mr Wilden, DIBP, *Committee Hansard*, Canberra, 7 September 2015, p. 29.

employing temporary workers through the 457 visa process forced employers to test the local market first:

... our members first of all look for local people to fill the vacancies – because it is inherently very expensive to go down the 457 track, so there is an in-built bias to look for local employees to fill the positions.²⁰

- 4.21 Overall, the MCA suggests that the effect of ChAFTA on the 457 visa program will be ‘small and positive’:

As at September 2014, there were 6 245 Chinese citizens on primary 457 visa holders in Australia. Of these, the Migration Council estimates about 1 150 would be subject to labour market testing as they fall into non-exempt occupations. These migrants represent approximately one per cent of the 457 visa program.²¹

Skills assessment

- 4.22 A side letter to ChAFTA streamlines the skills assessment process for temporary skilled labour visas by removing the requirement for mandatory skills assessment for ten occupations. It also undertakes to review remaining occupations within two years with the intention of reducing the number of occupations requiring such assessment, or eliminating the requirement within five years.

- 4.23 The removal of mandatory skills assessment for these occupations and the possibility of the future removal of mandatory assessment from others raises concerns over safety in some sectors. In particular the Electrical Trades Union (ETU) said it would have a significant impact on safety in the electrical trades:

Electrical work is inherently dangerous, that’s why there are stringent electrical training and safety standards in Australia that have been developed over decades. Removing the requirement for overseas trades workers to be assessed to see if their skills meet our standards is dangerous for workers, their colleagues and for the public.²²

20 Mr Wilhelm Harnisch, Chief Executive Officer, Master Builders Australia Ltd, *Committee Hansard*, Canberra, 7 September 2015, p. 14.

21 MCA, *Submission 72*.

22 Electrical Trades Union of Australia (ETU), *Submission 44*.

- 4.24 There are currently two pathways for applicants applying for a 457 visa in a nominated occupation²³: those for nationals in a short list of nominated countries²⁴ and nationals in all other countries. China has been moved from the short list to the list for all other countries.
- 4.25 Applicants from the nominated countries must undertake a skills assessment recognised by Trades Recognition Australia (TRA) *prior* to lodging a visa application.²⁵ Applicants from all other countries are required to include evidence of requisite skills, qualifications and work experience *as part of* their application.²⁶ Applicants from both streams need to meet all other visa requirements as well as any Federal, State or Territory licensing or registration requirements.²⁷
- 4.26 For applicants from countries on the broader list, DIBP must be satisfied that the evidence submitted with the application demonstrates the necessary experience to work in the nominated occupation in Australia. If the Department is not satisfied it will request that TRA undertake an assessment of the applicant's skills and the application will need to be re-lodged with evidence of successful skills assessment.²⁸
- 4.27 After arriving in Australia, applicants have 28 days to obtain the appropriate Australian registration or certification for the nominated occupation before they can start work.²⁹
- 4.28 Moving China from the short list of nominated countries to the list for all other countries acknowledges the improvement in China's training system:
- [This action] signals Chinese qualifications will be treated in the same manner as other countries, such as the United Kingdom, recognising the continuous improvement in the Chinese formal education sector and the growth in the maturity of the Chinese labour market.³⁰

23 There are currently 28 nominated occupations. See Trades Recognition Australia, '457 Nominated Occupations', <<http://www.tradesrecognitionaustralia.gov.au/Programs/457/Pages/Eligibility.aspx>> viewed 15 September 2015.

24 The nominated countries are: Brazil, China (including Hong Kong and Macau), Fiji, India, Papua New Guinea, Philippines, South Africa, Thailand, Vietnam and Zimbabwe.

25 Department of Foreign Affairs and Trade (DFAT), *Submission 78*.

26 DFAT, *Submission 78*.

27 DFAT, *Submission 78*.

28 DFAT, *Submission 78*.

29 DIBP, *Submission 88*, p. 7.

30 MCA, *Submission 72*.

- 4.29 The Australian Manufacturing Workers' Union (AMWU) conceded that in some trades Chinese training has improved substantially but still expressed reservations about blanket recognition of Chinese trade skills and qualifications:

We have great respect for our Chinese colleagues and the skills that they have. Having some knowledge of Chinese vocational training, I can say that in some instances they actually have higher standards of vocational training than comparable areas in Australia, but we have no certainty about that with respect to vehicle testing and vehicle maintenance.³¹

- 4.30 The AMWU explained that equivalence between Australia's and China's skills levels and qualification system is difficult to establish because of the difference in their training schemes. It is difficult to compare the Chinese two year, school-based system with Australia's four-year apprenticeship program. They suggest that the system lacks the 'rigour' of the Australian system.³²

- 4.31 The National Electrical and Communication Association (NECA) initially had serious concerns over the new arrangements for skills assessment proposed under ChAFTA. However, after consultation with the Minister and DFAT, NECA is satisfied that the new arrangement does not jeopardise licensing and safety standards:

A 457 applicant will still need to satisfy the Department of Immigration and Border Protection that they have the skills and the experience required for their nominated occupation in order for a visa to be granted. The process for determining an applicant's experience still includes evidence of qualifications: membership of trade bodies, if applicable; references; and English language tests and skills. As with all 457 applications, if a processing officer considers that further verification is required, a skills assessment can then be ordered.³³

- 4.32 NECA is also reassured that licensing requirements will be rigorously enforced:

On the assumption that the applicant satisfies the 457 application, the applicant is still required to obtain a licence as part of the conditions and requirements of their relevant state or territory

31 Mr Andrew Dettmer, National President, Australian Manufacturing Workers' Union (AMWU), Melbourne, *Committee Hansard*, 28 August 2015, p. 37.

32 Mr Dettmer, AMWU, *Committee Hansard*, Melbourne, 28 August 2015, p. 37

33 Mr Suresh Manickam, Chief Executive Officer, National Electrical and Communications Association (NECA), *Committee Hansard*, Melbourne, 28 August 2015, p. 18.

licensing authority. Critically, the regular 457 application track that is being proposed for Chinese nationals does not remove the requirement that temporary visa holders must hold relevant licences and certification as required by Australia federal, state and territory laws and regulations.³⁴

- 4.33 Master Builders Australia supports the change to the skills assessment proposed in the side letter provided that the process for the alternative pathway retains the current safeguards.³⁵ The Business Council of Australia (BCA) is also satisfied with the change but stresses that, with the implementation of the Korea and Japan FTAs as well as ChAFTA, steps must be taken to ensure that the relevant agencies are adequately resourced and coordinated to assure compliance.³⁶

Investment Facilitation Arrangement

- 4.34 The Memorandum of Understanding (MOU) that contains the Investor Facilitation Arrangement (IFA) was negotiated alongside ChAFTA, although it is not a part of the treaty. The MOU is an agreement between Australia and China that is not legally binding and therefore not enforceable under international law. The Committee's review of ChAFTA covered all matters relating to the Agreement, including arrangements such as this MOU, the MOU on a Work and Holiday Visa arrangement and the side letters.
- 4.35 The IFA provides for Chinese investors in projects over \$150 million to negotiate a concessional visa arrangement for temporary workers. Eligible projects will be determined by DFAT and the China International Contractors Association (CHINCA).
- 4.36 Concerns have been raised regarding three issues:
- the lack of mandatory labour market testing;
 - the possibility of a negotiated arrangement broadening the 457 visa to include semi-skilled workers; and
 - the potential for exploitation of temporary workers entering Australia under the concessional 457 visa program.
- 4.37 These concerns stem from section 4 of the MOU:

34 Mr Manikam, NECA, *Committee Hansard*, Melbourne, 28 August 2015, p. 18.

35 Master Builders Australia (MBA), *Submission 54*, pp. 8–9.

36 Business Council of Australia (BCA), *Submission 76*, pp. 5–6.

The areas which will be subject to negotiation between DIBP and the project company in respect of the eligible project will include:

- (a) the occupations covered by the IFA project agreement;
- (b) English language proficiency requirements;
- (c) qualifications and experience requirements;
- (d) calculation of the terms and conditions of the Temporary Skilled Migration Income Threshold (TSMIT).³⁷

IFA impact on 457 visas

4.38 Under section 4(a) of the IFA MOU, 'occupations covered by the IFA' is one of the areas for negotiation between DIPB and the project company. The occupations eligible for negotiation include those listed as skills levels 1-4 in the Australian and New Zealand Standard Classification of Occupations (ANZCO). Level 4 is the skill level equivalent of Australian Qualification Framework (AQF) Certificate II or III and is considered semi-skilled or sub-trade level.

4.39 The CFMEU point out that this skill level has never been included in an FTA package before.³⁸ However, the MCA indicates that the subsection is based on precedents for arrangements for labour agreements under various previous governments:

Many labour agreements provide the pathway for employers to hire 457 visa holders in skill level 4 occupations not available under the standard 457 visa program. This is neither new nor noteworthy. For example, a new occupation – the 'Skilled Meat Worker' – was created for abattoirs in regional Australia and is based on a skill level 4AQF standard.³⁹

4.40 Broadening the eligibility criteria to include semi-skilled workers is seen as threatening vulnerable Australian workers particularly if there is no requirement for labour market testing:

... there is merit to the argument that skill level 4 occupations should be preceded by a requirement to demonstrate the need for labour in some form. This is as semi-skilled and unskilled work is more precarious and has traditionally not been seen as the domain of immigration policy.⁴⁰

37 *Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on an Investment Facilitation Arrangement (MOU IFA)*, s 4.

38 CFMEU, *Submission 80*, p. 30.

39 MCA, *Submission 72*.

40 MCA, *Submission 72*.

Labour market testing

- 4.41 The MOU for the IFA states clearly that:
- There will be no requirement for labour market testing to enter into an IFA.⁴¹
- 4.42 Implementing an IFA is a three step process. The first stage, negotiated between CHINCA and DFAT, solely addresses the infrastructure development criteria in the MOU. If the proposed IFA is endorsed by DFAT, the second stage commences, where the project company submits a project proposal to DIPB.
- 4.43 According to DIBP Project Agreement Guidelines, at this second stage the project company must provide:
- evidence of being registered in Australia and the owner or project manager of a major resource or infrastructure project;
 - supporting business case;
 - robust labour market analysis;
 - project workforce strategy; and
 - evidence of stakeholder consultation.⁴²
- 4.44 The DIBP states that the labour market analysis would have to 'demonstrate labour market shortages in the occupations the project company is seeking to fill for the successful completion of the project'.⁴³
- 4.45 When the project agreement has been agreed to by the Minister, the third stage commences; negotiating individual labour agreements with direct employers.⁴⁴
- 4.46 At the labour agreement stage of the process, employers must show that there is a 'demonstrated labour market need' which may require labour market testing:
- [The company] must provide a comprehensive written statement of the labour market need for the requested occupation(s), demonstrating ongoing shortages. This includes a project workforce profile illustrating the composition of the business' current and future anticipated workforce on the project, as well as evidence that [the company] have made significant efforts to recruit workers from the Australian labour market within the previous six months.⁴⁵

41 MOU IFA, s 6.

42 DFAT, *Submission 78*.

43 DIBP, *Submission 88*, p. 9.

44 DFAT, *Submission 78*; DIBP, *Submission 88*, pp. 8-9.

45 DIBP, *Submission 88*, p. 9.

4.47 Both the second (project agreement) and third (labour agreement) stages rest on existing legislation and regulations.⁴⁶ Despite reassurances from the implementing departments, there is still scepticism regarding the application of labour market testing for positions covered by an IFA. The failure to specify that labour market testing will be mandatory is seen as a 'loophole' that will encourage circumvention of a requirement to determine if there are suitable workers locally available.⁴⁷ The CFMEU is not convinced that the DIBP Guidelines are sufficient to ensure that the Australian labour market will be tested before employing temporary overseas workers and argues that the Guidelines are ambiguous and contradictory.⁴⁸ The AMWU would prefer to see the requirements given the force of law:

One of the fundamental problems with the way all these schemes operate is that the actual conditions and requirements that are there are neither in legislation nor in regulations. They are in ministerial decrees and departmental guidelines. That means that they have very little actual force in law in a sense and are very easy to get around. One of the things we would like to see is very strong sensible conditions ... put into legislation ...⁴⁹

4.48 The questions around mandatory labour market testing for IFA projects have been compounded by the conditions set out in Chapter 10 of ChAFTA discussed above. There appears to be confusion over whether the exemption from labour market testing for 457 visa applicants under 10.4(3)(b) applies to applicants under the IFA provisions. The MCA recommends that the Government clarify the connection between the requirements in Chapter 10 and the MOU.⁵⁰

4.49 However, overall the MCA maintains that existing processes are adequate and sees nothing to suggest that the provisions in ChAFTA will led to migrant workers being prioritised over Australian workers:

... there does not appear to be clauses in ChAFTA Chapter 10, the side letter on skills assessment and licensing or either Memorandum of Understanding that will prioritise potential

46 MCA, *Submission 72*.

47 Communications Electrical Plumbing Union (CEPU), *Submission 79*, p. 4; Dr Patricia Ranald, Coordinator, Australian Fair Trade and Investment Network Ltd (AFTINET), *Committee Hansard*, Sydney, 31 July 2015, pp. 8 and 12.

48 CFMEU, *Submission 80*, p. 34.

49 Dr Tom Skladzien, National Economics Adviser, Australian Manufacturing Workers' Union (AMWU), *Committee Hansard*, Melbourne, 28 August 2015, p. 36.

50 MCA, *Submission 72*.

Chinese migrants [sic] workers over Australian workers in the labour market.⁵¹

Safeguards for temporary workers

4.50 Allowing the areas listed in section 4 of the MOU to be negotiated between the investor and the DIBP at the IFA stage and before the temporary workers arrive in Australia has led to concerns over the exploitation of these workers. The MOU requires all direct employers to comply with Australian workplace law:

All direct employers under an IFA and workers granted visas under an approved IFA labour agreement will be required to comply with applicable Australian laws, including workplace law, work safety law and relevant Australian licensing, regulation and certification standards.⁵²

4.51 The MCA reiterates that all temporary workers in Australia under the 457 visa scheme fall under Australia's domestic workplace law:

... when participating in the Australian labour market, all Chinese citizens on either a subclass 457 or 462 visa will remain subject to the Fair Work Act and all other relevant domestic legislation governing the labour market.⁵³

4.52 However, AMWU argues that these workers have no guaranteed access to representation and that a lack of English language skills could leave them unaware of their rights under Australian law:

This raises grave concerns that these workers will be exploited, with no recourse to or assistance from the usual Australian institutions that expose, counter and fight against worker exploitation.⁵⁴

4.53 Australian Fair Trade and Investment Network Ltd (AFTINET), among others, echoes these concerns emphasising the possible isolation and vulnerability of these workers:

... it says that their conditions are supposed to meet Australian minimum standards. But bear in mind that these workers will be brought over by a particular employer, they will be tied to that employer, and they [will] be isolated from the rest of the workforce. They certainly do not have the basic right to collective

51 MCA, *Submission 72*.

52 MOU IFA, s 11.

53 MCA, *Submission 72*.

54 AMWU, *Submission 66*, p. 9.

bargaining, which is a fundamental aspect of the Fair Work Act, because their conditions have already been determined in this prior negotiation.⁵⁵

4.54 A number of unions provided examples of abuse under the current temporary worker arrangements to illustrate the type of exploitation that currently occurs, ranging from low wages and poor conditions to unfair dismissal.⁵⁶ The fear is that temporary workers brought in under the MOU IFA will face similar problems.

4.55 There is also concern that the provision to employ temporary foreign workers on these projects could be used to pressure Australian workers into accepting lesser conditions.⁵⁷ The AMWU suggests that a project company could use the threat of bringing in Chinese workers to force Australian workers to accept lower wages and conditions:

From our point of view, this is a very clear way that pressure can be exerted on workers and their representatives to accept lower pay, lower conditions and lower safety standards. It is not even by entering an IFA, but just by casually mentioning that such an option is theoretically possible – that is our concern.⁵⁸

Work and Holiday Visa Arrangement

4.56 The MOU to establish a work and holiday visa (WHV) arrangement provides for up to 5 000 multiple entry Work and Holiday visas for a temporary stay of twelve months for Chinese students wishing to come to Australia. While the arrangements contain employment provisions, they are primarily intended for students intending to holiday in Australia.⁵⁹

4.57 Previous arrangements with other countries have had reciprocal provisions, where Australian students are able to access work and holiday visas. Concern has been expressed with the lack of reciprocity in this arrangement:

... it appears there is a lack of reciprocity for Australian citizens to 'work and holiday' in China. This is a [sic] disappointing given

55 Dr Ranald, AFTINET, *Committee Hansard*, Sydney, 31 July 2015, p. 9; ETU, *Submission 44*.

56 Mr Leslie McLaughlan, National President, Western Australia State Secretary, Electrical Trades Union (ETU), *Committee Hansard*, Perth, 25 August 2015, pp. 3-4; Mr Dettmer, *Committee Hansard*, Melbourne, 28 August 2015, p. 35; AFTINET, *Submission 21*, p. 6.

57 AMWU, *Submission 66*, p. 9.

58 Dr Skladzien, AMWU, *Committee Hansard*, Melbourne, 28 August 2015, p. 35.

59 *Memorandum of Understanding between the Government of Australia and the Government of the People's Republic of China on a Work and Holiday Visa Arrangement (MOU WHV)*, s 2.

traditionally these agreements are reciprocal in nature. It would be lamentable if this MoU established a precedent extended to future negotiations.⁶⁰

4.58 The MOU provides for a review in three years in which reciprocity will be considered.⁶¹

4.59 The most pressing concern raised over the WHV arrangements is the possibility of exploitation of young workers. Recent media reports⁶² of the exploitation of young international workers in Australia have fuelled speculation that young Chinese workers could face similar problems.⁶³

60 MCA, *Submission 72*.

61 MOU WHV, s 3.

62 Examples: Four Corners, 'Labour exploitation, slave-like conditions found on farms supplying biggest supermarkets', 04.05.15 and 7:30, 'Young workers on holiday visas face exploitation, locals asked to accept the same says union', 22.06.15.

63 AFTINET, *Submission 21*, p. 9; CFMEU, *Submission 80*, p. 36.

